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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 2017

Issue#	Rules Due Date	Date of Issue
1	December 27, 2016	January 6, 2017
2	January 3, 2017	January 13, 2017
3	January 9, 2017	January 20, 2017
4	January 17, 2017	January 27, 2017
5	January 23, 2017	February 3, 2017
6	January 30, 2017	February 10, 2017
7	February 6, 2017	February 17, 2017
8	February 14, 2017	February 24, 2017
9	February 21, 2017	March 3, 2017
10	February 27, 2017	March 10, 2017
11	March 6, 2017	March 17, 2017
12	March 13, 2017	March 24, 2017
13	March 20, 2017	March 31, 2017
14	March 27, 2017	April 7, 2017
15	April 3, 2017	April 14, 2017
16	April 10, 2017	April 21, 2017
17	April 17, 2017	April 28, 2017
18	April 24, 2017	May 5, 2017
19	May 1, 2017	May 12, 2017
20	May 8, 2017	May 19, 2017
21	May 15, 2017	May 26, 2017

22	May 22, 2017	June 2, 2017
23	May 30, 2017	June 9, 2017
24	June 5, 2017	June 16, 2017
25	June 12, 2017	June 23, 2017
26	June 19, 2017	June 30, 2017
27	June 26, 2017	July 7, 2017
28	July 3, 2017	July 14, 2017
29	July 10, 2017	July 21, 2017
30	July 17, 2017	July 28, 2017
31	July 24, 2017	August 4, 2017
32	July 31, 2017	August 11, 2017
33	August 7, 2017	August 18, 2017
34	August 14, 2017	August 25, 2017
35	August 21, 2017	September 1, 2017
36	August 28, 2017	September 8, 2017
37	September 5, 2017	September 15, 2017
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40	September 25, 2017	October 6, 2017
41	October 2, 2017	October 13, 2017
42	October 10, 2017	October 20, 2017
43	October 16, 2017	October 27, 2017
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46	November 6, 2017	November 17, 2017
47	November 13, 2017	November 27, 2017
48	November 20, 2017	December 1, 2017
49	November 27, 2017	December 8, 2017
50	December 4, 2017	December 15, 2017
51	December 11, 2017	December 26, 2017
52	December 18, 2017	December 29, 2017

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED REPEALER

1) Heading of the Part: Procedures for Issuing Municipal Waste Planning and Nonhazardous Solid Waste or Municipal Waste Enforcement Grants

2) Code Citation: 35 Ill. Adm. Code 870

3)

Section Numbers:	Proposed Actions:
870.101	Repealed
870.102	Repealed
870.103	Repealed
870.201	Repealed
870.202	Repealed
870.203	Repealed
870.204	Repealed
870.205	Repealed
870.206	Repealed
870.207	Repealed
870.209	Repealed
870.210	Repealed
870.211	Repealed
870.301	Repealed
870.302	Repealed
870.303	Repealed
870.304	Repealed
870.305	Repealed
870.306	Repealed
870.308	Repealed
870.309	Repealed
870.310	Repealed

4) Statutory Authority: Implementing and authorized by Section 22.15 of the Environmental Protection Act [415 ILCS 5/22.15].

5) A Complete Description of the Subjects and Issues Involved: In response to Executive Order 2016-12, the Illinois Environmental Protection Agency (Illinois EPA) proposes to repeal 35 Ill. Adm. Code 870. This Part contains procedures for issuing financial assistance in the form of individual grants. The Illinois EPA no longer issues such grants. In addition, the Illinois EPA's statutory authority for the Waste Planning component of this Part was repealed in 1995.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED REPEALER

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

7) Will this proposed repealer replace an emergency rule currently in effect? No

8) Does this repealer contain an automatic repeal date? No

9) Does this repealer contain incorporations by reference? No

10) Are there any other rulemakings pending on this Part? No

11) Statement of Statewide Policy Objective: It does not create or expand a State mandate under the State Mandates Act [30 ILCS 805].

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on the proposed rules may submit them in writing by no later than 45 days after publication of this Notice to:

Sara Terranova
Assistant Counsel
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield IL 62794-9276

217/782-5544
sara.terranova@illinos.gov

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: Part 870 provides procedures for issuing municipal waste-related grants that may affect small businesses.

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

C) Types of professional skills necessary for compliance: None

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED REPEALER

14) Regulatory Agenda on which this rulemaking was summarized: July 2017

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

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED REPEALER

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 870
PROCEDURES FOR ISSUING MUNICIPAL WASTE PLANNING AND NONHAZARDOUS SOLID WASTE OR MUNICIPAL WASTE ENFORCEMENT GRANTS (REPEALED)

SUBPART A: INTRODUCTION

Section
870.101 Purpose
870.102 Definitions
870.103 Severability

SUBPART B: MUNICIPAL WASTE PLANNING GRANTS

Section
870.201 Grant Assistance Availability
870.202 Assistance Amount
870.203 Allocation
870.204 Required Content of Applications for MWP Grants
870.205 Agency Action on Application
870.206 Grant Award and Acceptance
870.207 Grantee Responsibilities
870.208 Supplemental SWP Grants (Repealed)
870.209 Grant Payment Schedule
870.210 Noncompliance with Grant Conditions
870.211 Indemnity
870.212 Guidance for Planning (Repealed)

SUBPART C: NONHAZARDOUS SOLID WASTE OR MUNICIPAL WASTE ENFORCEMENT GRANTS

Section
870.301 Grant Assistance Availability
870.302 Assistance Amount
870.303 Required Content of Applications for SMWE Grants

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED REPEALER

870.304 Agency Action on Application
870.305 Grant Award and Acceptance
870.306 Evaluation of Performance
870.307 Supplemental SWE Grants (Repealed)
870.308 Grant Payment Schedule
870.309 Noncompliance with Grant Conditions
870.310 Indemnity

AUTHORITY: Implementing and authorized by Section 22.15 of the Environmental Protection Act [415 ILCS 5/22.15].

SOURCE: Emergency rules adopted at 10 Ill. Reg. 17780, effective September 29, 1986, for a maximum of 150 days; adopted at 11 Ill. Reg. 9585, effective May 15, 1987; amended at 14 Ill. Reg. 19024, effective November 13, 1990; amended at 15 Ill. Reg. 9311, effective June 18, 1991; amended at 19 Ill. Reg. 11861, effective August 3, 1995; repealed at 41 Ill. Reg. _____, effective _____.

SUBPART A: INTRODUCTION

Section 870.101 Purpose

a) The Illinois Solid Waste Management Act [415 ILCS 20] amended the Environmental Protection Act [415 ILCS 5] (Act) by adding Section 22.15 of the Act which authorized the Environmental Protection Agency to:

1) *Provide financial assistance to units of local government in planning for the management of nonhazardous solid waste* or municipal waste *where alternatives to disposal of nonhazardous solid waste* or municipal waste *in a sanitary landfill will receive full evaluation and consideration in the planning process; or in plans prepared pursuant to the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act* [415 ILCS 5/22.15(g)]; and

2) *Provide financial assistance to units of local government for the performance of inspecting, investigating and enforcement activities pursuant to Section 4(r)* of the Act *at nonhazardous solid waste* or municipal waste *disposal sites* [415 ILCS 5/22.15(h)].

b) This Part sets forth the procedures used by the Agency in the issuance of grants to

units of local government for:

1) planning for the management of municipal waste in accordance with Section 22.15(g) of the Act [415 ILCS 5/22.15(g)] of the Act; and

2) inspecting, investigating and enforcement activities at nonhazardous solid waste or municipal waste disposal sites in accordance with Section 22.15(h) [415 ILCS 5/22.15(h)].

Section 870.102 Definitions

For purposes of this Part, the words and terms used in this Part shall have the meanings below. Words and terms not defined in this Part, if defined in the Environmental Protection Act [415 ILCS 5], shall have the meanings as defined therein. Words and terms not defined in this Part and not defined in the Environmental Protection Act [415 ILCS 5] shall have the meaning as defined in the Solid Waste Planning and Recycling Act [415 ILCS 15].

"Act" or "Environmental Protections Act" means the Environmental Protection Act at 415 ILCS 5.

"Advertising" means costs for advertising related to grant activities. Public notices, newspaper advertisements, and consultant procurement costs are typically included in the advertising category.

"Agency" means the Environmental Protection Agency established by the Environmental Protection Act. (Section 3.01 of the Act)

"Allowable costs" means allocable project costs of the grantee that are reasonable and necessary. These may include, but are not limited to:

Costs of salaries, benefits, and expendable material incurred by the grantee for the project, except as provided in 35 Ill. Adm. Code 871.601(b)(7);
Professional and consultant services;
Project feasibility and engineering reports; and
Materials acquired, consumed, or expended specifically for the project.

"Amortization" means the prorating of appropriate other direct costs over a useful life, and the subsequent submittal of the prorated cost to the Agency for reimbursement.

"An accounting" means a compilation of documentation to establish, substantiate and justify the nature and extent of the charges for which the grantee is requesting reimbursement.

"Applicant" means the unit of local government that is applying for a municipal waste planning or nonhazardous solid or municipal waste enforcement grant under Section 22.15 of the Act.

"Combustion", as applied to municipal waste, means the incineration of municipal waste for either energy recovery or volume reduction.

"Commercial waste", as applied to municipal waste, means nonhazardous waste originating from wholesale, retail, or service establishments such as office buildings, stores, markets, theaters, hotels, motels, and warehouses.

"Composting" *means the biological treatment process by which microorganisms decompose the organic fraction of waste, producing compost.* (Section 3.70 of the Act)

"Computer charges" means expenses related to the lease or rental of computers, printers, and accessories.

"Conference or training registration" means expenses related to registration for conferences, workshops, seminars, and training that are grant-related.

"Construction or demolition debris", as applied to municipal waste, means nonhazardous materials, such as broken concrete, stone, rock, bricks or building or construction debris resulting from construction or demolition activities.

"Content", as applied to municipal waste, means the composition or characterization of that waste.

"Contractor" means the person, as defined in Section 3.26 of the Act, to whom a subagreement is awarded.

"Delegation agreement" means an agreement authorized by Section 4(r) of the Act under which the Agency may delegate inspection, investigation and enforcement authority at nonhazardous solid or municipal waste facilities or sites to a unit of

local government.

"Direct labor costs" means expenses for personnel working on grant-related activities that can be directly identified to the grant. These costs may include costs for the applicant's or grantee's direct personnel, in-kind contributions, and fringe benefits, but do not include contractors' costs.

"Direct personnel costs" means expenses for an applicant's or grantee's employees that can be directly identified to the grant. These costs do not include subcontractors' costs.

"Directly identifiable costs" means grant expenses that can be documented and traced to allowable grant activities and are supported by accurate and adequate documentation, such as timesheets, receipts, logs and vouchers.

"Economic assessment" means a study, review, or evaluation of the economic effects of a particular municipal waste management option or combination of options on the study area.

"Environmental assessment" means a study, review, or evaluation of the environmental effects of a particular municipal waste management option or combination of options on the study area.

"Equipment" means items to be purchased for grant activities that individually cost $50 or more and have a useful life of one year or more. These typically include office furniture, computers and printers, calculators and adding machines, and cameras.

"Expensed" means that requests for reimbursement for other direct costs are submitted by the grantee during the year in which the costs were accrued.

"Facilities, projects or programs", as applied to municipal waste management, means existing and proposed sites, operations, activities, and other recommended actions related to municipal waste management planning.

"Fringe benefits" means benefits for the applicant's or grantee's personnel. These may include, but are not limited to, social security, retirement, unemployment insurance, workers' compensation, and health insurance.

"Garbage" means *waste resulting from the handling, processing, preparation, cooking, and consumption of food, and wastes from the handling, processing, storage, and sale of produce.* (Section 3.11 of the Act)

"General household waste", as applied to municipal waste, means nonhazardous solid waste originating in single and multiple-family dwellings.

"Grant agreement" means the written agreement and amendments thereto between the Agency and a grantee in which the terms and conditions governing the grant are stated and agreed to by both parties.

"Grantee" means the unit of local government that has been awarded a grant for municipal waste planning or nonhazardous solid or municipal waste enforcement under Section 22.15 of the Act.

"Implementation", as applied to municipal waste planning, means activities related to the initiation or execution of facilities, projects, or programs included in an adopted waste management plan.

"Indirect Costs" means those costs incurred by an applicant or grantee for a common or joint purpose but benefitting more than one cost objective, and not readily identifiable to the cost objectives specifically benefitted. Procedures for the determination of indirect costs and indirect cost rates are found at 35 Ill. Adm. Code 871.Appendix B.

"Industrial lunchroom or office waste" means non-industrial waste produced in industrial lunchrooms, cafeterias or food-serving functions, or offices.

"In-kind contributions" means goods and services donated to the applicant's or grantee's grant program by a second unrelated party. These goods and services must be contributed to the applicant or grantee and a fair market value must be assigned to these contributions.

"Institutional waste", as applied to municipal waste, means non-industrial waste originating in facilities such as schools, hospitals, correctional facilities, and research institutions.

"Landscape Waste" means *all accumulations of grass or shrubbery cuttings, leaves, tree limbs and other materials accumulated as the result of the care of*

lawns, shrubbery, vines and trees. (Section 3.20 of the Act)

"Licensed professional engineer" means an individual currently licensed to practice professional engineering in the State of Illinois.

"Local Solid Waste Disposal Act" or "LSWDA" means the Local Solid Waste Disposal Act at 415 ILCS 10.

"Municipal joint action agency" means a planning or implementation agency formed pursuant to Section 3 of the Intergovernmental Cooperation Act [5 ILCS 220/3] consisting of any two or more municipalities, counties, or combination thereof formed by intergovernmental agreement to provide for efficient and environmentally sound collection, transportation, processing, storage, and disposal of municipal waste.

"Municipal waste" means *garbage, general household, institutional and commercial waste, industrial lunchroom or office waste, landscape waste, and construction or demolition debris.* (Section 3 of the Solid Waste Planning and Recycling Act [415 ILCS 15/3]).

"Municipal waste management plan" means a program designed to manage municipal waste over a 20-year period. Plans shall include an evaluation of the existing municipal waste management system and a set of recommended actions that matches municipal waste management alternatives to applicable portions of the waste stream, and shall be adopted in accordance with the Solid Waste Planning and Recycling Act [415 ILCS 15].

"Municipal waste management planning" means the evaluation of various municipal waste management alternatives, using economic, energy, environmental, political, and technical criteria appropriate to the planning area, for incorporation in a municipal waste management plan to be adopted in accordance with the Solid Waste Planning and Recycling Act [415 ILCS 15].

"Nonhazardous Municipal Waste Planning Grants" or "MWP" Grants means grants issued pursuant to Section 22.15(g) of the Act and Subpart B of this Part.

"Municipal Waste Planning Grants" or "MWP Grants" means grants issued pursuant to Section 22.15(g) of the Act and Subpart B of this Part.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED REPEALER

"Nonhazardous Solid Waste or Municipal Waste Enforcement Grants" or "SMWE Grants" means grants issued pursuant to Section 22.15(h) of the Act and Subpart C of this Part.

"Office lease and utility expenses" means expenses for the lease or rental of office space and the concomitant utility expenses such as for heat and electricity.

"Origin", as applied to municipal waste, means the source of that waste, such as the general household, commercial, or institutional sector of the waste stream.

"Other direct costs" means those grant costs that can be directly identified as grant-related. These include travel, equipment, supplies, postage, advertising, computer charges, telecommunications, office lease and utility costs, vehicle charges, printing, and conference and training registration.

"Outputs" means all draft and final reports, documents, plans, and other materials produced for grant program elements. These include Phase I-Needs Assessments and Phase II-Municipal Waste Management Plans adopted in accordance with the provisions of the Solid Waste Planning and Recycling Act [415 ILCS 15].

"Phase I MWP Grant" means a Municipal Waste Needs Assessment Grant issued pursuant to Section 22.15(g) of the Act and 35 Ill. Adm. Code 870.204(b).

"Phase II MWP Grant" means a Municipal Waste Planning Grant issued pursuant to Section 22.15(g) of the Act and 35 Ill. Adm. Code 870.204(c).

"Phase III MWP Grant" means a Municipal Waste Implementation Planning Grant issued pursuant to Section 22.15(g) of the Act and 35 Ill. Adm. Code 870.204(d).

"Postage" means expenses for transmitting mail and packages for grant activities. These typically include regular, certified, express mail, and shipping charges for packages.

"Printing" means expenses related to copying, printing, reproduction, and document preparation.

"Program elements" means all activities, tasks, duties, assignments, functions, or responsibilities to be conducted to complete grant outputs, projects or programs.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED REPEALER

"Recycling center" means *a site or facility that accepts only segregated, nonhazardous, nonspecial, homogenous, nonputrescible materials, such as dry paper, glass, cans or plastics, for subsequent use in the secondary materials market.* (Section 3.81 of the Act)

"Recycling program" means facilities, projects, activities, or recommendations included in a municipal waste management plan that comply with the provisions of the Solid Waste Planning and Recycling Act [415 ILCS 15].

"Recycling, reclamation or reuse" means *a method, technique or process designed to remove any contaminant from waste so as to render such waste reusable, or any process by which materials that would otherwise be disposed of or discarded are collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.* (Section 3.30 of the Act)

"Solid Waste" means *waste*. (Section 3.82 of the Act)

"Solid Waste Management Act" means the Solid Waste Management Act at 415 ILCS 20.

"Solid Waste Planning and Recycling Act" or "SWPRA" means the Solid Waste Planning and Recycling Act at 415 ILCS 15.

"Source reduction", as applied to municipal waste, means the design, manufacture, acquisition, purchase, or use of materials or products to reduce the amount or toxicity of municipal waste before it enters the municipal waste stream. This may be accomplished through the redesign of manufacturing processes; redesign of products; changes in consumers' purchasing decisions, use, and disposal habits; and backyard composting.

"State" means the State of Illinois.

"Subagreement" means a written agreement between the grantee and another party, such as a contractor, and any tier of agreement thereunder for the furnishing of services, supplies, or equipment necessary to complete the project for which a grant was awarded, including contracts for personal and professional services and purchase orders.

"Subcontractor progress report" means a summary of a subcontrator's progress in meeting its tasks required under a grantee subagreement. Subcontractor progress reports shall include: the tasks completed during the reporting period; a description of any problems or delays; and a listing of current billing information. Subcontractors shall submit progress reports to grantees for transmittal to the Agency in accordance with the schedule in the grant agreement.

"Supplies" means items to be purchased for grant activities that have an individual cost of less than $50 and a useful life of less than one year and/or are personal (fitted or sized, such as gloves and boots) in nature.

"Telecommunications" means expenses related to telecommunications, such as telephone installation and usage, portable telephones, and pagers.

"Transfer station" means *a site or facility that accepts waste for temporary storage or consolidation and for further transfer to a waste disposal, treatment or storage facility. "Transfer station" includes a site where waste is transferred from:*

A rail carrier to a motor vehicle or water carrier;

A water carrier to a rail carrier or motor vehicle;

A motor vehicle to a rail carrier, water carrier or motor vehicle;

A rail carrier to a rail carrier, if the waste is removed from a rail car; or

A water carrier to a water carrier, if the waste is removed from a vessel. (Section 3.83 of the Act)

"Travel" means expenses related to the applicant's or grantee's execution of grant-related activities while on travel status. These typically include mileage, transportation, lodging, meals or per diem, and parking.

"Unallowable costs" means costs that exceed the total amount of the grant offer or which are not necessary for completion of the work required by the grant agreement. Such costs include, but are not limited to:

Areawide planning or enforcement not directly related to the project;

Bonus payments not legally required for completion of the project;

Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or otherwise;

Fines and penalties resulting from violations of, or failure to comply with, federal, State or local laws;

Costs outside the scope of the approved planning or enforcement project;

Interest on bonds or any other form of indebtedness required to finance the project costs;

Ordinary operating expenses of local governments, such as salaries and expenses of a mayor, city council members, or city attorney, except as provided in 35 Ill. Adm. Code 871.601(d);

Site acquisition (for example, sanitary landfills and sludge disposals areas);

Costs for which payment has been or will be received under another State or federal assistance program;

Costs of equipment or material procured in violation of any of the 35 Ill. Adm. Code 871 provisions;

Costs of special funds (i.e., industry advancement funds; funds to reimburse bidding costs to unsuccessful offerors, etc.) financed by contractors, contributions in the industry for methods and materials research, public and industry relations, market development, labor-management matters, wage negotiations, jurisdictional disputes, or defraying of all or part of unsuccessful offerors' bidding costs;

Costs under contracts that are incurred after the expiration of the applicable contractual completion date, even if the contractual completion date is subsequently extended by the grantee, unless such extention has been approved by the Agency in accordance with 35 Ill. Adm. Code 871.402;

Personal and professional consultant services costs arising under cost-plus-percentage-of-cost type of agreement (including the multiplier contract where profit is in the multiplier);

Personal and professional consultant services costs when the Agency has been refused access to the books and records of the contractor or the contractor has refused to renegotiate a personal or professional services contract in accordance with 35 Ill. Adm. Code 302; and

Increases in personal and professional consultant services contract fees which are based solely on a percentage of increased costs notwithstanding the contractual liabilities of the grantee under such contract.

"Unit of local government" means a municipality, county, or a municipal joint action agency pursuant to Section 3 of the Intergovernmental Cooperation Act [5 ILCS 220/3], or if the context requires, the member municipalities of such an agency or its territory.

"Vehicle changes" means costs for the lease, rental, purchase or utilization of a vehicle for grant activities. If a vehicle is purchased, only an amortized amount, calculated over a 36 month lifespan, may be reimbursed by the Agency.

"Volume reduction at the source" means source reduction.

"Waste" *means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the federal Water Pollution Control Act, as now or hereafter amended, or source, special nuclear, or by-product materials as defined in the Atomic Energy Act of 1954, as amended (68 U.S.C. 921) or any solid or dissolved materials from any facility subject to the federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant thereto,* except that for the purposes of this Part, waste does not include hazardous waste. (Section 3.53 of the Act)

"Waste audit" or "Waste stream audit", as applied to municipal waste, means a systematic accounting of materials (inputs) and products or waste (outputs) to identify potential waste reduction or recycling opportunities.

"Waste characterization study", as applied to municipal waste, means a study designed to determine estimates of the composition or characterization of that waste.

"Waste generation", as applied to municipal waste, means the weight or volume of materials and products as they enter the municipal waste stream, and before materials recovery, combustion, or landfilling occur.

"Waste reduction", as applied to municipal waste, means all municipal waste management methods resulting in a reduction of municipal waste requiring final disposal. Municipal waste reduction includes, but is not limited to, source reduction, recycling, composting, and shredding and compaction of municipal waste.

"Waste stream", as applied to municipal waste, means the waste generated by a specific sector as it moves from generation to final handling. A waste stream may include the municipal waste stream components, the total waste stream, or any component thereof.

Section 870.103 Severability

If any Section, subsection, sentence or clause of this Part shall be adjudged unconstitutional, void, invalid or otherwise unlawful, such adjudication shall not affect the validity of this Part as a whole, or any Section, subsection, sentence or clause thereof not adjudged unconstitutional, void, invalid or otherwise unlawful.

SUBPART B: MUNICIPAL WASTE PLANNING GRANTS

Section 870.201 Grant Assistance Availability

a) Subject to the availability of funding and the limitations and requirements set forth in this Part, grant assistance is available for the following planning projects and programs for the management of municipal waste:

1) Phase I MWP Grants (Municipal Waste Needs Assessment).

2) Phase II MWP Grants (Municipal Waste Planning).

3) Phase I and II MWP Grants (Municipal Waste Needs Assessment and Planning).

4) Phase III MWP Implementation Grants (Municipal Waste Implementation Planning).

b) The State share for total eligible costs for MWP Grants shall not exceed 70 percent.

c) Forms and instructions for applying for grant funding will be made available to eligible units of local government by the Agency.

d) As of September 1, 1995, no applications for Phase I or Phase II Grants will be accepted by the Agency.

Section 870.202 Assistance Amount

a) The amount of assistance to be provided to an applicant will be based on:

1) Identification of a need for planning in the affected area for management of municipal waste;

2) Provision of a specific means for satisfying that need through development of information conducive to the full evaluation and consideration of each preferred alternative to landfill facilities as identified in Section 2(b) of the Illinois Solid Waste Management Act;

3) Demonstration that the costs of the work program do not exceed the benefits from the proposed outputs. If the Agency's evaluation indicates that the proposed outputs do not justify the level of funding requested, the Agency may reduce the assistance amount; and

4) The extent to which the applicant's work program is demonstrated to be necessary and appropriate and to the extent that the anticipated cost of the applicant's program is proportionate to the proposed outputs.

b) No combination of MWP Phase I and II Grants issued under this Subpart may provide aggregate financial assistance in excess of $500,000.

c) Counties and municipal joint action agencies shall be eligible for Phase III Municipal Waste Implementation Planning Grants. No Phase III Municipal Waste Implementation Planning Grant issued under this Subpart shall provide financial assistance in excess of $500,000.

d) Phase III Municipal Waste Implementation Planning Grants will not be issued to counties and municipal joint action agencies without an adopted plan that has been deemed by the Agency to meet the requirements of the Solid Waste Planning and Recycling Act and any other applicable State legislation. These grants will provide funding for further planning toward implementation of municipal waste management alternatives identified in adopted plans. These adopted plans may be developed with State financial assistance. The issuance of Phase III grants is not contingent upon receipt of previous State financial assistance.

Section 870.203 Allocation

a) MWP Phase I and II grant funds shall be allocated for approved applications in the order of receipt of complete applications, to the extent that funds are available and appropriate. Priority in awarding grant funding shall be given to applicants that:

1) Have received no prior MWP grants; or

2) Are conducting planning in areas for which no previous planning activities have occurred.

b) The Agency shall make application forms, and other forms, and instructions available to counties and municipal joint action agencies to apply for Phase III grant funding. The Agency shall accept applications for Phase III Municipal Waste Implementation Planning Grants only on December 30 and June 30 of each year. If either of these dates falls on a weekend or a State holiday, applications will be accepted on the next business day. Applicants must submit applications on forms prescribed and provided by the Agency.

1) To the extent that funds are available and appropriated, priority in

reviewing grant applications shall be given to applicants based on the date and time that a complete application is received from the grant applicant by the Planning and Grants Unit, Solid Waste Management Section, Division of Land Pollution Control, Bureau of Land, Illinois Environmental Protection Agency. For purposes of review prioritizaton, a complete Phase III grant application must:

A) Include an ordinance or resolution by the applicant certifying that a municipal waste management plan has been adopted in accordance with the provisions of the Solid Waste Planning and Recycling Act. If the plan has been revised after initial adoption, a resolution or ordinance that designates the revisions as part of the plan must be submitted;

B) Include an ordinance or resolution by the applicant certifying that implementation of the plan, including the recycling program, has begun within one year after plan adoption; and

C) Adequately address the provisions of Section 870.204(d) of this Part, including but not limited to:

i) A description of the facilities, projects, and programs included in the adopted municipal waste management plan, for which funding is requested, with priority given to projects or programs that are designed to produce significant increases in waste reduction or recycling;

ii) The tasks to be completed for the facility, project, or program. This information shall be specific to the facility, project, or program, and shall address the provisions of Section 870.204(d)(4) (A) through (D) of this Part;

iii) A work program to be carried out under the grant, including a schedule for completing tasks and program elements, costs for each program element, and outputs for each program element; and

iv) Cost justification for the amount requested, including a budget submitted on forms provided and prescribed by the

Agency, in accordance with instructions provided by the Agency.

2) *Priority in the awarding of such assistance shall be given to projects and programs that are designed to produce significant increases in waste reduction or recycling.* (Section 22.15.(g) of the Act) The Agency shall approve or disapprove complete applications in accordance with Section 870.205 of this Part.

Section 870.204 Required Content of Applications for MWP Grants

a) MWP Grants will not be awarded unless complete, acceptable applications are filed in accordance with the requirements of this Section.

b) A complete, acceptable application for a MWP Grant for a Phase I – Municipal Waste Needs Assessment shall address and provide information for the following:

1) The geographic area to be encompassed by the grant, including demographic data.

2) The methods to be used in assessing municipal waste needs and obtaining the information required under subsection (b)(3) below. These may include, but are not limited to, surveys, literature reviews, waste characterization studies, and weighing and sorting projects. The statistical methodology that will be used to ensure that the data to be collected is accurate shall be included.

3) Methods and procedures by which the following information will be acquired:

A) Origin, content, and weight or volume of municipal waste currently generated;

B) Origin, content, and weight or volume of municipal waste annually disposed in landfills;

C) Origin, content, and weight or volume of municipal waste annually recycled, reclaimed, or reused;

D) Origin, content, and weight or volume of municipal waste annually combusted for energy recovery;

E) Origin, content, and weight or volume of municipal waste annually combusted for volume reduction;

F) Weight or volume of municipal waste annually transported into (imported) and out of (exported) the study area;

G) Average distance municipal waste is transported before final handling;

H) Weight or volume and handling methods used for municipal waste managed on-site; and

I) *A description of the facilities where municipal waste is currently being processed or disposed of and the remaining available permitted capacity of such facilities.* (Section 4 of the SWPRA)

4) Projections of information required under subsection (b)(3) above for twenty years from the study date as required by the SWPRA.

5) The work program to be carried out under the grant. The work program must specify:

A) Number of months and/or work years needed for each program element;

B) The outputs committed to under each program element, including outputs required under subsections (b)(3) and (b)(4) above;

C) A schedule for accomplishment of outputs and the tasks to be accomplished to meet the outputs;

D) Identification of the unit of local government responsible for each of the elements and outputs; and

E) Identification of the public involvement process to be used in developing the program. At a minimum, such process shall

provide for at least one public meeting to be held, after reasonable notice to the public, for the purpose of receiving public comment.

6) Cost justifications for the amount requested, including a budget submitted on forms prescribed and provided by the Agency for the expenses to be incurred. With the exception of indirect costs (as defined in 35 Ill. Adm. Code 871.Appendix B), all costs must be directly identified as grant related. To be directly identifiable and eligible for grant reimbursement, expenses must be documentable and traceable to the grant.

7) The budget, which shall be submitted to the Agency on forms prescribed and provided by the Agency, shall include at a minimum:

A) Demonstration through an ordinance or resolution of source of funds for the local share.

B) Direct labor costs, which shall be itemized as follows:

i) Direct personnel;

ii) In-kind contributions;

iii) Fringe benefits.

C) Indirect costs, as defined and described in 35 Ill. Adm. Code 871.Appendix B.

D) Other direct costs include:

i) Travel;

ii) Equipment;

iii) Supplies;

iv) Postage;

v) Advertising;

vi) Computer charges;

vii) Telecommunications;

viii) Office lease and utility costs;

ix) Vehicle charges;

x) Printing; and

xi) Training and conference registration.

E) Subagreements.

F) Total estimated cost.

G) Source of funds by budget category.

H) Allocation of funds by State fiscal year.

I) Local contributions.

c) Applicants for a MWP Grant for Phase II – Municipal Waste Planning must submit applications that reflect the final plan adopted by the county as required by Section 4(b) of the Solid Waste Planning and Recycling Act on or before September 1, 1995. Such an application shall address and provide information for the following:

1) The geographic area to be encompassed by the grant, including demographic data.

2) An assessment of the municipal waste needs for the planning area which includes the information required under subsections (b)(3) and (b)(4) above.

3) The outputs to be developed by the applicant in planning for the *effective and efficient management of solid* or municipal *waste in a manner that promotes economic development, protects the environment and public health and safety and allows the most practical and beneficial use of the*

material and energy values of solid or municipal *waste*. (Section 2(a)(4) of the Illinois Solid Waste Management Act)

4) The outputs to be developed by the applicant to assure that, with respect to all identified municipal waste needs for the planning area, *alternatives to disposal of nonhazardous waste in a sanitary landfill will receive full evaluation and consideration in the planning process or in plans prepared pursuant to the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act*. (Section 22.15(g) of the Act) The applicant must demonstrate the environmental, economic, and technical feasibility aspects of each alternative in accordance with *the following management hierarchy, in descending order of preference:*

A) *Volume reduction at the source.*

B) *Recycling and reuse.*

C) *Combustion with energy recovery.*

D) *Combustion for volume reduction.*

E) *Disposal in landfill facilities.*

(Section 2(b) of the Illinois Solid Waste Management Act)

5) The methods to be used by the applicant to ensure development of a municipal waste management plan in accordance with the Solid Waste Planning and Recycling Act or the Local Solid Waste Disposal Act. These methods shall provide, at a minimum, the following:

A) *A description of the origin, content, and weight or volume of municipal waste currently generated within* the planning area's *boundaries, and the origin, content, and weight or volume of municipal waste that will be generated during the next 20 years, including an assessment of the primary variables affecting this estimate and the extent to which they can reasonably be expected to occur;*

B) *A description of the facilities where municipal waste is currently*

being processed or disposed of and the remaining available permitted capacity of such facilities;

C) *A description of the facilities and programs that are proposed for the management of municipal waste generated within the* planning area's *boundaries during the next 20 years, including, but not limited to, their size, expected cost and financing method;*

D) *An evaluation of the environmental, energy, life cycle cost and economic advantages and disadvantages of the proposed waste management facilities and programs;*

E) *A description of the time schedule for the development and operation of each proposed facility or program;*

F) *The identity of potential sites within the* planning area *where each proposed waste processing, disposal, and recycling program will be located or an explanation of how the sites will be chosen. For any facility outside the* planning area *that is proposed to be used, the plan shall explain the reasons for selecting such facility* (Section 4 of the SWPRA);

G) *If the plan concludes that waste stream control measures are necessary to implement the plan, the identification of those measures* (Section 3 of the Local Solid Waste Disposal Act);

H) *The identity of the governmental entity responsible for implementing the plan and an explanation of the legal basis for the entity's authority to do so* (Section 6 of the SWPRA);

I) *Adequate provision for the present and reasonably anticipated future needs of the recycling and resource recovery interests within the area* (Section 3 of the Local Solid Waste Disposal Act); and

J) A description of the planning area's recycling program. Such recycling program:

i) *Shall be* designed to be *implemented throughout the*

planning area's *boundaries and* shall *include a time schedule for implementation.*

ii) *Shall provide for the designation of a recycling coordinator to administer the program.*

iii) *Shall be designed to recycle, by the end of the third and fifth years of the program respectively, 15% and 25% of the municipal waste generated* in the planning area, *subject to the existence of a viable market for the recycled material, based on measurements of recycling and waste generated in terms of weight. The determination of recycling rate shall not include: discarded motor vehicles, wastes used for clean fill or erosion control, or commercial, institutional, or industrial machinery or equipment.*

iv) *May provide for the construction and operation of one or more recycling centers by a unit of local government, or for contracting with other public or private entities for the operation of recycling centers.*

v) *May* be designed to *require residents to separate recyclable materials at the time of disposal or trash pick-up.*

vi) *May* be designed to *make special provision for commercial and institutional establishments that implement their own specialized recycling programs, provided that such establishments annually provide written documentation of the total number of tons of material recycled* in the planning area.

vii) *Shall* be designed to *provide for separate collection and composting of leaves.*

viii) *Shall include public education and notification programs to foster understanding of and encourage compliance with the recycling program.*

ix) *Shall* be designed to *include provisions for compliance,*

including incentives and penalties.

x) *Shall include provisions for recycling the collected materials, identifying potential markets for at least 3 recyclable materials, and promoting the use of products made from recovered or recycled materials among businesses, newspapers, and local governments in the* planning area.

xi) *May* be designed to *provide for the payment of recycling diversion credits to public and private parties engaged in recycling activities.* (Section 6 of the SWPRA)

K) *Any other information that the Agency may require.* (Section 4 of the SWPRA)

6) The work program to be carried out under the grant. The work program shall specify:

A) The number of months and/or work years needed for each program element;

B) The outputs committed to under each program element including outputs required under subsections 870.204(c)(3) and (c)(4) above;

C) A schedule for accomplishment of outputs and the tasks to be accomplished to meet the outputs;

D) The unit of local government responsible for each of the elements and outputs; and

E) The public involvement process to be used in developing the program. At a minimum, such process shall comply with the public involvement process included in the Solid Waste Planning and Recycling Act, and provide for at least one public hearing to be held, after reasonable notice to the public, for the purpose of receiving public comment.

7) Cost justifications for the amount requested, including a budget submitted

on forms prescribed and provided by the Agency for the expenses to be incurred. With the exception of indirect costs (as defined in 35 Ill. Adm. Code 871.Appendix B), all costs must be directly identified as grant-related. To be directly identifiable and eligible for grant reimbursement, expenses must be documentable and traceable to the grant.

8) The budget, which shall be submitted to the Agency on forms prescribed and provided by the Agency, shall include at a minimum:

A) Demonstration through an ordinance or resolution of the source of funds for the local share.

B) Direct labor costs, which shall be itemized as follows:

i) Direct personnel;

ii) In-kind contributions; and

iii) Fringe benefits.

C) Indirect costs, as defined and described in 35 Ill. Adm. Code 871.Appendix B.

D) Other direct costs, which shall include:

i) Travel;

ii) Equipment;

iii) Supplies;

iv) Postage;

v) Advertising;

vi) Computer charges;

vii) Telecommunications;

viii) Office lease and utility costs;

ix) Vehicle charges;

x) Printing; and

xi) Training and conference registration.

E) Subagreements.

F) Total estimated cost.

G) Source of funds by budget category.

H) Allocation of funds by State fiscal year.

I) Local contributions.

d) A complete, acceptable application for a MWP grant for Phase III – Municipal Waste Implementation Planning shall address and provide information for the following:

1) The geographic area to be encompassed by the grant, including demographic data.

2) A municipal waste management plan adopted in accordance with the provisions of the Solid Waste Planning and Recycling Act. Such plan shall include an ordinance or resolution by the applicant certifying that a municipal waste management plan has been adopted in accordance with the provisions of the Solid Waste Planning and Recycling Act. If the plan has been revised after initial adoption, a resolution or ordinance which designates the revisions as part of the plan must be submitted. The municipal waste management plan shall address, at a minimum, the following:

A) *A description of the origin, content, and weight or volume of municipal waste currently generated within the county's* or municipal joint action agency's *boundaries, and the origin, content, and weight or volume of municipal waste that will be*

generated within the county's or municipal joint action agency's *boundaries during the next 20 years, including an assessment of the primary variables affecting this estimate and the extent to which they can reasonably be expected to occur;*

B) *A description of the facilities where municipal waste is currently being processed or disposed of and the remaining available permitted capacity of such facilities;*

C) *A description of the facilities and programs that are proposed for the management of municipal waste generated within the county's* or municipal joint action agency's *boundaries during the next 20 years, including, but not limited to, their size, expected cost and financing method;*

D) *An evaluation of the environmental, energy, life cycle cost and economic advantages and disadvantages of the proposed waste management facilities and programs;*

E) *A description of the time schedule for the development and operation of each proposed facility or program;*

F) *The identity of potential sites within the county* or municipal joint action agency *where each proposed waste processing, disposal, and recycling program will be located, or an explanation of how the sites will be chosen. For any facility outside the county* or municipal joint action agency *that is proposed to be used. The plan shall explain the reasons for selecting such facility* (Section 4 of the SWPRA);

G) *The identity of the governmental entity responsible for implementing the plan on behalf of the county* or municipal joint action agency *and explanation of the legal basis for the entity's authority to do so* (Section 6 of the SWPRA);

H) A description of the county's or municipal joint action agency's recycling program. Such recycling program:

i) *Shall be implemented throughout the county's* or municipal

joint action agency's *boundaries, and* shall *include a time schedule for implementation;*

ii) *Shall provide for the designation of a recycling coordinator to administer the program;*

iii) *Shall be designed to recycle, by the end of the third and fifth years of the program respectively, 15% and 25% of the municipal waste generated in the county* or municipal joint action agency, *subject to the existence of a viable market for the recycled material, based on measurements of recycling and waste generated in terms of weight. The determination of recycling rate shall not include: discarded motor vehicles, wastes used for clean fill or erosion control, or commercial, institutional, or industrial machinery or equipment;*

iv) *May provide for the construction and operation of one or more recycling centers by a unit of local government, or for contracting with other public or private entities for the operation of recycling centers;*

v) *May require residents of the county* or municipal joint action agency *to separate recyclable materials at the time of disposal or trash pick-up;*

vi) *May make special provision for commercial and institutional establishments that implement their own specialized recycling programs, provided that such establishments annually provide written documentation to the county* or municipal joint action agency *of the total number of tons of material recycled;*

vii) *Shall provide for separate collection and composting of leaves;*

viii) *Shall include public education and notification programs to foster understanding of and encourage compliance with the recycling program;*

ix) *Shall include provisions for compliance, including incentives and penalties;*

x) *Shall include provisions for recycling the collected materials, identifying potential markets for at least 3 recyclable materials and promoting the use of products made from recovered or recycled materials among businesses, newspapers, and local governments in the county* or municipal joint action agency; and

xi) *May provide for the payment of recycling diversion credits to public and private parties engaged in recycling activities* (Section 6 of the SWPRA).

I) *Any other information that the Agency may require*. (Section 4 of the SWPRA)

3) The facilities, projects, and programs included in the adopted municipal waste management plan for which funding is requested. These shall include:

A) The facility, project, or program type;

B) The methods to be used to achieve significant increases in waste reduction or recycling;

C) The methods and tasks to be used in facility, project, or program implementation planning;

D) The area to be serviced by the facility, project or program;

E) The responsible unit of local government; and

F) The proposed owner and operator of the facility, project, or program.

4) The tasks to be completed under the grant. This information shall be specific to the selected facility, project or program. Unless it can be

demonstrated to the Agency's satisfaction that these activities are not applicable, these categories shall include, but shall not be limited to:

A) For waste reduction (including, but not limited to, source reduction, recycling, composting, and shredding or compaction of municipal waste):

i) Waste characterization studies;

ii) Waste stream audits;

iii) Waste reduction studies;

iv) Environmental assessments; and

v) Economic impact analysis.

B) For transfer station facilities:

i) Waste characterization studies;

ii) Computer modeling or simulations for air and noise emmissions, and waste collection routings;

iii) Economic impact analysis; and

iv) Environmental assessments.

C) For combustion facilities:

i) Computer modeling or simulations for air and noise emissions;

ii) Economic impact analysis;

iii) Environmental assessments; and

iv) Waste characterization studies.

D) For landfill facilities:

i) Soil sampling, including test borings and soil testing;

ii) Computer modeling or simulations for groundwater flow, waste collection routings, air emissions, and surface water impacts;

iii) Engineering and architectural drawings and plans;

iv) Requests for qualifications and requests for proposals;

v) Environmental assessments; and

vi) Economic impact analysis.

5) The work program to be carried out under the grant. The work program must specify:

A) Number of months and/or work years needed for each program element;

B) Total cost for each program element;

C) The outputs committed to under each program element;

D) A schedule for accomplishment of outputs and the tasks to be accomplished to meet the outputs; and

E) Identification of a licensed professional engineer registered in the State of Illinois who will be responsible for reviewing the appropriate outputs.

6) Cost justifications for the amount requested, including a budget submitted on forms prescribed and provided by the Agency for the expenses to be incurred. With the exception of indirect costs (as defined in 35 Ill. Adm. Code 871.Appendix B), all costs must be directly identified as grant-related. To be directly identifiable and eligible for grant reimbursement, expenses must be documentable and traceable to the grant.

7) The budget, which shall be submitted to the Agency on forms prescribed and provided by the Agency, shall include at a minimum:

A) Demonstration through an ordinance or resolution of the source of funds for the local share.

B) Direct labor costs, which shall be itemized as follows:

i) Direct personnel;

ii) In-kind contributions; and

iii) Fringe benefits.

C) Indirect costs, as defined and described in 35 Ill. Adm. Code 871.Appendix B.

D) Other direct costs, which shall include:

i) Travel;

ii) Equipment;

iii) Supplies;

iv) Postage;

v) Advertising;

vi) Computer charges;

vii) Telecommunications;

viii) Office lease and utility costs;

ix) Vehicle charges;

x) Printing; and

xi) Training and conference registration.

E) Subagreements.

F) Total estimated cost.

G) Source of funds by budget category.

H) Allocation of funds by State fiscal year.

I) Local contributions.

8) Items that are not eligible for a Municipal Waste Implementation Planning Grant shall include, but not be limited to, land purchase, purchase or lease of construction machinery, building materials or building legal fees, or lawsuit settlements.

Section 870.205 Agency Action on Application

Within 90 days after receipt, the Agency shall review each application and may approve each complete, acceptable application that meets all criteria and requirements pursuant to Section 870.204 of this Part, or disapprove each application that does not meet all criteria and requirements pursuant to Section 870.204 of this Part. When funds are available, the Agency will award assistance to approved applicants.

a) Approval. Within 90 days after receipt of a complete, acceptable application that meets all criteria and requirements of Section 870.204 of this Part, the Agency shall submit written approval of the application to the applicant. If the Agency needs an extension of time beyond the 90 days, it will notify the applicant of such extension in writing. The application shall not be deemed automatically approved if the Agency fails to notify the applicant of approval or disapproval within 90 days after receipt. The Agency will approve the application only if it satisfies the terms, conditions, and limitations of Section 870.204 and relevant statutes and program regulations; and if achievement of the proposed outputs is feasible, considering the applicant's existing problems, past performance under previous grants, program authority, organization, availability of local share resources, and proposed methodologies for accomplishing outputs.

b) Disapproval. For applications that are not approved, the Agency's review shall include written comments necessary to revise the application to develop a complete, acceptable application that meets all criteria and requirements pursuant to Section 870.204 of this Part. If the application cannot be approved, the Agency will negotiate with the applicant to change the output commitments, to reduce the assistance amount, or to make any other changes necessary for approval. If negotiation fails, the Agency will disapprove the application in writing.

Section 870.206 Grant Award and Acceptance

a) Where the Agency has approved an application, the Agency shall so notify the applicant in writing. The grant award notification shall include the following:

1) All conditions of the grant, including:

A) Criteria and procedures for determining allowable costs;

B) The proportion of allowable costs that the State will pay under the grant (the " State share");

C) The grant payment schedule;

D) Requirements applicable to access, auditing, reporting and records; and

E) Requirements applicable to contractors and the grantee.

2) Grounds and procedures for action by the Agency in the event of noncompliance with these rules or any grant conditions.

b) Within 45 days after receipt of a grant award notification under this Section, the grantee shall notify the Agency in writing of its acceptance by submitting the grant agreement with appropriate signatures to the Agency. Failure to submit the notice of acceptance required by the grant offer during this period may result in:

1) Withholding of the grant award;

2) Termination of the grant award; or

3) Such other action as the Agency may be authorized to take.

Section 870.207 Grantee Responsibilities

The recipient of a Phase I, Phase II, or a Phase I and II grant shall develop draft and final documents in accordance with the approved grant agreement's budget, scope of work, and schedule. Grantees shall submit draft sections of their documents and reports to the Agency for review and comment. Agency input shall be provided in response to these draft sections in a timely manner, not to exceed 90 days from receipt of outputs. The Agency shall make recommendations on the draft and final documents to ensure compliance with provisions of the grant award and to ensure production of an acceptable document. Grantees shall make revisions in response to Agency recommendations in a timely manner, not to exceed 90 days from receipt of Agency comments. Failure to develop and submit draft and final documents in accordance with the approved grant agreement's budget, scope of work, and schedule may subject the grantee to the noncompliance provisions in Section 870.210 of this Part.

a) Grantees shall collect and compile data as required by Section 870.204(b)(3) of this Part. Data collection methods shall be the most statistically accurate and economical within the scope of the grant award, and may include, but not be limited to, surveys, literature reviews, waste characterization studies, and weighing and sorting projects. Grantees shall make good faith efforts to collect and compile the most accurate and comprehensive data possible. Grantees are responsible for the reliability and verification of data presented in their documents.

b) Grantees shall develop projections for data as required by Section 870.204(b)(4) of this Part. Information used to develop these projections shall include municipal waste generation data on a per capita basis and population and employment data. Any assumptions used to develop these projections shall be included and a single projection shall be selected for the required information.

c) Grantees shall develop final documents for Phase I, Phase II, Phase I and II or Phase III MWP grants. These shall adequately address the applicable requirements of Section 870.204(b), (c) or (d) of this Part, the Solid Waste Planning and Recycling Act, the Local Solid Waste Disposal Act, and any other applicable legislation. The Agency will approve final documents and make final payments only after the requirements of Section 870.204(b), (c) or (d) of this Part, as applicable, have been addressed to the Agency's satisfaction and revisions have been made in response to the Agency's comments.

d) Upon receipt of the grant, grantees shall identify a project manager to oversee the administration of the grant. The project manager shall be an employee of the grantee and shall not be a contractor hired by the grantee. The project manager shall act as the primary contact between the grantee and the Agency and shall have direct responsibility for project administration and completion. In the case of a multi-county regional planning grant, the counties shall designate a project manager to administer the grant on their behalf. This project manager shall maintain regular correspondence with each county and act as the liaison between the grantee and the Agency. The grantee shall notify the Agency in a timely manner of any changes in the project manager's status relative to the project.

Project managers shall oversee contractors hired by the grantee to complete the project. Project managers shall submit correspondence, reports and drafts, and requests for payment and subcontractor progress reports to the Agency on behalf of the grantee as well as any other materials required by the Agency, during the course of the project.

e) Grantees shall submit outputs committed to under each program element in accordance with the schedule presented in the grant agreement. The Agency may issue no-cost time extensions to grantees to allow for further time to complete the requirements of the grant agreement. Extensions shall not exceed one calendar year from the scheduled completion date in the original grant agreement. These shall be approved only if each of the following is met:

1) Agency evaluation of the grantee's performance and progress toward completing the outputs in the approved work program indicates that a good faith effort has been made;

2) The grantee has submitted outputs on a quarterly basis, or in accordance with the schedule in the approved grant agreement;

3) The grantee has submitted requests for payment and progress reports in accordance with the schedule included in the grant agreement; and

4) The grantee submits a revised schedule for completing the remaining requirements of the grant agreement.

f) The Agency will oversee each grantee's performance under the grant agreement.

The Agency will evaluate grantee performance and progress toward completing the outputs in the approved work program according to the schedule in the grant agreement. The grantee shall submit outputs to the Agency on a quarterly basis or in accordance with the schedule in the approved grant agreement. The Agency will review grantee outputs for compliance with the grant agreement and provide comments to the grantee in a timely manner, not to exceed 90 days from receipt of the outputs. Grantees shall make revisions to draft documents in accordance with Agency comments before preparation of the final documents. If the evaluation reveals that the recipient is not achieving the conditions of the grant agreement to the Agency's satisfaction, the Agency will attempt to resolve the situation through negotiations. If agreement is not reached, the Agency may impose sanctions as set forth in Section 870.210 of this Part.

g) Each Phase I, Phase II, Phase I and II or Phase III MWP grantee shall notify the Agency in writing when it has completed 50 percent of the work to be performed under the grant agreement. Upon receipt of the notification, the Agency shall schedule a meeting with the grantee to discuss the progress in meeting the requirements of the grant agreement and to determine whether the grantee will meet the requirements of the grant agreement in a timely manner.

h) Under Phase I, Phase II, or Phase I and II MWP Grants final documents shall be sent to the Agency in a finished and printed form, with five copies, by the date set forth in the grant agreement. Each Phase I final report shall provide the information obtained, as specified in Section 870.204(b) of this Part. Each Phase II final report shall provide the information required as specified in Section 870.204(c) of this Part, including all conclusions, recommendations and demonstrations called for under the approved application. The Agency will review Phase I and Phase II documents and make appropriate recommendations to ensure these meet the requirements of the grant agreement.

i) Appropriate and relevant Phase III outputs, as defined in the grant agreement, shall be submitted to the Agency in accordance with the schedule in the grant agreement. The Agency will review Phase III documents and make appropriate recommendations to ensure these meet the requirements of the grant agreement. All design work related to facilities needing permits shall be prepared by, or under the supervision of, a Licensed Professional Engineer. The Licensed Professional Engineer shall affix the engineer's name, date of preparation, registration number, a statement attesting to the accuracy of the information and design, and a professional seal to all designs.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED REPEALER

Section 870.208 Supplemental SWP Grants (Repealed)

Section 870.209 Grant Payment Schedule

a) Requests for partial or final payment shall be sent by the grantee to the Agency and shall demonstrate the performance of work in accordance with the terms of the grant agreement. Requests shall be made according to the grant payment schedule. The Agency shall not make payment for requests for payment that are submitted by a grantee more than 12 months after the eligible grant expenses have been incurred. In addition, grantees shall submit grantee progress reports, on forms prescribed and provided by the Agency, in accordance with the grant agreement.

b) With the exception of indirect costs (as defined in Section 871.Appendix B of this Part) all grant costs must be directly identified as grant-related. To be directly identifiable and eligible for grant reimbursement, expenses must be documentable and traceable to the grant and submitted on forms prescribed and provided by the Agency, in accordance with the Agency's instructions. Accurate documentation must be submitted by the grantee with the request for payment in accordance with the payment schedule in the grant agreement. If accurate documentation for all grant expenses cannot be provided by the grantee, reimbursement shall not be made.

c) The grantee shall be paid the State share of allowable costs incurred within the scope of an approved project not to exceed the total grant, subject to the limitations of the conditions of the grant. Such payments must be in accordance with the payment schedule and the grant amount set forth in the grant agreement. Where the Agency has issued a Phase I and II MWP Grant, the Agency will not make payment for Phase II work items until all Phase I work items have been completed in accordance with the terms of the grant agreement.

1) Requests for payment
The grantee shall submit requests for payments and progress reports to the Agency for allowable costs incurred in accordance with the payment schedule set forth in the grant agreement. The grantee shall include an accounting of all eligible grant expenses to the Agency with the requests for payment. Subject to the availability of appropriated funding, the Agency shall cause payment to be disbursed to the grantee upon receipt of

accurate documentation with the request for payment. Such funds shall be disbursed so that the total amount of State payments made to the grantee for the project is equal to the State share of the actual or estimated allowable project costs incurred to date, as certified by the grantee in its most recent request for payment. Failure to submit requests for payments and progress reports in accordance with the payment schedule set forth in the grant agreement may subject the grantee to the noncompliance provisions of Section 870.210 of this Part.

2) Adjustment
At any time or times prior to final payment under the grant, the Agency may cause any request(s) for payment to be reviewed or audited by the Agency. Each subsequent payment shall be subject to reduction for amounts included in the related request for payment which are found, on the basis of such review or audit not to constitute allowable costs. Any payment will be reduced for overpayments or increased for underpayments on preceding requests for payment.

3) Refunds, rebates, credits, etc.
The State share of any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the grantee with respect to the project, to the extent that they are properly allocable to costs for which the grantee has been paid under a grant, must be paid to the State of Illinois Solid Waste Management Fund. Reasonable expenses incurred by the grantee for the purposes of securing such refunds, rebates, credits, or other amounts shall be allowable costs under the grant.

4) Final payment
The Agency will retain ten percent of all documented costs and will not issue payment for the retained amount until compliance with all applicable requirements of the grant has been demonstrated by the grantee. Upon compliance by the grantee with all applicable requirements of the grant, the Agency shall cause to be disbursed to the grantee any balance of approved allowable project costs which has not been paid to the grantee. Prior to final payment under the grant, the grantee must execute and deliver an unconditional assignment to the Agency, on forms prescribed and provided by the Agency, of the State share of refunds, rebates, credits or other amounts (including any interest thereon) properly allocable to costs for which the grantee has been paid by the State under the grant, and

a release discharging the State of Illinois, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work or under the grant. Exceptions to such release shall be allowed only where the grantee is powerless as a matter of law, or precluded by litigation, from conveying such an unconditional release.

5) Schedule of payment
Payments for eligible grant expenses will be paid by the Agency in accordance with the payment schedule set forth in the grant agreement, subject to appropriation of funds by the Illinois General Assembly. Failure to submit requests for payment and grantee progress reports in accordance with the schedule in the grant agreement may subject the grantee to the noncompliance provisions in Section 870.210 of this Part.

Section 870.210 Noncompliance with Grant Conditions

a) In addition to such other remedies as may be provided by law, in the event of noncompliance with any condition imposed pursuant to a MWP grant:

1) The grant may be annulled and all grant funds recovered;

2) The grant may be terminated;

3) The project work may be suspended;

4) An injunction may be entered by an appropriate court; or

5) Such other action as the Agency may be authorized to take.

b) No action shall be taken under this Section without prior consultation with the grantee.

c) Recovery actions taken under this Section shall be pursuant to the Illinois Grant Funds Recovery Act [30 ILCS 705].

Section 870.211 Indemnity

The grantee shall assume the entire risk, responsibility and liability for any and all loss or damage to property owned by the grantee, the Agency or third persons, and any injury to or

death of any persons (including employees of the grantee) caused by, arising out of, or occurring in connection with the execution of any work, contract or subcontract arising out of this grant, and the grantee shall indemnify, save harmless and defend the State of Illinois and the Agency from all claims for any such loss, damage, injury or death whether caused by the negligence of the State of Illinois, the Agency, their agents or employees or otherwise consistent with the provisions of the Construction Contract Indemnification for Negligence Act [740 ILCS 35]. The grantee shall require that any and all contractors or subcontractors engaged by the grantee shall agree in writing that they shall look solely to the grantee for performance of such contract or satisfaction of any and all claims arising thereunder.

Section 870.212 Guidance for Planning (Repealed)

SUBPART C: NONHAZARDOUS SOLID WASTE OR MUNICIPAL WASTE ENFORCEMENT GRANTS

Section 870.301 Grant Assistance Availability

a) Subject to the availability of funding and the limitation and requirements set forth in this Part, grant assistance is available to units of local government that have entered into written delegation agreements with the Agency pursuant to Section 4(r) of the Act under which the Agency has delegated all or portions of its inspecting, investigating and enforcement functions at nonhazardous solid waste or municipal waste disposal sites.

b) The State share for total eligible costs for SMWE Grants shall not exceed 70 percent.

c) SMWE Grants shall be issued with budget periods which shall be concurrent with the state fiscal year. SMWE Grants may be issued in subsequent fiscal years subject to funding availability and the requirements of this Part.

Section 870.302 Assistance Amount

a) In determining the amount of assistance to an applicant, the Agency will evaluate the extent to which the applicant's work program is demonstrated to be necessary and appropriate and the anticipated cost of the applicant's program is proportionate to the proposed outputs.

b) If the Agency's evaluation of the applicant's work program indicates that the

proposed outputs do not justify the level of funding requested, the Agency will reduce the assistance amount.

c) No SMWE grant issued under this Subpart may provide financial assistance in excess of $100,000.

Section 870.303 Required Content of Applications for SMWE Grants

a) SMWE Grants will not be awarded unless complete, acceptable applications are submitted in accordance with the requirements of this Section. Forms and instructions for applying for grant funding will be made available to all eligible units of local government by the Agency.

b) A complete, acceptable application for a SMWE Grant shall address the following:

1) The geographic area to be encompassed by the grant.

2) The status of a written delegation agreement pursuant to Section 4(r) of the Act.

A) Applicants with a current delegation agreement shall provide the following:

i) The level of resources to which the applicant is currently committed;

ii) The current annual number of inspections being conducted; and

iii) A description of the applicant's capabilities to conduct the local enforcement program, along with a discussion of the process to be used to implement administrative citation authority.

B) Applicants with no delegation agreement shall initiate a discussion of negotiation for a delegation agreement with the Agency.

3) The work program to be carried out under the grant. The work program

shall include:

A) A brief narrative on the local nonhazardous solid or municipal waste management system to be subject to the enforcement program. This shall encompass information based on the Agency's Division of Land Pollution Control, Field Operations Section data on the current annual number of inspections being conducted by the Agency or the applicant;

B) The number of currently permitted nonhazardous solid or municipal waste disposal sites to be subject to local inspection;

C) An inspection schedule including the number and frequency of activities for:

i) Permitted nonhazardous solid or municipal waste landfills and transfer stations;

ii) Permitted landscape waste composting facilities;

iii) Closed and covered nonhazardous solid or municipal waste landfills; and

iv) Open dump investigations, including follow-up investigations;

D) A description of a training program for assigned staff, developed in conjunction with Agency staff;

E) A description of equipment requirements needed to implement the local nonhazardous solid waste or municipal waste enforcement program;

F) Coordination procedures to be used between the applicant and Agency staff related to inspection protocol and response times;

G) Establishment of open dump investigation procedures and response times;

H) Methods for assessing compliance with recordkeeping and payment procedures related to the solid waste tipping fee at permitted landfills; and

I) A description of the total number of activities to be conducted under the grant. At least 100 activities should be conducted by each full-time inspector on an annual basis. Agency staff will provide assistance in developing the local enforcement program schedule, scope of work, and budget.

4) Cost justifications for the amount requested including a budget, submitted on forms prescribed and provided by the Agency, for the expenses to be incurred. With the exception of indirect costs (as defined in 35 Ill. Adm. Code 871.Appendix B), all costs must be directly identified as grant-related. To be directly identifiable and eligible for grant reimbursement, expenses must be documentable and traceable to the grant. The budget, which shall be submitted to the Agency on forms prescribed and provided by the Agency, shall include at a minimum:

A) Demonstration through an ordinance or resolution of the source of funds for the local share.

B) Direct labor costs, which shall be itemized as follows:

i) Direct personnel;

ii) In-kind contributions; and

iii) Fringe benefits.

C) Indirect costs, as defined and described in 35 Ill. Adm. Code 871.Appendix B.

D) Other direct costs, which shall include:

i) Travel;

ii) Equipment;

iii) Supplies;

iv) Postage;

v) Advertising;

vi) Computer charges;

vii) Telecommunications;

viii) Office lease and utility costs;

ix) Vehicle charges;

x) Printing; and

xi) Training and conference registration.

E) Subagreements.

F) Total estimated cost.

G) Source of funds by budget category.

H) Allocation of funds by State fiscal year.

I) Local contributions.

Section 870.304 Agency Action on Application

Within 90 days after receipt, the Agency will review each application and may approveeach complete, acceptable application that meets all criteria and requirements pursuant to Section 870.303 of this Part, or disapprove each application that does not meet all criteria and requirements pursuant to Section 870.303 of this Part. When funds are available, the Agency will award assistance to an approved application. For a continuation award made after the beginning of the approved budget period, the Agency will reimburse the applicant for allowable costs incurred from the beginning of the budget period, provided that such costs are contained in the approved application and that the application was submitted before the expiration of the prior budget period applications.

a) Approval. Within 90 days after receipt of a complete, acceptable application that meets all criteria and requirements of Section 870.303 of this Part, the Agency shall submit written approval of the application to the applicant. If the Agency needs an extension of time beyond 90 days, it will notify the applicant of such extension in writing. The application shall not be deemed automatically approved if the Agency fails to notify the applicant of approval or disapproval within 90 days after receipt. The Agency will approve the application only if it satisfies the terms, conditions, and limitations of Section 870.303 and relevant statutes and program regulations; and if achievement of the proposed outputs is feasible, considering the applicant's existing problems, past performance under previous grants, program authority, organization, availability of local share resources, and proposed methodologies for accomplishing outputs.

b) Disapproval. For applications that are not approved, the Agency's review shall include written comments necessary to revise the application to develop a complete, acceptable application that meets all criteria and requirements pursuant to Section 870.303 of this Part. If the application cannot be approved, the Agency will negotiate with the applicant to change the output commitments, to reduce the assistance amount, or to make any other changes necessary for approval. If negotiation fails, the Agency will disapprove the application in writing.

Section 870.305 Grant Award and Acceptance

a) When the Agency has approved an application, the Agency shall notify the applicant in writing. The grant award notification shall include the following:

1) All conditions of the grant, including:

A) Criteria and procedures for determining allowable costs;

B) The proportion of allowable costs for which the State will pay under the grant (the " State share");

C) The grant payment schedule;

D) Requirements applicable to access, auditing, reporting and records; and

E) Requirements applicable to subagreements and employees of the grantee.

2) Grounds and procedures for action by the Agency in the event of noncompliance with these rules or any grant conditions.

b) Within 30 days of receipt of the grant award notification under this Section, the grantee shall notify the Agency in writing of its acceptance by submitting the grant agreement, with appropriate signatures, to the Agency. Failure to submit the notice of acceptance required by the grant may result in:

1) Withholding of the grant award;

2) Termination of the grant award; or

3) Such other action as the Agency may be authorized to take.

Section 870.306 Evaluation of Performance

The Agency will oversee each recipient's performance under an enforcement grant. The Agency will evaluate grantee performance and progress toward completing the outputs in the approved work program according to the schedule. If the evaluation reveals that the grantee is not achieving one or more of the conditions of the assistance agreement, the Agency will attempt to resolve the situation through negotiation. If agreement is not reached, the Agency may impose any of the sanctions in Section 870.309 of this Part.

Section 870.307 Supplemental SWE Grants (Repealed)

Section 870.308 Grant Payment Schedule

a) Request for partial or final payment shall be sent to the Agency and shall demonstrate the performance of work in accordance with the terms of the grant agreement. Requests shall be made according to the grant payment schedule. In addition, grantees shall submit grantee progress reports, on forms prescribed and provided by the Agency, in accordance with the grant agreement.

b) With the exception of indirect costs (as defined in 35 Ill. Adm. Code 871.Appendix B), all grant costs must be directly identified as grant related. To be directly identifiable and eligible for grant reimbursement, expenses must be

documentable and traceable to the grant. Accurate documentation, on forms prescribed and provided by the Agency, must be provided by the grantee in accordance with the schedule for payment in the grant agreement for all grant expenses. If accurate documentation for all grant expenses cannot be provided by the grantee, reimbursement shall not be made.

c) The grantee shall be paid the State share of allowable costs incurred within the scope of an approved project not to exceed the total grant, subject to the limitations of the conditions of the grant. Such payments must be in accordance with the payment schedule and the grant amount set forth in the grant agreement.

1) Request for Payment
The grantee shall submit requests for payment and progress reports to the Agency for allowable costs incurred in accordance with the payment schedule set forth in the grant agreement. The grantee shall include an accounting of all eligible grant expenses to the Agency with the requests for payment. Subject to the availability of appropriated funding, the Agency shall cause payment to be disbursed to the grantee upon receipt of accurate documentation with the request for payment. Such funds shall be disbursed so that the total amount of State payments made to the grantee for the project is equal to the State share of the actual or estimated allowable project costs incurred to date, as certified by the grantee in its most recent request for payment.

2) Adjustment
At any time or times prior to final payment under the grant, the Agency may cause any request(s) for payment to be reviewed or audited by the Agency. Each subsequent payment shall be subject to reduction for amounts included in the related request for payment which are found, on the basis of such review or audit, not to constitute allowable costs. Any payment will be reduced for overpayments or increased for underpayments on preceding requests for payment.

3) Refunds, rebates, credits, etc.
The State share of any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the grantee with respect to the project, to the extent that they are properly allocable costs for which the grantee has been paid under a grant, must be paid to the State of Illinois Solid Waste Management Fund. Reasonable expenses

incurred by the grantee for the purposes of securing such funds, rebates, credits, or other amounts shall be allowable costs under the grant.

4) Schedule of payment
Payments for eligible grant expenses will be paid by the Agency in accordance with the payment schedule set forth in the grant agreement subject to appropriation of funds by the Illinois General Assembly. Failure to submit requests for payment and progress reports in accordance with the schedule in the grant agreement may subject the grantee to the noncompliance provisions in Section 870.309 of this Part.

Section 870.309 Noncompliance with Grant Conditions

a) In addition to such other remedies as may be provided by law, in the event of noncompliance with any condition imposed pursuant to a SMWE grant:

1) The grant may be annulled and all grant funds recovered;

2) The grant may be terminated;

3) The project work may be suspended;

4) An injunction may be entered by an appropriate court; or

5) Such other action as the Agency may be authorized to take.

b) No action shall be taken under this Section without prior consultation with the applicant.

c) Recovery actions taken under this Section shall be pursuant to the Illinois Grant Funds Recovery Act [30 ILCS 705].

Section 870.310 Indemnity

The grantee shall assume the entire risk, responsibility and liability for any and all loss or damage to property owned by the grantee, the Agency or third persons, and any injury to or death of any persons (including employees of the grantee) caused by, arising out of, or occurring in connection with the execution of any work, contract or subcontract arising out of this grant, and the grantee shall indemnify, save harmless and defend the State of Illinois and the Agency

from all claims for any such loss, damage, injury or death whether caused by the negligence of the State of Illinois, the Agency, their agents or employees or otherwise consistent with the provisions of the Construction Contract Indemnification for Negligence Act [740 ILCS 35]. The grantee shall require that any and all contractors or subcontractors engaged by the grantee shall agree in writing that they shall look solely to the grantee for performance of such contract or satisfaction of any and all claims arising thereunder.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED REPEALER

1) Heading of the Part: General Conditions of State of Illinois Municipal Waste Planning and Nonhazardous Municipal Waste Enforcement Grants

2) Code Citation: 35 Ill. Adm. Code 871

3)

Section Numbers:	Proposed Actions:
871.101	Repealed
871.102	Repealed
871.103	Repealed
871.201	Repealed
871.202	Repealed
871.203	Repealed
871.204	Repealed
871.205	Repealed
871.206	Repealed
871.301	Repealed
871.302	Repealed
871.303	Repealed
871.304	Repealed
871.305	Repealed
871.401	Repealed
871.402	Repealed
871.403	Repealed
871.501	Repealed
871.502	Repealed
871.503	Repealed
871.601	Repealed
871.602	Repealed
871.603	Repealed
871.605	Repealed
871.APPENDIX A	Repealed
871.APPENDIX B	Repealed

4) Statutory Authority: Implementing and authorized by Section 22.15 of the Environmental Protection Act [415 ILCS 5/22.15].

5) A Complete Description of the Subjects and Issues Involved: In response to Executive Order 2016-13, the Illinois EPA proposes to repeal 35 Ill. Adm. Code 871. This Part contains procedures for issuing financial assistance in the form of individual grants. The

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NOTICE OF PROPOSED REPEALER

Illinois EPA no longer issues such grants. In addition, the Illinois EPA's statutory authority for the Waste Planning component of this Part was repealed in 1995.

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

7) Will this proposed repealer replace an emergency rule currently in effect? No

8) Does this repealer contain an automatic repeal date? No

9) Does this repealer contain incorporations by reference? No

10) Are there any other rulemakings pending on this Part? No

11) Statement of Statewide Policy Objective: It does not create or expand a State mandate under the State Mandates Act [30 ILCS 805].

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on the proposed rules may submit them in writing by no later than 45 days after publication of this Notice to:

Sara G. Terranova
Assistant Counsel
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield IL 62794-9276

217/782-5544
sara.terranova@illinois.gov

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: Part 871 provides procedures for issuance of municipal waste planning-related grants that may affect small businesses.

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

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C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: July 2017

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

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NOTICE OF PROPOSED REPEALER

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 871
GENERAL CONDITIONS OF STATE OF ILLINOIS MUNICIPAL WASTE PLANNING AND NONHAZARDOUS MUNICIPAL WASTE ENFORCEMENT GRANTS (REPEALED)

SUBPART A: INTRODUCTION

Section
871.101 Purpose
871.102 Definitions
871.103 Severability

SUBPART B: LIABILITIES AND REMEDIES FOR FAILURE TO COMPLY WITH GRANT CONDITIONS

Section
871.201 Noncompliance with Grant Conditions
871.202 Stop-Work Order
871.203 Termination
871.204 Waiver of Conditions
871.205 Covenant Against Contingent Fees
871.206 Statutory Conditions

SUBPART C: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS OF GRANTEE

Section
871.301 General Conditions for all Subagreements
871.302 Contracts for Personal and Professional Services − Professional Consultant Agreements
871.303 Compliance with Procurement Requirements
871.304 Disputes
871.305 Indemnity

SUBPART D: REQUIREMENTS APPLICABLE TO INITIATION AND AMENDMENT

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Section
871.401 Project Initiation
871.402 Project Changes
871.403 Termination of Delegation Agreement

SUBPART E: REQUIREMENTS APPLICABLE TO ACCESS, AUDITING, AND RECORDS

Section
871.501 Access
871.502 Audit and Records
871.503 Reports

SUBPART F: REQUIREMENTS APPLICABLE TO PAYMENT OF GRANTS

Section
871.601 Determination of Allowable Costs
871.602 Amount of Grant-Percentage of Approved Allowable Costs
871.603 Use of Grant and Payment of Unallowable Costs
871.604 Grant Payment Schedule (Repealed)
871.605 Other Federal or State Grants

871.APPENDIX A Required Provisions – Professional Contractor Agreements
871.APPENDIX B Procedures for Determination of Indirect Costs and Indirect Cost Rates

AUTHORITY: Implementing and authorized by Section 22.15 of the Environmental Protection Act [415 ILCS 5/22.15].

SOURCE: Adopted at 11 Ill. Reg. 18158, effective October 23, 1987; amended at 14 Ill. Reg. 17201, effective October 9, 1990; amended at 19 Ill. Reg. 11871, effective August 3, 1995; repealed at 41 Ill. Reg. _____, effective _____.

SUBPART A: INTRODUCTION

Section 871.101 Purpose

a) Section 22.15 of the Environmental Protection Act [415 ILCS 5/22.15] authorizes the Agency to:

1) *Provide financial assistance to units of local government in planning for the management of nonhazardous solid waste or municipal waste where alternatives to disposal of nonhazardous solid waste or municipal waste in a sanitary landfill will receive full evaluation and consideration in the planning process or in plans prepared pursuant to the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act* (Section 22.15(g) of the Act); *and*

2) *To provide financial assistance to units of local government for the performance of inspecting, investigating and enforcement activities pursuant to Section 4(r) at nonhazardous solid waste* or municipal waste *disposal sites.* (Section 22.15(h) of the Act)

b) The rules set forth in this Part constitute conditions which apply to any agreement through which the Agency provides the financial assistance described in subsection (a) above for:

1) Planning for the management of municipal waste in accordance with Section 22.15(g) of the Environmental Protection Act [415 ILCS 5/22.15(g)]; and

2) Inspection, investigation and enforcement activities at nonhazardous solid waste or municipal waste disposal sites in accordance with Section 22.15(h) of the Environmental Protection Act [415 ILCS 5/22.15(h)].

Section 871.102 Definitions

a) For purposes of this Part, the words and terms used in this Part shall have the meanings below. Words and terms not defined in this Part shall have the meanings set forth in 35 Ill. Adm. Code 870. Words and terms not defined in this Part and not defined in 35 Ill. Adm. Code 870 shall have the meanings as defined in the Environmental Protection Act [415 ILCS 5].

b) For purposes of this Part, the following definitions apply.

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

"Applicant" means the unit of local government that is applying for a

municipal waste planning or nonhazardous solid or municipal waste enforcement grant under Section 22.15 of the Act.

"Contractor" means the person, as defined by Section 3.26 of the Act, to whom a subagreement is awarded.

"Delegation agreement" means an agreement authorized by Section 4(r) of the Act [415 ILCS 5/4(r)], under which the Agency may delegate inspection, investigation and enforcement authority at nonhazardous solid waste or municipal waste facilities or sites to a unit of local government.

"Enforcement grant" means a grant issued pursuant to Section 22.15(h) of the Act for inspection, investigation and enforcement activities at nonhazardous solid waste or municipal waste disposal sites. (Referred to as "SMWE Grant" in 35 Ill. Adm. Code 870.)

"Generally accepted accounting principles" means procedures outlined by the Financial Accounting Standards Board (High Ridge Park, Stamford, Connecticut 06905, June 1, 1987).

"Grant agreement" means the written agreement and amendments thereto between the Agency and a grantee in which the terms and conditions governing the grant are stated and agreed to by both parties.

"Grantee" means the unit of local government that has been awarded a grant for municipal waste planning or nonhazardous solid or municipal waste enforcement under Section 22.15 of the Act.

"Phase I MWP Grant" means a Municipal Waste Needs Assessment Grant issued pursuant to Section 22.15(g) of the Act and 35 Ill. Adm. Code 870.204(b).

"Phase II MWP Grant" means a Municipal Waste Planning Grant issued pursuant to Section 22.15(g) of the Act and 35 Ill. Adm. Code 870.204(c).

"Phase III MWP Grant" means a Municipal Waste Implementation Planning Grant issued pursuant to Section 22.15(g) of the Act and 35 Ill. Adm. Code 870.204(d).

"Planning grant" means a grant issued pursuant to Section 22.15(g) of the Act for the planning of municipal waste management.

"State" means the State of Illinois.

"Subagreement" means a written agreement between the grantee and another party, such as a contractor, and any tier of agreement thereunder for the furnishing of services, supplies, or equipment necessary to complete the project for which a grant was awarded, including contracts for personal and professional services and purchase orders.

Section 871.103 Severability

If any provisions of this Part or the application thereof to any person or in any circumstance is adjudged invalid, such adjudication shall not affect the validity of this Part as a whole or any provision thereof not adjudged invalid.

SUBPART B: LIABILITIES AND REMEDIES FOR FAILURE TO COMPLY WITH GRANT CONDITIONS

Section 871.201 Noncompliance with Grant Conditions

a) In the event of noncompliance with any condition or obligation imposed pursuant to a grant made under Section 22.15 of the Act, the Agency may take one or more of the following actions:

1) Commence legal action in a court of competent jurisdiction (e.g., to obtain an injunction or to recover in fraud);

2) Annul the grant and recover all grant funds pursuant to the Illinois Grant Funds Recovery Act [30 ILCS 705];

3) Terminate the grant pursuant to Section 871.203 of this Part;

4) Suspend all or part of the project work pursuant to Section 871.202 of this Part; or

5) Take other actions, such as reducing the amount of the grant by the amount of misused funds, or disallowing costs in accordance with Section

871.601 of this Part.

b) No action shall be taken under this Part without prior consultation with the grantee.

c) In determining whether to take action and which action to take when the Agency is empowered to act under this Part, the Agency shall consider factors such as the severity of the violation(s); the number of violations by the grantee; whether the violation is a continuing one; whether the grantee can remedy the violation; and whether the grantee and any subagreements remain capable of complying with the approved work project (see Subpart C of this Part).

Section 871.202 Stop-Work Order

a) The Agency may, for any violation of this Part, by written order to the grantee, require the grantee to stop all or any part of the project work for a period of not more than 30 days after the date of the order, and for any further period to which the parties may agree. Any such order shall be specifically identified as a stop-work order issued pursuant to this Section. Any such order shall include a list of the project activities to which the stop-work order shall apply. Upon receipt of such an order, the grantee shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of not more than 30 days of the date of the stop-work order, or within any extension of that period to which the parties shall have agreed, the Agency shall either:

1) Cancel the stop-work order upon the resolution of the violations leading to that stop-work order; or

2) Terminate the work covered by such order as provided in Section 871.203 of this Part.

b) If a stop-work order issued under this condition is canceled or the period of the order or any extension there of expires, the grantee shall resume work. An equitable adjustment shall be made in the grant period, the project period, or grant amount, or all of these, and the grant instrument shall be amended accordingly, if:

1) The stop-work order results either in an increase in the time required to complete the project, or an increase in the grantee's cost properly allocable

to the performance of any part of the project; and

2) The grantee asserts a written claim for such adjustment within 30 days after the end of the period of work stoppage. Such claim must be submitted prior to final payment under the grant.

c) Costs incurred by the grantee after the receipt of a stop-work order, or within any extension of the stop-work order period to which the Agency and the grantee shall have agreed, shall be allowable costs only if so defined by Section 871.601 of this Part.

Section 871.203 Termination

a) Grant Termination by Agency

The Agency, by written notice and after consultation with the grantee, may terminate the grant, in whole or in part. Cause for termination shall include, but not be limited to: default by the grantee, failure by the grantee to comply with the terms and conditions of the grant, realignment of programs, change in program requirements or priorities, lack of adequate funding, or advancements in the state of the art.

b) Project Termination by Grantee

The grantee may not terminate a project for which the grant has been awarded, except for good cause. Good cause for termination shall include, but not be limited to: realignment of programs, change in program requirements or priorities, lack of adequate funding, or advancements in the state of the art. If the Agency finds that there is good cause for the termination of all or any portion of a project for which the grant has been awarded, it shall enter into a termination agreement or unilaterally terminate the grant, effective with the date of termination of the project by the grantee. If the Agency finds that the grantee has terminated the project without good cause, then the grant shall be annulled and all grant funds previously paid or owing to the grantee shall be returned to the State of Illinois Solid Waste Management Fund as final settlement.

Section 871.204 Waiver of Conditions

The Director of the Agency may waive any or all of the conditions required by this Part, with

respect to any grant offer, by a statement made in writing to the grantee, either as a special condition of the grant offer or otherwise (and the waiver made subject to such additional conditions as the Director may deem necessary), if the purpose of the requirement has been accomplished or if the requirement waived is not considered by the Director to be necessary to insure the integrity of the project.

Section 871.205 Covenant Against Contingent Fees

The grantee warrants that no person or agency has been employed or retained to solicit or secure this grant upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, the Agency shall have the right to annul this grant without liability or in its discretion to deduct from the grant award, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

Section 871.206 Statutory Conditions

The grantee is solely responsible for assuring compliance with all statutory requirements.

SUBPART C: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS OF GRANTEE

Section 871.301 General Conditions for all Subagreements

a) Scope of Application
The following conditions shall apply to all subagreements entered into between the grantee and any other party and any tier of agreement thereunder for the furnishing of services, supplies, or equipment necessary to complete the project for which the grant is awarded, including contracts and subcontracts for personal and professional services.

b) Local Preference
Local laws, ordinances, regulations or procedures which are designed or operate to give local or in-state bidders or proposers preference over other bidders or proposers shall not be employed in evaluating bids or proposals for subagreements under a grant.

c) Competition
It is the policy of the Agency to encourage free and open competition appropriate to the type of project work to be performed.

d) Profits
Only fair and reasonable profits approved by the Agency may be earned by contractors in subagreements under Agency grants. Factors to be considered in determining a fair and reasonable profit shall include, but not be limited to, material acquisition, labor costs, associated management costs, contract risks, capital investments, degree of independent development, and cost control and record keeping efforts. The determination of a fair and reasonable profit shall not be based upon the application of a predetermined percentage factor.

e) Travel
The grantee is responsible for ensuring that reimbursement for travel expenses accrued by contractors conducting grant eligible activities does not exceed the travel limits established by 80 Ill. Adm. Code 3000 (effective July 1, 1990), and rules promulgated thereunder. The Agency will not reimburse grantees for any contractors' travel expenses exceeding State travel limits for mileage, transportation, lodging, per diem, parking, tolls, and other eligible travel costs.

f) Grantee Responsibility
The grantee is responsible for the administration and successful accomplishment of the project for which the Agency grant is awarded. The grantee is responsible for the settlement and satisfaction of all contractual and administrative issues arising out of subagreements entered into under the grant. This includes, but is not limited to, issuance of invitations for bids or requests for proposals, selection and oversight of contractors, award of contracts, protests of award, claims, disputes, and other procurement matters. These functions may be performed for the grantee by an individual or firm retained by the grantee for that purpose. Such an agent acts for the grantee and is subject to all the provisions of the grant agreement, including the requirements contained in this Part, that apply to the grantee. Ultimate responsibility for the project will continue to remain with the grantee. Costs incurred by a unit of local government will be eligible for grant reimbursement only after the grant is executed.

g) Privity of contract
Neither the Agency nor the State of Illinois shall be a party to any subagreement (including contracts), nor to any solicitation or request for proposals therefor.

h) General Requirements
Subagreements shall:

1) Be directly related to the accomplishment of the grantee's approved work program;

2) Be in the form of a bilaterally executed written agreement;

3) Be for monetary or in-kind consideration; and

4) Not be in the nature of a grant or gift.

i) Documentation

1) Procurement records and files for contracts shall include the following:

A) Basis for contractor selection; and

B) Basis for award cost or price.

2) Procurement documentation as described in subsection (i)(1) above shall be retained by the grantee or contractors of the grantee for the period of time required by Section 871.502.

j) In-kind Work

1) The grantee must secure prior written approval of the Agency for utilization of in-kind contributions for work on planning grants in excess of $10,000 for Phase I activities and $25,000 for Phase II activities unless otherwise stipulated in the Grant Agreement.

2) The Agency's approval of in-kind contributions shall be based on its determination that:

A) The grantee has trained manpower and supervisory personnel whose expertise and current responsibilities would enable them to accomplish the project work and to maintain records of such work in accordance with this Part; and

B) The use of in-kind contributions will effect savings in cost over those that would be incurred under technical/professional service contracting methods.

k) The Agency retains the right to review, approve or disapprove in accordance with this Part all subagreements to be entered into by the grantee prior to execution of all such agreements. The Agency shall not approve the awarding of any subagreements to any person or organization which does not:

1) Have adequate resources, or the ability to obtain such resources prior to project initiation, to satisfactorily complete the project, including financial, organizational, and technical qualifications;

2) Have experience, or the ability to obtain such experience prior to the project's initiation, in nonhazardous solid waste or municipal waste planning, data collection and interpretation, and report preparation; and have a proven record of meeting schedules and budgets;

3) Have staffing sufficient to comply with the proposed or required completion schedule for the project;

4) Have a satisfactory record of integrity, judgment, and performance, including, in particular, any prior performance under grants and contracts with federal or State government;

5) Have an adequate financial management system and audit procedure which complies with generally accepted accounting procedures and with American Institute of Certified Public Accountant's Professional Standards (666 Fifth Avenue, N.Y., N.Y. 10019, June 1, 1987). (This incorporation contains no later amendments or editions.);

6) Maintain a standard of procurement in accordance with this Part;

7) Maintain a property management system that provides adequate procedures for the acquisition, maintenance, safeguarding, and disposition of all property; or

8) Conform to the civil rights, equal employment opportunity, and labor law requirements of the State of Illinois.

l) Fraud and Other Unlawful or Corrupt Practices

1) The award and administration of grants by the State of Illinois, and of subagreements awarded by grantees under those grants, must be accomplished free from bribery, graft, kickbacks, and other corrupt practices. The grantee bears the primary responsibility for prevention and detection of such conduct and for cooperation with appropriate authorities in the prosecution of any such conduct.

2) The grantee shall effectively pursue available State or local legal and administrative remedies and shall take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices which are brought to its attention. The grantee shall advise the Agency immediately when any such allegation or evidence comes to its attention and shall periodically advise the Agency of the status and ultimate disposition of any such matter.

m) Negotiation of Subagreements
Negotiation of subagreements (i.e., award of subagreements by any method other than formal advertising) is authorized if it is impracticable and infeasible to use formal advertising. Negotiated contracts must be competitively awarded to the maximum practicable extent. Procurements may be negotiated by the grantee if:

1) Public exigency as evidenced by governmental declaration will not permit the delay in advertising (e.g., an emergency procurement);

2) The aggregate amount involved does not exceed $2,500;

3) The material or service to be procured is available from only one person or firm (and, if the procurement is expected to aggregate more than $10,000, the Agency has given prior approval in writing);

4) The procurement is for personal or professional services, or for any service to be rendered by a university or other educational institution; or

5) No responsive bids at acceptable price levels have been received after formal advertising, and the Agency has given advance written approval of the negotiated contract. The Agency shall give such approval upon a showing by the grantee that no responsive bids were received.

n) Small Purchases

1) A small purchase is the procurement of materials, supplies, and services when the aggregate amount involved in any one transaction does not exceed $10,000. The small purchase limitation of $10,000 applies to the aggregate total of an order, including all estimated overhead and profit to be paid under the order. In arriving at the aggregate amount involved in any one transaction, there must be included all items which should properly be grouped together. Reasonable competition shall be obtained and shall be evidenced by submission of price quotations.

2) Subagreements for small purchases need not be in the form of a bilaterally executed written agreement. Where appropriate, unilateral purchase orders, sales slips, memoranda of oral price quotations, and the like may be utilized in the interest of minimizing paperwork. Retention in the purchase files of these documents and of written quotations received, or references to written catalogs or printed price lists used, will suffice as the record supporting the price paid.

o) Agency Review of Subagreements

1) The Agency retains the right to review, approve, or disapprove in accordance with this Part all subagreements to be entered into by the grantee in furtherance of the administration of the grant prior to execution of that subagreement. The Agency shall approve a subagreement only if the grantee demonstrates that the subagreement is in conformance with subsection (k) above.

2) If, at any time during the project, the Agency determines that the grantee's subcontractors are not successfully accomplishing project activities in accordance with the grant award, the Agency may take one or more actions presented in Section 871.201 of this Part. If the determination is due to the failure of the grantee's subcontractors to successfully accomplish the project work, the Agency shall notify the grantee in a timely manner of the determination and its recommendations for resolving the project deficiencies.

p) Award of Subagreement
After review and approval by the Agency, the grantee may award the contract. The Agency shall notify the grantee in writing of disapproved subagreements.

Unsuccessful candidates shall be notified promptly.

Section 871.302 Contracts for Personal and Professional Services – Professional Consultant Agreements

a) Scope of Application
The provisions of subsections (a) through (i) of this Section apply to all subagreements of grantees for consulting services. When $10,000 or less of services (e.g., for consultant or consultant subcontract services) is required, the provisions of Section 871.301 (n) of this Part (Small Purchases) shall apply.

b) Type of Contract (Subagreement)

1) General
Cost reimbursement or fixed price contracts may be negotiated for consulting services. A fixed price contract is generally used only when the scope and extent of work to be performed are clearly defined. In most other cases, a cost reimbursement type of contract is more appropriate.

2) Cost reimbursement contracts
Each cost reimbursement contract must clearly establish a cost ceiling that may not be exceeded without formally amending the contract and a fixed dollar profit which may not be increased except in case of a contract amendment that increases the scope of the work.

3) Fixed price contracts
An acceptable fixed price contract is one that establishes a guaranteed maximum price which may not be increased except to the extent that a contract amendment increases the scope of work.

4) Contracts prohibited
The cost-plus-percentage-of-cost type of contract is prohibited.

5) Compensation procedures
If, under either a cost reimbursement or fixed price contract, the grantee desires to utilize a multiplier type of compensation, all of the following must apply:

A) The multiplier and the portions of the multiplier allocable to

overhead and allocable to profit have been specifically negotiated;

B) The portion of the multiplier allocable to overhead includes only allowable items of cost under the cost principles contained in Section 871.601 of this Part; and

C) The portions of the multiplier allocable to profit and allocable to overhead have been separately identified in the contract.

c) Evaluation and Qualifications

1) The grantee shall review and uniformly evaluate the qualifications of candidate firms.

2) Qualifications shall be evaluated by an objective process such as by the appointment of a board or committee, which, to the extent practicable, should include persons with technical skills.

3) Criteria that shall be considered in the evaluation of candidates for submission of proposals include, but are not limited to:

A) Specialized experience and technical competence of the candidate or firm and its personnel (including a joint venture, association or professional subcontract) in connection with the type of services required and the complexity of the project;

B) Past record of performance on contracts with the grantee, other government agencies or public bodies, and private industry, including such factors as control of costs, quality of work, and ability to meet schedules;

C) Capacity of the candidate to perform the work (including any specialized services) within the time limitations, taking into consideration the current and planned workload of the firm; and

D) Avoidance of personal and organizational conflicts of interest prohibited under State and local law.

d) Solicitation and Evaluation of Proposals

1) Requests for professional services proposals must be in writing and must contain the information necessary to enable a prospective offeror to prepare a proposal properly. The request for proposals must inform offerors of the evaluation criteria, including all those in subsection (c)(3) of this Section, and of the relative importance attached to each criterion (a numerical weighted formula need not be utilized).

2) All proposals submitted in response to the request for professional services proposals must be uniformly evaluated. Evaluation criteria shall include, at a minimum, all criteria stated in subsection (c)(3) of this Section. The grantee shall also evaluate the candidate's proposed method to accomplish the work required, including, where appropriate, demonstrated capability to explore and develop innovative or advanced techniques and designs.

3) Proposals shall be evaluated by an objective process such as the appointment of a board or committee that, to the extent practicable, includes persons with technical skills. Oral (including telephone) or written interviews shall be conducted with top rated proposers, and information derived therefrom shall be treated as confidential, except as required to be disclosed pursuant to State or local law or to the Agency pursuant to subsection (f) below.

4) At no point during the entire procurement process shall information be conveyed to any candidate that would specify bid deficiencies and corrective actions, indicate the contents of competing bids, or otherwise provide an unfair competitive advantage.

e) Negotiation

1) Grantees are responsible for negotiation of their contracts for consulting services. Contract procurement including negotiation may be performed by the grantee directly or by another non-state governmental body, person or firm retained for the purpose.

2) Negotiation shall be conducted in accordance with State or local procedures. If such procedures conflict with this Part, State procedures shall have precedence over this Part. This Part shall have precedence over local procedures.

3) The object of negotiations with any candidate shall be to reach agreement on the provisions of the proposed contract. The grantee and the candidate shall discuss, at a minimum:

A) The scope and extent or work;

B) Identification of the personnel and facilities to accomplish the work within the required time, including, where needed, employment of additional personnel, subcontracting, joint ventures, etc.;

C) Availability of the required technical services in accordance with regulations and criteria established for the project; and

D) A fair and reasonable price for the required work, to be determined in accordance with the cost and profit considerations set forth in subsections (f) and (g) below, and payment provisions.

f) Cost and Price Considerations

1) General
It is the policy of the Agency that the cost or price of all subagreements and amendments thereto must be considered. For each subagreement, grantees shall use the procedures described in subsection (f)(2) below or equivalent process.

2) Cost Review

A) A review of proposed subagreement costs shall be made by the grantee.

B) At a minimum, proposed subagreement costs shall be presented on forms prescribed and provided by the Agency and shall be supported by a certification executed by the selected contractor that proposed costs reflect complete, current and accurate cost and pricing data applicable to the date of anticipated subagreement award.

C) In addition to the specific elements of cost, the estimated amount of profit shall be set forth separately in the cost summary for fixed price contracts and a maximum total dollar amount of profit shall be set forth separately in the cost summary for cost reimbursement contracts.

D) More detailed cost data than that required by the summary format may be required by the grantee or the Agency to substantiate the reasonableness of proposed subagreement costs. Such detailed documentation is required by the Agency only when the selected contractor is unable to certify that the cost and pricing data used are complete, current and accurate or when evidence of fraud or misconduct has arisen. The Agency may, on a selected basis, perform a pre-award cost analysis on any subagreement. Circumstances under which such an analysis would be conducted include amendments to subagreements or evidence of cost inflation to meet costs. A provisional overhead rate will be agreed upon prior to contract award.

E) The contractor's actual costs, direct and indirect, allowable for State participation shall be determined in accordance with the terms and conditions of the subagreement and this Part.

F) The contractor shall have an accounting system that accounts for costs in accordance with generally accepted accounting principles. This system shall provide for the identification, accumulation and segregation of allowable and unallowable project costs among projects. The contractor must propose and account for costs in a manner consistent with normal accounting procedures.

G) Subagreements awarded on the basis of review of a cost element summary and a certification of complete, current and accurate cost, and pricing data shall be subject to downward renegotiation or recoupment of funds where the Agency determines that such certification was not based on complete, current and accurate cost and pricing data or not based on costs allowable under the appropriate Agency cost principles at the time of award.

g) Profit

The objective of negotiations shall be the determination of a fair and reasonable profit as described in Section 871.301(d) of this Part. For the purpose of subagreements under State grants, profit is defined as the net proceeds obtained by deducting all allowable costs (direct and indirect) from the price. Profit on a subagreement and each amendment to a subagreement under a grant should be sufficient to attract contractors who possess talents and skills necessary to accomplish project objectives, and to stimulate efficient and expeditious completion of the project. Where cost review is performed, the estimate of profit shall be reviewed by the grantee and the Agency as will all other elements of price.

h) Required Subagreement Provisions

1) Content of subagreement

A) Each subagreement must define, at a minimum:

i) The scope and extent of project work;

ii) The time for performance and completion of the contract work, including where appropriate, dates for completion of significant project tasks;

iii) Personnel and facilities necessary to accomplish the work within the required time; and

iv) The extent of subcontracting and contractor agreements, including all costs to be incurred under each subagreement.

B) If any of these elements cannot be defined for later tasks or steps at the time of contract execution, the subsequent tasks or steps shall be included in the contract at a time specified in the contract.

2) Required subagreement provisions
Each consulting services contract must include the provisions set forth in Appendix A of this Part, and shall state that Appendix A provisions will supersede all others.

i) Subcontracts Under Subagreements for Consulting Services

1) The award or execution of subcontracts under a prime contract for consulting services awarded to a contractor by a grantee, and the procurement and negotiation procedures used by the contractor in awarding such subcontracts, are required to comply with all provisions, selection procedures, policies and principles set forth in Section 871.301 and Section 871.302 of this Part.

2) The award or execution of subcontracts in excess of $10,000 under a prime contract for consulting services and the procurement procedures used by the contractor in awarding such subcontracts must comply with the following:

A) Section 871.301(b) of this Part (Local Preference);

B) Section 871.302(f) of this Part (Cost and Price Considerations); and

C) Section 871.302(g) of this Part (Profit).

Section 871.303 Compliance With Procurement Requirements

a) Grantee Responsibility
The grantee is responsible for selecting the low, responsive bidder or other contractor in accordance with applicable requirements of State or local laws or ordinances, as well as the specific requirements of State and federal law or the grant agreement directly affecting the procurement (for example, the non-restrictive specification requirement or the equal employment opportunity requirement) and for the initial resolution of complaints based upon alleged violations. If complaint is made to the Agency concerning an alleged violation of any law or of this grant agreement in the procurement of services or materials for a project, the complaint will be referred to the grantee for resolution. The grantee shall promptly determine each such complaint upon its merits permitting the complaining party as well as any other interested party who may be adversely affected, including bidders on the contract in question, to state in writing or at a conference the basis for views concerning the proposed procurement. The grantee must promptly furnish to the complaining party and to other affected parties who participated in the conference or submitted written comments, by certified mail, a written summary of its determination, substantiated by an engineering and legal

opinion, providing a justification for its determination.

b) Arbitration
Disputes between the grantee and any party adversely affected by the determination of the grantee made pursuant to subsection (a) above shall be resolved by binding arbitration by a single arbitrator, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (140 W. 51st Street, N.Y., N.Y. 10020, 1986). (This incorporation contains no further amendments or editions.) This agreement to arbitrate shall be specifically enforceable under the Uniform Arbitration Act [710 ILCS 5]. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in any court having jurisdiction thereof. A copy of the arbitration award shall be provided to the Agency immediately upon its issuance.

c) Time Limitations
Complaints pursuant to subsection (a) above shall be made as early as possible during the procurement process, preferably prior to issuance of an invitation for bids to avoid disruption of the procurement process, provided that a complaint authorized by subsection (a) above must be mailed by certified mail (return receipt requested), or delivered, no later than five working days after the bid opening. A request for arbitration pursuant to subsection (b) above must be made to the American Arbitration Association within one week after the complaining party received the grantee's adverse determination.

d) Deferral of Procurement Action
Where the grantee has received a written complaint pursuant to subsection (a) above, it must defer issuance of its solicitation or award or notice to proceed under the contract (as appropriate) for ten days after mailing or delivery of any written adverse determination. If a determination is made by either the grantee or the arbitrator which is favorable to the complainant, the terms of the solicitation must be revised or the contract must be awarded (as appropriate) in accordance with such determination.

e) Enforcement
Noncompliance with the provisions of this grant affecting procurement will result in:

1) Total or partial termination of the grant pursuant to Section 871.203;

2) Ineligibility for grant assistance which could otherwise be awarded under this grant; or

3) Disallowance of project costs incurred in violation of the provisions of this grant offer or applicable laws, as determined by the Agency.

Section 871.304 Disputes

a) Only the grantee may appeal to the Agency under this provision with respect to its subagreements thereunder in its own name and for its own benefit. Neither a contractor nor a subcontractor of a grantee may prosecute an appeal under the disputes provision of a grant in its own name or interest.

b) Any dispute arising under this grant which is not disposed of by agreement shall be decided by the Agency. A written decision shall be mailed or otherwise furnished to the grantee. The decision of the Agency shall be final and conclusive.

c) This "disputes" clause does not preclude consideration of questions of law in connection with decisions provided for in subsection (b) above.

Section 871.305 Indemnity

The grantee shall assume the entire risk, responsibility and liability for any and all loss or damage to property owned by the grantee, the Agency or third persons, and any injury to or death of any persons (including employees of the grantee) caused by, arising out of, or occurring in connection with the execution of any work, contract or subcontract arising out of this grant, and the grantee shall indemnify, save harmless and defend the State of Illinois and the Agency from all claims for any such loss, damage, injury or death whether caused by the negligence of the State of Illinois, the Agency, their agents or employees or otherwise consistent with the provisions of Construction Contract Indemnification for Negligence Act [740 ILCS 35]. The grantee shall require that any and all contractors or subcontractors engaged by the grantee shall agree in writing that they shall look solely to the grantee for performance of such contract or satisfaction of any and all claims arising thereunder.

SUBPART D: REQUIREMENTS APPLICABLE TO INITIATION AND AMENDMENT

Section 871.401 Project Initiation

Any obligation of the State of Illinois and the Agency to make any payment of grant funds shall terminate absolutely unless the grantee initiates performance of its obligations under the grant no later than one calendar year from the date of acceptance by the grantee of a Planning Grant offer or not later than 3 months from the date of acceptance of an Enforcement Grant offer or as otherwise provided by the grant agreement. Performance of obligations under the grant shall be deemed to have been initiated on the execution of an agreement or contract for any element of project work; or, if an agreement or contract covering an element of the work has previously been entered into, upon the issuance of a notice to proceed with that work.

Section 871.402 Project Changes

a) Prior approval by the Agency is required for project changes that may:

1) Alter the scope of the project by changing the methodologies or personnel to be used, as agreed to at the time of the grant award;

2) Extend any contractual or grant completion date for the project; subject to the provisions required by Section 870.207(e); or

3) Re-allocate budget amounts by category through line-item revisions, provided that the total grant amount does not change.

b) The grantee shall notify the Agency of project changes pursuant to subsection (a) above in writing 30 days prior to the effective date of all proposed project changes. Failure on the part of the grantee to give timely notice of proposed project changes pursuant to subsection (a) of this Section may, in accordance with Section 871.201 of this Part, result in:

1) Disallowance of costs incurred that are attributable to the change; or

2) Termination of the grant.

c) The Agency shall disapprove proposed project changes by written notice to the grantee within 30 days after receipt of a written notice from the grantee of a proposed change pursuant to subsection (a) of this Section. If the Agency fails to notify the grantee within 30 days after receipt of project changes pursuant to subsection (a) of this Section, these changes shall be deemed to be approved. Neither approval nor failure to disapprove a project change shall commit or obligate the State of Illinois or the Agency to any increase in the amount of the

grant or payments thereunder and nothing herein shall operate to increase the amount of the grant. The total cost for all changes allowable under this provision shall not exceed one-half of one percent of the total grant offer.

d) In addition to the notification of project changes pursuant to subsections (a) through (c) of this Section, a copy of any prime contract or modification thereof and of revisions to specifications must be submitted to the Agency for approval within one week of execution; however, neither approval nor disapproval of any prime contract or modification thereof or revisions to specifications shall commit or obligate the State of Illinois or the Agency to any increase in the amount of the grant or payments thereunder.

e) The Agency will approve project changes if the grantee can make a showing that:

1) Amendments to State statutes affect the project cost;

2) A project element was inadvertently omitted; or

3) An approved project element was found to be unnecessary.

Section 871.403 Termination of Delegation Agreement

Any obligation of the State of Illinois and the Agency to make any payment of funds pursuant to a Nonhazardous Solid Waste or Municipal Waste Enforcement Grant shall terminate upon the termination of the delegation agreement under which the grantee is authorized to perform the activities subsidized by the grant.

SUBPART E: REQUIREMENTS APPLICABLE TO
ACCESS, AUDITING, AND RECORDS

Section 871.501 Access

a) The Agency and any persons designated by the Agency shall have access to the premises where any portion of the work for which the grant was awarded is being performed during normal business hours and any other time at which the work is being performed. Subsequent to cessation of grant support, Agency personnel or any authorized representative shall have access to the project records as defined in Section 871.502 of this Part to the full extent of the grantee's right to access, during normal business hours.

b) Any contract entered into by the grantee for work, and any subagreement thereunder, shall provide that the representatives of the Agency will have access to the work as described in subsection (a) above and that the contractor or subcontractor will provide proper facilities for such access and inspection. Such contract or subagreement must also provide that the Agency or any authorized representative shall have access to any books, documents, papers, and records of the contractor or subcontractor that are pertinent to the project for the purpose of making audit, examination, excerpts, and transcriptions thereof.

c) Any failure by the grantee or any contractor or subcontractor of the grantee to provide access, as provided herein, after 10 days' written notice from the Agency, shall be cause for termination of the grant pursuant to Section 871.203 of this Part and refund to the State of Illinois Solid Waste Management Fund of any grant funds previously expended by the grantee, contractor, or subcontractor found in noncompliance with this Section.

Section 871.502 Audit and Records

a) The grantee shall maintain books, records, documents, reports, and other evidentiary material and accounting procedures and practices that conform to generally accepted accounting principles to properly account for:

1) The receipt and disposition by the grantee of all assistance received for the project, including both State assistance and any matching share or cost sharing; and

2) The costs of the project, including all direct and indirect costs of whatever nature incurred for the performance of the project for which the grant has been awarded. The foregoing constitute "records" for the purposes of this condition.

b) The grantee's facilities, or such facilities as may be engaged in the performance of the project for which the grant has been awarded, and the grantee's records shall be subject to inspection and audit by the Agency or any authorized representative at the times specified in Section 871.501 of this Part.

c) The grantee shall preserve and make his records available to the Agency or any authorized representative:

1) Until expiration of 3 years from the date of final payment under this grant; and

2) For such longer period, if any, as is required by applicable statute or lawful requirement, or by subsection (d) or (e) below.

d) If this grant is terminated completely or partially, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final termination settlement.

e) Records that relate to appeals under Section 871.304 of this Part, litigation, the settlement of claims arising out of the performance of the project for which this grant was awarded, or costs and expenses of the project to which exception has been taken by the Agency or any of its duly authorized representatives shall be retained until final disposition of such appeals, litigation, claims, or exceptions.

f) Any failure by the grantee or any contractor or subcontractor of the grantee to make records available to the Agency as required by this Section after 10 days' written notice from the Agency shall be cause for termination of the grant pursuant to Section 871.203 of this Part, and refund to the State of Illinois Solid Waste Management Fund of any grant funds previously expended by the grantee, contractor or subcontractor found in noncompliance with this Section.

Section 871.503 Reports

The grantee shall prepare and file with the Agency a final report containing the information required by 35 Ill. Adm. Code 870.207 and all financial requests required by Section 870.209. Failure to timely submit reports required by this grant offer may result in:

a) Withholding of grant funds;

b) Suspension of the grant pursuant to Section 871.202;

c) Termination of the grant pursuant to Section 871.203; or

d) Such other action as the Agency may be authorized to take.

SUBPART F: REQUIREMENTS APPLICABLE TO PAYMENT OF GRANTS

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED REPEALER

Section 871.601 Determination of Allowable Costs

a) The grantee will be paid, upon request, for the State share of all necessary costs within the scope of the approved project not to exceed the total grant offer and determined to be allowable in accordance with the criteria listed below. Allocable project costs of the grantee which are reasonable and necessary are allowable. Necessary costs may include, but are not limited to:

1) Costs of salaries, benefits, and expendable material incurred by the grantee for the project, except as provided in subsection (b)(7) below;

2) Professional and consultant services;

3) Project feasibility and engineering reports; and

4) Materials acquired, consumed, or expended specifically for the project.

b) Unallowable Costs

Costs which exceed the total amount of the grant offer or which are not necessary for completion of the work required by the Grant Agreement are unallowable. Such costs include, but are not limited to:

1) Area wide planning or enforcement not directly related to the project;

2) Bonus payments not legally required for completion of the project;

3) Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or otherwise;

4) Fines and penalties resulting from violations of, or failure to comply with, federal, State, or local laws;

5) Costs outside the scope of the approved planning or enforcement project;

6) Interest on bonds or any other form of indebtedness required to finance the project costs;

7) Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, or city attorney, except as provided in subsection (d) below;

8) Site acquisition (for example, sanitary landfills and sludge disposal areas);

9) Costs for which payment has been or will be received under another State or federal assistance program;

10) Costs of equipment or material procured in violation of any provisions of these General Conditions;

11) Costs of special funds (i.e., industry advancement funds, funds to reimburse bidding costs to unsuccessful offerors, etc.) financed by contractors, contributions in the industry for methods and materials research, public and industry relations, market development, labor-management matters, wage negotiations, jurisdictional disputes, defraying of all or part of unsuccessful offerors bidding costs, or similar purposes;

12) Costs under contracts that are incurred after the expiration of the applicable contractual completion date, even if the contractual completion date is subsequently extended by the grantee, unless such extension has been approved by the Agency in accordance with Section 871.402;

13) Personal and professional consultant services costs arising under a cost-plus-percentage-of-cost type of agreement (including the multiplier contract where profit is included in the multiplier);

14) Personal and professional consultant services costs when the Agency has been refused access to the books and records of the contractor or the contractor has refused to renegotiate a personal or professional services contract in accordance with the provisions of Section 871.302; and

15) Increases in personal and professional consultant services contract fees which are based solely on a percentage of an increased construction cost notwithstanding the contractual liabilities of the grantee under such contract.

c) Indirect Costs

Indirect costs of the grantee shall be allowable in accordance with an indirect cost agreement negotiated and incorporated in the grant agreement. An indirect cost agreement must identify those cost elements allowable pursuant to subsection (a) above. Where the benefits derived from an applicant's indirect services cannot be readily determined, a lump sum for overhead may be negotiated based upon a determination that such amount will be approximately the same as the actual indirect costs that may be incurred. Procedures for development of an indirect cost agreement are included as Appendix B to this Part.

d) Disputes Concerning Allowable Costs
The grantee shall seek to resolve any questions relating to cost allowability or allocation at its earliest opportunity (if possible, prior to execution of the grant agreement). Final determinations by the Agency concerning the allowability of costs shall be conclusive unless appealed within 30 days in accordance with Section 871.304.

e) Limitation on Project Costs Incurred Prior to Grant Award
Payment will not be authorized for costs incurred prior to the date of the grant award.

Section 871.602 Amount of Grant-Percentage of Approved Allowable Costs

a) The commitment and obligation of the State of Illinois and the Agency to the grantee by this grant for the project is limited to and shall not exceed the total amount of the grant. Nothing herein, including the provisions of Section 871.402 of this Part, shall operate to commit or obligate the State of Illinois or the Agency to any increase in the total amount or percentage of the grant or of the grant offer.

b) The amount of the grant shall not exceed the State share of the approved allowable cost of the project as set forth in the grant offer and special conditions thereof. In the event the actual allowable cost of the project, as determined by the Agency pursuant to periodic audit, is less than the estimated allowable cost, such actual eligible cost shall be used to determine the amount of the grant and the grant shall be reduced as necessary to conform with the limitations described above.

Section 871.603 Use of Grant and Payment of Unallowable Costs

a) The grant shall be expended solely for approved allowable costs incurred in the

municipal waste planning or nonhazardous solid waste or municipal waste enforcement activities authorized by the terms of the grant.

b) The grantee agrees to pay the unallowable costs associated with the project and all allowable costs of the project which exceed the amount of the grant offer.

Section 871.604 Grant Payment Schedule (Repealed)

Section 871.605 Other Federal or State Grants

If the grantee becomes eligible for a grant of federal funds or State funds for this project from other than the Solid Waste Management Fund, the grantee shall repay to the State of Illinois, for deposit in the Solid Waste Management Fund, any funds received under this offer if the total federal or State funds received exceed 70 percent of the approved allowable cost under a planning grant or enforcement grant, as defined by the Agency in accordance with the conditions of this grant. The grantee shall take any and all actions as may be directed by the Agency to perfect and preserve such eligibility and to obtain such grant of federal funds or State funds from other than the Solid Waste Management Fund or to reimburse to the Solid Waste Management Fund such amounts as might have been returned to it under this condition but for failure of the grantee to take timely action as directed.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED REPEALER

Section 871.APPENDIX A Required Provisions − Professional Contractor Agreements

1. General

a) The grantee and the contractor agree that the following provisions shall apply to the work to be performed under this agreement and that such provisions shall supersede any conflicting provisions of this agreement.

b) This agreement is funded in part by a grant from the Illinois Environmental Protection Agency (Agency). Neither the State of Illinois nor the Agency is a party to this agreement.

2. Responsibility of the Contractor

a) The contractor shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the contractor under this agreement. The contractor shall, without additional compensation, correct or revise any errors or deficiencies in designs, drawings, specifications, reports and other services.

b) The contractor shall perform such professional services as may be necessary to accomplish the work required to be performed under this agreement, in accordance with this agreement and 35 Ill. Adm. Code 871.

c) Approval by the grantee or Agency of drawings, designs, specifications, reports, and incidental consulting work or materials furnished hereunder shall not in any way relieve the contractor of responsibility for the technical adequacy of the work. Neither the grantee's nor Agency's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this agreement or of any cause of action arising out of the performance of this agreement, and the contractor shall be and remain liable in accordance with applicable law for all damages to the grantee or Agency caused by the contractor's negligent performance of any of the services furnished under this agreement.

d) The rights and remedies of the grantee provided for under this agreement are in addition to any other rights and remedies provided by law.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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3. Scope of Work

Except as may be otherwise specifically limited in this agreement, the services to be rendered by the contractor shall include all services required to complete the task or step in accordance with 35 Ill. Adm. Code 871.

4. Changes

a) The grantee may, at any time, by written order, make changes within the general scope of this agreement in the services or work to be performed. If such changes cause an increase or decrease in the contractor's cost of, or time required for, performance of any services under this agreement, whether or not changed by any order, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly. Any claim of the contractor for adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the contractor of the notification of change unless the grantee grants a further period of time before the date of final payment under this agreement.

b) If additional compensation will be charged by the contractor for its services, prior written authorization must be obtained from the grantee.

5. Termination

a) This agreement may be terminated in whole or in part in writing by either party in the event of failure by the other party to fulfill its obligations under this agreement through no fault of the terminating party, provided that no such termination may be effected unless the other party is given: (1) not less than ten (10) days' written notice (delivered by certified mail, return receipt requested) of intent to terminate; and (2) an opportunity for consultation with the terminating party prior to termination.

b) If termination for default is effected by the grantee, an equitable adjustment in the price provided for in this agreement shall be made, but: (1) no amount shall be allowed for anticipated profit on unperformed services or other work; and (2) any payment due to the contractor at the time of termination shall be adjusted to reflect any additional costs occasioned to the grantee by reason of the contractor's default. If

termination for default is effected by the contractor, or if termination for convenience is effected by the grantee, the equitable adjustment shall include a reasonable profit, as defined in Section 871.301(d) of this Part, for services or other work performed. The equitable adjustment for any termination shall provide for payment to the contractor for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the contractor relating to commitments which are contractually obligated prior to the termination.

c) Upon receipt of the termination action pursuant to paragraphs (a) or (b) of this clause, the contractor shall: (1) promptly discontinue all services affected (unless the notice directs otherwise); and (2) deliver or otherwise make available to the grantee all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the contractor in performing this agreement, whether completed or in process.

d) Upon termination pursuant to paragraphs (a) or (b) of this clause, the grantee may take over the work and prosecute the same to completion by agreement with another party or otherwise.

e) If, after termination for failure of the contractor to fulfill contractual obligations, it is determined that the contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the grantee. In such event, adjustment of the price provided for in this agreement shall be made as provided in paragraph (b) of this clause.

f) The rights and remedies of the grantee and the contractor provided in this clause are in addition to any other rights and remedies provided by law or under this agreement.

6. Remedies

a) Except as may be otherwise provided in this agreement, or as the parties hereto may otherwise agree, all claims, counterclaims, disputes and other matters in question between the grantee and the contractor arising out of or relating to this agreement or the breach thereof will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, subject to the limitations stated

in paragraphs (c) and (d) of this clause. This agreement, and any other agreement or consent to arbitrate entered into in accordance therewith as provided below, will be specifically enforceable under the prevailing law of any court having jurisdiction.

b) Notice of demand for arbitration must be filed in writing with the other party to this Agreement, with the Agency, and with the American Arbitration Association. The demand must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may the demand for arbitration be made after the time when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

c) All demands for arbitration and all answering statements thereto which include any monetary claim must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than $200,000 (exclusive of interest and costs). The arbitrators will not have jurisdiction, power or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any claim, counterclaim, dispute or other matter in question where the amount in controversy thereof is more than $200,000 (exclusive of interest and costs) or to render a monetary award in response thereto against any party which totals more than $200,000 (exclusive of interest and costs).

d) No arbitration arising out of, or relating to, this agreement may include, by consolidation, joinder or in any other manner, any additional party not a party to this agreement.

e) By written consent signed by all the parties to this agreement and containing a specific reference hereto, the limitations and restrictions contained in paragraphs (c) and (d) of this clause may be waived in whole or in part as to any claim, counterclaim, dispute or other matter specifically described in such consent. No consent to arbitration in respect of a specifically described claim, counterclaim, dispute or other matter in question will constitute consent to arbitrate any other claim, counterclaim, dispute or other matter in question which is not specifically described in such consent or in which the sum or value in controversy exceeds

$200,000 (exclusive of interest and costs) or which is with any party not specifically described therein.

f) The award rendered by the arbitrators will be final, not subject to appeal, and judgment may be entered upon it in any court having jurisdiction thereof.

7. Payment

a) The contractor shall submit payment requests to the grantee in accordance with the schedule in the project scope of work. Such requests shall be based upon the value of the work and services performed by the contractor under this agreement, and shall be prepared by the contractor and supplemented or accompanied by such supporting data as may be required by the grantee or the Agency. The contractor shall also submit progress reports to the grantee on forms prescribed and provided by the Agency in accordance with the schedule in the project scope of work. These reports shall document work completed and costs incurred during the reporting period and to date.

b) Upon approval of such payment request by the grantee, payment shall be made to the contractor as soon as practicable of ninety percent of the amount as determined above..

c) Upon satisfactory completion by the contractor of the work called for under the terms of this agreement, and upon acceptance of such work by the grantee, the contractor will be paid the unpaid balance of any money due for such work, including the retained percentages relating to this portion of the work.

d) Upon satisfactory completion of the work performed hereunder, and prior to final payment under this agreement for such work, or prior to settlement upon termination of the agreement, and as a condition precedent thereto, the contractor shall execute and deliver to the grantee a release of all claims against the grantee arising under or by virtue of this agreement, other than such claims, if any, as may be specifically exempted by the contractor from the operation of the release in stated amounts to be set forth therein.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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8. Audit and Access to Records

a) The contractor shall maintain books, records, documents and other evidence directly pertinent to performance on Agency grant work under this agreement in accordance with generally accepted accounting principles and in accordance with Sections 871.501 and 871.502 of this Part. The contractor shall also maintain the financial information and data used by the contractor in the preparation or support of the cost submission required pursuant to this Part for subagreements over $100,000 and a copy of the grant cost summary submitted to the grantee. The Agency or any of its duly authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. The contractor will provide proper facilities for such access and inspection.

b) The contractor agrees to include paragraphs (a) through (e) of this clause in all contracts and all tier subcontracts directly related to project performance which are in excess of $10,000.

c) Audits conducted pursuant to this provision shall be in accordance with the American Institute of Certified Public Accountants' Professional Standards.

d) The contractor agrees to the disclosure of all information and reports resulting from access to records pursuant to paragraphs (a) and (b) of this clause, to the Agency. Where the audit concerns the contractor, the auditing agency will afford the contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

e) Records under paragraphs (a) and (b) of this clause shall be maintained and made available during performance on Agency grant work under this agreement and until three years from date of final Agency grant payment for the project. In addition, those records that relate to any "dispute" appeal under an Agency grant agreement, or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or

exception.

9. Price Reduction for Defective Cost or Pricing Data for Agreements Exceeding $100,000

a) If the Agency determines that any price, including profit negotiated in connection with this agreement or any cost reimbursable under this agreement was increased because the contractor furnished incomplete or inaccurate cost or pricing data or data not current as certified in his certification of current cost or pricing data, then such price, cost, or profit shall be reduced accordingly, and the agreement shall be modified in writing to reflect such reduction.

b) Failure to agree on a reduction shall be subject to the "Remedies" clause of 35 Ill. Adm. Code 871.Appendix A(6) of this Part.

(Note: Since the agreement is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, the contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the contractor. It is also expected that any contractor subject to such indemnification will generally require substantially similar identification for defective cost or pricing data required to be submitted by his lower tier subcontractors.)

10. Subcontractors

a) Any subcontractors and outside associates or consultants hired by the contractor in connection with the services covered by this agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations, or as are specifically approved by the grantee during the performance of this agreement. Any substitution of subcontractors, associates, or consultants will be subject to the prior written approval of the Agency and the grantee.

b) Except as otherwise provided in this agreement, the contractor may not subcontract services in excess of thirty percent (30%) of the contract price to subcontractors or consultants without prior written approval of the grantee.

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11. Equal Employment Opportunity

The contractor agrees to not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin.

12. Covenant Against Contingent Fees

The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees. For breach or violation of this warranty the grantee shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such commission percentage or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

13. Gratuities

a) The grantee may, by written notice to the contractor, terminate the right of the contractor to proceed under this agreement if it is found, after notice and hearing, by the grantee that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the contractor, or any agent or representative of the contractor, to any official or employee of the grantee or of the Agency with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this agreement, provided that the existence of the facts upon which the grantee makes such findings shall be in issue and may be reviewed in proceedings pursuant to clause 6 (Remedies) of this agreement.

b) In the event this agreement is terminated as provided in paragraph (a) of this clause, the grantee shall be entitled: (1) to pursue the same remedies against the contractor as it could pursue in the event of a breach of the contract by the contractor; and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the grantee) which shall be not less than three nor more than ten times the costs incurred by the contractor in providing any such gratuities to any such officer or employee.

c) The rights and remedies of the grantee provided in this clause shall not be exclusive and are in addition to any rights and remedies provided by law or under this agreement.

14. Conflict of Interest

Contractor, by signing this agreement, covenants that contractor has no public or private interest, direct or indirect, and shall not acquire directly or indirectly any such interest which does or may conflict in any manner with the performance of contractor's services and obligations under this agreement. Any such conflict shall be disclosed to the grantee and the grantee shall determine whether such conflict is cause for the non-execution or termination of this agreement. Contractor further covenants that, in the performance of this agreement, no person having such interest shall be employed by contractor.

15. Americans with Disabilities Act

Contractor certifies that it shall comply with the provisions of the Americans with Disabilities Act (42 USC Section 12101 et seq.) as it may apply to the services, programs or activities that are to be provided under this agreement.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED REPEALER

Section 871.APPENDIX B Procedures for Determination of Indirect Costs and Indirect Cost Rates

1. Definition

Indirect costs are those costs incurred for a common or joint purpose but benefiting more than one cost objective, and not readily identifiable to the cost objectives specifically benefited. The term indirect cost, as used herein, applies to costs of this type occurring in the grantee department (or other relevant organizational unit responsible for project performance), as well as those central service support costs incurred by other departments in supplying goods, services, and facilities to the grantee department when such cost can be assigned to the departmental indirect cost pool as a result of an approved cost allocation plan.

2. General

a) Indirect costs of the grantee shall be allowable in accordance with an indirect cost agreement incorporated in the grant agreement. Indirect cost rates and indirect costs as determined below shall be used in the grant agreement but shall be considered to be estimates; the final amount of eligible indirect costs will be based on audited actual costs.

b) Indirect cost rates are not retroactive and may not be changed during the period of the grant agreement.

3. Grantees with Existing State or Federal Grants

a) If the grantee has a current grant from a State or federal agency, the most recently established indirect cost rate in that grant will be used by the Agency, provided that the rate was established in accordance with 40 CFR 30.410 and 40 CFR 30.412 (July 1, 1986). (This incorporation contains no later amendments or editions.)

b) If the grantee has a current State or federal grant that shows a zero indirect cost rate or that specifies that there is no indirect cost rate, it is not eligible to establish an indirect cost rate for a planning grant.

c) To establish an indirect cost rate, the Agency will require:

1) copies of all executed grants currently in effect between the grantee and State or federal agencies, certified by the clerk or other appropriate official of the grantee; and

2) a letter from an appropriate official of the grantee, authorizing representatives of the Agency to have access to the federal audit which served as the basis of the indirect cost rate in the State or federal grants.

d) If the grantee has more than one currently effective State or federal grant with differing indirect cost rates, the Agency will determine which of the approved indirect cost rates is most appropriate for use on the State planning or enforcement grant. The most appropriate indirect cost rate is that rate derived from the prior existing project which was most similar in scope, objectives, methodology and personnel to the project for which the enforcement or planning grant is sought.

4. Grantees without Existing State or Federal Grants

For grantees that do not have existing current State or federal grants, either of the following procedures may be used to establish an indirect cost rate:

a) A negotiated lump sum for overhead may be established, based on the grantee's submission of evidence of estimated charges to be incurred. The provisions of applicable federal regulations will be used as guidance in establishing such a lump sum. Lump sum indirect costs negotiated under this provision may not exceed one percent of the total project cost; or

b) A negotiated indirect cost rate may be established in accordance with the following procedures: the grantee shall follow the Agency's criteria in determining eligibility of specific items used in establishing an indirect cost rate, submit the completed indirect cost rate determination to the Agency with calculations and assumptions made within the calculations, and provide a certification from an appropriate official of the grantee that the information submitted is, to the best of its knowledge, true and accurate. Total indirect costs may not exceed five percent of the total estimated project cost.

5. Disputes

The grantee will be notified in writing of Agency approval or disapproval of a proposed indirect cost rate. If the Agency disapproves the proposed rate, its reasons for disapproval shall be stated, together with a more appropriate method of determination. If the grantee does not accept the Agency's determination of a more appropriate method, it may contest it pursuant to the provisions of Section 871.304 of this Part.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED REPEALER

1) Heading of the Part: Procedures For White Goods Collection Grants

2) Code Citation: 35 Ill. Adm. Code 875

3)

Section Numbers:	Proposed Actions:
875.100	Repealed
875.101	Repealed
875.102	Repealed
875.200	Repealed
875.201	Repealed
875.202	Repealed
875.203	Repealed
875.204	Repealed
875.205	Repealed
875.206	Repealed
875.207	Repealed
875.208	Repealed
875.209	Repealed
875.210	Repealed
875.300	Repealed
875.301	Repealed
875.302	Repealed
875.303	Repealed
875.304	Repealed
875.305	Repealed
875.400	Repealed
875.401	Repealed
875.402	Repealed

4) Statutory Authority: Implementing and authorized by Section 22.28 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1022.28).

5) A Complete Description of the Subjects and Issues Involved: In response to Executive Order 2016-13, the Agency proposes to repeal 35 Ill. Adm. Code 875. This Part contains procedures for white goods collection grants which are no longer used.

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

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED REPEALER

7) Will this proposed repealer replace an emergency rule currently in effect? No

8) Does this repealer contain an automatic repeal date? No

9) Does this repealer contain incorporations by reference? No

10) Are there any other rulemakings pending on this Part? No

11) Statement of Statewide Policy Objective: It does not create or expand a State mandate under the State Mandates Act [30 ILCS 805].

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on the proposed rules may submit them in writing by no later than 45 days after publication of this Notice to:

Sara G. Terranova
Assistant Counsel
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield IL 62794-9276

217/782-5544
sara.terranova@illinois.gov

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: Part 875 provides procedures for issuance of white goods collection-related grants that may affect small businesses.

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 2017

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED REPEALER

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

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED REPEALER

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 875
PROCEDURES FOR WHITE GOODS COLLECTION GRANTS (REPEALED)

SUBPART A: INTRODUCTION

Section
875.100 Purpose
875.101 Definitions
875.102 Severability

SUBPART B: WHITE GOODS COLLECTION GRANTS

Section
875.200 Grant Assistance Availability
875.201 Grant Assistance Criteria and Limitations
875.202 Requirements Applicable to Subagreements
875.203 Allocation
875.204 Required Content of Applications for White Goods Collection Grants
875.205 Agency Action on Application
875.206 Determination of Allowable Costs
875.207 Grant Award and Acceptance
875.208 Evaluation of Performance
875.209 Grant Payments
875.210 Project Changes

SUBPART C: NONCOMPLIANCE WITH GRANT CONDITIONS

Section
875.300 Agency Action for Noncompliance with Grant Conditions
875.301 Project Termination by Grantee
875.302 Covenant Against Contingent Fees
875.303 Statutory Conditions
875.304 Indemnity
875.305 Disputes

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED REPEALER

SUBPART D: AUDITING AND RECORDS

Section
875.400 Access
875.401 Audit and Records
875.402 Reports

AUTHORITY: Implementing and authorized by Section 22.28 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111½, par. 1022.28).

SOURCE: Adopted at 16 Ill. Reg. 20122, effective December 14, 1992; repealed at 41 Ill. Reg. _____, effective _____.

SUBPART A: INTRODUCTION

Section 875.100 Purpose

Section 22.28(d) of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111½, par. 1022.28(d)) authorizes the Agency to:

> *Provide financial assistance to units of local government from the Solid Waste Management Fund to plan for and implement programs to collect, transport and manage white goods. Units of local government may apply jointly for financial assistance.*

Section 875.101 Definitions

a) Unless specified otherwise, all terms shall have the meanings set forth in the Act.

b) For purposes of this Part, the following definitions apply:

> "Act" means the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111½, par. 1001 et seq.).
>
> "Applicant" means a unit of local government that applies for a white goods collection grant.
>
> "Component Treatment or Disposal" means the treatment or disposal through a hazardous waste facility of the white good components after

they have been removed from the white goods.

"Grantee" means the unit of local government which has been awarded a grant for the collection, transportation, and management of white goods under Section 22.28 of the Act.

"Grant Agreement" means the written agreement and amendments thereto between the Agency and a grantee or applicant in which the terms and conditions governing the grant are stated and agreed to by both parties.

"White Goods" means *all discarded refrigerators, ranges, water heaters, freezers, air conditioners, humidifiers, and other similar domestic and commercial large appliances.* (Section 22.28(c)(1) of the Act).

"White Goods Collection Grant" or "WGC Grant" means grants issued pursuant to Section 22.28 of the Act and Subpart B of this Part.

"White Goods Components" means the component parts of white goods which are hazardous wastes in accordance with the Act, including any *chlorofluorocarbon refrigerant gas, any electrical switches containing mercury, and any device that contains or may contact PCBs in a closed system, such as dielectric fluid for a capacitor, ballast, or other component.* (Section 22.28(c)(2) of the Act).

"Polyclorinated Biphenyls" or "PCBs" means a commercial mixture produced by reacting known weights of chlorine with biphenyl and identified by Chemical Abstract Services (CAS) number 1336-36-3.

"State" means the State of Illinois.

"Subagreement" means a written agreement between the grantee and another party and any tier of agreement thereunder for the furnishing of services, supplies, or equipment necessary to complete the project for which a grant was awarded, including contracts for personnel and professional services and purchase orders.

Section 875.102 Severability

If any Section, subsection, sentence or clause of this Part shall be adjudged unconstitutional,

void, invalid, or otherwise unlawful, such adjudication shall not affect the validity of this Part as a whole, or any Section, subsection, sentence, or clause thereof not adjudged unconstitutional, void, invalid, or otherwise unlawful.

SUBPART B: WHITE GOODS COLLECTION GRANTS

Section 875.200 Grant Assistance Availability

a) Subject to the availability of funding and the limitations and requirements set forth in this Part, grant assistance is available to units of local government for planning and collection programs for white goods and for the disposal and/or treatment of the white good components.

b) *Units of local government may apply jointly for financial assistance under this Section.* (Section 22.28(d) of the Act).

c) The state shall reimburse 70% of the eligible program costs.

d) *All materials collected or received under a program operated with financial assistance under this Section shall be recycled whenever possible. Treatment or disposal of collected materials are not eligible for financial assistance unless the applicant shows and the agency approves which materials may be treated or disposed of under various conditions.* (Section 22.28(e) of the Act).

Section 875.201 Grant Assistance Criteria and Limitations

The limits of assistance to be provided to a grantee will be as follows:

a) Counties with a population of less than 100,000 are eligible to receive a WGC grant up to $25,000;

b) Counties with a population of greater than 100,000 are eligible to receive a WGC grant up to $50,000;

c) Municipalities with a population of less than 25,000 are eligible to receive a WGC grant up to $10,000;

d) Municipalities with a population of 25,000 to 500,000 are eligible to receive a WGC grant up to $25,000;

e) Municipalities with a population of greater than 500,000 are eligible to receive a WGC grant up to $50,000.

Section 875.202 Requirements Applicable to Subagreements

a) The following conditions shall apply to all subagreements:

1) It is the policy of the Agency to encourage free and open competition appropriate to the type of project work to be performed.

2) Only fair and reasonable profits may be earned by contractors in subagreements under Agency grants. Factors to be considered in determining a fair and reasonable profit shall include material acquisition, labor costs, associated management costs, contract risks, capital investments, degree of independent development, and cost control and recordkeeping efforts. The determination of a fair and reasonable profit shall not be based upon the application of a predetermined percentage factor.

3) The grantee is responsible for the administration and successful accomplishment of the project for which the Agency grant is awarded. The grantee is responsible for the settlement and satisfaction of all contractual and administrative issues arising out of subagreements entered into under the grant. This includes, but is not limited to, issuance of invitations for bids or requests for proposals, selection of contractors, award of contracts, protest of award, claims, disputes and other procurement matters.

4) Neither the Agency nor the state shall be a party to any subagreement (including contracts or subcontracts), solicitation, or request for proposals.

b) No subagreement shall be awarded to any person or organization which does not:

1) Have adequate financial resources for performance, the necessary experience, organization, technical qualification, and facilities, or a firm commitment, arrangement, or ability to obtain such (including proposed subagreements);

2) Have staffing sufficient to comply with the proposed or required completion schedule for the project;

3) Have a satisfactory record of integrity, judgement, and performance, including in particular any prior performance under grants and contracts with the federal and state government;

4) Have an adequate financial management system and audit procedure which complies with generally accepted accounting procedures and with American Institute of Certified Public Accountant's Professional Standards (1211 Avenue of the Americas, N.Y., N.Y. 10036-8775, June, 1992). (This incorporation contains no later amendments or editions.);

5) Maintain a standard of procurement in accordance with this Part;

6) Maintain a property management system which provides adequate procedures for the acquisition, maintenance, safeguarding and disposition of all property; and

7) Conform to the civil rights, equal employment opportunity, and labor law requirements of the state.

c) The Agency retains the right to review and approve in accordance with this Part any subagreements to be entered into by the grantee in furtherance of the administration of the grant prior to execution of that subagreement. The Agency shall approve a subagreement only if the grantee demonstrates that the subagreement is in conformance with subsection (a) of this Section.

Section 875.203 Allocation

a) *Financial assistance shall be awarded for a state fiscal year, and may be renewed, upon application, if the Agency approves the operation of the program.* (Section 22.28(d) of the Act.)

b) Pursuant to the availability of funds, grant renewals will be awarded for no more than 3 consecutive years. Recipients requesting grants for more than a 3-year period must reapply at the end of the third year.

c) Recipients must comply with all reporting requirements set forth in Subpart C of

this Part before consideration can be given for grant renewal.

Section 875.204 Required Content of Applications for White Goods Collection Grants

a) WGC grants will not be awarded unless complete applications are filed in accordance with requirements of this Section.

b) *Applications for WGC* grants *shall be submitted to the agency and must provide a description of:*

1) *The area to be served by the program;*

2) *The white goods intended to be included in the program;*

3) *The methods intended to be used for collecting and receiving materials;*

4) *The property, buildings, equipment, and personnel included in the program;*

5) *The Public Education Systems to be used as part of the program;*

6) *The safety and security systems that will be used;*

7) *The intended processing methods for each white goods type;*

8) *The intended designation for final material handling location; and*

9) *Any staging sites used to handle collected materials, the activities to be performed at such sites and the procedures for assuring removal of collected materials from such sites.* (Section 22.28(d) of the Act.)

c) Cost justification for the amount requested, including a budget for the expenses to be incurred, must be submitted to the Agency. The budget shall include:

1) Demonstration of source of funds for the local portions of the project.

2) Costs shall be itemized as follows:

A) Equipment;

B) Personal services;

C) Fringe benefits;

D) Supplies;

E) Contractual support;

F) Travel; and

G) Other costs.

Section 875.205 Agency Action on Application

a) WGC grants shall be issued with budget periods concurrent with the state fiscal year. Applications for upcoming state fiscal years shall be due prior to May 1 of each year. The Agency will make awards by June 15 of each year.

b) The Agency will approve the application only if:

1) It satisfies the terms, conditions, and limitations of Section 875.204 of this Part, relevent statutes, and program regulations; and

2) Achievement of the proposed outputs is feasible, considering the applicant's existing problems, past performance under previous grants, program authority, organization, availability of local share resources, and proposed methodologies for accomplishing outputs.

c) The applicant will be notified in writing by the Agency if the application is disapproved.

Section 875.206 Determination of Allowable Costs

a) The grantee will be paid, upon request, in accordance with Section 875.209, for the state share of all necessary costs within the scope of the approved project not to exceed the total grant offer and determined to be allowable in accordance with the following criteria.

b) Allocable project costs of the grantee which are reasonable and necessary are allowable. Necessary costs may include, but are not limited to:

1) Purchase and/or lease costs of collection and processing equipment;

2) Costs of salaries and benefits of operating and management personnel;

3) White good component treatment or disposal at Agency preapproved disposal or recycling facilities;

4) Material transportation expenses; and

5) Materials acquired, consumed, or expended specifically for the project.

c) Costs associated with the purchase or lease of property or building(s) for the project are unallowable costs.

d) Costs which exceed the total amount of the grant offer or which are not necessary for completion of the work required by the grant agreement are unallowable costs. Such costs include, but are not limited to:

1) Inspection or enforcement activities related to the project;

2) Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or otherwise;

3) Fines and penalties resulting from violations of, or failure to comply with, federal, state, or local laws;

4) Costs outside the scope of the approved collection project;

5) Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, or city attorney; and

6) Costs of equipment or material procured in violation of any provisions of this Part.

e) The grantee shall seek to resolve any questions relating to cost allowability or allocation at its earliest opportunity (if possible, prior to execution of the grant

agreement). Final determinations by the Agency concerning the allowability of costs shall be conclusive unless appealed in accordance with Section 875.305 of this Part.

f) Payment will not be authorized for costs incurred prior to the date of the grant award.

Section 875.207 Grant Award and Acceptance

When the Agency has approved an application, the Agency shall notify the applicant in writing with a grant award notification. Within 30 days of receipt of a grant award notification, the grantee shall notify the Agency in writing of its acceptance. Failure by the applicant to so notify the Agency shall terminate the grant award.

Section 875.208 Evaluation of Performance

a) The Agency will oversee each grantee's performance under an accepted WGC grant. The Agency will evaluate grantee performance and progress toward completing the outputs in the approved work program according to the schedule. If the evaluation reveals that the grantee is not achieving one or more of the terms, conditions or limitations of the WGC grant, the Agency will attempt to resolve the situation through negotiation. If agreement is not reached, the Agency may impose any of the sanctions in Subpart C of this Part.

b) The Agency will schedule quarterly meetings with the grantee to discuss the progress in meeting the requirements of the grant agreement and to determine whether the grantee will timely meet the requirements of the grant agreement.

Section 875.209 Grant Payments

a) Requests for partial or final payment shall be sent to the Agency and shall demonstrate the performance of work in accordance with the terms of the grant agreement. Payments will only be made on a reimbursement basis according to the grant payment schedule.

b) The grantee shall be paid in the state share of allowable costs incurred within the scope of an approved project not to exceed the total grant. Such payments must be in accordance with the payment schedule and the grant amount set forth in the grant award notification or any amendments thereto.

1) Request for Payment: The grantee may submit requests for payment for allowable costs incurred in accordance with the payment schedule. Upon receipt of a request for payment, subject to limitations set forth in the conditions of the grant, the Agency shall cause to be disbursed from available funds such amounts as are necessary so that the total amount of state payments to the grantee for the project is equal to the state share of the actual or estimated allowable project costs incurred to date, as certified by the grantee in its most recent request for payment.

2) Adjustment: At any time or times prior to final payment under the grant, the Agency may cause any request(s) for payment to be reviewed or audited. Each subsequent payment shall be subject to reduction for amounts included in the related request for payment which are found, on the basis of such review or audit, not to constitute allowable costs. Any payment will be reduced for overpayments or increased for underpayments on preceding requests for payment.

3) Schedule of Payments: Payments for project work will be paid in accordance with the schedule of payments established by a condition of the grant, subject to appropriation of funds by the Illinois General Assembly.

Section 875.210 Project Changes

a) Prior approval by the Agency is required for project changes which may:

1) Increase the amount of state funds needed to complete the project, except that no change will be approved which either exceeds the grant offered or which exceeds the limitation provided for approvable contingencies;

2) Alter the scope of the project by changing the methodologies or personnel to be used, as agreed to at the time of the grant award; or

3) Extend any contractual or grant completion date for the project.

b) The grantee shall notify the Agency in writing three weeks prior to the effective date of all proposed project changes. Failure on the part of the grantee to give timely notice of proposed project changes may, in accordance with Subpart C of

this Part, result in:

1) Disallowance of costs incurred which are attributable to the change; or

2) Termination of the grant.

c) The Agency may disapprove proposed project changes by written notice to the grantee within 3 weeks after receipt of a written notice of a proposed change; however, neither approval nor failure to disapprove a project change shall commit or obligate the state or the Agency to any increase in the amount of the grant or payments thereunder and nothing herein shall operate to increase the amount of the grant.

d) Notwithstanding the provisions of subsections (a)-(c) of this Section, prior Agency approval is not required for changes having a cost of less than $500.00. The total cost for all changes allowable under this provision shall not exceed one-half of one percent of the total grant offer.

e) The Agency will approve project changes if the grantee can make a showing that:

1) The original project cost approval was based on estimated cost or contractor bids where the actual costs or contractor bids were different;

2) Amendments to state statutes affect the project cost;

3) A project element was inadvertently omitted; or

4) An approved project element was found unnecessary.

SUBPART C: NONCOMPLIANCE WITH GRANT CONDITIONS

Section 875.300 Agency Action for Noncompliance with Grant Conditions

a) In addition to such other remedies as may be provided by law, in the event of noncompliance with any condition imposed pursuant to a WGC grant, the grant may be annulled and all grant funds recovered, or

1) The grant may be terminated;

2) The project work may be suspended;

3) An injunction may be entered by an appropriate court; or

4) Such other action may be taken by the Agency as the Director shall determine.

b) No action shall be taken under this Section without prior consultation with the grantee.

c) In determining whether to take action and which action to take when the Agency is empowered to act under this Subpart, the Agency shall consider factors such as the severity of the violation(s); the number of violations by the grantee; whether the violation is a continuing one; whether the grantee can remedy the violation; and whether the grantee and any subagreement parties remain capable of complying with the approved work project.

d) Recovery actions taken under this Section shall be pursuant to the Illinois Grant Funds Recovery Act (Ill. Rev. Stat. 1991, ch. 127, par. 2301 et seq.).

Section 875.301 Project Termination by Grantee

The grantee may not terminate a project for which the grant has been awarded, except for good cause. Good cause for termination shall include, but not be limited to: realignment of programs, change in program requirements or priorities, lack of adequate funding, or advancements in the state of the art. If the Agency finds that there is good cause for termination of all or any portion of a project for which the grant has been awarded, it shall enter into a termination agreement or unilaterally terminate the grant, effective the date of termination of the project by the grantee. If the Agency finds that the grantee has terminated the project without good cause, then the grant shall be annulled and all grant funds previously paid or owing to the grantee shall be returned to the State Solid Waste Management Fund as final settlement.

Section 875.302 Covenant Against Contingent Fees

The grantee warrants that no person or agency has been employed or retained to solicit or secure this grant upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, the Agency shall have the right to annul this grant without liability or in its discretion to deduct from the grant award, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED REPEALER

Section 875.303 Statutory Conditions

The grantee is solely responsible for assuring compliance with all statutory requirements.

Section 875.304 Indemnity

The grantee shall assume the entire risk, responsibility and liability for any and all loss or damage to property owned by the grantee, the Agency, or third persons, and any injury to or death of any persons (including employees of the grantee) caused by, arising out of, or occurring in connection with the execution of any work, contract, or subcontract arising out of this grant, and the grantee shall indemnify, save harmless and defend the state and the Agency from all claims for any such loss, damage, injury, or death whether caused by the negligence of the state, the Agency, their agents or employees or otherwise consistent with the provisions of the Construction Contract Indemnification for Negligence Act (Ill. Rev. Stat. 1991, ch. 29, pars. 61 et seq.). The grantee shall require that any and all contractors or subcontractors engaged by the grantee shall agree in writing that they shall look solely to the grantee for performance of such contract or satisfaction of any and all claims arising thereunder.

Section 875.305 Disputes

a) Only the grantee may appeal to the Agency under this provision with respect to its subagreements thereunder for its own name and benefit. Neither a contractor nor a subcontractor of a grantee may prosecute an appeal under the disputes provision of a grant in its own name or interest.

b) Any dispute arising under this grant which is not disposed of by agreement shall be decided by the Director or his/her duly authorized representative, who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the applicant. The decision of the Director shall be final and conclusive.

c) This Section does not preclude consideration of questions of law in connection with decisions provided for in subsection (b) of this Section.

SUBPART D: AUDITING AND RECORDS

Section 875.400 Access

a) The Agency and any persons designated by the Agency shall have access to the

premises where any portion of the work for which the grant was awarded is being performed during normal business hours and at any other time at which the work is being performed. Subsequent to cessation of the grant support, Agency personnel or any authorized representative shall have access to the project records, as defined in Section 875.401(a) of this Subpart, to the full extent of the grantee's right to access, during normal business hours.

b) Any contract entered into by the grantee for work, and any subagreement thereunder, shall provide that the representatives of the Agency will have access to the work as described in subsection (a) of this Section and that the contractor or subcontractor will provide proper facilities for such access and inspection. Such contract or subagreement must also provide that the Agency or any authorized representative shall have access to any books, documents, papers, and records for the contractor or subcontractor which are pertinent to the project for the purpose of making an audit, examination, excerpts, and transcriptions thereof.

c) Any failure by the grantee or any contractor or subcontractor of the grantee to provide access, as provided herein, after 10 days written notice from the Agency, shall be cause for termination of the grant pursuant to Subpart C of this Part, and refund to the State Solid Waste Management Fund of any unexpended grant funds in the hands of the grantee, and in addition thereto, refund of any grant funds previously expended by the grantee, contractor, or subcontractor found in noncompliance with this Section.

Section 875.401 Audit and Records

a) The grantee shall maintain books, records, documents, reports, and other evidentiary material and accounting procedures and practices that conform to generally accepted accounting principles to properly account for:

1) The receipt and disposition by the grantee of all assistance received for the project, including both state assistance and any local share; and

2) The costs charged to the project, including all direct and indirect costs of whatever nature incurred for the performance of the project for which the grant has been awarded. The foregoing constitute "records" for the purposes of this condition.

b) The grantee's facilities, or such facilities as may be engaged in the performance of

the project for which the grant has been awarded, and the grantee's records shall be subject to inspection and audit by the Agency or any authorized representative at the times specified in Section 875.400 of this Subpart.

c) The grantee shall preserve and make his records available to the Agency or any authorized representative:

1) Until expiration of 3 years from the date of final payment under this grant; and

2) For such longer period, if any, as is required by applicable statute or lawful requirement, or by subsections (d) or (e) of this Section.

d) If this grant is terminated completely or partially, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final termination settlement.

e) Records which relate to disputes and/or appeals, litigation or the settlement of claims arising out of the performance of the project for which this grant was awarded, or costs and expenses of the project as to which exception has been taken by the Agency or any of its duly authorized representatives, shall be retained until such appeals, litigation, claims, or exceptions have been disposed of.

f) Any failure by the grantee or any contractor or subcontractor of the grantee to make records available to the Agency as required by this Subpart after ten days written notice from the Agency shall be cause for termination of the grant and refund to the State Solid Waste Management Fund of any unexpended grant funds in the hands of the grantee, and in addition thereto, refund of any grant funds previously expended by the grantee, contractor or subcontractor found in noncompliance with this Section.

Section 875.402 Reports

The grantee shall prepare and file with the Agency a final report containing a summary of the work completed, a detailed evaluation of the project activities and impacts, and a summation of actual expenditures. Failure to timely submit reports required by this grant offer may result in:

a) Withholding of grant funds;

b) Suspension of the grant;

c) Termination of the grant; or

d) Such other action as the Agency may be authorized to take.

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

1) Heading of the Part: Medical Assistance Programs

2) Code Citation: 89 Ill. Adm. Code 120

3) Section Number: 120.61 — Proposed Action: Amendment

4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]

5) Complete Description of the Subjects and Issues Involved: This proposed amendment implements PA 100-23 and increases in the minimum monthly personal needs allowance for residents of facilities licensed under the ID/DD Community Care Act, the Community Integrated Living Arrangements Licensure and Certification Act, the Specialized Mental Health Rehabilitation Act of 2013, and the MC/DD Act who are eligible for medical assistance.

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

11) Statement of Statewide Policy Objective: This rulemaking does not affect units of local government.

12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. All comments must be in writing and should be addressed to:

Mollie Zito
General Counsel
Illinois Department of Healthcare and Family Services
201 South Grand Avenue E., 3rd Floor

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

Springfield IL 62763-0002

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

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

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: None

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

C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not anticipated by the Department when the most recent regulatory agendas were published.

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

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

TITLE 89: SOCIAL SERVICES
CHAPTER I: DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES
SUBCHAPTER b: ASSISTANCE PROGRAMS

PART 120
MEDICAL ASSISTANCE PROGRAMS

SUBPART A: GENERAL PROVISIONS

Section
120.1 Incorporation By~~by~~ Reference

SUBPART B: ASSISTANCE STANDARDS

Section
120.10 Eligibility for Medical Assistance
120.11 Eligibility for Pregnant Women and Children
120.12 Healthy Start – Medicaid Presumptive Eligibility ~~Program~~ for Pregnant Women (Repealed)
120.14 Presumptive Eligibility for Children (Repealed)
120.20 MANG(AABD) Income Standard
120.30 MANG(C) Income Standard
120.31 MANG(P) Income Standard
120.32 FamilyCare Assist
120.34 FamilyCare Share and FamilyCare Premium Level 1 (Repealed)
120.40 Exceptions To Use Of MANG Income Standard MANG (AABD) (Repealed)
120.50 AMI Income Standard (Repealed)

SUBPART C: FINANCIAL ELIGIBILITY DETERMINATION

Section
120.60 Community Cases
120.61 Long Term Care
120.62 Department of Mental Health and Developmental Disabilities (DMHDD) Approved Home and Community Based Residential Settings Under 89 Ill. Adm. Code 140.643 (Repealed)
120.63 Department of Mental Health and Developmental Disabilities (DMHDD) Approved Home and Community Based Residential Settings (Repealed)
120.64 Determination of Eligibility for Cases Subject to Modified Adjusted Gross

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

Income (MAGI) Methodology
120.65 Department of Mental Health and Developmental Disabilities (DMHDD) Licensed Community – Integrated Living Arrangements (Repealed)
120.66 Healthy Start – Medicaid Presumptive Eligibility for Pregnant Women
120.67 Presumptive Eligibility for Children
120.68 Hospital Presumptive Eligibility (HPE) under the Affordable Care Act

SUBPART D: MEDICARE PREMIUMS

Section
120.70 Supplementary Medical Insurance Benefits (SMIB) Buy-In Program
120.72 Eligibility for Medicare Cost Sharing as a Qualified Medicare Beneficiary (QMB)
120.73 Eligibility for Payment of Medicare Part B Premiums for Specified Low-Income Medicare Beneficiaries (SLIBs) and Qualified Individuals-1 (QI-1)
120.74 Qualified Medicare Beneficiary (QMB) Income Standard
120.75 Specified Low-Income Medicare Beneficiaries (SLIBs) and Qualified Individuals-1 (QI-1) Income Standards
120.76 Hospital Insurance Benefits (HIB)

SUBPART E: RECIPIENT RESTRICTION PROGRAM

Section
120.80 Recipient Restriction Program

SUBPART F: MIGRANT MEDICAL PROGRAM

Section
120.90 Migrant Medical Program (Repealed)
120.91 Income Standards (Repealed)

SUBPART G: AID TO THE MEDICALLY INDIGENT

Section
120.200 Elimination Of Aid To The Medically Indigent
120.208 Client Cooperation (Repealed)
120.210 Citizenship (Repealed)
120.211 Residence (Repealed)
120.212 Age (Repealed)
120.215 Relationship (Repealed)

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

120.216 Living Arrangement (Repealed)
120.217 Supplemental Payments (Repealed)
120.218 Institutional Status (Repealed)
120.224 Foster Care Program (Repealed)
120.225 Social Security Numbers (Repealed)
120.230 Unearned Income (Repealed)
120.235 Exempt Unearned Income (Repealed)
120.236 Education Benefits (Repealed)
120.240 Unearned Income In-Kind (Repealed)
120.245 Earmarked Income (Repealed)
120.250 Lump Sum Payments and Income Tax Refunds (Repealed)
120.255 Protected Income (Repealed)
120.260 Earned Income (Repealed)
120.261 Budgeting Earned Income (Repealed)
120.262 Exempt Earned Income (Repealed)
120.270 Recognized Employment Expenses (Repealed)
120.271 Income From Work/Study/Training Program (Repealed)
120.272 Earned Income From Self-Employment (Repealed)
120.273 Earned Income From Roomer and Boarder (Repealed)
120.275 Earned Income In-Kind (Repealed)
120.276 Payments from the Illinois Department of Children and Family Services (Repealed)
120.280 Assets (Repealed)
120.281 Exempt Assets (Repealed)
120.282 Asset Disregards (Repealed)
120.283 Deferral of Consideration of Assets (Repealed)
120.284 Spend-down of Assets (AMI) (Repealed)
120.285 Property Transfers (Repealed)
120.290 Persons Who May Be Included in the Assistance Unit (Repealed)
120.295 Payment Levels for AMI (Repealed)

SUBPART H: MEDICAL ASSISTANCE – NO GRANT (MANG) ELIGIBILITY FACTORS

Section
120.308 Client Cooperation
120.309 Caretaker Relative
120.310 Citizenship
120.311 Residence
120.312 Age

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

120.313	Blind
120.314	Disabled
120.315	Relationship
120.316	Living Arrangement~~Arrangements~~
120.317	Supplemental Payments
120.318	Institutional Status
120.319	Assignment of Rights to Medical Support and Collection of Payment
120.320	Cooperation in Establishing Paternity and Obtaining Medical Support
120.321	Good Cause for Failure to Cooperate in Establishing Paternity and Obtaining Medical Support
120.322	Proof of Good Cause for Failure to Cooperate in Establishing Paternity and Obtaining Medical Support
120.323	Suspension of Paternity Establishment and Obtaining Medical Support Upon Finding Good Cause
120.324	Health Insurance Premium Payment (HIPP) Program
120.325	Health Insurance Premium Payment (HIPP) Pilot Program
120.326	Foster Care Program
120.327	Social Security Numbers
120.328	Compliance with Employment and Work Activity Requirements (Suspended; Repealed)
120.329	Compliance with Non-Economic Eligibility Requirements of Article IV (Suspended; Repealed)
120.330	Unearned Income
120.332	Budgeting Unearned Income
120.335	Exempt Unearned Income
120.336	Education Benefits
120.338	Incentive Allowance
120.340	Unearned Income In-Kind
120.342	Child Support and Spousal Maintenance Payments
120.345	Earmarked Income
120.346	Medicaid Qualifying Trusts
120.347	Treatment of Trusts and Annuities
120.350	Lump Sum Payments and Income Tax Refunds
120.355	Protected Income
120.360	Earned Income
120.361	Budgeting Earned Income
120.362	Exempt Earned Income
120.363	Earned Income Disregard – MANG(C)
120.364	Earned Income Exemption

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

120.366 Exclusion From Earned Income Exemption
120.370 Recognized Employment Expenses
120.371 Income From Work/Study/Training Programs
120.372 Earned Income From Self-Employment
120.373 Earned Income From Roomer and Boarder
120.374 Earned Income from Temporary Employment with the Census Bureau
120.375 Earned Income In-Kind
120.376 Payments from the Illinois Department of Children and Family Services
120.379 Provisions for the Prevention of Spousal Impoverishment
120.380 Resources
120.381 Exempt Resources
120.382 Resource Disregard
120.383 Deferral of Consideration of Assets
120.384 Spenddown of Resources
120.385 Factors Affecting Eligibility for Long Term Care Services
120.386 Property Transfers Occurring On or Before August 10, 1993
120.387 Property Transfers Occurring On or After August 11, 1993 and Before January 1, 2007
120.388 Property Transfers Occurring On or After January 1, 2007
120.390 Persons Who May Be Included In the Assistance Unit
120.391 Individuals Under Age 18 Who Do Not Qualify For AFDC/AFDC-MANG And Children Born October 1, 1983, or Later
120.392 Pregnant Women Who Would Not Be Eligible For AFDC/AFDC-MANG If The Child Were Already Born Or Who Do Not Qualify As Mandatory Categorically Needy
120.393 Pregnant Women And Children Under Age Eight Years Who Do Not Qualify As Mandatory Categorically Needy Demonstration Project
120.395 Payment Levels for MANG (Repealed)
120.399 Redetermination of Eligibility
120.400 Twelve Month Eligibility for Persons under Age 19

SUBPART I: SPECIAL PROGRAMS

Section
120.500 Health Benefits for Persons with Breast or Cervical Cancer
120.510 Health Benefits for Workers with Disabilities
120.520 SeniorCare (Repealed)
120.530 Home and Community Based Services Waivers for Medically Fragile, Technology Dependent, Disabled Persons

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

120.540 Illinois Healthy Women Program
120.550 Asylum Applicants and Torture Victims

120.TABLE A Value of a Life Estate and Remainder Interest
120.TABLE B Life Expectancy (Repealed)

AUTHORITY: Implementing Articles III, IV, V and VI and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. III, IV, V and VI and 12-13] and implementing the federal Deficit Reduction Act of 2005.

SOURCE: Filed effective December 30, 1977; peremptory amendment at 2 Ill. Reg. 17, p. 117, effective February 1, 1978; amended at 2 Ill. Reg. 31, p. 134, effective August 5, 1978; emergency amendment at 2 Ill. Reg. 37, p. 4, effective August 30, 1978, for a maximum of 150 days; peremptory amendment at 2 Ill. Reg. 46, p. 44, effective November 1, 1978; peremptory amendment at 2 Ill. Reg. 46, p. 56, effective November 1, 1978; emergency amendment at 3 Ill. Reg. 16, p. 41, effective April 9, 1979, for a maximum of 150 days; emergency amendment at 3 Ill. Reg. 28, p. 182, effective July 1, 1979, for a maximum of 150 days; amended at 3 Ill. Reg. 33, p. 399, effective August 18, 1979; amended at 3 Ill. Reg. 33, p. 415, effective August 18, 1979; amended at 3 Ill. Reg. 38, p. 243, effective September 21, 1979; peremptory amendment at 3 Ill. Reg. 38, p. 321, effective September 7, 1979; amended at 3 Ill. Reg. 40, p. 140, effective October 6, 1979; amended at 3 Ill. Reg. 46, p. 36, effective November 2, 1979; amended at 3 Ill. Reg. 47, p. 96, effective November 13, 1979; amended at 3 Ill. Reg. 48, p. 1, effective November 15, 1979; peremptory amendment at 4 Ill. Reg. 9, p. 259, effective February 22, 1980; amended at 4 Ill. Reg. 10, p. 258, effective February 25, 1980; amended at 4 Ill. Reg. 12, p. 551, effective March 10, 1980; amended at 4 Ill. Reg. 27, p. 387, effective June 24, 1980; emergency amendment at 4 Ill. Reg. 29, p. 294, effective July 8, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 37, p. 797, effective September 2, 1980; amended at 4 Ill. Reg. 37, p. 800, effective September 2, 1980; amended at 4 Ill. Reg. 45, p. 134, effective October 27, 1980; amended at 5 Ill. Reg. 766, effective January 2, 1981; amended at 5 Ill. Reg. 1134, effective January 26, 1981; peremptory amendment at 5 Ill. Reg. 5722, effective June 1, 1981; amended at 5 Ill. Reg. 7071, effective June 23, 1981; amended at 5 Ill. Reg. 7104, effective June 23, 1981; amended at 5 Ill. Reg. 8041, effective July 27, 1981; amended at 5 Ill. Reg. 8052, effective July 24, 1981; peremptory amendment at 5 Ill. Reg. 8106, effective August 1, 1981; peremptory amendment at 5 Ill. Reg. 10062, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10079, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10095, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10113, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10124, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10131, effective October 1, 1981; amended at 5 Ill. Reg. 10730, effective October 1, 1981; amended at 5 Ill. Reg. 10733, effective October 1, 1981; amended at 5 Ill. Reg. 10760, effective

October 1, 1981; amended at 5 Ill. Reg. 10767, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 11647, effective October 16, 1981; peremptory amendment at 6 Ill. Reg. 611, effective January 1, 1982; amended at 6 Ill. Reg. 1216, effective January 14, 1982; emergency amendment at 6 Ill. Reg. 2447, effective March 1, 1982, for a maximum of 150 days; peremptory amendment at 6 Ill. Reg. 2452, effective February 11, 1982; peremptory amendment at 6 Ill. Reg. 6475, effective May 18, 1982; peremptory amendment at 6 Ill. Reg. 6912, effective May 20, 1982; emergency amendment at 6 Ill. Reg. 7299, effective June 2, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 8115, effective July 1, 1982; amended at 6 Ill. Reg. 8142, effective July 1, 1982; amended at 6 Ill. Reg. 8159, effective July 1, 1982; amended at 6 Ill. Reg. 10970, effective August 26, 1982; amended at 6 Ill. Reg. 11921, effective September 21, 1982; amended at 6 Ill. Reg. 12293, effective October 1, 1982; amended at 6 Ill. Reg. 12318, effective October 1, 1982; amended at 6 Ill. Reg. 13754, effective November 1, 1982; amended at 7 Ill. Reg. 394, effective January 1, 1983; codified at 7 Ill. Reg. 6082; amended at 7 Ill. Reg. 8256, effective July 1, l983; amended at 7 Ill. Reg. 8264, effective July 5, l983; amended (by adding Section being codified with no substantive change) at 7 Ill. Reg. 14747; amended (by adding Sections being codified with no substantive change) at 7 Ill. Reg. 16108; amended at 8 Ill. Reg. 5253, effective April 9, 1984; amended at 8 Ill. Reg. 6770, effective April 27, 1984; amended at 8 Ill. Reg. 13328, effective July 16, 1984; amended (by adding Sections being codified with no substantive change) at 8 Ill. Reg. 17897; amended at 8 Ill. Reg. 18903, effective September 26, 1984; peremptory amendment at 8 Ill. Reg. 20706, effective October 3, 1984; amended at 8 Ill. Reg. 25053, effective December 12, 1984; emergency amendment at 9 Ill. Reg. 830, effective January 3, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 4515, effective March 25, 1985; amended at 9 Ill. Reg. 5346, effective April 11, 1985; amended at 9 Ill. Reg. 7153, effective May 6, 1985; amended at 9 Ill. Reg. 11346, effective July 8, 1985; amended at 9 Ill. Reg. 12298, effective July 25, 1985; amended at 9 Ill. Reg. 12823, effective August 9, 1985; amended at 9 Ill. Reg. 15903, effective October 4, 1985; amended at 9 Ill. Reg. 16300, effective October 10, 1985; amended at 9 Ill. Reg. 16906, effective October 18, 1985; amended at 10 Ill. Reg. 1192, effective January 10, 1986; amended at 10 Ill. Reg. 3033, effective January 23, 1986; amended at 10 Ill. Reg. 4907, effective March 7, 1986; amended at 10 Ill. Reg. 6966, effective April 16, 1986; amended at 10 Ill. Reg. 10688, effective June 3, 1986; amended at 10 Ill. Reg. 12672, effective July 14, 1986; amended at 10 Ill. Reg. 15649, effective September 19, 1986; amended at 11 Ill. Reg. 3992, effective February 23, 1987; amended at 11 Ill. Reg. 7652, effective April 15, 1987; amended at 11 Ill. Reg. 8735, effective April 20, 1987; emergency amendment at 11 Ill. Reg. 12458, effective July 10, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 14034, effective August 14, 1987; amended at 11 Ill. Reg. 14763, effective August 26, 1987; amended at 11 Ill. Reg. 20142, effective January 1, 1988; amended at 11 Ill. Reg. 20898, effective December 14, 1987; amended at 12 Ill. Reg. 904, effective January 1, 1988; amended at 12 Ill. Reg. 3516, effective January 22, 1988; amended at 12 Ill. Reg. 6234, effective March 22, 1988; amended at 12 Ill. Reg. 8672, effective May 13, 1988; amended at 12 Ill. Reg.

9132, effective May 20, 1988; amended at 12 Ill. Reg. 11483, effective June 30, 1988; emergency amendment at 12 Ill. Reg. 11632, effective July 1, 1988, for a maximum of 150 days; emergency amendment at 12 Ill. Reg. 11839, effective July 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 12835, effective July 22, 1988; emergency amendment at 12 Ill. Reg. 13243, effective July 29, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 17867, effective October 30, 1988; amended at 12 Ill. Reg. 19704, effective November 15, 1988; amended at 12 Ill. Reg. 20188, effective November 23, 1988; amended at 13 Ill. Reg. 116, effective January 1, 1989; amended at 13 Ill. Reg. 2081, effective February 3, 1989; amended at 13 Ill. Reg. 3908, effective March 10, 1989; emergency amendment at 13 Ill. Reg. 11929, effective June 27, 1989, for a maximum of 150 days; emergency expired November 25, 1989; emergency amendment at 13 Ill. Reg. 12137, effective July 1, 1989, for a maximum of 150 days; amended at 13 Ill. Reg. 15404, effective October 6, 1989; emergency amendment at 13 Ill. Reg. 16586, effective October 2, 1989, for a maximum of 150 days; emergency expired March 1, 1990; amended at 13 Ill. Reg. 17483, effective October 31, 1989; amended at 13 Ill. Reg. 17838, effective November 8, 1989; amended at 13 Ill. Reg. 18872, effective November 17, 1989; amended at 14 Ill. Reg. 760, effective January 1, 1990; emergency amendment at 14 Ill. Reg. 1494, effective January 2, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 4233, effective March 5, 1990; emergency amendment at 14 Ill. Reg. 5839, effective April 3, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 6372, effective April 16, 1990; amended at 14 Ill. Reg. 7637, effective May 10, 1990; amended at 14 Ill. Reg. 10396, effective June 20, 1990; amended at 14 Ill. Reg. 13227, effective August 6, 1990; amended at 14 Ill. Reg. 14814, effective September 3, 1990; amended at 14 Ill. Reg. 17004, effective September 30, 1990; emergency amendment at 15 Ill. Reg. 348, effective January 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 5302, effective April 1, 1991; amended at 15 Ill. Reg. 10101, effective June 24, 1991; amended at 15 Ill. Reg. 11973, effective August 12, 1991; amended at 15 Ill. Reg. 12747, effective August 16, 1991; amended at 15 Ill. Reg. 14105, effective September 11, 1991; amended at 15 Ill. Reg. 14240, effective September 23, 1991; amended at 16 Ill. Reg. 139, effective December 24, 1991; amended at 16 Ill. Reg. 1862, effective January 20, 1992; amended at 16 Ill. Reg. 10034, effective June 15, 1992; amended at 16 Ill. Reg. 11582, effective July 15, 1992; amended at 16 Ill. Reg. 17290, effective November 3, 1992; amended at 17 Ill. Reg. 1102, effective January 15, 1993; amended at 17 Ill. Reg. 6827, effective April 21, 1993; amended at 17 Ill. Reg. 10402, effective June 28, 1993; amended at 18 Ill. Reg. 2051, effective January 21, 1994; amended at 18 Ill. Reg. 5934, effective April 1, 1994; amended at 18 Ill. Reg. 8718, effective June 1, 1994; amended at 18 Ill. Reg. 11231, effective July 1, 1994; amended at 19 Ill. Reg. 2905, effective February 27, 1995; emergency amendment at 19 Ill. Reg. 9280, effective July 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 11931, effective August 11, 1995; amended at 19 Ill. Reg. 15079, effective October 17, 1995; amended at 20 Ill. Reg. 5068, effective March 20, 1996; amended at 20 Ill. Reg. 15993, effective December 9, 1996; emergency amendment at 21 Ill. Reg. 692, effective January 1, 1997, for a

maximum of 150 days; amended at 21 Ill. Reg. 7423, effective May 31, 1997; amended at 21 Ill. Reg. 7748, effective June 9, 1997; amended at 21 Ill. Reg. 11555, effective August 1, 1997; amended at 21 Ill. Reg. 13638, effective October 1, 1997; emergency amendment at 22 Ill. Reg. 1576, effective January 5, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 7003, effective April 1, 1998; amended at 22 Ill. Reg. 8503, effective May 1, 1998; amended at 22 Ill. Reg. 16291, effective August 28, 1998; emergency amendment at 22 Ill. Reg. 16640, effective September 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 19875, effective October 30, 1998; amended at 23 Ill. Reg. 2381, effective January 22, 1999; amended at 23 Ill. Reg. 11301, effective August 27, 1999; amended at 24 Ill. Reg. 7361, effective May 1, 2000; emergency amendment at 24 Ill. Reg. 10425, effective July 1, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 15075, effective October 1, 2000; amended at 24 Ill. Reg. 18309, effective December 1, 2000; amended at 25 Ill. Reg. 8783, effective July 1, 2001; emergency amendment at 25 Ill. Reg. 10533, effective August 1, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 16098, effective December 1, 2001; amended at 26 Ill. Reg. 409, effective December 28, 2001; emergency amendment at 26 Ill. Reg. 8583, effective June 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 9843, effective June 26, 2002; emergency amendment at 26 Ill. Reg. 11029, effective July 1, 2002, for a maximum of 150 days; emergency amendment at 26 Ill. Reg. 15051, effective October 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 16288, effective October 25, 2002; amended at 27 Ill. Reg. 4708, effective February 25, 2003; emergency amendment at 27 Ill. Reg. 10793, effective July 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 18609, effective November 26, 2003; amended at 28 Ill. Reg. 4701, effective March 3, 2004; amended at 28 Ill. Reg. 6139, effective April 1, 2004; emergency amendment at 28 Ill. Reg. 6610, effective April 19, 2004, for a maximum of 150 days; emergency amendment at 28 Ill. Reg. 7152, effective May 3, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 11149, effective August 1, 2004; emergency amendment at 28 Ill. Reg. 12921, effective September 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 13621, effective September 28, 2004; amended at 28 Ill. Reg. 13760, effective October 1, 2004; amended at 28 Ill. Reg. 14541, effective November 1, 2004; amended at 29 Ill. Reg. 820, effective January 1, 2005; amended at 29 Ill. Reg. 10195, effective June 30, 2005; amended at 29 Ill. Reg. 14939, effective September 30, 2005; emergency amendment at 30 Ill. Reg. 521, effective January 1, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 10314, effective May 26, 2006; emergency amendment at 30 Ill. Reg. 15029, effective September 1, 2006, for a maximum of 150 days; amended at 31 Ill. Reg. 2629, effective January 28, 2007; emergency amendment at 31 Ill. Reg. 7323, effective May 1, 2007, for a maximum of 150 days; amended at 31 Ill. Reg. 11667, effective August 1, 2007; amended at 31 Ill. Reg. 12756, effective August 27, 2007; emergency amendment at 31 Ill. Reg. 15854, effective November 7, 2007, for a maximum of 150 days; emergency rule suspended at 31 Ill. Reg. 16060, effective November 13, 2007; emergency rule repealed, effective May 10, 2008; peremptory amendment at 32 Ill. Reg. 7212, effective April 21, 2008; peremptory amendment suspended at

32 Ill. Reg. 8450, effective May 20, 2008; peremptory amendment repealed under Section 5-125 of the Illinois Administrative Procedure Act, effective November 16, 2008; amended at 32 Ill. Reg. 17428, effective November 1, 2008; peremptory amendment at 32 Ill. Reg. 18889, effective November 18, 2008; peremptory amendment suspended at 32 Ill. Reg. 18906, effective November 19, 2008; suspension withdrawn by the Joint Committee on Administrative Rules at 33 Ill. Reg. 6551, effective April 28, 2009; peremptory amendment repealed by emergency rulemaking at 33 Ill. Reg. 6712, effective April 28, 2009, for a maximum of 150 days; amended at 33 Ill. Reg. 1681, effective February 1, 2009; amended at 33 Ill. Reg. 2289, effective March 1, 2009; emergency amendment at 33 Ill. Reg. 5802, effective April 2, 2009, for a maximum of 150 days; emergency expired August 29, 2009; emergency amendment at 33 Ill. Reg. 10785, effective June 30, 2009, for a maximum of 150 days; amended at 33 Ill. Reg. 12703, effective September 7, 2009; amended at 33 Ill. Reg. 15707, effective November 2, 2009; amended at 33 Ill. Reg. 17070, effective December 2, 2009; amended at 34 Ill. Reg. 889, effective December 30, 2009; emergency rulemaking at 34 Ill. Reg. 13538, effective September 1, 2010, for a maximum of 150 days; amended at 35 Ill. Reg. 379, effective December 27, 2010; amended at 35 Ill. Reg. 979, effective January 1, 2011; amended at 35 Ill. Reg. 18645, effective January 1, 2012; amended at 36 Ill. Reg. 4133, effective March 1, 2012; amended at 36 Ill. Reg. 9095, effective June 11, 2012; emergency amendment at 36 Ill. Reg. 10253, effective July 1, 2012 through June 30, 2013; amended at 36 Ill. Reg. 17044, effective November 26, 2012; emergency amendment at 36 Ill. Reg. 17549, effective December 3, 2012 through June 30, 2013; amended at 37 Ill. Reg. 10208, effective June 27, 2013; emergency amendment at 37 Ill. Reg. 15976, effective October 1, 2013, for a maximum of 150 days; emergency amendment to emergency rule at 38 Ill. Reg. 1139, effective January 1, 2014, for a maximum of 150 days; emergency amendment to emergency rule at 38 Ill. Reg. 2925, effective January 10, 2014, for a maximum of 150 days; emergency amendments effective January 1 and January 10, 2014 repealed by emergency rule at 38 Ill. Reg. 7368, effective March 24, 2014, for the remainder of the 150 day effective periods of each of the emergency rules; amended at 38 Ill. Reg. 5967, effective February 26, 2014; emergency amendment at 38 Ill. Reg. 7650, effective March 24, 2014, for a maximum of 150 days; emergency amendment at 38 Ill. Reg. 15646, effective July 7, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. 16214, effective July 17, 2014; amended at 38 Ill. Reg. 18432, effective August 19, 2014; amended at 38 Ill. Reg. 23595, effective December 2, 2014; amended at 39 Ill. Reg. 4376, effective March 11, 2015; amended at 40 Ill. Reg. 2784, effective January 20, 2016; amended at 40 Ill. Reg. 11174, effective August 2, 2016; amended at 41 Ill. Reg. 3279, effective March 8, 2017; amended at 41 Ill. Reg. _____, effective _____.

SUBPART C: FINANCIAL ELIGIBILITY DETERMINATION

Section 120.61 Long Term Care

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

This Section applies to persons residing in long term care facilities or State-certified, State-licensed, or State-contracted residential care programs who, as a condition of eligibility for medical assistance, are required to pay all of their income, less certain protected amounts, for the cost of their own care.

a) The term "long term care facility" refers to:

1) an institution (or a distinct part of an institution) that meets the definition of a "nursing facility" as that term is defined in 42 USC 1396r;

2) licensed Intermediate Care Facilities (ICF and ICF/DD), licensed Skilled Nursing Facilities (SNF and SNF/Ped) and licensed hospital-based long term care facilities (see 89 Ill. Adm. Code 148.50(c)); and

3) Supportive Living Facilities (SLF) and Community Integrated Living Facilities (CILA).

b) The eligibility period shall begin with:

1) the first day of the month of application;

2) up to three months prior to the month of application for any month in which the person meets both financial and non-financial eligibility requirements. Eligibility will be effective the first day of a retroactive month if the person meets eligibility requirements at any time during that month; or

3) the first day of a month, after the month of application, in which the person meets non-financial and financial eligibility requirements.

c) Eligibility Without Spenddown

1) A one-month eligibility period will be used. If a person's nonexempt income available during the eligibility period is equal to or below the applicable income standard and nonexempt resources are not in excess of the applicable resource disregard (see Section 120.382), the person is eligible for medical assistance from the first day of the eligibility period without a spenddown.

2) A person eligible under this subsection (c) is responsible for reporting any changes that occur during the eligibility period that might affect eligibility for medical assistance. If changes occur, appropriate action shall be taken by the Department, including termination of eligibility for medical assistance. If changes in income, resources or family composition occur that would make the person a spenddown case, a spenddown obligation will be determined and subsection (d) will apply. A redetermination of eligibility shall be made at least every 12 months.

d) Eligibility with Spenddown

1) If countable income available during the eligibility period exceeds the applicable income standard and/or nonexempt resources exceed the applicable resource disregard, a person has a spenddown obligation that must be met before financial eligibility for medical assistance can be established. The spenddown obligation is the amount by which the person's countable income exceeds the applicable income standard or nonexempt resources exceed the applicable resource disregard.

2) A person meets the spenddown obligation by incurring or paying for medical expenses in an amount equal to the spenddown obligation. Medical expenses shall be applied to the spenddown obligation as provided in Section 120.60(c).

3) Projected expenses for services provided by a long term care facility that have not yet been incurred, but are reasonably expected to be, may also be used to meet a spenddown obligation. The amount of the projected expenses is based on the private pay rate of the long term care facility at which the person resides or is seeking admission.

4) A person who has both an income spenddown and a resource spenddown cannot apply the same incurred medical benefits to both. Incurred medical expenses are first applied to an income spenddown.

e) Post-eligibility Treatment of Income. If non-financial and financial eligibility is established, a person's total income, including income exempt and disregarded in determining eligibility, must be applied to the cost of the person's care, minus any applicable deductions provided under subsection (f).

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

f) Post-eligibility Income Deductions. From a person's total income that is payable for a person's care, certain deductions are allowed. Allowed deductions shall increase the amount paid by the Department for residential services on behalf of the person, up to the Department's payment rate for the facility. Deductions shall be allowed for the following amounts in the following order:

1) SSI benefits paid under 42 USC 1382(e)(1)(E) or (G) and, for residents of Supportive Living Facilities, the minimum current SSI payment standard for an individual (or a couple, if spouses reside together), less the personal needs allowance specified in subsection (f)(2)(C) of this Section, shall be deducted for room and board charges (see 89 Ill. Adm. Code 146.225(c) and (d));

2) a personal needs allowance:

A) for persons other than those specified in subsections (f)(2)(B) through (H~~F~~), $30 per month;

B) for spouses residing together, $60 per couple per month ($30 per spouse);

C) for persons or spouses residing in Supportive Living Facilities, $90;

D) for persons residing in Community Integrated Living Arrangements (see 59 Ill. Adm. Code 115):

i) $50 per month, for dates of service prior to 9/1/14;

ii) $60 per month, for dates of service on or after 9/1/14 through 6/30/15;

iii) $50 per month, for dates of service on or after 7/1/15;

iv) $60 per month, for dates of service on or after 7/1/17;

E) for veterans who have neither a spouse nor dependent child, or surviving spouses of veterans who do not have a dependent child,

and whose monthly veterans' benefits are reduced to $90, a $90 income disregard is allowed in lieu of a personal allowance deduction. Persons allowed the $90 per month income disregard are not also permitted the $30 per month personal allowance; ~~or~~

F) for persons residing in an Intermediate Care Facility for Individuals with Developmental Disabilities (ICF/DD) licensed under the ID/DD Community Care Act [210 ILCS 47]:

i) $30 per month, for dates of service prior to 9/1/14;

ii) $60 per month, for dates of service on or after 9/1/14 through 6/30/15;

iii) $30 per month, for dates of service on or after 7/1/15;

iv) $60 per month, for dates of service on or after 7/1/17;

G) for persons residing in a Specialized Mental Health Rehabilitation Facility licensed under the Specialized Mental Health Rehabilitation Act of 2013 [210 ILCS 49], $60 per month, for dates of service on or after 7/1/17; or

H) for persons residing in a Medically Complex for the Developmentally Disabled facility licensed under the MC/DD Act [210 ILCS 46], $60 per month, for dates of service on or after 7/1/17;

3) a community spouse income allowance pursuant to Section 120.379(e);

4) a family allowance pursuant to Section 120.379(e)(2);

5) an amount to meet the needs of qualifying children (as defined in 26 USC 152) under age 21 who do not reside with either parent, who do not have enough income to meet their needs and whose resources do not exceed the resource limit. To determine needs and resource limits:

A) the MANG(C) and applicable resource disregard are used (see Sections 120.30 and 120.382); and

B) any payments made on medical bills for the children can be deducted from the person's income;

6) amounts for incurred expenses for certain Medicare and health insurance cost sharing that are not subject to payment by a third party, limited to:

A) Medicare premiums, deductibles, or coinsurance charges not paid by Medicaid or another third party payor;

B) Other health insurance premiums, deductibles or coinsurance (cost sharing) charges provided the insurance meets the definition of a "health benefit plan" and is approved for providing that insurance in Illinois by the Illinois Department of Insurance.

i) "Health benefit plan" means any accident and health insurance policy or certificate, health services plan contract, health maintenance organization subscriber contract, plan provided by a MEWA (Multiple Employer Welfare Arrangement) or plan provided by another benefit arrangement.

ii) Health benefit plan does not mean accident only, credit, or disability insurance; long-term care insurance (except for the month of admission to a long term care facility); dental only or vision only insurance; specified disease insurance; hospital confinement indemnity coverage; limited benefit health coverage; coverage issued as a supplement to liability insurance; insurance arising out of a workers' compensation or similar law; automobile medical payment insurance; or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance;

7) Expenses Not Subject to Third Party Payment for Necessary Medical Care Recognized under State Law, but Not a Covered Service under the Medical Assistance Program. "Necessary medical care" has the meaning described in Section 2 of the Comprehensive Health Insurance Plan Act

[215 ILCS 105/2] and must be proved as such by a prescription, referral or statement from the patient's doctor or dentist. The following are allowable deductions from a person's post-eligibility income for medically necessary services:

A) expenses incurred within the six months prior to the month of an application, provided those expenses remain a current liability to the person and were not used to meet a spenddown. Medical expenses incurred during a period of ineligibility resulting from a penalty imposed under Section 120.387 or 120.388 are not an allowable deduction;

B) expenses incurred for necessary medical services from a medical provider (subject to reasonable dollar limits on specific services) so long as the provider was not terminated, barred or suspended from participation in the Medical Assistance Program (pursuant to 89 Ill. Adm. Code 140.16, 140.17 or 140.18) at the time the medical services were provided; and

C) expenses for long term care services, subject to the limitations of this subsection (f)(7) and provided that the services were not provided by a facility to a person admitted during a time the facility was subject to the sanction of non-payment for new admissions (see 305 ILCS 5/12-4.25(I)(3));

8) Amounts to maintain a residence in the community for up to six months when:

A) the person does not have a spouse and/or dependent children in the home;

B) a physician has certified that the stay in the facility is temporary and the individual is expected to return home within six months;

C) the amount of the deduction is based on:

i) the rent or property expense allowed under the AABD MANG standard if the person was at home (see 89 Ill. Adm. Code 113.248); and

ii) the utility expenses that would be allowed under the AABD MANG standard if the person was at home (see 89 Ill. Adm. Code 113.249).

(Source: Amended at 41 Ill. Reg. _____, effective _____)

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Specialized Health Care Delivery Systems

2) Code Citation: 89 Ill. Adm. Code 146

3)

Section Numbers:	Proposed Actions:
146.225	Amendment
146.910	Amendment

4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]

5) Complete Description of the Subjects and Issues Involved: This proposed amendment implements PA 100-23 by increasing the reimbursement rate under the Medical Assistance Program for both supportive living program providers and facilities licensed under Specialized Mental Health Rehabilitation Act of 2013 by 2.8%.

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

7) Will this rulemaking replace any emergency rule currently in effect? No

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

9) Does this rulemaking contain incorporations by reference? No

10) Are there any other rulemakings pending on this Part? No

11) Statement of Statewide Policy Objective: This rulemaking does not affect units of local government.

12) Time, Place, and Manner in Which Interested Persons May Comment on this Proposed Rulemaking: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. All comments must be in writing and should be addressed to:

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

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

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

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

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: None

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

C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not anticipated by the Department when the most recent regulatory agendas were published.

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

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

TITLE 89: SOCIAL SERVICES
CHAPTER I: DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES
SUBCHAPTER d: MEDICAL PROGRAMS

PART 146
SPECIALIZED HEALTH CARE DELIVERY SYSTEMS

SUBPART A: AMBULATORY SURGICAL TREATMENT CENTERS

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

SUBPART B: SUPPORTIVE LIVING FACILITIES

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

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

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

SUBPART C: STATE HEMOPHILIA PROGRAM

Section
146.400 Definitions
146.410 Patient Eligibility
146.420 Hemophilia Treatment Centers
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DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

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

SOURCE: Old Part repealed at 14 Ill. Reg. 13800, effective August 15, 1990; new Part adopted at 20 Ill. Reg. 4419, effective February 29, 1996; emergency amendment at 21 Ill. Reg. 13875, effective October 1, 1997, for a maximum of 150 days; amended at 22 Ill. Reg. 4430, effective February 27, 1998; emergency amendment at 22 Ill. Reg. 13146, effective July 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 19914, effective October 30, 1998; amended at 23 Ill. Reg. 5819, effective April 30, 1999; emergency amendment at 23 Ill. Reg. 8256, effective July 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 13663, effective November 1, 1999; amended at 24 Ill. Reg. 8353, effective June 1, 2000; emergency amendment at 26 Ill. Reg. 14882, effective October 1, 2002, for a maximum of 150 days; amended at 27 Ill. Reg. 2176, effective February 1, 2003; emergency amendment at 27 Ill. Reg. 10854, effective July 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 18671, effective November 26, 2003; emergency amendment at 28 Ill. Reg. 12218, effective August 11, 2004, for a maximum of 150 days; emergency amendment at 28 Ill. Reg. 14214, effective October 18, 2004, for a maximum of 150 days; amended at 29 Ill. Reg. 852, effective January 1, 2005; emergency amendment at 29 Ill. Reg. 2014, effective January 21, 2005, for a maximum of 150 days; amended at 29 Ill. Reg. 4360, effective March 7, 2005; expedited correction at 29 Ill. Reg. 14127, effective March 7,

2005; amended at 29 Ill. Reg. 6967, effective May 1, 2005; amended at 29 Ill. Reg. 14987, effective September 30, 2005; amended at 30 Ill. Reg. 8845, effective May 1, 2006; amended at 31 Ill. Reg. 5589, effective April 1, 2007; emergency amendment at 31 Ill. Reg. 5876, effective April 1, 2007, for a maximum of 150 days; amended at 31 Ill. Reg. 11681, effective August 1, 2007; amended at 33 Ill. Reg. 11803, effective August 1, 2009; emergency amendment at 36 Ill. Reg. 6751, effective April 13, 2012, for a maximum of 150 days; amended at 36 Ill. Reg. 13885, effective August 27, 2012; amended at 37 Ill. Reg. 17624, effective October 28, 2013; expedited correction at 38 Ill. Reg. 4518, effective October 28, 2013; amended at 38 Ill. Reg. 13255, effective June 11, 2014; amended at 38 Ill. Reg. 13893, effective June 23, 2014; amended at 38 Ill. Reg. 15152, effective July 2, 2014; emergency amendment at 38 Ill. Reg. 15713, effective July 7, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. 23768, effective December 2, 2014; emergency amendment at 39 Ill. Reg. 6945, effective May 1, 2015 through June 30, 2015; amended at 41 Ill. Reg. _____, effective _____.

SUBPART B: SUPPORTIVE LIVING FACILITIES

Section 146.225 Reimbursement for Medicaid Residents

Supportive Living Programs (SLPs) shall accept the reimbursement provided in this Section as payment in full for all services provided to Medicaid residents.

a) The Department has established the rate methodology for SLP providers as follows:

1) Prior to July 1, 2014, the Department shall establish its portion of the reimbursement for Medicaid residents by calculating 60 percent of the weighted average (weighted by Medicaid patient days) nursing facility rates for the geographic grouping as defined in Section 146.290. Each SLP shall be paid 60 percent of the weighted average nursing facility geographic group rate, based upon the nursing facility geographic group in which it is located. The rates paid to SLPs shall be updated semi-annually on April 1 and on October 1 to assure that the rates coincide with 60 percent of weighted average nursing facility geographic group rates. Notwithstanding the provisions of this subsection, the supportive living program rates shall remain at the level in effect on April 30, 2011.

2~~1~~) Notwithstanding the provisions set forth in 89 Ill. Adm. Code 153.126, and subject to federal CMS approval, as of July 1, 2014, supportive living program rates shall no longer be 60 percent of the weighted average

nursing facility rates for the geographic group rate, based upon the nursing facility geographic group in which it is located.

3~~2~~) Notwithstanding the provisions set forth in 89 Ill. Adm. Code 153.126, and subject to federal CMS approval, for dates of service on or after July 1, 2014, rates effective on June 30, 2014 shall be increased 8.85 percent.

4~~3~~) Notwithstanding the provisions set forth in 89 Ill. Adm. Code 153.126, and subject to federal CMS approval of the imposition of the assessment in 89 Ill. Adm. Code 140.86, for dates of service on or after July 1, 2014, rates effective July 1, 2014 shall be increased an additional 9.09 percent.

5) Notwithstanding the provisions set forth in 89 Ill. Adm. Code 153.126, for dates of service on or after July 1, 2017, rates effective on June 30, 2017 shall be increased by 2.8 percent.

b) The payment rate received by the SLP from the Department for services, with the exception of meals, provided in accordance with Section 146.230 shall constitute the full and complete charge for services rendered. Additional payment, other than patient credits authorized by the Department, may not be accepted. Meals are included in the room and board amount paid by the resident.

c) Single Occupancy: Each Medicaid resident of an SLP shall be allotted a minimum of $90 per month as a deduction from his or her income as a protected amount for personal use. The SLP may charge each Medicaid resident no more than the current SSI rate for a single individual less a minimum of $90 for room and board charges. Any income remaining after deduction of the protected minimum of $90 and room and board charges shall be applied first towards medical expenses not covered under the Department's Medical Assistance Program. Any income remaining after that shall be applied to the charges for SLP services paid by the Department.

d) Double Occupancy: In the event a Medicaid eligible resident chooses to share an apartment, the Medicaid resident of an SLP shall be allotted a minimum of $90 per month as a deduction from his or her income as a protected amount for personal use. The SLP may charge each Medicaid resident no more than the resident's share of the current SSI rate for a couple less a minimum of $90 for room and board charges. The room and board rate for two Medicaid eligible individuals sharing an apartment cannot exceed the SSI rate for a married couple

even if the two individuals sharing an apartment are unrelated. Any income of an individual remaining after deduction of the protected minimum of $90 and room and board charges shall be applied first towards that individual's medical expenses not covered under the Department's Medical Assistance Program. Any income of an individual remaining after that shall be applied to that individual's charges for SLP services paid by the Department. If one, or both, of the individuals sharing an apartment is not Medicaid eligible, the SLP may negotiate its own rate with the non-Medicaid individual or individuals.

e) The room and board charge for Medicaid residents shall only be increased when the SSI amount is increased. Any room and board charge increase shall not exceed the amount of the SSI increase.

f) Payment shall be made by the Department for up to 30 days per State fiscal year during a Medicaid resident's temporary absence from the SLP when the absence is due to situations such as hospitalizations or vacations. The resident shall continue to be responsible for room and board charges during any absence. Involuntary discharge criteria relating to temporary absence are found at Section 146.255(b) and (d)(7). Nursing facilities that have a distinct part certified as an SLP shall consider converted beds in the nursing facility's licensed capacity when calculating the 93 percent occupancy level for bed reserve payments pursuant to 89 Ill. Adm. Code 140.523.

1) The day a resident is transferred to the hospital is the first day of the temporary absence.

2) For all other temporary absences, except a long-term care admission, the day after resident leaves the SLP is the first day of the temporary absence.

3) The day before resident returns to the SLP is the last day of the temporary absence.

4) The Department does not pay for temporary absence due to admission to a long-term care facility. In this instance, an SLP shall discharge the resident from the Department's database. An SLP may choose to hold an apartment while a resident is in a long-term care facility.

5) By agreement between the SLP and a resident, an SLP may continue to hold an apartment when a resident has exceeded the 30 days payable by the Department.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART G: SPECIALIZED MENTAL HEALTH REHABILITATION FACILITIES

Section 146.910 Reimbursement

a) Facilities licensed under Specialized Mental Health Rehabilitation Act of 2013 shall be reimbursed at:

1) the rate in effect on June 30, 2014, less $7.07 for each facility previously licensed under the Nursing Home Care Act on June 30, 2013;~~or~~

2) the rate in effect on June 30, 2013 for each facility licensed under the Specialized Mental Health Rehabilitation Act on June 30, 2013; or~~.~~

3) effective for services provided on or after July 1, 2017, the rate in effect on June 30, 2017 increased by 2.8%.

b) Any adjustment in the support component or the capital component for facilities licensed by the Department of Public Health under the Nursing Home Care Act shall apply equally to facilities licensed by the Department of Public Health under the Specialized Mental Health Rehabilitation Act of 2013.

c) Notwithstanding the provisions set forth in 89 Ill. Adm. Code 153, facilities licensed under the Specialized Mental Health Rehabilitation Act of 2013 shall receive a payment in the amount of $29.43 per licensed bed, per day, for the period beginning June 1, 2014 and ending June 30, 2014.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

OFFICE OF THE STATE TREASURER

NOTICE OF PROPOSED RULES

1) Heading of the Part: E-Pay Program

2) Code Citation: 74 Ill. Adm. Code 735

3)

Section Numbers:	Proposed Actions:
735.100	New Section
735.110	New Section
735.200	New Section
735.210	New Section
735.300	New Section
735.310	New Section
735.320	New Section
735.330	New Section
735.400	New Section
735.410	New Section
735.500	New Section

4) Statutory Authority: 15 ILCS 505/7 and 17

5) A Complete Description of the Subjects and Issues Involved: PA 99-856, effective August 19, 2016, authorizes the State Treasurer to establish and administer the E-Pay Program. This Program allows governmental agencies to accept payments 24 hours a day, seven days per week, utilizing credit card and electronic payment options. This rule will provide clarification for the implementation and administration of the Program by the Treasurer's Office.

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? Yes, see Section 735.210.

10) Are there any other rulemakings pending on this Part? No

11) Statement of Statewide Policy Objective: This rulemaking does not create or expand a State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].

OFFICE OF THE STATE TREASURER

NOTICE OF PROPOSED RULES

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice. Comments should be submitted to:

Sandi Raphael
Deputy General Counsel
Illinois State Treasurer
100 W. Randolph, Suite 15-600
Chicago IL 60601

312/814-2985
fax: 217/785-2777
e-mail: SRaphael@illinoistreasurer.gov

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: The E-Pay Program offers units of local and State government a convenient, secure and affordable electronic payments processing option for the acceptance of credit card, debit card, and E-check payments from constituents. The Program allows the Treasurer's Office to achieve economies of scale and save on costs for State and local governmental units.

B) Reporting, bookkeeping or other procedures required for compliance: Units of local and State government who wish to participate in the Program are required to submit an enrollment form, sign a master services agreement and E-Pay agreement, and comply with the uniform form and system of receipts established by the State Comptroller pursuant to Section 4 of the State Officers and Employees Money Disposition Act [30 ILCS 230/4].

C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: July 2017

OFFICE OF THE STATE TREASURER

NOTICE OF PROPOSED RULES

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

OFFICE OF THE STATE TREASURER

NOTICE OF PROPOSED RULES

TITLE 74: PUBLIC FINANCE
CHAPTER V: TREASURER

PART 735
E-PAY PROGRAM

SUBPART A: INTRODUCTION AND PURPOSE OF PROGRAM

Section
735.100 Establishment of Program
735.110 Purpose of Program

SUBPART B: DEFINITIONS

Section
735.200 Definitions
735.210 Incorporation by Reference

SUBPART C: ADMINISTRATION

Section
735.300 Treasurer Responsibilities
735.310 Processor Responsibilities
735.320 Fees
735.330 Termination

SUBPART D: PARTICIPATION AND ENROLLMENT IN THE PROGRAM

Section
735.400 Participation
735.410 Enrollment

SUBPART E: SETTLEMENT

Section
735.500 Settlement Account

AUTHORITY: Implementing and authorized by Sections 7 and 17 of the State Treasurer Act [15 ILCS 505].

OFFICE OF THE STATE TREASURER

NOTICE OF PROPOSED RULES

SOURCE: Adopted at 41 Ill. Reg. _____, effective _____.

SUBPART A: INTRODUCTION AND PURPOSE OF PROGRAM

Section 735.100 Establishment of Program

This Part governs the E-Pay Program created by Sections 7 and 17 of the State Treasurer Act.

Section 735.110 Purpose of Program

a) The Act requires the Treasurer to *receive the revenues and all other public moneys of the State, and all moneys authorized by law to be paid to the Treasurer, and safely keep the same* [15 ILCS 505/7]. Pursuant to this authority, the Treasurer maintains contractual relationships with vendors in order to process financial transactions, such as credit card processing and electronic checks, on the State's behalf.

b) The Act permits the Treasurer to establish an *E-Pay program to supplement and enhance both the investment opportunities and the secure electronic payment options otherwise available to other custodians of public funds for public agencies in this State* [15 ILCS 505/17].

c) Pursuant to this authority, the Treasurer has established the E-Pay Program that provides a convenient, secure and affordable electronic payments processing option to facilitate the acceptance and processing of credit card, debit card and electronic check (E-check) payments to public agencies. The management, administration, processing and settlement of electronic payments are provided by the Treasurer and its vendors, selected through a competitive bidding process.

SUBPART B: DEFINITIONS

Section 735.200 Definitions

"Act" means the State Treasurer Act [15 ILCS 505] that establishes the E-Pay Program.

"Constituent" means a person or entity that utilizes the E-Pay Program to make payments or donations of public funds to a participant.

"Custodian" means a public agency or a recipient.

"Electronic Signature" means a signature in electronic form attached to or logically associated with an electronic record. [5 ILCS 175/5-105]

"E-Pay Agreement" means the participant agreement that sets forth the Treasurer's terms and conditions for participation in the E-Pay Program.

"E-Pay Program" means the electronic payments processing program provided to public agencies to facilitate the acceptance and processing of credit card, debit card or E-check payments made to public agencies.

"Enrollment Form" means the form provided by the Treasurer to collect the required pertinent public agency information for enrollment into the E-Pay Program.

"Master Services Agreement" means the participant agreement that sets forth the E-Pay Program fees and the processor's terms and conditions for participation in the E-Pay Program.

"Participant" means a public agency that has been accepted by the Treasurer and enrolled into the E-Pay Program.

"PCI Data Security Standards" means the technical and operational requirements set forth by the Payment Card Industry (PCI) Security Standards Council for organizations accepting or processing payment transactions, and for software developers and manufacturers of applications and devices used in those transactions.

"Principal" means an individual who is authorized by the public agency or statute to execute contractual agreements on behalf of the public agency.

"Processor" means a vendor designated by the Treasurer, through a competitive bidding process, to provide electronic payment services via point-of-sale (POS), internet and telephone for the E-Pay Program.

"Public Agency" has the same meaning as in Section 17 of the Act. Questions regarding whether an entity qualifies as a component unit of a public agency shall

be resolved by reference to Governmental Accounting Standards Board (GASB) pronouncements, including but not limited to GASB Statement 14: The Financial Reporting Entity.

"Public Funds" means *current operating funds, special funds, interest and sinking funds, and funds of any kind or character belonging to or in the custody of any public agency*. [30 ILCS 235/1]

"Recipient" means a person or entity that receives public funds in the form of a fee or donation on behalf of a public agency.

"Settlement Account" means an account established by a participant to settle funds from E-Pay Program activity.

"Settlement Bank" means the institution designated by the participant that is responsible for the settlement of funds from E-Pay Program activity.

"Treasurer" means the duly elected Treasurer of the State of Illinois or his or her designees.

"Treasurer's Website" means www.illinoistreasurer.gov or the successor to that website.

Section 735.210 Incorporation by Reference

a) The following materials are incorporated by reference in this Part:

PCI Security Standards Council, LLC, 401 Edgewater Place, Suite 600, Wakefield MA 01880

Payment Card Industry (PCI) Data Security Standard v.3.2 (April 2016); https://www.pcisecuritystandards.org/document_library?category=pcidss&document=pci_dss

b) The materials incorporated by reference in this Section are incorporated as of the date specified and do not include any later amendments or editions.

SUBPART C: ADMINISTRATION

Section 735.300 Treasurer Responsibilities

a) The Treasurer will procure and designate a credit/debit card and electronic check payment processing vendor to provide electronic payment services via point-of-sale, internet and telephone for the E-Pay Program. This shall include the acceptance of major credit/debit card providers and E-checks for all participants.

b) Pursuant to the Local Government Acceptance of Credit Cards Act [50 ILCS 345], the E-Pay Program will comply with applicable standards for the acceptance and processing of credit card payments by local government participants.

c) Pursuant to PCI Data Security Standards, the E-Pay Program will comply with operational and technical requirements for accepting or processing payment transactions, and for software developers and manufacturers of applications and devices used in those transactions.

d) The Treasurer is responsible for the administration of the E-Pay Program and will perform the following:

1) Review the eligibility of public agencies prior to enrollment;

2) Establish enrollment, quality control, and maintenance requirements and processes;

3) Establish terms and conditions;

4) Establish customer service processes;

5) Procure any necessary services administered through the E-Pay Program;

6) Retain documents in compliance with State statutes, including the State Records Act [5 ILCS 160], the Treasurer's document retention policies, and program policies; and

7) Other tasks necessary to administer the E-Pay Program.

Section 735.310 Processor Responsibilities

The Processor is responsible for the day-to-day management of the E-Pay Program and will perform the following:

a) Enroll public agencies into the E-Pay Program as determined by the Treasurer;

b) Provide for electronic credit card and check payment services via multiple payment formats in accordance with PCI data security standards and industry best practices;

c) Provide customer service as determined by the Treasurer;

d) Distribute funds from E-Pay Program activity into the participant's settlement account;

e) Retain copies of participant documents, including the enrollment form;

f) Charge participants for the applicable services in accordance with the cost schedule;

g) Provide the Treasurer and participants with sufficient reports and/or the ability to run reports; and

h) File the participant's accurate 1099K with the Internal Revenue Service by the due date.

Section 735.320 Fees

To the extent permitted by law, the Treasurer shall permit participants to absorb the processing fees associated with electronic payment services or pass the processing fees to constituents. Processing fees shall be publicly available and disclosed to public agencies prior to enrollment. Processing fees will be established through the competitive procurement of the processor. Processing fees may include, but are not limited to:

a) Cost of interchange rates, dues, assessments, and any other pass through fees from the issuing credit card bank and the card networks;

b) Fees collected by the processor for the authorization, clearing, and settlement of credit card transactions and electronic check payments; and

c) Fees paid to the Treasurer by the processor for the program administration, pursuant to Section 735.300. Administrative fees paid to the Treasurer shall not exceed the product of 25 basis points multiplied by the monthly processing volume, excluding transaction fees.

Section 735.330 Termination

The Treasurer shall have the right to freeze and/or terminate any or all of a participant's E-Pay Program services for failure to comply with terms and conditions of the processor as set forth in the master services agreement or the Treasurer as set forth in the E-Pay agreement, pursuant to Section 735.410. Prior to freezing or terminating any services, the Treasurer shall provide a minimum of 24 hours' notice of the intent to freeze or terminate that identifies the grounds for that action. If satisfactory remedial action is not taken by the participant and/or its recipient within the notice period, the Treasurer will freeze or terminate the services, depending upon the notice given. Notwithstanding anything to the contrary in this Section, the Treasurer may freeze any or all of the participant's E-Pay Program services without notice if there is illegal, or suspected illegal, use of the E-Pay Program services; use of the E-Pay Program services that is unauthorized by the participant, or suspected to be so unauthorized; or any reason that E-Pay Program services cannot be provided through no fault of the Treasurer's (e.g., problems with the settlement bank).

SUBPART D: PARTICIPATION AND ENROLLMENT IN THE PROGRAM

Section 735.400 Participation

a) The E-Pay Program is offered to public agencies to facilitate the acceptance and processing of credit card, debit card or E-check payments. In order to participate in the E-Pay Program, a public agency shall submit an enrollment form and agree to the terms and conditions established by the Treasurer and its vendors.

b) In order to comply with the mandate of Section 7 of the Act that the *State Treasurer shall receive the revenues and all other public moneys of the State, and all moneys authorized by law to be paid to the Treasurer, and safely keep the same* [15 ILCS 505/7], State agencies must comply with the *uniform form and system of receipts for use when money is received for or on behalf of the State* established by the State Comptroller pursuant to Section 4 of the State Officers and Employees Money Disposition Act [30 ILCS 230/4], including participation in the E-Pay Program to the extent required.

c) *Participation in the Public Treasurers' Investment Pool shall not be a prerequisite for participation in the Treasurer's E-Pay Program* [15 ILCS 505/17].

Section 735.410 Enrollment

A public agency may enroll in the E-Pay Program on documents prescribed by the Treasurer and its vendors. Electronic signatures are permitted when electronically submitting any documents, E-Pay agreements, or master services agreements.

a) The enrollment form shall require public agencies to provide the following information for the public agency and may require this information for any custodians that are not the public agency itself:

1) names;

2) tax identification numbers;

3) mailing and physical street addresses;

4) email addresses;

5) phone numbers;

6) name and title of the person who will be the principal;

7) processing and technical requirements to be used;

8) settlement banks; and

9) any additional information needed to assist in clarifying when the enrollment form is unclear or insufficient.

b) Public agencies shall sign a master services agreement in which they agree to the fees and the terms and conditions of the processor.

c) Public agencies shall sign an E-Pay agreement in which they agree to the terms and conditions of the Treasurer.

OFFICE OF THE STATE TREASURER

NOTICE OF PROPOSED RULES

SUBPART E: SETTLEMENT

Section 735.500 Settlement Account

Funding from the E-Pay Program activity will be distributed by the processor into settlement accounts at the participant's settlement banks. The Treasurer may give public agencies the option of using their own settlement banks, a settlement bank selected by the Treasurer via a competitive procurement process, or the processor's settlement bank. The participant's settlement bank must, at minimum, be authorized to do business in Illinois as an Illinois bank or a national bank with a presence in Illinois. In addition, the participant's settlement bank must be insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund, be a member of the Automated Clearing House network, and qualify as a depository for public funds pursuant to either the Public Funds Investment Act [30 ILCS 235] or the Deposit of State Moneys Act [15 ILCS 520].

SECRETARY OF STATE

NOTICE OF PROPOSED AMENDMENT

1) Heading of the Part: Issuance of Licenses

2) Code Citation: 92 Ill. Adm. Code 1030

3) Section Number: 1030.85 Proposed Action: Amendment

4) Statutory Authority: 625 ILCS 5/6-508 (b-2)

5) A Complete Description of the Subjects and Issues Involved: PA 100-223, effective August 25, 2017, allows the Secretary of State to waive the written knowledge exams required for the issuance of a commercial driver's license (CDL), if the applicant is a current member of the U.S. military or has been discharged within the last 12 months, provided the applicant meets certain requirements.

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

7) Will this proposed rulemaking replace an emergency rule currently in effect? No

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

9) Does this rulemaking contain incorporations by reference? No

10) Are there any other rulemakings pending on this Part? Yes

Section Numbers:	Proposed Actions:	*Illinois Register* Citations:
1030.1	Amendment	41 Ill. Reg. 8268; July 14, 2017
1030.26	New Section	41 Ill. Reg. 8268; July 14, 2017
1030.27	New Section	41 Ill. Reg. 8268; July 14, 2017
1030.1	Amendment	41 Ill. Reg. 10906; Aug. 25, 2017
1030.92	Amendment	41 Ill. Reg. 10906; Aug. 25, 2017

11) Statement of Statewide Policy Objective: The rulemaking will not create or enlarge a State mandate.

12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Text of the prepared amendments is posted on the Secretary of State's website, www.sos.il.us/departments/index/home as part of the *Illinois Register*. Interested

persons may present their comments concerning this proposed rulemaking in writing within 45 days after publication of this Notice to:

Jennifer Egizii
Office of the Secretary of State
Driver Services Department
2701 South Dirksen Parkway
Springfield IL 62723

217/557-4462

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: Small trucking companies may have more applicants for driving jobs.

B) Reporting, bookkeeping or other procedures required for compliance: The State of Illinois knowledge/skills test waiver form that must be completed by the applicant and his/her commanding officer

C) Types of Professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the two recent agendas because the need for this rulemaking was not anticipated at the time the agendas were prepared.

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

SECRETARY OF STATE

NOTICE OF PROPOSED AMENDMENT

TITLE 92: TRANSPORTATION
CHAPTER II: SECRETARY OF STATE

PART 1030
ISSUANCE OF LICENSES

Section	
1030.1	Definitions
1030.5	Procedure for Obtaining a Driver's License
1030.6	Procedure for Obtaining a Visa Status Temporary Visitor's Driver's License Pursuant to IVC Section 6-105.1(a)
1030.7	Procedure for Obtaining a Non-Visa Status Temporary Visitor's Driver's License Pursuant to IVC Section 6-105.1(a-5)
1030.10	What Persons Shall Not be Licensed or Granted Permits
1030.11	Procedure for Obtaining a Driver's License/Temporary Visitor's Driver's License (Renumbered)
1030.12	Identification Cards for the Homeless
1030.13	Denial of License or Permit
1030.14	Emergency Contact Database
1030.15	Cite for Re-testing
1030.16	Physical and Mental Evaluation
1030.17	Errors in Issuance of Driver's License/Cancellation
1030.18	Medical Criteria Affecting Driver Performance
1030.20	Classification of Drivers – References (Repealed)
1030.22	Medical Examiner's Certificate − CLP or CDL Holders
1030.25	Safe Driver License Renewals
1030.30	Classification Standards
1030.40	Fifth Wheel Equipped Trucks
1030.50	Bus Driver's Authority, Religious Organization and Senior Citizen Transportation
1030.55	Commuter Van Driver Operating a For-Profit Ridesharing Arrangement
1030.60	Third-Party Certification Program
1030.63	Religious Exemption for Social Security Numbers (Repealed)
1030.65	Instruction Permits
1030.66	Adult Driver Education
1030.70	Driver's License Testing/Vision Screening
1030.75	Driver's License Testing/Vision Screening With Vision Aid Arrangements Other Than Standard Eye Glasses or Contact Lenses
1030.80	Driver's License Testing/Written Test
1030.81	Endorsements

1030.82	Charter Bus Driver Endorsement Requirements
1030.83	Hazardous Material Endorsement
1030.84	Vehicle Inspection
1030.85	Driver's License Testing/Road Test
1030.86	Multiple Attempts − Written and/or Road Tests
1030.88	Exemption of Facility Administered Road Test
1030.89	Temporary Driver's Licenses and Temporary Instruction Permits
1030.90	Requirement for Photograph and Signature of Licensee on Driver's License
1030.91	Person with a Disability Identification Card
1030.92	Restrictions
1030.93	Restricted Local Licenses
1030.94	Duplicate or Corrected Driver's License or Instruction Permit
1030.95	Consular Licenses (Repealed)
1030.96	Seasonal Restricted Commercial Driver's License
1030.97	Invalidation of a Driver's License, Permit and/or Driving Privilege
1030.98	School Bus Endorsement or Learner's Permit
1030.100	Anatomical Gift Donor (Repealed)
1030.110	Emergency Medical Information Card
1030.115	Change-of-Address
1030.120	Issuance of a Probationary License
1030.130	Grounds for Cancellation of a Probationary License
1030.140	Use of Captured Images
1030.150	Veteran Designation on Driver's License or Identification Card

1030.APPENDIX A	Questions Asked of a Driver's License Applicant
1030.APPENDIX B	Acceptable Identification Documents – Applicants for a Driver's License, Instruction Permit, Visa Status Temporary Visitor's Driver's License Pursuant to IVC Section 6-105.1(a) or Visa Status Temporary Visitor's Instruction Permit
1030.APPENDIX C	Acceptable Identification Documents – Applicants for a Non-Visa Status Temporary Visitor's Driver's License or Non-Visa Status Temporary Visitor's Instruction Permit Pursuant to IVC Section 6-105.1(a-5)

AUTHORITY: Implementing Article I of the Illinois Driver Licensing Law of the Illinois Vehicle Code [625 ILCS 5/Ch. 6, Art. I] and authorized by Section 2-104(b) of the Illinois Vehicle Title and Registration Law of the Illinois Vehicle Code [625 ILCS 5/2-104(b)].

NOTICE OF PROPOSED AMENDMENT

SOURCE: Filed March 30, 1971; amended at 3 Ill. Reg. 7, p. 13, effective April 2, 1979; amended at 4 Ill. Reg. 27, p. 422, effective June 23, 1980; amended at 6 Ill. Reg. 2400, effective February 10, 1982; codified at 6 Ill. Reg. 12674; amended at 9 Ill. Reg. 2716, effective February 20, 1985; amended at 10 Ill. Reg. 303, effective December 24, 1985; amended at 10 Ill. Reg. 15130, effective September 2, 1986; amended at 10 Ill. Reg. 18182, effective October 14, 1986; amended at 11 Ill. Reg. 9331, effective April 28, 1987; amended at 11 Ill. Reg. 18292, effective October 23, 1987; amended at 12 Ill. Reg. 3027, effective January 14, 1988; amended at 12 Ill. Reg. 13221, effective August 1, 1988; amended at 12 Ill. Reg. 16915, effective October 1, 1988; amended at 12 Ill. Reg. 19777, effective November 15, 1988; amended at 13 Ill. Reg. 5192, effective April 1, 1989; amended at 13 Ill. Reg. 7808, effective June 1, 1989; amended at 13 Ill. Reg. 12880, effective July 19, 1989; amended at 13 Ill. Reg. 12978, effective July 19, 1989; amended at 13 Ill. Reg. 13898, effective August 22, 1989; amended at 13 Ill. Reg. 15112, effective September 8, 1989; amended at 13 Ill. Reg. 17095, effective October 18, 1989; amended at 14 Ill. Reg. 4570, effective March 8, 1990; amended at 14 Ill. Reg. 4908, effective March 9, 1990; amended at 14 Ill. Reg. 5183, effective March 21, 1990; amended at 14 Ill. Reg. 8707, effective May 16, 1990; amended at 14 Ill. Reg. 9246, effective May 16, 1990; amended at 14 Ill. Reg. 9498, effective May 17, 1990; amended at 14 Ill. Reg. 10111, effective June 11, 1990; amended at 14 Ill. Reg. 10510, effective June 18, 1990; amended at 14 Ill. Reg. 12077, effective July 5, 1990; amended at 14 Ill. Reg. 15487, effective September 10, 1990; amended at 15 Ill. Reg. 15783, effective October 18, 1991; amended at 16 Ill. Reg. 2182, effective January 24, 1992; emergency amendment at 16 Ill. Reg. 12228, effective July 16, 1992, for a maximum of 150 days; emergency expired on December 13, 1992; amended at 16 Ill. Reg. 18087, effective November 17, 1992; emergency amendment at 17 Ill. Reg. 1219, effective January 13, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 2025, effective February 1, 1993; amended at 17 Ill. Reg. 7065, effective May 3, 1993; amended at 17 Ill. Reg. 8275, effective May 24, 1993; amended at 17 Ill. Reg. 8522, effective May 27, 1993; amended at 17 Ill. Reg. 19315, effective October 22, 1993; amended at 18 Ill. Reg. 1591, effective January 14, 1994; amended at 18 Ill. Reg. 7478, effective May 2, 1994; amended at 18 Ill. Reg. 16457, effective October 24, 1994; amended at 19 Ill. Reg. 10159, effective June 29, 1995; amended at 20 Ill. Reg. 3891, effective February 14, 1996; emergency amendment at 20 Ill. Reg. 8358, effective June 4, 1996, for a maximum of 150 days; emergency amendment repealed in response to an objection of the Joint Committee on Administrative Rules at 20 Ill. Reg. 14279; amended at 21 Ill. Reg. 6588, effective May 19, 1997; amended at 21 Ill. Reg. 10992, effective July 29, 1997; amended at 22 Ill. Reg. 1466, effective January 1, 1998; emergency amendment at 23 Ill. Reg. 9552, effective August 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 13947, effective November 8, 1999; amended at 24 Ill. Reg. 1259, effective January 7, 2000; emergency amendment at 24 Ill. Reg. 1686, effective January 13, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 6955, effective April 24, 2000; emergency amendment at 24 Ill. Reg. 13044, effective August 10, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 18400, effective December 4,

2000; amended at 25 Ill. Reg. 959, effective January 5, 2001; amended at 25 Ill. Reg. 7742, effective June 5, 2001; amended at 25 Ill. Reg. 12646, effective September 24, 2001; emergency amendment at 25 Ill. Reg. 12658, effective September 24, 2001, for a maximum of 150 days; emergency expired February 20, 2002; amended at 26 Ill. Reg. 9961, effective June 24, 2002; amended at 27 Ill. Reg. 855, effective January 3, 2003; emergency amendment at 27 Ill. Reg. 7340, effective April 14, 2003, for a maximum of 150 days; emergency expired September 10, 2003; emergency amendment at 27 Ill. Reg. 16968, effective October 17, 2003, for a maximum of 150 days; emergency expired March 14, 2004; emergency amendment at 28 Ill. Reg. 384, effective January 1, 2004, for a maximum of 150 days; emergency expired May 29, 2004; amended at 28 Ill. Reg. 8895, effective June 14, 2004; amended at 28 Ill. Reg. 10776, effective July 13, 2004; amended at 29 Ill. Reg. 920, effective January 1, 2005; emergency amendment at 29 Ill. Reg. 2469, effective January 31, 2005, for a maximum of 150 days; emergency expired June 29, 2005; amended at 29 Ill. Reg. 9488, effective June 17, 2005; amended at 29 Ill. Reg. 12519, effective July 28, 2005; amended at 29 Ill. Reg. 13237, effective August 11, 2005; amended at 29 Ill. Reg. 13580, effective August 16, 2005; amended at 30 Ill. Reg. 910, effective January 6, 2006; amended at 30 Ill. Reg. 5621, effective March 7, 2006; amended at 30 Ill. Reg. 11365, effective June 15, 2006; emergency amendment at 30 Ill. Reg. 11409, effective June 19, 2006, for a maximum of 150 days; emergency expired November 15, 2006; amended at 31 Ill. Reg. 4782, effective March 12, 2007; amended at 31 Ill. Reg. 5096, effective March 15, 2007; amended at 31 Ill. Reg. 5864, effective March 29, 2007; amended at 31 Ill. Reg. 6370, effective April 12, 2007; amended at 31 Ill. Reg. 7643, effective May 16, 2007; amended at 31 Ill. Reg. 11342, effective July 18, 2007; amended at 31 Ill. Reg. 14547, effective October 9, 2007; amended at 31 Ill. Reg. 14849, effective October 22, 2007; amended at 31 Ill. Reg. 16543, effective November 27, 2007; amended at 31 Ill. Reg. 16843, effective January 1, 2008; emergency amendment at 32 Ill. Reg. 208, effective January 2, 2008, for a maximum of 150 days; amended at 32 Ill. Reg. 6544, effective April 4, 2008; amended at 33 Ill. Reg. 2391, effective January 21, 2009; amended at 33 Ill. Reg. 8489, effective June 5, 2009; amended at 33 Ill. Reg. 9794, effective June 29, 2009; amended at 33 Ill. Reg. 11620, effective July 22, 2009; amended at 33 Ill. Reg. 14185, effective September 28, 2009; amended at 34 Ill. Reg. 563, effective December 22, 2009; amended at 34 Ill. Reg. 9457, effective June 23, 2010; amended at 34 Ill. Reg. 15418, effective September 22, 2010; amended at 34 Ill. Reg. 19071, effective November 22, 2010; amended at 35 Ill. Reg. 2197, effective January 21, 2011; amended at 35 Ill. Reg. 4692, effective March 3, 2011; amended at 35 Ill. Reg. 19664, effective November 23, 2011; amended at 36 Ill. Reg. 3924, effective February 27, 2012; amended at 36 Ill. Reg. 7255, effective April 26, 2012; amended at 36 Ill. Reg. 14755, effective September 18, 2012; amended at 37 Ill. Reg. 7776, effective May 22, 2013; amended at 37 Ill. Reg. 14176, effective September 1, 2013; amended at 37 Ill. Reg. 19342, effective November 28, 2013; amended at 38 Ill. Reg. 7946, effective March 28, 2014; emergency amendment at 38 Ill. Reg. 8429, effective April 4, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. 12515, effective July 1, 2014;

amended at 38 Ill. Reg. 16366, effective July 21, 2014; amended at 38 Ill. Reg. 20039, effective October 1, 2014; amended at 39 Ill. Reg. 1182, effective January 5, 2015; amended at 39 Ill. Reg. 5083, effective March 23, 2015; amended at 39 Ill. Reg. 8028, effective May 21, 2015; amended at 39 Ill. Reg. 11531, effective July 28, 2015; amended at 39 Ill. Reg. 14930, effective October 29, 2015; amended at 40 Ill. Reg. 1882, effective January 12, 2016; amended at 40 Ill. Reg. 7330, effective May 2, 2016; amended at 40 Ill. Reg. 13637, effective September 19, 2016; amended at 40 Ill. Reg. 15397, effective October 26, 2016; amended at 41 Ill. Reg. 438, December 29, 2016; amended at 41 Ill. Reg. 3009, effective February 24, 2017; amended at 41 Ill. Reg. _____, effective _____.

Section 1030.85 Driver's License Testing/Road Test

a) Classification of licenses is established in Section 1030.30.

b) Persons applying for a Class C or Class D (CDL or Non-CDL) driver's license, a religious organization restriction, for-profit ridesharing arrangement restriction, or senior citizen transportation restriction in a First Division vehicle who are required by IVC Section 6-109 to complete a road test shall be evaluated on the following driving skills: start, posture, use of mirrors, steering, lane observance, right-of-way, left and right turns (signal, speed, lane, turn), attention (distraction level), following (too closely), speed (too fast/too slow), parking (up and/or down hill), starting (up and/or down hill), final park, signal (pulling into and away from curb, changing lanes), stop signs, other signs (yield, school, railroad, regulatory, warning, special), traffic lights, backing, turn about, and use of clutch or automatic transmission.

c) In addition to those maneuvers listed in subsection (b), persons applying for a Class A or B driver's license (CDL) shall also be evaluated on the following:

1) Pre-Trip Inspection − the applicant shall demonstrate skills necessary to conduct a pre-trip inspection, which include the ability to:

A) locate and verbally identify air brake operating controls and monitoring devices;

B) determine the motor vehicle's brake system condition for proper adjustments and that the air system connections between vehicles have been properly made and secured;

C) inspect low pressure warning devices to ensure they will activate in emergency situations;

D) ascertain, with the engine running, that the system contains an adequate supply of compressed air;

E) determine that the required minimum air pressure build up at the time is within acceptable limits and that required alarms and emergency devices automatically deactivate at the proper pressure level; and

F) operationally check the brake system for proper performance.

2) Vehicle skills test that shall include dock parking, straight line backing, stop at marked line, and predetermined right turn.

3) Additional road test driving skills of use of gears, railroad crossing, expressway, bridge and underpass.

d) In addition to those maneuvers listed in subsection (b), persons applying for a Class A or B driver's license (non-CDL) shall also be evaluated on straight line backing.

e) In addition to those maneuvers listed in subsection (c), persons applying for a school bus driver permit must complete a road test in a representative vehicle, which shall consist of the following: use of gears, railroad crossing (stop and observation), curb bus (simulate loading/unloading passengers), use of stop arm, and use of flasher lights.

f) Applicants for a Class L or Class M driver's license who are required to complete a road test shall be evaluated by using of the following drive tests: ALMOST – Alternate Motorcycle Operator Skill Test; 5 dot test; and Offstreet Illinois Department of Transportation Motorcycle Operator Skill Test.

1) Test exercises for the ALMOST and Offstreet Illinois Department of Transportation Motorcycle Operation Skill Test, for both Class L and Class M, shall consist of the following: stalling (improper shift, failure to shift), sharp turn (path, foot down), normal stop (skid, position), cone weave (skips, hits, foot down), U-Turn (path, foot down), quick stop

(distance), obstacle turn (path), slow drive (time, path, foot down).

2) Test exercises for the 5 dot test, for both Class L and Class M, shall consist of the following: knowledge of controls, figure U Walk (walk vehicle without engine running), start from rest, slow drive, gear shifting skill, figure 8 ride, serpentine ride (balanced cone weave), posture, mounting/dismounting.

g) Test exercises and skills are evaluated on a point system. When the applicant commits an error, a point or points are assessed based upon the severity of the error. Applicants for a CDL or Non-CDL Class A, B, C or D license or a religious organization vehicle restriction, for-profit ridesharing arrangement restriction or senior citizen transportation restriction are allowed 36 points. Applicants for a Second Division school bus permit are allowed 40 points. Applicants for a First Division school bus permit are allowed 36 points. Applicants for a Class L or M license taking the ALMOST or Offstreet Illinois Department of Transportation Motorcycle Operation Skill Test evaluation shall be allowed 11 points. Applicants for an L or M license taking the 5 dot test shall be allowed seven points.

h) The following acts will result in immediate disqualification: violation in which an applicant receives a ticket; dangerous action; lack of cooperation or refusal to perform; or letting the cycle fall or falling off a cycle.

i) A road test will be considered incomplete for the following reasons: the applicant becomes ill or disabled and is unable to continue the road test; the vehicle develops mechanical problems after the road test has begun; weather conditions make the continuation of the road test hazardous; or an accident occurs for which the applicant does not receive a ticket.

j) No persons are allowed to accompany the applicant and examiner on the road test. When necessary, exceptions may be made for any applicants who may require a translator and for the training and evaluation of facility personnel.

k) Any applicant who is suspected by a Driver Services Facility employee of having consumed alcohol and/or drugs must seek the approval of a Driver Services Facility manager prior to being administered the road test. If a Driver Services Facility manager has reasonable cause to believe that an applicant has consumed alcohol and/or drugs, the applicant shall not be administered the road test.

Evidence of alcohol and/or drug consumption shall include, but not be limited to, one or more of the following conditions:

1) the applicant admits he/she has consumed alcohol and/or drugs;

2) the applicant has a strong odor of alcohol on his/her breath;

3) the applicant's eyes are red and the pupils are dilated;

4) the applicant's speech is slurred; or

5) the applicant is unsteady when walking.

l) All persons applying for a CDL, with the exception of those persons renewing their Illinois CDL, or those persons holding an Illinois CLP who successfully completed federally approved CDL training and testing in another CDL certified state, shall be required to successfully complete the examinations set forth in subsections (c) and (d) pursuant to IVC Section 6-508(a)(1).

m) Military personnel are exempt from the CDL administered pre-trip, skills and road test (excluding school bus and passenger endorsements) if:

1) In the two-year period immediately prior to application for a CDL the applicant has not:

A) had more than one license, except for a military-issued driver's license;

B) had any driver's license suspended, revoked or cancelled;

C) had any convictions in any type of motor vehicle for the disqualifying offenses contained in 49 CFR 383.51(b) (October 1, 2012);

D) had more than one conviction in any type of motor vehicle for a serious traffic violation contained in 49 CFR 383.51(c) (October 1, 2012); and

E) had any conviction for a violation of military, State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident and has no record of an accident in which the applicant was at fault.

2) The applicant certifies that:

A) he/she is regularly employed or was regularly employed within the last 12 months in a military position requiring operation of a commercial motor vehicle;

B) he/she was exempted from the CDL requirements of 49 CFR 383.3(c) (October 1, 2012); and

C) he/she was operating a vehicle representative of the commercial motor vehicle the applicant operates or expects to operate for at least the two years immediately preceding discharge from the military.

3) The applicant submits a completed Secretary of State CDL-ST WVR form, including signature of the applicant's commanding officer.

n) The use of any recording device, including but not limited to cell phones, cameras, tape recorders or video recorders, is prohibited during the administration of a road test. If an examiner discovers a recording device is in use during the road test, the examiner shall request the applicant to stop the recording device and delete any recordings of the road test. If the applicant refuses to do so, the examiner shall immediately terminate the road test and the applicant will be deemed to have failed the road test.

o) Qualified and eligible military service members with certain MOS/Ratings (U.S. armed forces specialist designations) are exempt from the CDL administered general knowledge written exam (excluding school bus endorsement) if the applicant:

1) Is a current resident of this State;

2) Is a current or former member of the military services, including a member of any reserve component or National Guard unit;

3) Within one year prior to the date of application, was regularly employed in a military position that requires the operation of large trucks;

4) Received formal military training in the operation of a vehicle similar to the commercial motor vehicle the applicant expects to operate; and

5) Provides the Secretary of State with a State of Illinois Application for Exchange of US Military Commercial Driving Experience for Commercial Driver's License (CDL) signed by the applicant and his or her commanding officer certifying that the applicant qualifies for the general knowledge written exam waiver.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

1) Heading of the Part: Public Utility Electronic Tariff Filing

2) Code Citation: 83 Ill. Adm. Code 290

3)

Section Numbers:	Adopted Actions:
290.10	New Section
290.20	New Section
290.30	New Section
290.40	New Section
290.50	New Section
290.60	New Section
290.70	New Section
290.80	New Section
290.90	New Section

4) Statutory Authority: Implementing and authorized by Section 10-101 of the Public Utilities Act [220 ILCS 5/10-101]

5) Effective Date of Rules: September 14, 2017

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

7) Does this rulemaking contain incorporations by reference? No

8) A copy of the adopted rules, including any material incorporated by reference, is on file in the Commission's Springfield office and is available for public inspection.

9) Notice of Proposal published in the *Illinois Register*: 41 Ill. Reg. 1275; February 10, 2017

10) Has JCAR issued a Statement of Objection to this rulemaking? No

11) Differences between Proposal and Final Version: No changes were made.

12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreement letter issued by JCAR? No changes were necessary.

13) Will this rulemaking replace emergency rules currently in effect? No

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

14) Are there any rulemakings pending on this Part? No

15) Summary and Purpose of Rulemaking: The rules will allow electric, gas, and water and sewer utilities, at their option, to submit, file, distribute, and access new or revised tariffs electronically, as an alternative to paper filings. One of the stated purposes of the Electronic Commerce Security Act is "to facilitate electronic filing of documents with State and local government agencies, and promote efficient delivery of government services by means of reliable electronic records" [5 ILCS 175/1-105(3)]. The Act also authorizes State agencies to send and receive electronic records and electronic signatures. Consistent with those provisions, the agency has developed an online system that can be used for the submission, filing, distribution, and accession of tariffs by electronic means. The new rules will govern the use of that system by public utilities that elect to make electronic filings rather than paper filings.

16) Questions or requests for information about these adopted rules shall be directed to:

Brian W. Allen
Office of General Counsel
Illinois Commerce Commission
527 East Capitol Avenue
Springfield IL 62701

217/558-2387

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

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

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

PART 290
PUBLIC UTILITY ELECTRONIC TARIFF FILING

Section

290.10 Overview of Electronic Tariff Filing
290.20 Definitions
290.30 Applicability
290.40 Acceptable Format
290.50 Electronic Tariff Filing System Accounts
290.60 Control Processes
290.70 Required Information
290.80 Submission of Tariffs Electronically
290.90 Notification of Acceptance or Rejection of Tariff Submission

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

SOURCE: Adopted at 41 Ill. Reg. 11901, effective September 14, 2017.

Section 290.10 Overview of Electronic Tariff Filing

One of the stated purposes of the Electronic Commerce Security Act is *to facilitate electronic filing of documents with State and local government agencies, and promote efficient delivery of government services by means of reliable electronic records* [5 ILCS 175/1-105(3)]. The Electronic Commerce Security Act authorizes State agencies to send and receive electronic records and electronic signatures. In addition, the Commission has the authority over its process and proceedings pursuant to Section 10-101 of the Public Utilities Act [220 ILCS 5]. To that end, the Commission is committed to facilitating the filing, distributing and accessing of tariffs electronically through its Electronic Tariff Filing System. Any public utility subject to the provisions of this Part may elect to submit a tariff and all associated documents for filing in an electronic format instead of in hard copy format. However, nothing in this Part should be construed to require any public utility to submit any tariff for filing in an electronic format.

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

Section 290.20 Definitions

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

"Commission" or "ICC" means the Illinois Commerce Commission.

"Electronic Tariff Filing System", "e-Tariff System" or "e-Tariff" means the ICC's system used by public utilities to submit tariffs electronically.

"ICC External User" or "Authorized User" means a person who is not an ICC employee and who has been authorized to use the Commission's electronic tariff filing system.

"ICC External User Account" or "Authorized User Account" means the unique user name and password that are assigned to a person who is authorized to use the Commission's electronic tariff filing system.

"ICC External User Account Application" means the form used to request the creation of an ICC external user account.

"Personally Identifiable Information" includes, but is not limited to, social security numbers, driver's license numbers, credit card numbers, debit card numbers, and medical records.

"PDF" means the Adobe Acrobat Portable Document Format.

"Public Utility" has the meaning ascribed in Sections 3-105(a)(1) and (2) of the Act.

"Staff" means ICC employees.

"Tariff" has the meaning ascribed in the definition of "Schedule" in 83 Ill. Adm. Code 255.10, excluding standard information requirement materials submitted pursuant to 83 Ill. Adm. Code 285.

Section 290.30 Applicability

This Part applies to all public utilities.

Section 290.40 Acceptable Format

a) All tariffs submitted electronically to the Commission shall be in PDF.

b) All electronic tariff records will be stored by the Commission in PDF.

Section 290.50 Electronic Tariff Filing System Accounts

a) Each person seeking to submit tariffs electronically must have an active ICC external user account. The ICC external user account application is available on the ICC website or by contacting the Chief Clerk's Office.

b) A completed ICC external user account application must be delivered to the Chief Clerk's Office in accordance with the instructions provided on the form.

c) A public utility is responsible for authorizing the persons who may submit tariffs electronically on its behalf. Any user authorized to submit tariffs electronically on behalf of a public utility can see a list of the public utility's authorized users for the electronic tariff filing system.

d) The public utility shall timely contact the Chief Clerk's Office to request the revocation of an authorized user account if a person is no longer authorized to submit tariffs electronically on behalf of the public utility, or if the public utility becomes aware of a security breach associated with the person or the account.

e) A person whose ICC external user account application is accepted by the ICC will be assigned a unique user name and password.

f) An authorized user is responsible for keeping his or her user name and password confidential. The unique user name and password assigned to a person are used to authenticate authorized users and establish authority to submit tariffs electronically on behalf of a public utility. Therefore, safeguarding this information is important to prevent unauthorized electronic submission of tariffs.

g) The unique user name and password of an authorized user enable the e-Tariff system to trace an electronically submitted tariff to a specific person as if the

submission were signed. This shall serve as an electronic signature of the authorized user on those submissions.

Section 290.60 Control Processes

a) The electronic tariff filing system allows only users with an authorized user account to submit tariffs electronically.

b) If an electronic tariff submission is found to contain malware, the submission will be rejected and the user shall be notified of the rejection.

c) If an electronic tariff submission is found to contain personally identifiable information, the submission will be rejected and the user shall be notified of the rejection.

d) A user's web browser must be set to accept cookies in order for authorized users to submit tariffs electronically. Cookies identify authorized users and enable the server to send customized data to the user. Cookies also submit account information for the authorized user. A privacy statement is available on the ICC website.

e) The electronic tariff filing system logs every electronic tariff submission with the ICC external user account, public utility name, filing description, tracking number, date and time.

f) Any problems or errors experienced during an electronic tariff submission should be reported to the ICC Chief Clerk's Office.

Section 290.70 Required Information

a) Tariffs submitted electronically shall consist of a letter of transmittal, tariff pages and work papers, if applicable. Letters of transmittal and tariff pages will be publicly viewable. Work papers will be viewable only by the public utility representatives that submitted the work papers and Staff. The work papers represent information the public utility believes is necessary to facilitate the understanding of the tariff submission.

b) The letter of transmittal shall contain the following information:

1) The name of the public utility on record with the ICC.

2) The tariff pages that are being changed.

3) A signature of a representative of the public utility.

c) The letter of transmittal and tariff pages shall contain the information required by, and, except for page size and hard copy form, shall be in the format prescribed by, 83 Ill. Adm. Code 255.30(a) through (l)(3).

d) The work papers, if applicable, shall:

1) Be submitted in a separate file from the letter of transmittal and tariff pages file.

2) Use the following naming convention for the work paper file: Company Name – Tariff – WP.

3) For each page heading of the work paper file, provide the following minimum information:

A) Public utility name;

B) Tariff name;

C) Sheet No.; and

D) WP (or Work Paper) page x of x.

4) Be retained by the ICC as confidential and proprietary in accordance with Section 4-404 of the Act.

Section 290.80 Submission of Tariffs Electronically

a) An authorized user must verify that the tariff documents submitted electronically do not contain personally identifiable information.

b) Upon submission of an electronic tariff, the electronic tariff filing system will provide the authorized user with a tracking number for the submission. The tracking number should be retained for any inquiries related to the submission.

c) An authorized user can locate and view electronic tariff submissions made by the account in the electronic tariff filing system by tracking number or date range. The entry for the tariff submission will indicate whether the submission is publicly viewable, the status of the submission (pending, accepted or rejected) and a description of the submission. An authorized user may also view all electronic tariff documents submitted on behalf of his or her public utility.

d) Submission of a tariff electronically does not constitute acceptance of the tariff. An electronically submitted tariff is deemed accepted when the Chief Clerk's Office designates the tariff as accepted on the electronic tariff filing system.

e) In order for an electronically submitted tariff to be considered filed on a particular date, it must be accepted by the ICC Chief Clerk's Office before 5:00 PM Central Time on that date. It is the responsibility of the public utility to ensure that its submission is made in such a manner that acceptance of the submission by the ICC Chief Clerk's Office for filing occurs on the date that is shown on the applicable tariff documents the public utility submitted for filing.

Section 290.90 Notification of Acceptance or Rejection of Tariff Submission

a) An authorized user will be able to create an e-mail notification list for each electronic tariff submitted. The user and any associated e-mail notification list will be notified automatically by email for each electronic tariff submission.

b) When an electronic tariff submission is accepted or rejected by the Chief Clerk's Office, an e-mail is sent to the user and the notification list for the tariff submission.

c) It is the responsibility of the public utility to monitor electronic tariff submissions and verify acceptance or rejection of the tariff.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Electronic Prescription Monitoring Program

2) Code Citation: 77 Ill. Adm. Code 2080

3)

Section Numbers:	Adopted Actions:
2080.20	Amendment
2080.190	Amendment
2080.210	Amendment
2080.230	Amendment
2080.320	New Section
2080.325	New Section

4) Statutory Authority: Implementing and authorized by Sections 316, 317, 318, 319, 320 and 321 of Article III of the Illinois Controlled Substances Act [720 ILCS 570/316, 317, 318, 319, 320 and 321].

5) Effective Date of Rules: September 13, 2017

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

7) Does this rulemaking contain incorporations by reference? Yes

8) A copy of the adopted rules, including any material incorporated, is on file in the Agency's principal office and is available for public inspection.

9) Notice of Proposal published in the *Illinois Register*: 41 Ill. Reg. 2322; February 24, 2017

10) Has JCAR issued a Statement of Objection to this rulemaking? No

11) Differences between Proposal and Final Version: Various grammatical and technical changes were made to Sections 2080.230 and 2080.325 since First Notice.

12) Have all changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? None were made.

13) Will this rulemaking replace an emergency rule currently in effect? No

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

14) Are there any rulemakings pending on this Part? No

15) Summary and Purpose of Rulemaking: This rulemaking affects the Electronic Prescription Monitoring Program (PMP) which is designed to control the abuse of Schedule II, III, IV and V retail dispensed drugs. These amendments establish the implementation and operational processes of the Illinois Controlled Substances Act (720 ILCS 570). Specifically, this rulemaking amends the definition section, certain criteria regarding personal information reports, how the Prescription Information Library is accessed and it designates other drugs which may be included on the schedule of controlled substances. The rulemaking also establishes both the Prescription Monitoring Program Advisory Committee and the Peer Review Subcommittee. The amendments are designed to enhance reporting of controlled substances in order to reduce medication shopping and substance abuse. The amendments will provide a more up to date resource for evaluating the need for opioid prescription medications and other controlled substances. This rulemaking will also assist the Department in providing the most up to date prescription information to prescribers and dispensers of controlled substances.

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

Tracie Drew, Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue East
Harris Building, 3rd Floor
Springfield IL 62762

217/785-9772

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

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

TITLE 77: PUBLIC HEALTH
CHAPTER X: DEPARTMENT OF HUMAN SERVICES
SUBCHAPTER e: CONTROLLED SUBSTANCES ACTIVITIES

PART 2080
ELECTRONIC PRESCRIPTION MONITORING PROGRAM

Section
2080.10 Authority
2080.20 Incorporation by Reference and Definitions
2080.30 General Description
2080.40 Official Triplicate Prescription Blanks (Repealed)
2080.50 Authorized Prescribers
2080.60 Application (Repealed)
2080.70 Schedule II, III, IV and V Drug Prescription Requirements
2080.80 Prohibited use of the Official Triplicate Prescription Blank (Repealed)
2080.90 Dispensing a Schedule II, III, IV or V Drug
2080.100 Dispenser Responsibility
2080.110 Partial filling of prescriptions (Repealed)
2080.120 Emergency situations (Repealed)
2080.130 Prescriptions from out-of-state prescribers and exempt Federal practitioners (Repealed)
2080.140 Exemptions for prescribers in hospitals and institutions (Repealed)
2080.150 Exemptions for long term care and home infusion services (Repealed)
2080.160 Exemptions for narcotic treatment programs (Repealed)
2080.170 Exemptions for research (Repealed)
2080.180 Investigatory and regulatory referrals (Repealed)
2080.190 Reports
2080.200 Prescriber and Dispenser Inquiry System
2080.210 Access to the Prescription Information Library (PIL)
2080.211 Other State Prescription Monitoring Authority Access
2080.220 Error Reporting
2080.230 Designated Controlled Substances and Other Selected Drugs
2080.240 Mid-Level Practitioners Prescriptive Authority Reporting
2080.250 Mailing of Controlled Substances
2080.320 Prescription Monitoring Program Advisory Committee (PMPAC)
2080.325 Peer Review Subcommittee

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

AUTHORITY: Implementing and authorized by Sections 316, 317, 318, 319, 320 and 321 of Article III of the Illinois Controlled Substances Act [720 ILCS 570/316, 317, 318, 319, 320 and 321].

SOURCE: Adopted at 10 Ill. Reg. 4497, effective March 3, 1986; amended at 17 Ill. Reg. 11424, effective July 6, 1993; amended at 20 Ill. Reg. 3107, effective February 2, 1996; recodified from the Department of Alcoholism and Substance Abuse to the Department of Human Services at 21 Ill. Reg. 9319; amended at 26 Ill. Reg. 3975, effective March 4, 2002; amended at 33 Ill. Reg. 17333, effective December 9, 2009; amended at 39 Ill. Reg. 6421, effective April 22, 2015; amended at 40 Ill. Reg. 3737, effective February 29, 2016; amended at 41 Ill. Reg. 11909, effective September 13, 2017.

Section 2080.20 Incorporation by Reference and Definitions

No incorporations by reference in this Part include any later amendments or editions. The definitions that apply to this Part are those found in the Act.

"Act" means the Illinois Controlled Substances Act [720 ILCS 570].

"Account" refers to the clinical entity that is providing direct patient care and is registered with the PMP to have access to patient specific data through the Prescription Information Library (PIL).

"Account Custodian" means the licensed healthcare professional whose registration may be used by other members of the healthcare group for access to the PIL.

"Birth Date" means medication recipient's birth date.

"Central Repository" means a place designated by the Department where Schedule II, III, IV and V drug data is stored or housed.

"Clinical Director" or "PMP Administrator" *means a Department of Human Services administrative employee licensed to either prescribe or dispense controlled substances who shall run the clinical aspects of the Department of Human Services Prescription Monitoring Program and its Prescription Information Library* [720 ILCS 570/102 (d-5)]. The Clinical Director may be assisted by a PMP Assistant Administrator.

"Controlled Substance" means a drug, substance, or immediate precursor in the Schedules of Article II of the Illinois Controlled Substances Act or a drug or other substance, or immediate precursor, designated as a controlled substance by DHS [720 ILCS 570/102(f)].

"DEA Number" means the United States Drug Enforcement Agency prescriber or dispenser registration number.

"Department" or "DHS" means the Illinois Department of Human Services, or its successor agency.

"DFPR" means the Illinois Department of Financial and Professional Regulation.

"Dispenser" means any practitioner or pharmacy that dispenses a controlled substance to an alternative user or research subject by or pursuant to the lawful order of a prescriber [720 ILCS 570/102(p) and (q)].

"DPH" means the Illinois Department of Public Health.

"EHR" means electronic health record.

"Electronic Device" means using a computer system to transmit prescriptions from a prescriber directly to a dispenser.

"Electronic Integration" means the process by which an entity with EHRs applies to have its EHRs integrated with the PMP.

"Exempt Prescribers in Hospitals and Institutions" means prescribers in hospitals or institutions licensed under the Hospital Licensing Act [210 ILCS 85] who authorize the administration or dispensing of Schedule II drugs within the hospital or institution, for consumption within the hospital or institution (e.g., controlled substance prescriptions when a prescriber does not maintain his or her own DEA and State controlled substance license, but prescribes based upon the institution's (hospital's) controlled substance license).

"Facsimile Equipment" means any device capable of sending or receiving facsimiles of documents through connection with a telecommunications network.

"Freestanding Clinic" means urgent care operations or outpatient surgery centers and similar operations that do not provide overnight in-house stays.

"Illinois Controlled Substances License Number" means the State license number issued by DFPR permitting prescribers to possess, prescribe or dispense, and permitting dispensers to possess and dispense, controlled substances in Illinois pursuant to the Controlled Substances Act (see 77 Ill. Adm. Code 3100).

"Illinois Healthcare License Number" means the license assigned by DPH to facilities designated to provide specific types or levels of healthcare.

"Licensed Healthcare Entity" means those operations that are licensed to provide health services by either DPH or DFPR.

"Licensed Healthcare Provider" means any individual who meets the professional licensing requirements and follows the standards set forth by DFPR and is authorized to prescribe or dispense controlled substances within Illinois.

"Licensed Professional Administrator" means the clinical director of the Prescription Monitoring Program, who must be licensed to either prescribe or dispense controlled substances.

"Medication Shopping" means the conduct prohibited under Section 314.5(a) of the Act.

"Mid-level Practitioner" means:

a physician assistant who has been delegated authority to prescribe through a written delegation of authority by a physician licensed to practice medicine in all of its branches, in accordance with Section 7.5 of the Physician Assistant Practice Act of 1987 [225 ILCS 95];

an advanced practice nurse who has been delegated authority to prescribe through a written delegation of authority by a physician licensed to practice medicine in all of its branches or by a podiatrist, in accordance with Section 65-40 of the Nurse Practice Act [225 ILCS 65]*; or*

an animal euthanasia agency.

"National Drug Code Identification Number" or "NDC Identification Number" means the number used to provide uniform product identification for all substances recognized as drugs in the United States Pharmacopoeia National Formulary, USP31-NF26 (US Pharmacopoeial Convention, 12601 Twinbrook Parkway, Rockville, Maryland 20852 (2013)).

"NCPDP Protocol" means the computing standards implemented by the National Council for Prescription Drug Programs.

"Patient ID" means the identification of the individual receiving the medication or the responsible individual obtaining the medication on behalf of the recipient or the owner of the animal. The standards for establishing patient ID for the purpose of proper filling of a prescription are established by Section 2080.70(d).

"Patient Location Code" means the location of the patient when receiving pharmacy services.

"Pharmacist-In-Charge" means the licensed pharmacist whose name appears on the pharmacy license and who is responsible for all aspects of the operation related to the practice of pharmacy.

"Pharmacy Shopping" means the conduct prohibited under Section 314.5(b) of the Act.

"PMIX Based Protocol" means industry and government standards used to facilitate and reduce the cost of participating and sharing the PMP information by requiring end-to-end security, standards based exchange services, common exchange data and metadata, and hub-to-hub capability.

"PMP Administrator" See definition of "Clinical Director".

"PMP Assistant Administrator" means an employee of the Department with a background in computer and business processes who operates under the designated, specific authority of the Clinical Director.

"Prescribed" means ordered by a prescriber verbally, electronically or in writing.

"Prescriber" means the healthcare professional that is authorized to prescribe medications as set forth in the various professional practices of the State of Illinois.

"Prescription Information Library" or "PIL" means an electronic library containing 12 months of controlled substance, retail, prescription *information* that is accessible only by prescribers and dispensers for patient treatment usage [720 ILCS 570/102(nn-5)].

"Prescription Monitoring Program" or "PMP" means the entity that collects, tracks, and stores reported data on controlled substances and select drugs [720 ILCS 570/102(nn-10)].

"Prescription Monitoring Program Advisory Committee" or "PMPAC" means a committee consisting of licensed healthcare providers representing all professions that are licensed to prescribe or dispense controlled substances. The committee serves in a consultant context regarding longitudinal evaluations of compliance with evidence based clinical practice and controlled substances. The committee makes recommendations regarding scheduling of controlled substances and recommendations concerning continuing education designed to improve the health and safety of the citizens of Illinois regarding pharmacotherapies of controlled substances.

"Push Reports" means the electronic exchange of patient specific health care information contained in electronic medical records from the PMP, without the requirement of the individual clinician having to "sign" into the PMP and request the patient information.

"Quantities of a Controlled Substance Dispensed" means the total of an NDC product dispensed whether it is in a solid unit such as a tablet or capsule, in a liquid unit such as milliliters, or in another unit as specified within the product identification.

"Recipient's Name" means the given or common name of a person who is the intended user of a dispensed medication. It may also mean the species or common name or common given name of an animal that is the intended user of a

dispensed medication. If an animal's name is entered, the owner's name is required also.

"RESTful Based Web Service" means a computing architectural style, consisting of a coordinated set of components, connectors and data elements within a distributed hypermedia system, in which the focus is on component roles and a specific set of interactions between data elements rather than implementation details. Its purpose is to induce performance, scalability, simplicity, modifiability, visibility, portability and reliability.

"Sample Trend Analysis" means the summary reports that look at utilization rates for specific classes of medications over time.

"Schedule Drug" means any substances listed in the federal Controlled Substances Act (21 USC 812) or the Illinois Controlled Substances Act [720 ILCS 570] or by the Department pursuant to its authority under Section 202 of the Illinois Controlled Substances Act [720 ILCS 570/202]. Schedule I, II, III, IV and V substances are listed in section 812 of the federal Controlled Substances Act (21 USC 812(b)(2), (b)(3), (b)(4), (b)(5) and (c)) and Sections 204, 206, 208, 210 and 212 of the Illinois Controlled Substances Act [720 ILCS 570/204, 206, 208, 210 and 212].

"Sex" means the medication recipient's gender.

"SOAP Based Web Service" means a messaging protocol that allows programs that run on disparate operating systems (e.g., Windows or Linux) to communicate using Hypertext Transfer Protocol (HTTP) and its Extensible Markup Language (XML).

(Source: Amended at 41 Ill. Reg. 11909, effective September 13, 2017)

Section 2080.190 Reports

a) For the purpose of intervention to prevent misuse, a prescriber or dispenser may request that reports about his or her patients be sent to them via a secure method if a patient meets the current PMP indications of potential misuse criteria set forth by the PMPAC.

b) A personal information report of a patient's prescription profile may be obtained if:

1) The patient, parent or guardian completes a notarized request; and

2) The patient, parent or guardian submits the notarized request by mail to the PMP at:

Illinois Prescription Monitoring Program
401 North 4th Street, First Floor
Springfield, Illinois 62702

c) *When a person has been identified as having 3~~6~~ or more prescribers or 3~~6~~ or more pharmacies, or both, that do not utilize a common electronic file as specified in Section 20 of the Pharmacy Practice Act* [225 ILCS 85] *for controlled substances within the course of a continuous 30-day period, the PMP may issue an unsolicited report to the prescribers informing them of the potential medication shopping* [720 ILCS 570/314.5(d)]. The individual prescriber's judgment determines what actions, if any, he or she should take upon receipt of the unsolicited 3-3-1~~6-6-1~~ reports.

d) *The PMP is authorized to develop operational push reports to entities with compatible electronic medical records* [720 ILCS 570/318(n)]. The push report will only include information for patients that are in the PMP organization's electronic medical record (EMR). It is the responsibility of the entity to keep the access to this confidential patient information secure. These entities must:

1) Meet and maintain the PMP's current security standards prior to the electronic transfer of information from the PMP to its respective EMR;

2) Be a licensed healthcare entity; and

3) Only use this confidential patient information for the treatment of the relevant patient.

e) Technical error and administrative function reports needed to determine that the records are received and maintained in good order may be used.

f) Sample trend analysis reports may be prepared extemporaneously by PMP staff. The disposition of all extemporaneous reports shall be at the discretion of the licensed, professional administrator of the PMP.

g) Authorized persons listed in this subsection may request information from the PMP.

1) Official inquiries must be from any one of the following:

A) DFPR;

B) An investigator from the Illinois Consumer Protection Division of the Office of the Attorney General; or

C) A law enforcement officer.

2) Inquiries must be submitted in writing and demonstrate that:

A) *The applicant has reason to believe that a violation under State or federal law that involves a controlled substance by an individual has occurred; and* [720 ILCS 570/318(e)(1)]

B) *The requested information is reasonably related to the investigation of the individual, adjudication, or prosecution of the violation.* [720 ILCS 570/318(e)(2)]

3) The Department may impose a fee for the cost of generating and furnishing the requested information.

h) Any other reports concerning the information received from dispensers shall only be prepared at the direction of the Clinical Director~~Manager, Bureau of Pharmacy and Clinical Support Services,~~ or successor administrator who meets the statutory requirements. *The information described in subsection* (g) *may not be released until it has been reviewed by an employee of the Department who is licensed as a prescriber or a dispenser and until that employee has certified that further investigation is warranted* [720 ILCS 570/318(g)].

i) As directed by the PMPAC and the Clinical Director for the PMP, aggregate data

that does not indicate any prescriber, practitioner, dispenser, or patient may be used for clinical studies under Article VIII, Part 21 of the Code of Civil Procedure [735 ILCS 5/Art. VIII, Part 21] (Medical Studies).

(Source: Amended at 41 Ill. Reg. 11909, effective September 13, 2017)

Section 2080.210 Access to the Prescription Information Library (PIL)

~~a)~~ ~~Medical prescribers or dispensers may utilize the PIL for patient care after obtaining authorization from the PMP.~~

a~~b~~) Any entity choosing to undergo electronic integration should do so using the process in this subsection (a).~~*A hospital emergency department or a freestanding healthcare facility providing healthcare to walk-in patients may obtain, for the purpose of improving patient care, a unique identifier for each shift to utilize the PIL system* [720 ILCS 570/318(o)]. It is the responsibility of the hospital emergency department or the freestanding clinic to secure access to the system so that only licensed healthcare providers with HIPAA training can view those materials. The security shall be both electronic and physical. Misuse by the account (security failures) will be handled as any other case of HIPAA violation (see 42 USC 1320 et seq.).~~

1) The entity shall email dhs.pmp@illinois.gov to request the Automated Connection Guide (ACG) and shall review its contents once the ACG is received.

A) The ACG describes the electronic message exchange processing flow and provides all the technical specifications for the transaction.

B) The entity shall share the ACG with its EHR vendor and its information technology support team to begin work to prepare for the electronic integration.

2) The entity shall determine its connectivity to the PMP for electronic integration.

A) The PMP Automated Connection supports two connectivity options. The entity must use one of the following connectivity options:

i) a SOAP based web service that uses a PMIX based protocol; or

ii) a RESTful based web service that uses the NCPDP protocol.

B) The entity shall complete the Meaningful Use Registration of Intent with the Illinois Department of Public Health (https://murs.illinois.gov). Once the Meaningful Use Registration of Intent is completed, the PMP will arrange a connectivity consultation with the entity.

3) The PMP will set up a secure, HIPAA compliant electronic integration testing environment during the connectivity determination process for use to test transactions. This testing environment shall be used by the entity to test transactions before moving to production.

4) Following successful testing, the connection is ready to be activated. The PMP will activate the production environment for the entity's use in exchanging transactions and the electronic integration process is complete.

A) The participating entities must maintain both electronic and physical security of the information.

B) Security failures or misuse of the account will be handled as any other case of HIPAA violation pursuant to 42 USC 1320 et seq.

b) Medical prescribers or dispensers or their authorized designee may utilize the PIL for patient care after obtaining authorization from the PMP.

c) Only the following licensed healthcare professionals shall serve as an authorized designee for a prescriber or dispenser for office or pharmacy practice sites:

1) registered nurse;

2) licensed practical nurse;

3) pharmacy technician;

4) student pharmacist; or

5) certified medical assistant.

d) The prescriber or dispenser shall only have up to three designees.

e) The prescriber and dispenser shall register the designees and must also agree to the terms and conditions for designees.

f) Each designee shall have an individual account that must be linked to the prescriber or dispenser.

g) PMP staff shall verify the following information about each designee:

1) license/certification number;

2) employer's phone number and address; and

3) work email address. If no work email is available, PMP staff shall contact the prescriber or dispenser to verify the designee.

h) PMP shall send out a notice for the prescriber or dispenser to ensure continued employment of their designees. If the designee is no longer employed with the prescriber or dispenser, the prescriber or dispenser shall terminate the designee's access to the PMP by locking the designee's account or by notifying the PMP that the designee's account should be locked.

i~~c~~) A user may only access the PIL for a patient's medical treatment.

j~~d~~) Department staff shall develop, modify and maintain data files of the PIL.

k~~e~~) PIL users are ultimately responsible for any usage of their authorization credentials.

l~~f~~) In order to expedite the approval and oversight of PIL applicants and users, the PIL must be managed by a licensed dispenser.

m~~g~~) PIL staff determine if a PIL user applicant may become a PIL user by using the following criteria:

1) Applicant's first and last name;

2) Pharmacy, clinic or office street address, city, state and zip code;

3) DEA number;

4) For a pharmacist's application, the pharmacy DEA number;

5) Illinois prescriber or dispenser license number; and

6) Business telephone number.

n~~h~~) PIL staff determine if a PIL user applicant may become a PIL group user by applying the following criteria:

1) The prescriber or dispenser who will be the account's custodian shall provide the following information:

A) First and last name;

B) DEA number;

C) National Provider Identifier (NPI) number;

D) Illinois prescriber or dispenser license number; and

E) Business telephone number;~~.~~

2) Hospital emergency department's or freestanding clinic's street address, city, state and zip code;

3) The pharmacist-in-charge (PIC) as the central user of the hospital pharmacy; and

4) A listing of all users with the following information:

A) First and last name; and

B) Illinois healthcare license number.

o~~i~~) The ~~PIL PMP~~ Clinical Director or designee shall~~will~~ review user applications that are unusual and render a professional decision as to whether access shall be granted.

p~~j~~) The PMP Assistant Administrator shall~~PIL manager will~~ review the user access log for any unusual or improper activity by a user.

q~~k~~) The Clinical Director or his or her designee shall~~PIL manager will~~ directly monitor the development, modification and/or expansion of the PIL.

(Source: Amended at 41 Ill. Reg. 11909, effective September 13, 2017)

Section 2080.230 Designated Controlled Substances and Other Selected Drugs

For tracking purposes, the Department, upon recommendation of the PMPAC, may designate and list drugs, other substances and immediate precursors as:

a) A Schedule I if the Department finds that:

1) *the substance has high potential for abuse; and*

2) *the substance has no currently accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision* [720 ILCS 570/203].

b) A Schedule II if the Department finds that:

1) *the substance has high potential for abuse;*

2) *the substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and*

3) *the abuse of the substance may lead to severe psychological or physiological dependence* [720 ILCS 570/205].

c) A Schedule III if the Department finds that:

1) *the substance has a potential for abuse less than the substances listed in Schedules I and II;*

2) *the substance has currently accepted medical use in treatment in the United States; and*

3) *abuse of the substance may lead to moderate or low physiological dependence or high psychological dependence* [720 ILCS 570/207].

d) A Schedule IV if the Department finds that:

1) *the substance has a low potential for abuse relative to substances in Schedule III;*

2) *the substance has currently accepted medical use in treatment in the United States; and*

3) *abuse of the substance may lead to limited physiological dependence or psychological dependence relative to the substances in Schedule III* [720 ILCS 570/209].

e) A Schedule V if the Department finds that:

1) *the substance has low potential for abuse relative to the controlled substances listed in Schedule IV;*

2) *the substance has currently accepted medical use in treatment in the United States; and*

3) *abuse of the substance may lead to limited physiological dependence or psychological dependence relative to the substances in Schedule IV, or the substance is a targeted methamphetamine precursor as defined in the Methamphetamine Precursor Control Act* [720 ILCS 648]. [720 ILCS 570/211]

f) Other Selected Drugs, including:

1) those medications that may contribute to clinical reviews of scheduled medications;

2) those medications determined to need additional monitoring or to assist in facilitating medication optimization and utilization; and

3) the dispensing of Naloxone for opioid overdose prevention.

(Source: Amended at 41 Ill. Reg. 11909, effective September 13, 2017)

Section 2080.320 Prescription Monitoring Program Advisory Committee (PMPAC)

A Prescription Monitoring Program Advisory Committee is established to aid in the implementation of the PMP and to advise the Clinical Director on the professional performance of prescribers and dispensers and other matters relevant to the PMPAC's field of competence.

a) The Clinical Director shall appoint the members of the PMPAC with the approval of the Secretary of the Department of Human Services.

b) The PMPAC shall consist of the following:

1) the Clinical Director who shall serve as the chairperson of the PMPAC;

2) four physicians licensed to practice medicine in all of its branches;

3) three pharmacists;

4) one dentist;

5) one podiatric physician;

6) one optometrist;

7) one advanced practice nurse; and

8) one physician assistant.

c) The PMPAC shall:

1) evaluate and recommend changes to the Illinois Controlled Substances Act [720 ILCS 570];

2) evaluate and recommend changes to the Administrative Rules regarding the PMP;

3) recommend inclusions of training materials for prescribers and dispensers regarding Continuing Medical Education and Continuing Education programs;

4) at least on a quarterly basis, review the contents of the Illinois Prescription Monitoring Program website (ilpmp.org) to ensure that the contents are current;

5) at least on a quarterly basis, review opportunities for federal grants and other forms of funding to support projects to increase the number of EHRs integrating seamlessly to the PMP; and

6) at least on a quarterly basis, review and prepare any communication to be sent to all registered users of the system relevant to prescribing and dispensing of controlled substances.

(Source: Added at 41 Ill. Reg. 11909, effective September 13, 2017)

Section 2080.325 Peer Review Subcommittee

The PMPAC is authorized to have a standing subcommittee. This subcommittee shall be a five member peer review subcommittee. The peer review subcommittee shall advise the PMP on matters relating to the advisory committee's field of competence, establish a formal peer review

of professional performance of prescribers and dispensers, and develop communications to transmit to prescribers and dispensers. The deliberations, information and communications of the peer review subcommittee are privileged and confidential and shall not be disclosed in any manner except in accordance with the Act.

a) The Clinical Director shall appoint the five members of the peer review subcommittee.

b) The peer review subcommittee shall consist of the following:

1) three physicians of the PMPAC; and

2) two pharmacists of the PMPAC.

c) Technical advisors from State medical and pharmacy schools with no voting authority may be appointed to the peer review subcommittee to aid the voting members on an as needed basis.

d) The peer review subcommittee shall meet, at a minimum, quarterly. The scheduling of these meetings should be set to allow the meetings to occur the month prior to the publicly scheduled meeting of the PMPAC.

e) The peer review subcommittee shall periodically review the data contained within the prescription monitoring program to identify those prescribers or dispensers who may be prescribing or dispensing outside the currently established professional standards for the prescriber's or dispenser's field of practice and for the type of medication (e.g., opioids) or type of care (e.g., hospice) applicable to the prescription under review.

f) The peer review subcommittee shall identify prescribers or dispensers who may be prescribing outside of the currently accepted medical standards in the course of their professional practice and send the identified prescriber or dispenser a request for information regarding his or her prescribing or dispensing practices. A prescriber or dispenser shall have 30 days to respond to the request for information.

g) The peer review subcommittee shall refer a prescriber or dispenser to the Department of Financial and Professional Regulation:

1) if a prescriber or dispenser does not respond to three successive requests for information;

2) if, in the opinion of a majority of members of the peer review subcommittee, the prescriber or dispenser does not have a satisfactory explanation for the practices identified by the peer review subcommittee or the prescriber or dispenser does not have a satisfactory explanation for the practices identified by the peer review subcommittee in its request for information; or

3) if, following communications with the peer review subcommittee, the prescriber or dispenser does not sufficiently rectify the practices identified in the request for information in the opinion of the majority of the members of the peer review subcommittee.

h) The peer review subcommittee shall prepare an annual report starting on July 1, 2017. The report shall contain the following information:

1) the number of times the peer review subcommittee was convened;

2) the number of prescribers or dispensers who were reviewed by the peer review subcommittee;

3) the number of requests for information sent out by the subcommittee; and

4) the number of prescribers or dispensers referred to the Department of Financial and Professional Regulation.

i) The following process shall be followed to allow PMP data to be publicly disseminated:

1) all data formats considered for dissemination shall be presented to the peer review subcommittee by its chairperson;

2) all deliberations shall be recorded to ensure accuracy of the minutes for each meeting;

3) Based upon the deliberations of the peer review subcommittee regarding the data to be disseminated, a summary report shall be written by the chairperson and forwarded to the General Counsel for review and approval of dissemination by the General Counsel, Chief of Staff and Secretary.

4) Official direction for the final processing and/or dissemination of the data will be sent via the General Counsel, Chief of Staff or Secretary's office to the chairperson of the PMPAC peer review subcommittee who will then disseminate the data accordingly.

(Source: Added at 41 Ill. Reg. 11909, effective September 13, 2017)

ILLINOIS DEPARTMENT OF MILITARY AFFAIRS

NOTICE OF ADOPTED RULES

1) Heading of the Part: Illinois Manual for Court-Martial and Nonjudicial Punishment

2) Code Citation: 95 Ill. Adm. Code 400

3)

Section Numbers:	Adopted Actions:
400.100	New Section
400.105	New Section
400.110	New Section
400.115	New Section
400.120	New Section
400.125	New Section
400.130	New Section
400.200	New Section
400.205	New Section
400.210	New Section
400.215	New Section
400.220	New Section
400.225	New Section
400.230	New Section
400.300	New Section
400.305	New Section
400.400	New Section
400.405	New Section
400.410	New Section
400.415	New Section
400.420	New Section
400.425	New Section
400.500	New Section
400.505	New Section
400.510	New Section
400.515	New Section
400.520	New Section
400.525	New Section
400.530	New Section
400.535	New Section
400.540	New Section
400.545	New Section
400.600	New Section
400.605	New Section

ILLINOIS DEPARTMENT OF MILITARY AFFAIRS

NOTICE OF ADOPTED RULES

400.610	New Section
400.615	New Section
400.620	New Section
400.625	New Section
400.630	New Section
400.635	New Section
400.640	New Section
400.645	New Section
400.650	New Section
400.655	New Section
400.660	New Section
400.665	New Section
400.670	New Section
400.675	New Section
400.680	New Section
400.685	New Section
400.690	New Section
400.695	New Section
400.700	New Section
400.705	New Section
400.710	New Section
400.715	New Section
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400.725	New Section
400.730	New Section
400.735	New Section
400.800	New Section
400.805	New Section
400.810	New Section
400.815	New Section
400.820	New Section
400.825	New Section
400.830	New Section
400.835	New Section
400.840	New Section
400.845	New Section
400.850	New Section
400.855	New Section
400.860	New Section

ILLINOIS DEPARTMENT OF MILITARY AFFAIRS

NOTICE OF ADOPTED RULES

400.865	New Section
400.870	New Section
400.875	New Section
400.880	New Section
400.900	New Section
400.905	New Section
400.1000	New Section
400.1005	New Section
400.1010	New Section
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400.1020	New Section
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400.1330	New Section
400.1335	New Section
400.1340	New Section
400.1345	New Section
400.APPENDIX A	New Section

4) Statutory Authority: 20 ILCS 1807

5) Effective Date of Rules: September 14, 2017

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

7) Does this rulemaking contain incorporations by reference? Yes

8) A copy of the adopted rules, including material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.

9) Notice of Proposal published in the *Illinois Register*: 41 Ill. Reg. 5153; May 19, 2017

10) Has JCAR issued a Statement of Objection to this rulemaking? No, as modified by agreement.

11) Differences between Proposal and Final Version: Differences are as follows. Section 400.525(b) substituted the words "are paramount" with "would override going." Section 400.810 added the word "that" after the word "record." Section 400.1030(a) added a cross-reference to NGIL Regulation 27-10 with respect to The Adjutant General's procedure to forward a court-martial to a different convening authority to act on findings or sentence, if necessary. Section 400.1100 deleted subsection (b); renamed subsections (c) and (d) as subsections (b) and (c), respectively; subsection (c)(17)(B) substituted "(c)(17)" for "(a); subsection (c)(26) changed "(c)(25)" to (c)(26)"; subsection (c)(33) added "(see subsection (c)(35)" after the word "lookout" and changed "111" to "112"; subsection (c)(34)(A), subsection (c)(34)(B), subsection (c)(34)(B)(ii) and subsection (c)(34(B)(iii) changed "(d)(32)" to "(c)(34)".

12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

13) Will this rulemaking replace emergency rules currently in effect? Yes

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14) Are there any rulemakings pending on this rulemaking? No

15) Summary and Purpose of Rulemaking: These rules establish procedures for Illinois State Military Forces to conduct courts-martial and non-judicial punishment proceedings under the Illinois Code of Military Justice.

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

Illinois Department of Military Affairs
Office of the Staff Judge Advocate
Col (Ret) Robert C. Roth
1301 N. MacArthur Blvd.
Springfield IL 62702

217/761-3366/3515
email: robert.c.roth.nfg@mail.mil

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

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CHAPTER II: DEPARTMENT OF MILITARY AFFAIRS

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400.105 Definitions and Referenced Materials
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400.115 Jurisdiction to Try Certain Personnel
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400.APPENDIX A Table of Maximum Punishments

AUTHORITY: Implementing and authorized by the Illinois Code of Military Justice [20 ILCS 1807].

SOURCE: Adopted by first emergency rulemaking at 41 Ill. Reg. 3214, effective March 2, 2017, for a maximum of 150 days; emergency expired July 29, 2017; adopted by second emergency rulemaking at 41 Ill. Reg. 5459, effective May 8, 2017, for a maximum of 150 days; adopted at 41 Ill. Reg. 11931, effective September 14, 2017.

SUBPART A: GENERAL PROVISIONS

Section 400.100 Introduction

a) This Part, the Illinois Manual for Courts-Martial, referenced in this Part as the Manual, shall be construed to secure simplicity in procedure, fairness in administration, and elimination of unjustifiable expense and delay. The purpose of military law is to promote justice, to maintain good order and discipline, to promote efficiency and effectiveness in the military, and to strengthen the security of the United States and the State of Illinois. This Manual prescribes the policies and procedures pertaining to the administration of military justice and implements

the Illinois Code of Military Justice [20 ILCS 1807] (the Code), applicable portions of the federal Uniform Code of Military Justice (UCMJ), and the Manual for Courts-Martial, United States (2012) (MCM).

b) To the extent allowed by Illinois law and as prescribed by the Code, this Manual reflects the MCM. Hence, this Manual must be construed so as to make it uniform, so far as practical, with the MCM. This Manual will be interpreted to include procedures and forms (e.g., DD Form 458, Charge Sheet) contained in the MCM and not contained in this Manual that may be needed from time-to-time in the administration of justice.

c) Insofar as any reference to the United States, President, or other federal official exists in the MCM, that reference encompasses the State, the Governor or State official, as appropriate.

d) Code Section 36 vests the Adjutant General of Illinois with the authority to make or adopt rules and regulations (this Manual) in conformity with the Code that, as nearly as practicable, must conform with the rules and regulations governing the U.S. armed forces. If this Manual differs from the rules and regulations governing the U.S. armed forces, this Manual shall apply.

e) There is no substitute for strong and effective military leadership. Commanders, officers, and non-commissioned officers should not attempt to replace leadership with military justice and punitive measures, except as a last resort and as punishment for offenses that have been committed. Proper leadership, guidance and counseling can be effective in preserving good order and discipline within the State military forces (SMF) and should reduce the need for use of the military justice system.

Section 400.105 Definitions and Referenced Materials

a) Definitions. Except as modified in this Manual, the definitions and rules of construction in RCM 103, as incorporated by reference in subsection (b), apply to courts-martial under the Code and this Manual.

"Accuser" means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused. (Code Section 1(a)(1))

"AGR" means Active Guard Reserve.

"ANG" means the Illinois Air National Guard.

"Appropriate Nonpunitive Administrative Measures" means such actions as reprimands, administrative reduction in rank, administrative separation from SMF, etc.).

"ARNG" means the Illinois Army National Guard.

"Cadet" or "Candidate" means a person who is enrolled in or attending a State military academy, a regional training institute, or any other formal education program for the purpose of becoming a commissioned officer in the State military forces. (Code Section 1(a)(2))

"Classified Information" means:

> *any information or material that has been determined by an official of the United States or any state pursuant to law, an Executive Order, or regulation to require protection against unauthorized disclosure for* reasons *of national or State security; and*
>
> *any restricted data, as defined in section* 2014*(y) of the Atomic Energy Act of 1954 (42 USC 2014(y)).* (Code Section 1(a)(3))

"Code" means the Illinois Code of Military Justice [20 ILCS 1807].

"Commander" or *"Commanding Officer"*, for purposes of this Part, means a commissioned or warrant officer who, by virtue of his or her or grade and assignment, exercises primary command authority over a military unit or organization recognized as a command. This term includes active duty and SMF commanders, whether in a Title 10 (U.S. Military) or Title 32 (National Guard) status, of installations or schools when a member's SMF commander is not also at the installation or school. This term *shall include officers in charge only when* they are *administering nonjudicial punishment* under Subpart K. (Code Section 1(a)(5))

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"Convening Authority" includes, in addition to the person who convened the court, a commissioned officer commanding for the time being or a successor in command to the convening authority. (Code Section 1(a)(6))

"Day" means a calendar day beginning at 0000 hours (12:00 a.m.) and ending at 2359 hours, 59 seconds (11:59, 59 seconds p.m.). Any punishment authorized by this Manual that is measured in terms of days shall, when served in a status other than annual field training, be construed to mean succeeding duty days. (Code Section 1(a)(7))

"Declination to Prosecute" or "Declination to Further Prosecute" is a written statement that, in the opinion of the appropriate civil authority:

there is insufficient evidence to prove guilt beyond a reasonable doubt; or

the offense does not otherwise merit prosecution or further prosecution and states the basis for that opinion.

"Department" or "DMA" means the Illinois Department of Military Affairs.

"Derivative Evidence" means facts, information or physical objects that tend to prove an issue in a court-martial, but that are excluded from consideration by the trier of fact because they were learned directly from information illegally obtained.

"Duty Status Other Than State Active Duty" or "OTAD" *means any other type of military duty or training pursuant to a written order issued under* 32 USC, *or traditional Inactive Duty Training periods pursuant to 32 USC 502(a).* (Code Section 1(a)(8)) It does not include "active duty" under 10 USC, i.e., "full-time duty in the active military service of the United States".

"Enlisted Member" means a person in an enlisted grade.

"ETS" means expiration of term of service.

"Government" means the U.S. Government or the State of Illinois or, in a trial setting, the trial counsel or the prosecution, as the context indicates.

"IDT" means inactive duty training.

"Judge Advocate" means a commissioned officer of the organized State military forces who is a member in good standing of the bar of the highest court of a state, and is:

> *certified or designated as a judge advocate in the Judge Advocate General's Corps of the Army, Air Force, Navy or Marine Corps, or designated as a law specialist as an officer of the Coast Guard, or a reserve or National Guard component of one of these; or*
>
> *certified as a non-federally recognized judge advocate by the senior judge advocate of the commander of the force in the SMF of which the accused is a member, as competent to perform such military justice duties required by the Code. If there is no such judge advocate available, then certification may be made by such senior judge advocate of the commander of another force in the SMF, as the convening authority directs.* (Code Section 1(a)(10))

"MCM" means the Manual for Courts-Martial, United States referenced in subsection (b).

"Manual" means this Part, the Illinois Manual for Courts-Martial and Nonjudicial Punishment.

"Member" means a member of the State Military Force.

"Members of His or Her Command" refers to the assigned members of the unit or organization commanded, and to other members who are on temporary duty with, or otherwise attached to, the unit or organization. Attachment orders are not necessary if the commander exercises the usual responsibilities and attributes of command over the member.

"Military Court" means a court-martial or a court of inquiry. (Code Section 1(a)(12))

"Military Judge" means an official of a general or special court-martial detailed in accordance with Code Section 26. (Code Section 1(a)(13))

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"Military Offenses" means those offenses proscribed under Code Section 1(a)(14), the Code and Subpart J of this Manual.

"National Guard Bureau" or "NGB" means the channel of communications on all matters pertaining the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States between Department of the Army, the Department of the Air Force, and the several states. (10 USC 10501(b))

"National Security" means the national defense and foreign relations of the United States. (Code Section 1(a)(15))

"NGIL-JA" means the Illinois National Guard Office of the Staff Judge Advocate.

"Nonjudicial Punishment" or "NJP" means action under Code Section 15 and Subpart K of this Manual.

"Officer" means a commissioned or warrant officer. (Code Section 1(a)(16))

"Officer in Charge" means a member of the Navy, the Marine Corps, or the Coast Guard designated as the officer in charge by the appropriate authority. (Code Section 1(a)(17))

"Principal Assistant" means a commissioned officer of the State military forces serving in a position immediately subordinate to the convening authority who would assume command in the event of the commander's death, prolonged absence, or disability, or to the vice-commander of the organization. However, in the case of the Air National Guard, the principal assistant may include an officer who is not "air rated" (as defined in the applicable service regulation pertaining to commanders) and is serving in a position immediately subordinate to the convening authority. Any delegation of authority to a "principal assistant" shall be in writing, unless exigencies prevent such written delegation. Verbal authorization shall be reduced to writing as soon as possible.

"Record", when used in connection with the proceedings of a court-martial, means:

an official written transcript, written summary, or other writing relating to the proceedings; or

an official audiotape, videotape, digital image or file, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced. (Code Section 1(a)(18))

"Senior Force Judge Advocate" means the senior judge advocate of the commander of the same force of the SMF as the accused and who is that commander's chief legal advisor. (Code Section 1(a)(22))

"SMF" means the State military forces subject to the Illinois Code of Military Justice.

"State", when not capitalized, means *one of the several states, the District of Columbia, the Commonwealth of Puerto Rico, Guam or the U.S. Virgin Islands.* (Code Section 1(a)(20)) When capitalized "State" means the State of Illinois.

"State Active Duty" means active duty in the SMF under an order of the Governor or the Adjutant General, or otherwise issued by authority of State law and paid by State funds.

"State Military Forces" or "SMF" means the Illinois *National Guard and any other military force organized under the Constitution and laws of* Illinois. This includes *the Illinois State Guard when*:

organized by the Governor as Commander-in-Chief under the Military Code of Illinois and the Illinois State Guard Act;

not in a status subjecting those forces *to* the *exclusive jurisdiction of* the UCMJ; and

traveling *to and from duty*. *(Code Section 1(a)(23))*

"Superior Commissioned Officer" means a commissioned officer superior in rank or command. (Code Section 1(a)(24))

"Uniform Code of Military Justice" or "UCMJ" means 10 USC 801 et seq.

b) Referenced Materials

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1) The Constitution of the State of Illinois; Article XII (Militia)

2) Illinois Statutes:

Appellate Court Act [705 ILCS 25]

Code of Civil Procedure of 1963 [735 ILCS 5]

Code of Criminal Procedure [725 ILCS 5]

Criminal Code of 2012 [720 ILCS 5]

Firearm Owners Identification Card Act (FOID Act) [430 ILCS 65]

Freedom of Information Act [5 ILCS 140] (FOIA)

Illinois Code of Military Justice [20 ILCS 1807] (the Code)

Military Code of Illinois [20 ILCS 1805]

State Finance Act [30 ILCS 105]

State Guard Act [20 ILCS 1815]

3) Illinois Materials:

Illinois Rules of Evidence (http://www.illinoiscourts.gov/SupremeCourt/Evidence/Evidence.asp)

4) Federal Statutes:

Armed Forces (10 USC)

Atomic Energy Act of 1954 (42 USC 2014)

Controlled Substances Act (21 USC 812).

Criminal laws of the United States (18 USC and other non-military federal criminal laws)

National Guard (32 USC)

Uniform Code of Military Justice (10 USC 801 et seq.) (UCMJ)

3) Incorporations by Reference

A) The following materials are incorporated by reference:

Federal Rules of Evidence, United States Supreme Court (2017), www.rulesofevidence.org.

Manual for Courts-Martial, United States (2012 Edition) (MCM) (jsc.defense.gov/Portals/99/Documents/MCM2012.pdf)

Part II: Rules for Courts-Martial (2012 Edition) (RCM)

Part III: Military Rules of Evidence (2012 Edition)

Appendix 3: Department of Defense Directive 5525.7 (Implementation of the Memorandum of Understanding Between the Department of Justice and the Department of Defense Relating to the Investigation and Prosecution of Certain Crimes)

B) This subsection (b)(3) incorporates no later amendments or editions.

Section 400.110 Persons Subject to the Code; Jurisdiction

a) General Statement. No person may be punished under the Code for any offense provided for in the Code, unless there is jurisdiction over the person and jurisdiction over the offense.

b) Jurisdiction Over the Person. There is jurisdiction over the person if, at both the time the offense was committed and the time of trial, that person:

1) *is a member of the SMF*; and

2) is, for a *day or a portion of a day, in State Active Duty status or OTAD, and at no other times*. (Code Section 2(a))

c) Jurisdiction Over the Offense. Subject matter jurisdiction is established if the person:

1) commits a military offense as defined in Code Section 1(a)(14); or

2) commits an offense not in Code Section 1(a)(14) (non-military offense) that is in violation of either the Code or the criminal law of the state in which it was committed, or that of the United States; and

A) the appropriate civil authority has provided the NGIL-JA a declination to prosecute; or

B) a civil court of competent jurisdiction has dismissed the charge, and the appropriate civil authority has provided the NGIL-JA a declination to further prosecute, provided jeopardy has not attached.

d) Persons Assigned and Attached to Other Commands. For jurisdiction issues based on assignment or attachment, each service component shall refer to the current service component guidance, including regulations and policy directives. Prior to the initiation of any military justice action, the judge advocate will ensure that the commander will resolve any military justice authority issue regarding assigned or attached personnel.

Section 400.115 Jurisdiction to Try Certain Personnel

a) Jurisdiction Over the Person

1) The following persons are subject to jurisdiction under the Code:

A) a member of the SMF when in State active duty or OTAD, but at no other times;

B) a person in custody of the SMF before trial or serving a sentence imposed by a court-martial;

C) a person who has voluntarily enlisted in the SMF and who has the capacity to understand the significance of enlisting in the SMF. The enlistment shall be valid for purposes of jurisdiction and a change of status from civilian to member of the SMF. This form of jurisdiction shall be effective upon the taking of the oath of enlistment; and

D) notwithstanding any other provision of law, a person serving in the SMF who:

i) submitted voluntarily to military authority;

ii) met the mental competence and minimum age qualifications of 10 USC 504 and 505 at the time of voluntary submission to military authority;

iii) received military pay or allowances; and

iv) performed military duties.

2) A person remains subject to this Manual until the person's active status has been terminated in accordance with the law of the armed forces (10 USC) and the Military Code of Illinois [20 ILCS 1805] or the State Guard Act [20 ILCS 1815] and any of the applicable regulations of the National Guard Bureau or of that person's active component service, unless termination of status has been effectuated through the person's fraudulent activity. If a person is charged and found guilty at court-martial of fraudulently obtaining discharge, Code Section 3 applies and the person may thereafter be charged for all offenses that were committed under the Code prior to the discharge, subject to the statute of limitations provided for in Code Section 43.

3) The Adjutant General may, without the member's consent, order a member of the SMF to State Active Duty for the purposes of implementing any proceedings initiated under the Code.

4) *No person who has deserted from the* SMF *may be relieved from amenability to the jurisdiction of* the *Code by virtue of a separation from any later period of service*. (Code Section 3(b))

b) Subject Matter Jurisdiction

1) Military Offenses. Offenses of a military nature contained in Code Section 1(a)(14) may be the subject of administrative measures, nonjudicial punishment, or courts-martial jurisdiction, except as provided in subsection (b)(2). Offenses of a military nature are derived from the UCMJ and, to the extent not inconsistent with the Code, this Manual reflects each element of the offense as described in the UCMJ, with the following clarifications:

A) Insofar as an element refers to the United States, the element also will refer to the State of Illinois.

B) Insofar as an element refers to individuals in the service of the United States or federal officials, the element also will include individuals in the service of the SMF or State officials as provided Code Sections 1(a)(14) and 88.

C) Insofar as an element refers to the property of the United States, the element also will include property of the State of Illinois.

2) Non-military Offenses

A) A non-military offense is an offense that *violates the Code and the criminal law of the United States, a state or a local jurisdiction.* (Code Section 2(b)) Non-military offenses may be disposed of by nonjudicial punishment or courts-martial, provided jurisdiction exists under the Code and this Manual. Non-military offenses may be subject to prosecution under U.S., state or local jurisdiction (see Code Sections 133, 134 and/or 149).

B) *A proper civilian court has primary jurisdiction when an act or omission violates both the Code and the criminal law* of the United States or of the state where the offense occurred. In such cases, *a State court-martial* or NJP proceeding *may be initiated only after*

the civilian authority has declined to prosecute or has dismissed charges, provided jeopardy has not attached, as provided in Section 400.835. (Code Sections 2(b) and 44) However, nothing in this Manual precludes a commander from taking administrative action even if the civilian authority exercises jurisdiction. Administrative remedies shall not be considered double jeopardy.

C) An SMF member who is subject to jurisdiction under the Code may be ordered to duty involuntarily for any purposes under this Manual or the Code.

D) Coordination with the Attorney General or other appropriate prosecutorial authorities is essential to ensure that judge advocates prosecute with the cooperation of the local State's Attorney. A commander shall refer all suspected civilian offenses to a judge advocate who shall coordinate with the proper authorities when appropriate.

Section 400.120 Territorial Applicability of the Code

a) Territorial jurisdiction exists so long as there is personal jurisdiction under Code Section 2. This Manual applies wherever and whenever the Code applies. *Courts-martial, courts of inquiry,* and nonjudicial punishment proceedings *may be convened* and conducted, and punishment may be imposed, while in the State and *while those units are serving outside the State with the same jurisdiction and powers as if the proceedings were held* within *the State*. (Code Section 5(b))

b) Courts-martial may be conducted anywhere and in any facility as mission requirements and military exigencies dictate, in the judgment of the appropriate senior force judge advocate.

Section 400.125 Judge Advocates

a) Judge advocates must adhere to the State bar licensing requirements pursuant to Code Sections 1(a)(10), 26, 27 and 38.

b) The senior force judge advocate of each force of the SMF is responsible for the supervision of the administration of military justice in that force. (See Code Section 6.)

ILLINOIS DEPARTMENT OF MILITARY AFFAIRS

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Section 400.130 Military Judges

a) *The Governor or the Adjutant General shall appoint at least one judge advocate officer from the active rolls of the Illinois National Guard who has been previously certified and qualified for duty as a military judge by the Judge Advocate General of the judge advocate officer's respective armed force under UCMJ Article 26(b) to serve as a military judge under the Code*.

b) *The military judge shall hold the rank of Major or above.* (Code Section 6(a)) The military judge not only rules on all legal issues, motions and items provided for in the Code and during courts-martial, but, in order to effectuate this intent and process, the military judge has the responsibilities provided in RCM 801.

SUBPART B: APPREHENSION AND RESTRAINT

Section 400.200 Apprehension

a) *Apprehension is the taking of a person into custody.* (Code Section 7(a))

b) *Any person* subject to the Code who is *authorized by* the *Code to apprehend persons subject to* the *Code may do so only* after consultation with the NGIL-JA and only after having *probable cause that an offense has been committed and that the person apprehended committed it*. (Code Section 7(b))

c) Civilians Authorized to Apprehend Deserters. Under Code Section 7, any civilian officer having authority to apprehend offenders under laws of the United States, or of a state, may do so when apprehension is of a deserter from SMF. Upon receipt of DD Form 553 (Deserter/Absentee Wanted by the Armed Forces), civilians authorized to apprehend shall do so and detain that deserter until appropriate military authorities take custody.

d) How an Apprehension May Be Made

1) General. An apprehension is made by clearly notifying the person to be apprehended that the person is in custody. This notice should be given orally or in writing, but may be implied by the circumstances.

2) Warrants. Neither warrants nor any other authorization shall be required for an apprehension under this Manual, except as required by the U.S. Constitution as applied to members of the armed forces.

3) Use of Force. Any person authorized under this Manual to make apprehension may use such force and means as reasonably necessary under the circumstances to effect the apprehension.

Section 400.205 Imposition of Restraint

a) Types of Pretrial Restraint. Pretrial restraint is moral or physical restraint on a person's liberty that is imposed before and during disposition of offenses. Pretrial restraint may consist of conditions on liberty, restriction in lieu of arrest, arrest or confinement.

1) Conditions on Liberty. Conditions on liberty are imposed by orders directing a person to do or refrain from doing specified acts. These conditions may be imposed in conjunction with other forms of restraint or separately.

2) Restriction in Lieu of Arrest. Restriction in lieu of arrest is the restraint of a person by oral or written orders directing the person to remain within specified limits. A restricted person shall, unless otherwise directed, perform full military duties while restricted.

3) Arrest. *Arrest is the restraint of a person by* oral or written *order not imposed as punishment, directing* the person *to remain within specified limits*. (Code Section 9(a)) A person in the status of arrest shall not be required to perform full military duties such as commanding or supervising personnel, serving as guard, or bearing arms. The status of arrest automatically ends when the person is placed, by the authority who ordered the arrest or a superior authority, on duty inconsistent with the status of arrest, but this shall not prevent requiring the person arrested to do ordinary cleaning or policing, or to take part in routine training and duties.

4) Confinement. Pretrial confinement is physical restraint, imposed by order of competent authority, depriving a person of freedom pending disposition of offenses. No person may be ordered into pretrial confinement, except

upon determination of probable cause that the person committed an offense under the Code and with the concurrence of the NGIL-JA.

A) *An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to* the *Code. A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted members of the commanding officer's command or subject to the commanding officer's authority into arrest or confinement.* (Code Section 9(b))

B) *A commissioned officer, a warrant officer, or a civilian subject to* the *Code or to trial* under the *Code may be ordered into arrest or confinement only by a commanding officer to whose authority the person is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order the persons into arrest or confinement may not be delegated*. (Code Section 9(c))

b) *No person subject to* the *Code may be* placed in any sort of pretrial restraint, *except*:

1) *for probable cause*, as described in subsection (c), has been determined *after coordination with a judge advocate officer*; and

2) when holding the person without restraint is *impractical or not possible* (Code Section 9(d)).

c) Probable cause for pretrial restraint exists when there is a reasonable belief that:

1) An offense triable by courts-martial has been committed;

2) The person to be restrained committed it; and

3) The restraint order is reasonably required by the circumstances.

d) Each person ordered to pretrial restraint shall be promptly informed of:

1) The nature of the offenses for which the person is held;

2) The right to remain silent and that any statement made by the person may be used against the person; and

3) The right to retain civilian counsel at no expense to the State of Illinois and the right to request free assignment of trial defense counsel through Illinois National Guard trial defense services.

e) *This* Section *does not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority* is *notified*. (Code Section 9(d))

Section 400.210 Confinement of Persons Charged with Offenses

a) *Any person subject to* the *Code charged with an offense under* the *Code may be ordered into arrest or confinement, as circumstances require. When any person subject to* the *Code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform the person of the specific wrong of which the person is accused and diligent steps shall be taken to try the person or to dismiss the charges and release the person.* (Code Section 10)

b) Requirements for Confinement. The commander shall direct the prisoner's release from pretrial confinement unless the commander believes, upon probable cause, that reasonable grounds exist that:

1) An offense triable by a court-martial has been committed;

2) The prisoner committed it;

3) Confinement is necessary because it is foreseeable that:

A) The prisoner will not appear at trial, pretrial hearing, or investigation; or

B) The prisoner will engage in serious criminal misconduct; and

4) Less severe forms of restraint are inadequate.

c) A person should not be confined as a mere matter of convenience or expedience. Some of the factors that should be considered under this subsection (c) are:

1) The nature and circumstances of the offenses charged or suspected, including extenuating circumstances;

2) The weight of the evidence against the accused;

3) The accused's ties to the locale, including family, off-duty employment, financial resources, and length of residence;

4) The accused's character and mental condition;

5) The accused's service record, including any record of previous misconduct;

6) The accused's record of appearance at or flight from other pretrial investigations, trials and similar proceedings; and

7) The likelihood that the accused can and will commit further serious criminal misconduct if allowed to remain at liberty.

d) Although the Illinois Military Rules of Evidence (Subpart F) are not applicable at this stage, the commander should judge the reliability of the information available. Before relying on the reports of others, the commander must have a reasonable belief that the information is believable and has a factual basis. The information may be received orally or in writing. Information need not be received under oath, but an oath may add to its reliability. A commander may examine the prisoner's personnel records and police records and may consider the recommendations of others.

e) Less serious forms of restraint must always be considered before pretrial confinement is approved.

f) Review of Confinement. No later than 48-hours after confinement is ordered, that confinement shall be reviewed by a military judge as a "neutral and detached officer" under RCM 305.

Section 400.215 Place of Confinement; Reports and Receiving of Prisoners

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a) *If a person subject to* the *Code is confined before, during or after trial, confinement shall be in a county jail,* an Illinois *Department of Corrections* (DOC) *facility, or in a military confinement facility*. (Code Section 11(a))

b) *No person, sheriff or* DOC personnel *authorized to receive prisoners* under *subsection (a) may refuse to receive or keep any prisoner committed to the person's charge by a commissioned* SMF *officer* who *furnishes a statement, signed* by that *officer, of the offense charged or conviction obtained against the prisoner, unless otherwise authorized by law*. (Code Section 11(b))

c) *Every person authorized to receive prisoners pursuant to subsection (a) to whose charge a prisoner is committed shall, within 24 hours after that commitment, or as soon as the person is relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the offense charged against the prisoner, and the name of the person who ordered or authorized the commitment.* (Code Section 11(c))

d) Transportation from Confinement to Proceedings Under the Code. When a person is subject to pretrial restraint under the Code and this Manual, the person's constitutional right to appear at proceedings must be protected. Towards that end, a person confined under this Manual must be transported to and from courts of inquiry, arraignment, pretrial hearings, motions arguments, court-martial, sentencing, and any other legal proceeding at which the person has a right to attend, unless circumstances are such that the SMF is manifestly unable to provide for that attendance, or unless the person flees from proceedings. Transportation shall occur in the following manner:

1) The peace officers, correctional officers, agents, employees or service members tasked with transportation of prisoners at the county jail, a DOC facility, or military confinement facility at which the person is confined shall transport the person subject to the Code to and from any legal proceeding the person has a right to attend, unless circumstances are reasonably such that the peace officers, correctional officers, agents, employees or service members are manifestly unable to transport the person;

2) If the peace officers, correctional officers, agents, employees or service members are manifestly unable to transport the confined person, military

police shall transport the person to and from legal proceedings the person has a right to attend, unless circumstances are reasonably such that the military police officers are manifestly unable to transport the person; and

3) If the military police are manifestly unable to transport the person, the SMF may contract with a prisoner transportation service company to provide appropriate transportation services to and from any legal proceedings the person has a right to attend.

Section 400.220 Confinement with Enemy Prisoners Prohibited

No member of the SMF *may be placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces*. (Code Section 12)

Section 400.225 Punishment Prohibited Before Trial

No person, while being held for trial or awaiting a verdict, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against the person, nor shall the arrest or confinement imposed upon that person be any more rigorous than the circumstances required to insure the person's presence, but the person may be subjected to minor punishment during that period for infractions of discipline. (Code Section 13)

Section 400.230 Delivery of Offenders to Civil Authorities

a) *A person subject* to the *Code accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial or confinement*. (Code Section 14(a))

b) *When delivery under* this Section *is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender, after having answered to the civil authorities for the offense, shall, upon the request of competent military authority, be returned to the place of original custody for the completion of the person's sentence*. (Code Section 14(b))

c) The Adjutant General may authorize the delivery of a person pending court-martial proceedings under the Code to civil authorities for separate, unrelated offenses as alleged by the civil authority when presented with a warrant or similar court order for that person's arrest or delivery. The civil authority responsible for

obtaining the warrant or similar court order must provide or arrange delivery to the appropriate receiving agency and pay or arrange payment for any costs incurred during the course of that delivery.

d) The Adjutant General shall authorize the delivery of a person pending court-martial proceedings under the Code to civil authorities for non-military offenses that have been charged by the civil authorities and that arise from the same allegations of misconduct that caused the person's pending court-martial proceedings under the Code. In this instance, Code Section 2(b) shall apply.

e) If a commanding officer receives a warrant or other court order demanding delivery of a person to civil authorities, that warrant or other court order must be forwarded to the Staff Judge Advocate and the Adjutant General immediately and within no more than 24 hours.

f) If a commanding officer receives a warrant or other court order demanding delivery of a person to civil authorities at a time when the person is present on a duty status and not under arrest or confinement under the Code, the commanding officer will order the person detained and will immediately, and within no more than 24 hours, notify the Staff Judge Advocate and the Adjutant General for confirmation and authority to deliver the person to civil authorities.

g) Nothing in this Manual limits the authority of federal or State law enforcement officials to apprehend persons, whether or not subject to trial by court-martial, to the extent permitted by applicable statutes and other laws.

SUBPART C: PRELIMINARY INQUIRY, INVESTIGATIONS AND DISPOSITION OF OFFENSES

Section 400.300 Preliminary Inquiry Into Reported Offenses

a) Any person may report an offense subject to trial by court-martial. Ordinarily, any military authority that receives a report of an offense shall forward as soon as practicable the report and any accompanying information to the immediate commander of the suspect. Competent authority superior to that commander may direct otherwise.

b) Upon receipt of information that an SFM member is accused or suspected of committing an offense triable by court-martial, the immediate commander shall

make or cause to be made a preliminary inquiry into the charges or suspected offenses.

c) The preliminary inquiry may be informal, but should include an examination of the charges and an investigative report or other summary of evidence. The inquiry should gather all reasonably available evidence bearing on guilt or innocence and any evidence relating to the aggravation, extenuation or mitigation of the conduct that the person is accused or suspect of committing.

d) If a person is accused or suspected of misconduct of a serious or complex nature, the commander should seek the assistance of civilian law enforcement personnel or military police in conducting any inquiry or further investigation.

e) The commanding officer should always consult with his or her judge advocate for appropriate legal guidance when notified of a potential offense, and use that legal guidance in directing the preliminary inquiry into the charges and offenses.

Section 400.305 Initial Disposition

a) Who May Dispose of Offenses. Subject to applicable military justice policies promulgated by proper authority, each commander has discretion to dispose of offenses by members of that command. Ordinarily, the immediate commander of a person accused or suspected of committing an offense triable by court-martial initially determines how to dispose of that offense.

b) A superior commander may withhold the authority to dispose of offenses in individual cases, types of cases, or generally. A superior commander may not limit the discretion of a subordinate commander to act on cases over which authority has not been withheld.

SUBPART D: COURTS-MARTIAL JURISDICTION AND COMPOSITION

Section 400.400 Courts-Martial Classified

The 3 kinds of courts-martial in the SMF *are*:

a) *general courts-martial, consisting of:*

1) *a military judge and not* fewer *than 5 members; or*

2) *only a military judge, if, before the court is assembled, the accused, knowing the identity of the military judge and after consultation with defense counsel, requests orally on the record or in writing a court composed only of a military judge, and the military judge approves;*

b) *special courts-martial, consisting of:*

1) *a military judge and not* fewer *than 3 members;* or

2) *only a military judge, if one has been detailed to the court and the accused, under the same conditions prescribed in* subsection (a)(2), *so requests; and*

c) *summary courts-martial consisting of one commissioned officer*. (Code Section 16)

Section 400.405 Jurisdiction of Courts-Martial

a) General. *Each component of the* SMF *has court-martial jurisdiction over all members of the particular component who are subject to* the *Code*. *Additionally, the Army and Air National Guard* SMF *have court-martial jurisdiction over all members subject* to the Code. (Code Section 17)

b) General Courts-Martial. *Subject to* subsection (a), *general courts-martial have jurisdiction to try persons subject to the Code for any offense made punishable by* the *Code, and may, under such limitations as the Governor may prescribe, adjudge any punishment not forbidden by* the Code. (Code Section 18)

c) Special Courts-Martial**.** *Subject to* subsection (a), *special courts-martial have jurisdiction to try persons subject to* the *Code for any offense made punishable by* the Code, *and may, under such limitations as the Governor may prescribe, adjudge any punishment not forbidden by* the *Code except dishonorable discharge, dismissal, confinement for more than one year, forfeiture of pay exceeding ⅔ pay per month, or forfeiture of pay for more than one year*. (Code Section 19)

d) Summary Courts-Martial

1) *Subject to* subsection (a), *summary courts-martial have jurisdiction to try persons subject to* the *Code, except officers, cadets and candidates, for any offense made punishable by* the *Code under such limitations as the Governor may prescribe*. (Code Section 20(a))

2) *No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if that person objects. If objection to trial by summary court-martial is made by an accused, trial by special or general court-martial may be ordered, as may be appropriate. Summary courts-martial may, under such limitations as the Governor may prescribe, adjudge any punishment not forbidden by the Code except dismissal, dishonorable or bad-conduct discharge, confinement for more than one month, restriction to specified limits for more than 2 months, or forfeiture of more than ⅔ of one month's pay*. (Code Section 20(b))

Section 400.410 Who May Convene a Court-Martial

a) General Courts-Martial

1) *General courts-martial may be convened by:*

A) *The Governor; or*

B) *The Adjutant General.* (Code Section 22)

2) Any superior commander can withhold convening authority from a subordinate commander but shall not delegate his or her own authority. When authority is withheld, that action should be in clearly defined writing or permanent directive. The original letter withholding convening authority should be filed at Joint Force Headquarters, Office of the Staff Judge Advocate, 1301 N. MacArthur Blvd, Springfield IL 62702. A copy should also be kept by the judge advocate serving the commander whose authority has been withheld. Any such withholding remains in effect when a new commander is appointed to or assumes either command, until or unless expressly revoked by the superior commander. Any such action should be addressed by duty title and not by name.

b) Special Courts-Martial

1) *Special courts-martial may be convened by:*

A) *any person who may convene a general court-martial;*

B) *the Commander of the Illinois Army National Guard,* for *members of the Illinois Army National Guard, when empowered by the Adjutant General; or*

C) *the Commander of the Illinois Air National Guard,* for *members of the Illinois Air National Guard, when empowered by the Adjutant General.* (Code Section 23(a))

2) *If any officer listed in* subsection (b)(1) *is an accuser, the court shall be convened by superior competent authority and may, in any case, be convened by* that *superior authority if considered desirable by* that *authority*. (Code Section 23(b))

c) Summary Courts-Martial

1) *Summary courts-martial may be convened by:*

A) *any person who may convene a general or special court-martial;*

B) *the commanding officer or officer in charge of any other command when empowered by the Adjutant General*. (Code Section 24(a))

2) *When only one commissioned officer is present with a command or detachment, that officer shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases. Summary courts-martial may, however, be convened in any case by superior competent authority if considered desirable by* that *authority*. (Code Section 24(b))

Section 400.415 Courts-Martial Composition

a) Members of a Court-Martial

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1) *Any* SMF *commissioned officer is eligible to serve on all courts-martial for the trial of any persons subject to* the *Code.* (Code Section 25(a))

2) *Any* SMF *warrant officer is eligible to serve on general and special courts-martial for the trial of any person subject to* the *Code, other than a commissioned officer*. (Code Section 25(b))

3) *Any enlisted member of the* SMF *who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member subject to* the *Code, but that member shall serve as a member of a court only if, before the conclusion of a session called by the military judge under* Code Section 39(a) *prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested orally on the record or in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial unless the membership includes at least ⅓ enlisted members, unless eligible enlisted members cannot be obtained on account of physical conditions or military exigencies. If* enlisted *members cannot be obtained, the court may be assembled and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained. In this* subsection (a), *"unit" means any regularly organized body of the* SMF *not larger than a company, a squadron or a body corresponding to a company or squadron.* (Code Section 25(c))

4) *When it can be avoided, no person subject to* the *Code may be tried by a court-martial any member of which is junior to the accused in rank or grade.* (Code Section 25(d))

5) *When convening a court-martial, the convening authority shall detail as members* of the court-martial *such* SMF *members as, in the convening authority's opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No* SMF *member is eligible to serve as a member of a general or special court-martial when that member is the accuser or a witness, or has acted as investigating officer or as counsel in the same case.* (Code Section 25(e))

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6) *Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating. The convening authority may delegate the authority under this* subsection (a)(6) *to a judge advocate or to any other principal assistant*. (Code Section 25(f))

7) Any delegation of authority to a judge advocate or principal assistant for purposes of excusal of members must be in writing, unless exigencies prevent written delegation. Verbal authorization shall be reduced to writing as soon as possible.

8) Duties. The members of a court-martial shall determine whether the accused is proved guilty and, if necessary, adjudge a proper sentence, based on the evidence and in accordance with the instructions of the military judge. Each member has an equal voice and vote in deliberating upon and deciding all matters, except as otherwise specifically provided in this Manual. No member may use rank or position to influence another member. No member of a court-martial may have access to or use in any open or closed session this Manual, reports of decided cases, or any other reference material, except that the president of a special court-martial without a military judge may use these materials in open session.

9) President

A) Qualifications. The president of a court-martial shall be the detailed member senior in rank then serving.

B) Duties. The president shall have the same duties as the other members and shall also:

i) Preside over closed sessions of the members of the court-martial during their deliberations;

ii) Speak for the members of the court-martial when announcing the decision of the members or requesting instructions from the military judge; and

iii) In a special court-martial without a military judge, perform the duties assigned by this Manual to the military judge, except as otherwise expressly provided.

b) Military Judges

1) Qualifications to serve as a military judge are described in Code Sections 6 and 26. In addition to the mandatory qualifications delineated in Code Sections 6 and 26, the following factors may be considered when certifying an officer as a military judge:

A) Appropriate judicial decorum, civility and temperament;

B) Civilian judicial experience;

C) Military judicial experience;

D) Military legal experience;

E) Designation as judge advocate;

F) Reputation;

G) Familiarity with the Code and this Manual;

H) Completion of the active component Military Judges Course;

I) Knowledge of general criminal law and procedures;

J) Education, training and experience;

K) Familiarity with the customs, procedures and organization of the service branch of the accused; and

L) Any other relevant factors.

2) *In addition to the requirements noted* in Code Section 6(a), *a military judge shall be*:

A) *an active commissioned officer of an organized* SMF;

B) *a member in good standing of the bar of the highest court of a state or a member of the bar of a federal court for at least 5 years;* and

C) *certified as qualified for duty as a military judge by the senior force judge advocate* that is in the *same force as the accused*. (Code Section 26(b))

3) *When a military judge is not a member of the bar of the highest court of the state,* he or she *shall be deemed admitted pro hac vice, subject to filing a certificate with the senior force judge advocate in the same force as the accused, setting forth the qualifications* listed *in* subsection (b)(1). (Code Section 26(c))

4) *The military judge of a general or special court-martial shall be designated by the senior force judge advocate* in *the same force as the accused, or a designee, for detail by the convening authority. Neither the convening authority nor any staff member of the convening authority shall prepare or review any report concerning the effectiveness, fitness or efficiency of the military judge* that *relates to performance of duty as a military judge*. (Code Section 26(d))

5) *No person is eligible to act as military judge in a case if that person is the accuser or a witness, or has acted as investigating officer or a counsel in the same case*. (Code Section 26(e))

6) *The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor vote with the members of the court.* (Code Section 26(f))

c) Absent and Additional Members

1) *No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause.* (Code Section 29(a))

2) *Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below 5 members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than the applicable minimum number of 5. The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.* (Code Section 29(b))

3) *Whenever a special court-martial, other than a special court-martial composed of a military judge only, is reduced below 3 members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not* fewer *than 3 members. The trial shall proceed with the new members present as if no evidence had been introduced previously at the trial, unless a verbatim record of the evidence previously introduced before the members of the court, or a stipulation to that record, is read to the court in the presence of the military judge, the accused and counsel for both sides.* (Code Section 29(c))

4) *If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of* Code Section 16(1)(B) or (2)(B), *after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced, or a stipulation to that record is read in court in the presence of the new military judge, the accused, and counsel for both sides*. (Code Section 29(d))

Section 400.420 Trial Counsel and Defense Counsel

a) Detail of trial counsel and defense counsel shall be pursuant to Code Section 27. *Except as provided in* subsection (b), *trial counsel or defense counsel detailed for a general or special court-martial must be:*

1) *a judge advocate as defined* in Code Section 1(a)(10); and

2) *in the case of trial counsel, a member in good standing of the bar of the highest court of the state where the court-martial is held*. (Code Section 27(b))

b) *When a defense counsel is not a member of the bar of the highest court of* the *state, the defense counsel shall be deemed admitted pro hac vice, subject to filing a certificate with the military judge setting forth the qualifications that:*

1) the *counsel is:*

A) *a commissioned officer of the armed forces of the United States or a component thereof;*

B) *a member in good standing of the bar of the highest court of a state; and*

C) *certified as a judge advocate in the Judge Advocate General's Corps of the Army, Air Force, Navy or Marine Corps*; or

2) the counsel is *a judge advocate as defined in Code Section 1(a)(10)*. (Code Section 27(c))

c) Trial counsel or assistant trial counsel cannot be a person who was a convening authority, accuser or investigating officer. However, the trial counsel and assistant trial counsel could have provided advice to the convening authority, the accuser or the investigator.

d) The defense counsel shall not be in the chain of command of the court-martial members, president of the court-martial, or convening authority.

e) A trial or defense counsel from one military component may be assigned to a court-martial in a different component and then detailed by the convening authority.

f) Upon appointment of defense counsel, the convening authority will provide sufficient resources to ensure effective assistance of counsel. Defense counsel may be placed in an appropriate duty or training status in order to provide defense services.

g) Trial counsel will be placed in an appropriate duty or training status in order to provide prosecutorial services.

h) The accused has a right to retain civilian counsel to represent him or her at his or her own expense and at no cost to the State or the United States. Civilian counsel must comply with the requirements of Code Section 27.

Section 400.425 Reporters and Court Interpreters

The convening authority of a general or special court-martial or court of inquiry shall detail or employ qualified court reporters who shall record the proceedings of, and testimony taken before that court and may detail or employ interpreters who shall interpret for the court. (Code Section 28)

SUBPART E: PRETRIAL PROCEDURES

Section 400.500 Charges and Specifications

a) *Charges and specifications shall be signed by a person subject to the Code under oath before a commissioned officer authorized by* Code Section *136*(a) *to administer oaths and shall state that*:

1) *the signer has personal knowledge of, or has investigated, the matters set forth* in the charges and specifications; *and*

2) the charges and specifications *are true in fact to the best of the signer's knowledge and belief*. (Code Section 30(a))

b) *Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made in the interest of justice and discipline. The person accused shall be informed of the charges as soon as practicable.* (Code Section 30(b))

c) If a person subject to the Code commits a non-military offense, and that offense is an offense under both the law of the state where committed and under the law of another state, then the charges and specifications shall be drafted as violations of the law of the state where the offense was committed.

Section 400.505 Compulsory Self-Incrimination Prohibited

a) *No person subject to* the *Code may compel any person to incriminate* himself or herself, or *to answer any question the answer to which may tend to incriminate* that person. (Code Section 31(a))

b) *No person subject to* the *Code may interrogate or request any statement from an accused or a person suspected of an offense without first informing that person of the nature of the accusation and advising that person that the person does not have to make any statement regarding the offense of which the person is accused or suspected and that any statement made by the person may be used as evidence against the person in a trial by court-martial*. (Code Section 31(b))

c) *No person subject to* the *Code may compel any person to make a statement or produce evidence before any military court if the statement or evidence is not material to the issue and may tend to degrade* that *person*. (Code Section 31(c))

d) *No statement obtained from any person in violation of this* Section *or through* the *use of coercion, unlawful influence, or unlawful inducement may be received in evidence against* that *person in a trial by court-martial*. (Code Section 31(d))

Section 400.510 Pretrial Investigation

a) *No charge or specification may be referred to a general or special court-martial for trial until a thorough and impartial investigation of all matters set forth* in the charge or specification *has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation* of *the disposition* that *should be made of the case in the interest of justice and discipline*. (Code Section 32(a))

b) Who May Direct Investigation. Unless prohibited by applicable law or regulation, an investigation may be directed under the Code by any court-martial convening authority (see Section 400.410). That authority may also give procedural instructions not inconsistent with this Manual.

c) Investigating Officer. The commander directing an investigation under this Manual shall detail a judge advocate officer who is not the accuser to be the investigating officer. The investigating officer shall conduct the investigation and make a report of conclusions and recommendations. The investigating officer is disqualified to act later in the same case in any other capacity.

d) Scope of Investigation. The investigating officer shall inquire into the truth and form of the charges, and such other matters as may be necessary to make a recommendation of the disposition of the charges.

e) *The accused shall be advised of the charges against* him or her *and of the right to be represented by counsel at the investigation* (see Section 400.805). *At* the *investigation, full opportunity shall be given to the accused to cross-examine witnesses, if they are available, and to present anything the accused may desire* on *the accused's own behalf, either in defense or mitigation. The investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides. A copy shall be given to the accused*. (Code Section 32(b))

f) *If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination and presentation prescribed in subsection* (e), *no further investigation of that charge is necessary under this* Section *unless it is demanded by the accused after the accused is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in the accused's own behalf*. (Code Section 32(c))

g) *If evidence adduced in an investigation under this* Section *indicates that the accused committed an uncharged offense, the investigating officer may investigate the subject matter of that offense* and make appropriate conclusions and recommendations as to disposition *without the accused having first been charged with the offense, if the accused is*:

1) *present at the investigation;*

2) *informed of the nature of each uncharged offense investigated; and*

3) *afforded the opportunities for representation, cross-examination and presentation prescribed in subsection* (e). (Code Section 32(d))

h) Witnesses. In general, any witness whose testimony would be relevant and not cumulative shall be produced if reasonably available. If not reasonably available,

the investigating officer may consider alternatives to testimony (see RCM 405g(4), incorporated by reference in Section 400.105).

i) Evidence. Subject to Section 400.700, evidence, including documents or physical evidence that is under the control of the government and that is relevant and not cumulative shall be produced if reasonably available. This evidence includes evidence requested by the accused if the request is timely. Evidence is reasonably available if its significance outweighs the difficulty, expense, delay and effect on military operations of obtaining the evidence. If the evidence is not reasonably available, the investigating officer may consider alternatives to evidence as provided in RCM 405g(5), incorporated by reference in Section 400.105.

j) Procedure for Presentation of Evidence, Objections, Access by Spectators, and Presence of the Accused. The provisions of RCM 405(h), incorporated by reference in Section 400.105, shall apply.

k) Illinois Military Rules of Evidence. Subpart F, other than Sections 400.610, 400.615, 400.620, 400.625, 400.695 and 400.700, shall not apply in pretrial investigations under this Manual.

l) Report of Investigation. The provisions of RCM 405(j), incorporated by reference in Section 400.105, shall apply.

m) Waiver. The accused may waive an investigation under this Manual. In addition, failure to make a timely objection under this Manual, including an objection to the report, shall constitute a waiver of the objection. Relief from the waiver may be granted by the investigating officer, the commander who directed the investigation, the convening authority, or the military judge, as appropriate, for good cause shown.

n) *The requirements of this* Section *are binding on all persons administering* the *Code, but failure to follow them does not constitute jurisdictional error*. (Code Section 32(e))

Section 400.515 Forwarding and Disposition of Charges

a) Only persons authorized to convene courts-martial or to administer nonjudicial punishment under Subpart K may dispose of charges. A superior competent

authority may withhold the authority of a subordinate to dispose of charges in individual cases, types of cases, or generally.

b) When a commander with authority to dispose of charges receives charges, that commander shall promptly determine what disposition will be made in the interest of justice and discipline, unless the authority to do so has been limited or withheld by superior competent authority. A commander may dispose of charges by dismissing any or all of them, forwarding any or all of them to another commander for disposition, or referring any or all of them to a court-martial the commander is empowered to convene.

c) *When a person is held for trial by general court-martial, the commanding officer shall, within 15 days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the person exercising general court-martial jurisdiction. If that is not practicable, the commanding officer shall report in writing to that person the reasons for delay*. (Code Section 33)

d) When charges are forwarded to a superior commander for disposition, the forwarding commander shall make a personal recommendation as to disposition. If the forwarding commander is disqualified from acting as convening authority in the case, the basis for the disqualification shall be noted.

e) Disposition by Summary Court-Martial Convening Authority. When in receipt of charges, a commander exercising summary court-martial jurisdiction may:

1) Dismiss any charges;

2) Forward charges (or, after dismissing charges, the matter) to a subordinate commander for disposition;

3) Forward any charges to a superior commander for disposition;

4) Refer charges to a summary court-martial for trial.

f) Disposition by Special Court-Martial Convening Authority. When in receipt of charges, a commander exercising special court-martial jurisdiction may:

1) Dismiss any charges;

2) Forward charges (or, after dismissing charges, the matter) to a subordinate commander for disposition;

3) Forward any charges to a superior commander for disposition;

4) Refer charges to a summary court-martial for trial; or

5) Unless otherwise directed by competent authority, direct a pretrial investigation under Code Section 32 and, if appropriate, refer any charges to a special court-martial for trial or forward the report of investigation with the charges to a superior commander for disposition.

Section 400.520 Advice of Judge Advocate and Referral for Trial

a) The convening authority shall refer the charges to the senior force judge advocate or designee for consideration and advice pursuant to Code Section 34. The judge advocate shall be provided with a complete copy of all documents, records or other evidence in the possession of the State and review all charges, together with the investigation and allied papers referenced in Code Section 33, as part of his or her legal review.

b) *Before any charge* or specification *may be referred for trial by general or special court-martial, the convening authority shall refer it to a judge advocate for consideration and advice*.

1) *The convening authority may not refer a specification under a charge to a general or special court-martial for trial unless the convening authority has been advised in writing by a judge advocate that:*

A) *the specification alleges an offense under* the *Code*;

B) *the specification is warranted by the evidence indicated in the report of investigation under* Code Section 32*, if there is such a report; and*

C) *a court-martial would have jurisdiction over the accused and the offense.* (Code Section 34(a))

2) The judge advocate shall also make to the convening authority a *recommendation of the action to be taken by the convening authority*. (Code Section 34(b)(2))

c) *The advice of the judge advocate under subsection* (b) *with respect to a specification under a charge shall include a written and signed statement by the judge advocate expressing conclusions with respect to each matter set forth in subsection* (b)(1). (Code Section 34(b)(1))

d) A copy of the advice of the judge advocate shall be referred to the accused if charges are referred to a general or special court-martial.

e) *If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence, may be made*. (Code Section 34(c))

Section 400.525 Action by Commander Exercising General Court-Martial Jurisdiction

a) Disposition. When in receipt of charges, a commander exercising general court-martial jurisdiction may:

1) Dismiss any charges;

2) Forward charges (or, after dismissing charges, the matter) to a subordinate commander for disposition;

3) Forward any charges to a superior commander for disposition;

4) Refer charges to a summary court-martial;

5) Unless otherwise directed by competent authority, direct a pretrial investigation pursuant to Section 400.510, after which additional action under this Section may be taken; or

6) Refer charges to a special or general court-martial.

b) National Security Matters. When in receipt of charges the trial of which the commander exercising general court-martial jurisdiction finds would probably be

inimical to the prosecution of war or harmful to national security, that commander, unless otherwise directed by competent authority, shall determine whether trial is warranted. If trial is warranted, he or she shall determine whether the security considerations involved would override going to trial. As the commander finds appropriate, the commander may dismiss the charges, authorize trial of them, or forward them to superior authority.

Section 400.530 Referral of Charges

a) General. Referral is the order of a convening authority that charges against an accused will be tried by a specified court-martial.

b) Any convening authority may refer charges to a court-martial convened by that convening authority or a predecessor unless the power to do so has been withheld by superior competent authority.

c) An accuser may not refer charges to a general or special court-martial.

d) Basis for Referral. If the convening authority finds or is advised by a judge advocate that there are reasonable grounds to believe that an offense triable by a court-martial has been committed, the accused committed that offense, and the specification alleges an offense, the convening authority may refer it. The finding may be based on hearsay in whole or in part. The convening authority or judge advocate may consider information from any source and shall not be limited to the information reviewed by any previous authority, but a case may not be referred to a general court-martial except in compliance with subsection (e). The convening authority or judge advocate shall not be required, before charges are referred, to resolve legal issues, including objections to evidence, that may arise at trial.

e) General and Special Courts-Martial (see Code Section 34(a)). The convening authority may not refer a specification under a charge to a general or special court-martial unless:

1) There has been substantial compliance with the pretrial investigation requirements of Section 400.510; and

2) The convening authority has received the advice of the staff judge advocate required under Section 400.520. These requirements may be waived by the accused.

f) How Charges Shall be Referred

1) Order; Instructions. Referral shall be by the personal order of the convening authority. The convening authority shall include proper instructions in the order prescribed by RCM 601(e) (Discussion).

2) Joinder of Offenses. In the discretion of the convening authority, two or more offenses charged against an accused may be referred to the same court-martial for trial, whether serious offenses or minor offenses (see Section 400.1200) or both, regardless of whether related. Additional charges may be joined with other charges for a single trial at any time before arraignment if all necessary procedural requirements have been met concerning the additional charges. After arraignment of the accused upon the charges, no additional charges may be referred to the same trial without consent of the accused.

3) Joinder of Accused. Allegations against 2 or more accused may be referred for joint trial if the accused are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses. The accused may be charged in one or more specifications, together or separately, and every accused need not be charged in each specification. Related allegations against 2 or more accused that may be proved by substantially the same evidence may be referred to a common trial.

g) Superior Convening Authorities. Except as otherwise provided in this Section, a superior convening authority may cause charges, whether or not referred, to be transmitted to the convening authority for further consideration, including, if appropriate, referral.

Section 400.535 Service of Charges

The trial counsel shall serve or caused to be served upon the accused a copy of the charges referred to trial. *No person may, against the person's objection, be brought to trial before a general court-martial within a period of 60 days after the service of charges upon the accused,*

or in a special court-martial, within a period of 45 days after the service of charges upon the accused. (Code Section 35) In computing periods, the date of service of charges and the date of trial are excluded; holidays and Sundays are included.

Section 400.540 Changes to Charges and Specifications

a) Minor Changes Defined. Minor changes in charges and specifications are any except those that add a party, offenses or a substantial matter not fairly included in those previously preferred, or that are likely to mislead the accused as to the offenses charged.

b) Minor Changes Before Arraignment. Any person forwarding, acting upon, or prosecuting charges on behalf of the State, except an investigating officer appointed under Section 400.510 may make minor changes to charges or specifications before arraignment.

c) Minor Changes After Arraignment. After arraignment, the military judge may, upon motion, permit minor changes in the charges and specifications at any time before findings are announced if no substantial right of the accused is prejudiced.

d) Major Changes. Changes or amendments to charges or specifications other than minor changes may not be made over the objection of the accused unless the charge or specification affected is preferred anew.

Section 400.545 Withdrawal of Charges

a) Withdrawal. The convening authority or superior competent authority may, for any reason, cause any charges or specifications to be withdrawn from a court-martial at any time before findings are announced.

b) Referral of Withdrawn Charges. Charges that have been withdrawn from a court-martial may be referred to another court-martial unless the withdrawal was for an improper reason (see RCM 604(b) (Discussion)). Charges withdrawn after the introduction of evidence on the general issue of guilt may be referred to another court-martial only if the withdrawal was necessitated by urgent and unforeseen military necessity.

SUBPART F: THE ILLINOIS MILITARY RULES OF EVIDENCE

ILLINOIS DEPARTMENT OF MILITARY AFFAIRS

NOTICE OF ADOPTED RULES

Section 400.600 General

a) Introduction

1) This Subpart F is applicable only to courts-martial. It is not applicable to nonjudicial punishment, administrative boards, promotion boards, medical retention boards, retention boards, or investigations and/or actions pertaining to nonpunitive or administrative punishment.

2) This Subpart is also maintained in a publication titled Illinois Military Rules of Evidence that is organized to coincide with the federal Military Rules of Evidence (MCM Part III). In this Subpart, the parenthetical cross-reference at the end of a body of text labeled Il. Mil. R. Evid. reflects the numbering system applied to these policies in that publication.

b) Scope of Rules

1) This Subpart applies to general and special court-martial proceedings.

2) In the absence of guidance in this Manual, courts-martial will apply Illinois State Rules of Evidence except as provided in subsection (b)(3). The reviewing courts may look to general military case law in applying these rules of evidence, with particular emphasis on military offenses.

3) Cases Arising in a State Other Than Illinois. In any court-martial arising out of conduct in a state other than Illinois, evidence derived from an investigation conducted in that State is not inadmissible under this Subpart, provided that the evidence was lawfully obtained and would be admissible under the laws of that state. (Il. Mil. R. Evid. 101)

c) Purpose. This Subpart shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined. (Il. Mil. R. Evid. 102)

d) Rulings on the Evidence

1) Effect of Erroneous Ruling. Error may not be predicated upon a ruling that admits or excludes evidence unless the ruling materially prejudices a substantial right of a party and:

A) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

B) Offer of Proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the military judge by offer or was apparent from the context within which questions were asked. Once the military judge makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal. The standard provided in this subsection (d)(1)(B) does not apply to errors involving requirements imposed by the Constitution of the United States or the Constitution of the State of Illinois as applied to members of the armed forces unless the error arises under this Subpart and this subsection (d)(1)(B) provides a standard that is more advantageous to the accused than the constitutional standard.

2) Record of Offer and Ruling. The military judge may add any other or further statement that shows the character of the evidence, the form in which it was offered, the objection made, and the ruling. The military judge may direct the making of an offer in question and answer form.

3) Hearing of Members. In a court-martial composed of a military judge and members, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the members by any means, such as making statements or offers of proof or asking questions in the hearing of the members.

4) Plain Error. Nothing in this subsection (d) precludes taking notice of plain errors that materially prejudice substantial rights that were not brought to the attention of the military judge. (Il. Mil. R. Evid. 104)

e) Preliminary Questions

1) Questions of Admissibility Generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, the admissibility of evidence, an application for a continuance, or the availability of a witness shall be determined by the military judge. In making these determinations, the military judge is not bound by the rules of evidence, except those with respect to privileges.

2) Relevancy Conditioned on Fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the military judge shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition. A ruling on the sufficiency of evidence to support a finding of fulfillment of a condition of fact is the sole responsibility of the military judge, except when this Manual provides expressly to the contrary.

3) Hearing of Members. Except in cases tried before a special court-martial without a military judge, hearings on the admissibility of statements of an accused under Sections 400.610 through 400.630 shall, in all cases, be conducted out of the hearing of the members. Hearings on other preliminary matters shall be so conducted when the interests of justice require or, when an accused is a witness, if the accused so requests.

4) Testimony by Accused. The accused does not, by testifying upon a preliminary matter, become subject to cross-examination with regard to other issues in the case.

5) Weight and Credibility. This subsection (e) does not limit the right of a party to introduce before the members evidence relevant to weight or credibility. (Il. Mil. R. Evid. 104)

f) Limited Admissibility
When evidence that is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the military judge, upon request, shall restrict the evidence to its proper scope and instruct the members accordingly. (Il. Mil. R. Evid 105)

g) Remainder of, or Related, Writings or Recorded Statements

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require that party at that time to introduce any other part or any other writing or recorded statement that, in fairness, should be considered contemporaneously with it. (Il. Mil. R. Evid. 106)

Section 400.605 Judicial Notice

a) Judicial Notice of Adjudicative Facts

1) Scope of Section. This Section governs only judicial notice of adjudicative facts.

2) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either:

A) generally known universally, locally, or in the area pertinent to the event; or

B) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

3) When Discretionary. The military judge may take judicial notice, whether requested or not. The parties shall be informed in open court when, without being requested, the military judge takes judicial notice of an adjudicative fact essential to establishing an element of the case.

4) When Mandatory. The military judge shall take judicial notice if requested by a party and supplied with the necessary information.

5) Opportunity To Be Heard. A party is entitled, upon timely request, to an opportunity to be heard on the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

6) Time of Taking Notice. Judicial notice may be taken at any stage of the proceeding.

7) Instructing Members. The military judge shall instruct the members that they may, but are not required to, accept as conclusive any matter judicially noticed. (Il. Mil. R. Evid. 201)

b) Judicial Notice of Law

1) Domestic Law. The military judge may take judicial notice of State and federal law. If the law is a fact that is of consequence to the determination of the action, the procedural requirements of subsections (a)(1) through (6) apply.

2) Foreign Law. A party who intends to raise an issue concerning the law of a foreign country must give reasonable written notice. The military judge, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under this Subpart. This determination is a ruling on a question of law. (Il. Mil. R. Evid. 201A)

Section 400.610 Self-Incrimination

a) Privilege Concerning Compulsory Self-Incrimination

1) General. The privileges against self-incrimination provided by the Fifth Amendment to the U.S. Constitution and Code Section 31 are applicable only to evidence of a testimonial or communicative nature. The privilege most beneficial to the individuals asserting the privilege shall be applied.

2) Standing

A) In General. The privilege of a witness to refuse to respond to a question the answer to which may tend to incriminate the witness is a personal one that the witness may exercise or waive at the discretion of the witness.

B) Judicial Advice. If a witness who is apparently uninformed of the privileges under this Section appears likely to incriminate himself or herself, the military judge should advise the witness of the right to decline to make any answer that might tend to incriminate the witness and that any self-incriminating answer the witness might

make can later be used as evidence against the witness. Counsel for any party or for the witness may request the military judge to so advise a witness provided that such a request is made out of the hearing of the witness and, except in a special court-martial without a military judge, the members. Failure to so advise a witness does not make the testimony of the witness inadmissible.

3) Exercise of the Privilege. If a witness states that the answer to a question may tend to incriminate him or her, the witness may not be required to answer unless facts and circumstances are such that no answer the witness might make to the question could have the effect of tending to incriminate the witness or that the witness has, with respect to the question, waived the privilege against self-incrimination. A witness may not assert the privilege if the witness is not subject to criminal penalty as a result of an answer by reason of immunity, running of the statute of limitations, or similar reason.

A) Immunity Generally. The minimum grant of immunity adequate to overcome the privilege is that which, under the proper authority, provides that neither the testimony of the witness nor any evidence obtained from that testimony may be used against the witness at any subsequent trial other than in a prosecution for perjury, false swearing, the making of a false official statement, or failure to comply with an order to testify after the military judge has ruled that the privilege may not be asserted by reason of immunity.

B) Notification of Immunity or Leniency. When a prosecution witness before a court-martial has been granted immunity or leniency in exchange for testimony, the grant shall be reduced to writing and shall be served on the accused prior to arraignment or within a reasonable time before the witness testifies. If notification is not made as required by this subsection (a)(3)(B), the military judge may grant a continuance until notification is made, prohibit or strike the testimony of the witness, or enter such other order as may be required.

4) Waiver by a Witness. A witness who answers a question without having asserted the privilege against self-incrimination and thereby admits a self-incriminating fact may be required to disclose all information relevant to

that fact except when there is a real danger of further self-incrimination. This limited waiver of the privilege applies only at the trial in which the answer is given, does not extend to a rehearing or new or other trial, and is subject to Section 400.705(h)(2).

5) Waiver by the Accused. When an accused testifies voluntarily as a witness, the accused waives the privilege against self-incrimination with respect to the matters concerning which he or she so testifies. If the accused is on trial for 2 or more offenses and on direct examination testifies concerning the issue of guilt or innocence as to only one or some of the offenses, the accused may not be cross-examined as to guilt or innocence with respect to the other offenses unless the cross-examination is relevant to an offense concerning which the accused has testified. This waiver is subject to Section 400.705(h)(2).

6) Effect of Claiming the Privilege

A) Generally. The fact that a witness has asserted the privilege against self-incrimination in refusing to answer a question cannot be considered as raising any inference unfavorable to either the accused or the government.

B) On Cross-Examination. If a witness asserts the privilege against self-incrimination on cross-examination, the military judge, upon motion, may strike the direct testimony of the witness in whole or in part, unless the matters to which the witness refuses to testify are purely collateral.

C) Pretrial. The fact that the accused, during official questioning and in exercise of rights under the Fifth Amendment to the U.S. Constitution or Code Section 31, remained silent, refused to answer a certain question, requested counsel, or requested that the questioning be terminated is inadmissible against the accused.

7) Instructions. When the accused does not testify at trial, defense counsel may request that the members of the court be instructed to disregard that fact and not to draw any adverse inference from it. Defense counsel may request that the members not be so instructed. Defense counsel's election shall be binding upon the military judge except that the military judge may

give the instruction when the instruction is necessary in the interests of justice. (Il. Mil. R. Evid. 301)

b) Waiver of the Privilege Against Self-Incrimination

1) General Rule. After receiving applicable warnings under Section 400.625, a person may waive the rights described in that Section and in subsection (a) of this Section and make a statement. The waiver must be made freely, knowingly and intelligently. A written waiver is not required. The accused or suspect must acknowledge affirmatively that he or she understands the rights involved, affirmatively decline the right to counsel, and affirmatively consent to making a statement.

2) Counsel

A) If the right to counsel is applicable and the accused or suspect does not decline affirmatively the right to counsel, the prosecution must demonstrate by a preponderance of the evidence that the individual waived the right to counsel.

B) If an accused or suspect interrogated requests counsel, any subsequent waiver of the right to counsel obtained during custodial interrogation concerning the same or different offenses is invalid unless the prosecution can demonstrate by a preponderance of the evidence that:

i) the accused or suspect initiated the communication leading to the waiver; or

ii) the accused or suspect has not continuously had his or her freedom restricted by confinement, or other means, during the period between the request for counsel and the subsequent waiver. (Il. Mil. R. Evid. 305A)

Section 400.615 Privilege Concerning Mental Examination of an Accused

a) General Rule. The accused has a privilege to prevent any statement made by the accused at a mental examination ordered under Code Section 76a and any derivative evidence obtained through use of such a statement from being received

into evidence against the accused on the issue of guilt or innocence or during sentencing proceedings. This privilege may be claimed by the accused notwithstanding the fact that the accused may have been warned of the rights provided by Section 400.625 at the examination.

b) Exceptions

1) There is no privilege under this Section when the accused first introduces into evidence such statements or derivative evidence.

2) An expert witness for the prosecution may testify as to the reasons for the expert's conclusions and the reasons therefor as to the mental state of the accused if expert testimony offered by the defense as to the mental condition of the accused has been received in evidence, but that testimony may not extend to statements of the accused except as provided in subsection (b)(1).

c) Release of Evidence. If the defense offers expert testimony concerning the mental condition of the accused, the military judge, upon motion, shall order the release to the prosecution of the full contents, other than any statements made by the accused, of any report prepared pursuant to Code Section 76a. If the defense offers statements made by the accused at that examination, the military judge may, upon motion, order the disclosure of those statements made by the accused and contained in the report as may be necessary in the interests of justice.

d) Noncompliance by the Accused. The military judge may prohibit an accused who refuses to cooperate in a mental examination authorized under Code Section 76a from presenting any expert medical testimony on any issue that would have been the subject of the mental examination.

e) Procedure. The privilege in this Section may be claimed by the accused only under the procedure set forth in Section 400.620(a) through (g) for an objection or a motion to suppress. (Il. Mil. R. Evid. 302)

Section 400.620 Confessions; Admissions; Statements

a) Definitions. As used in this Section:

1) "Confession" means an acknowledgment of guilt.

2) "Admission" means a self-incriminating statement falling short of an acknowledgment of guilt, even if it was intended by its maker to be exculpatory.

3) "Involuntary" means "involuntary" if it is obtained in violation of the self-incrimination privilege or due process clause of the Fifth Amendment to the U.S. Constitution or Code Section 31, or through the use of coercion, unlawful influence or unlawful inducement.

b) General Rule. Except as provided in subsection (c), an involuntary statement or any derivative evidence from an involuntary statement may not be received in evidence against an accused who made the statement if the accused makes a timely motion to suppress or an objection to the evidence under this Section.

c) Exceptions

1) If the statement is involuntary only in terms of noncompliance with the requirements of Section 400.625(c) or (f), or the requirements concerning counsel under Section 400.610(b) and Section 400.625(d) and (e), this Section does not prohibit use of the statement to impeach by contradiction in the court testimony of the accused or the use of that statement in a later prosecution against the accused for perjury, false swearing, or the making of a false official statement.

2) Evidence that was obtained as a result of an involuntary statement may be used when the evidence would have been obtained even if the involuntary statement had not been made.

3) Derivative Evidence. Evidence that is challenged under this subsection (c) as derivative evidence may be admitted against the accused if the military judge finds by a preponderance of the evidence that the statement was made voluntarily, that the evidence was not obtained by use of the statement, or that the evidence would have been obtained even if the statement had not been made.

d) Procedure

1) Disclosure. Prior to arraignment, the prosecution shall disclose to the defense the contents of all statements, oral or written, made by the accused that are relevant to the case, known to the trial counsel, and within the control of the armed forces.

2) Motions and Objections

A) Motions to suppress or objections under this subsection (d)(2) or Section 400.615 or 400.625 to statements that have been disclosed shall be made by the defense prior to submission of a plea. In the absence of such motion or objection, the defense may not raise the issue at a later time except as permitted by the military judge for good cause shown. Failure to so move or object constitutes a waiver of the objection.

B) If the prosecution intends to offer against the accused a statement made by the accused that was not disclosed prior to arraignment, the prosecution shall provide timely notice to the military judge and to counsel for the accused. The defense may enter an objection at that time and the military judge may make such orders as are required in the interests of justice.

C) If evidence is disclosed as derivative evidence under this subsection (d) prior to arraignment, any motion to suppress or objection under this subsection (d) or Section 400.615 or 400.625 shall be made in accordance with the procedure for challenging a statement under subsection (d)(2)(A). If that evidence has not been so disclosed prior to arraignment, the requirements of subsection (d)(2)(B) apply.

3) Specificity. The military judge may require the defense to specify the grounds upon which the defense moves to suppress or object to evidence. If defense counsel, despite the exercise of due diligence, has been unable to interview adequately those persons involved in the taking of a statement, the military judge may make any order required in the interests of justice, including authorization for the defense to make a general motion to suppress or general objection.

4) Rulings. A motion to suppress or an objection to evidence made prior to plea shall be ruled upon prior to plea unless the military judge, for good cause, orders that it be deferred for determination at trial, but no such determination shall be deferred if a party's right to appeal the ruling is affected adversely. When factual issues are involved in ruling upon the motion or objection, the military judge shall state essential findings of fact on the record.

5) Effect of Guilty Plea. Except as otherwise expressly provided in Code Section 45, a plea of guilty to an offense that results in a finding of guilty waives all privileges against self-incrimination and all motions and objections under this subsection (d) with respect to that offense, regardless of whether raised prior to plea.

e) Burden of Proof. When an appropriate motion or objection has been made by the defense under subsection (d)(2), the prosecution has the burden of establishing the admissibility of the evidence. When a specific motion or objection has been required under subsection (d)(3), the burden on the prosecution extends only to the grounds upon which the defense moved to suppress or object to the evidence.

1) In General. The military judge must find by a preponderance of the evidence that a statement by the accused was made voluntarily before it may be received into evidence. When trial is by a special court-martial without a military judge, a determination by the president of the court that a statement was made voluntarily is subject to objection by any member of the court. When such an objection is made, it shall be resolved by a majority vote of the members. The court-martial shall be closed, and the members shall vote orally, beginning with the member junior in rank.

2) Weight of the Evidence. If a statement is admitted into evidence, the military judge shall permit the defense to present relevant evidence with respect to the voluntariness of the statement and shall instruct the members to give such weight to the statement as it deserves under all the circumstances. When trial is by military judge without members, the military judge shall determine the appropriate weight to give the statement.

3) Derivative Evidence. Evidence that is challenged under this subsection (e) as derivative evidence may be admitted against the accused if the military

judge finds by a preponderance of the evidence that the statement was made voluntarily, that the evidence was not obtained by use of the statement, or that the evidence would have been obtained even if the statement had not been made.

f) Defense Evidence. The defense may present evidence relevant to the admissibility of evidence to which there has been an objection or motion to suppress under this Section. An accused may testify for the limited purpose of denying that the accused made the statement or that the statement was made voluntarily. Prior to the introduction of that testimony by the accused, the defense shall inform the military judge that the testimony is offered under this subsection (f). When the accused testifies under this subsection (f), the accused may be cross-examined only as to the matter on which he or she testifies. Nothing said by the accused on either direct or cross-examination may be used against the accused for any purpose other than in a prosecution for perjury, false swearing, or making of a false official statement.

g) Corroboration. An admission or a confession of the accused may be considered as evidence against the accused on the question of guilt or innocence only if independent evidence, either direct or circumstantial, has been introduced that corroborates the essential facts admitted to justify sufficiently an inference of their truth. Other uncorroborated confessions or admissions of the accused that would themselves require corroboration may not be used to supply this independent evidence. If the independent evidence raises an inference of the truth of some but not all of the essential facts admitted, the confession or admission may be considered as evidence against the accused only with respect to those essential facts stated in the confession or admission that are corroborated by the independent evidence. Corroboration is not required for a statement made by the accused before the court by which the accused is being tried, for statements made prior to or contemporaneously with the act, or for statements offered under a rule of evidence other than that pertaining to the admissibility of admissions or confessions.

1) Quantum of Evidence Needed. The independent evidence necessary to establish corroboration need not be sufficient of itself to establish beyond a reasonable doubt the truth of facts stated in the admission or confession. The independent evidence need raise only an inference of the truth of the essential facts admitted. The amount and type of evidence introduced as

corroboration is a factor to be considered by the trier of fact in determining the weight, if any, to be given to the admission or confession.

2) Procedure. The military judge alone shall determine when adequate evidence of corroboration has been received. Corroborating evidence usually is to be introduced before the admission or confession is introduced, but the military judge may admit evidence subject to later corroboration.

h) Miscellaneous

1) Degrading Questions. No person may be compelled to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade that person.

2) Oral Statements. A voluntary oral confession or admission of the accused may be proved by the testimony of anyone who heard the accused make it, even if it was reduced to writing and the writing cannot be made available.

3) Statements by One of Several Accused. When 2 or more accused are tried at the same trial, evidence of a statement made by one of them which is admissible only against him or her or only against some but not all of the accused may not be received in evidence unless all references inculpating an accused against whom the statement is inadmissible are deleted effectively or the maker of the statement is subject to cross-examination. (Il. Mil. R. Evid. 306)

4) Completeness. If only part of an alleged admission or confession is introduced against the accused, the defense, by cross-examination or otherwise, may introduce the remaining portions of the statement.

5) Certain Admissions by Silence. A person's failure to deny an accusation of wrongdoing concerning an offense for which, at the time of the alleged failure, the person was under official investigation or was in confinement, arrest or custody does not support an inference of an admission of the truth of the accusation.

6) Refusal to Obey Order to Submit Body Substance. If an accused refuses a lawful order to submit for chemical analysis a sample of his or her blood,

breath, urine or other body substance, evidence of that refusal may be admitted into evidence on:

A) A charge of violating an order to submit that sample; or

B) Any other charge on which the results of the chemical analysis would have been admissible. (Il. Mil. R. Evid. 304)

Section 400.625 Warnings About Rights

a) General. A statement obtained in violation of this Section is involuntary and shall be treated under Section 400.620.

b) Definitions. As used in this Section:

1) "Person Subject to the Code" means a person acting as a knowing agent of a military unit or of a person subject to the Code.

2) "Interrogation" means any formal or informal questioning in which an incriminating response either is sought or is a reasonable consequence of that questioning.

c) Warnings Concerning the Accusation, Right to Remain Silent, and Use of Statements. *A person subject to the Code* who is required to give warnings under Code Section 31 *may not interrogate or request any statement from an accused or a person suspected of an offense without first*:

1) *informing the accused or suspect of the nature of the accusation;*

2) *advising the accused or suspect that the accused or suspect has the right to remain silent;* and

3) *advising the accused or suspect that any statement made may be used as evidence against the accused or suspect in a trial by court-martial.* (Code Section 31(b))

d) Counsel Rights and Warnings

1) General. When evidence of a testimonial or communicative nature within the meaning of the Fifth Amendment to the U.S. Constitution either is sought or is a reasonable consequence of an interrogation, an accused or a person suspected of an offense is entitled to consult with counsel as provided in subsection (d)(2), to have counsel present at the interrogation, and to be warned of these rights prior to the interrogation if:

A) The interrogation is conducted by a person subject to the Code who is required to give warnings under Code Section 31 and the accused or suspect is in custody, could reasonably believe himself or herself to be in custody, or is otherwise deprived of his or her freedom of action in any significant way; or

B) The interrogation is conducted by a person subject to the Code acting in a law enforcement capacity, or the agent of such a person, the interrogation is conducted subsequent to the preferral of charges, and the interrogation concerns the offenses or matters that were the subject of the preferral of the charges.

2) Counsel. When a person entitled to counsel under this subsection (d) requests counsel, a judge advocate or an individual certified in accordance with Code Section 27(b) shall be provided by the State at no expense to the person and without regard to the person's indigency or lack of indigency before the interrogation may proceed. In addition to counsel supplied by the State, the person may retain civilian counsel at no expense to the State. Unless otherwise provided by regulations of the Adjutant General, an accused or suspect does not have a right under this subsection (d) to have military counsel of his or her own selection.

e) Presence of Counsel

1) Custodial Interrogation. Absent a valid waiver of counsel under Section 400.610(b), when an accused or person suspected of an offense is subjected to custodial interrogation under circumstances described in subsection (d)(1)(A), and the accused or suspect requests counsel, counsel must be present before any subsequent custodial interrogation may proceed.

2) Post-Preferral Interrogation. Absent a valid waiver of counsel under Section 400.610(b), when an accused or person suspected of an offense is subjected to interrogation under circumstances described in subsection (d)(1)(B), and the accused or suspect either requests counsel or has an appointed or retained counsel, counsel must be present before any subsequent interrogation concerning that offense may proceed.

f) Exercise of Rights

1) The Privilege Against Self-Incrimination. If a person chooses to exercise the privilege against self-incrimination under this Section, questioning must cease immediately.

2) The Right to Counsel. If a person subjected to interrogation under the circumstances described in subsection (d)(1) chooses to exercise the right to counsel, questioning must cease until counsel is present. (Il. Mil. R. Evid. 305)

Section 400.630 Standards for Nonmilitary Interrogations

a) General. When a person subject to the Code is interrogated by an official or agent of the United States, State of Illinois or any state, the person's entitlement to warnings about rights and the validity of any waiver of applicable rights will be determined by the principles of law generally recognized in the State of Illinois.

b) Warnings under Code Section 31 and the Fifth and Sixth Amendments to the U.S. Constitution are not required during an interrogation conducted outside of the U.S., including its possessions, by officials of a foreign government or their agents, unless the interrogation is conducted, instigated or participated in by SMF or U.S. military forces or their agents, or by officials or agents of U.S. federal, state or local jurisdictions. A statement obtained from a foreign interrogation is admissible unless the statement is obtained through the use of coercion, unlawful influence, or unlawful inducement (see MCM Appendix 22). An interrogation is not "participated in" by military personnel or their agents or by federal or state officials or agents merely because those officials or agents were present at an interrogation conducted in a foreign nation by officials of a foreign government or their agents, or because such a person acted as an interpreter or took steps to mitigate damage to property or physical harm during the foreign interrogation. (Il. Mil. R. Evid. 305B)

ILLINOIS DEPARTMENT OF MILITARY AFFAIRS

NOTICE OF ADOPTED RULES

Section 400.635 Evidence Obtained from Unlawful Searches and Seizures

a) General. Evidence obtained as a result of an unlawful search or seizure made by a person acting in a governmental capacity is inadmissible against the accused if:

1) Objection. The accused makes a timely motion to suppress or an objection to the evidence under this Section; and

2) Adequate Interest. The accused had a reasonable expectation of privacy in the person, place or property searched; the accused had a legitimate interest in the property or evidence seized when challenging a seizure; or the accused would otherwise have grounds to object to the search or seizure under the U.S. Constitution as applied to members of the armed forces.

b) Exceptions

1) Evidence that was obtained as a result of an unlawful search or seizure may be used to impeach by contradiction the in-court testimony of the accused.

2) Evidence that was obtained as a result of an unlawful search or seizure may be used when the evidence would have been obtained even if the unlawful search or seizure had not been made.

3) Evidence that was obtained as a result of an unlawful search or seizure may be used if:

A) The search or seizure resulted from an authorization to search, seize or apprehend issued by an individual competent to issue the authorization under Section 400.650(b)(4) or from a search warrant or arrest warrant issued by a competent civilian authority;

B) The individual issuing the authorization or warrant had a substantial basis for determining the existence of probable cause; and

C) The officials seeking and executing the authorization or warrant reasonably and with good faith relied on the issuance of the authorization or warrant. Good faith shall be determined on an objective standard.

c) Nature of Search or Seizure. A search or seizure is "unlawful" if it was conducted, instigated or participated in by:

1) Military Personnel. Military personnel or their agents and was in violation of the U.S. Constitution as applied to members of the armed forces, an Act of Congress applicable to trials by court-martial that requires exclusion of evidence obtained in violation of that Act or Sections 400.640 through 400.655 of this Manual;

2) Other Officials. Other officials or agents of the U.S. federal government or its possessions, and state or local government and was in violation of the U.S. Constitution, or is unlawful under the principles of law generally applied in the trial of criminal cases in the U.S. district courts involving a similar search or seizure; or

3) Officials of a Foreign Government. Officials of a foreign government or their agents and was obtained as a result of a foreign search or seizure that subjected the accused to gross and brutal maltreatment. A search or seizure is not "participated in" merely because a person is present at a search or seizure conducted in a foreign nation by officials of a foreign government or their agents, or because a person acted as an interpreter or took steps to mitigate damage to property or physical harm during the foreign search or seizure.

d) Motions to Suppress and Objections

1) Disclosure. Prior to arraignment, the prosecution shall disclose to the defense all evidence seized from the person or property of the accused, or believed to be owned by the accused, that it intends to offer into evidence against the accused at trial.

2) Motion or Objection

A) When evidence has been disclosed under subsection (d)(1), any motion to suppress or objection under this subsection (d) shall be made by the defense prior to submission of a plea. In the absence of such a motion or objection, the defense may not raise the issue at a later time except as permitted by the military judge for good cause shown. Failure to so move or object constitutes a waiver of the motion or objection.

B) If the prosecution intends to offer evidence seized from the person or property of the accused that was not disclosed prior to arraignment, the prosecution shall provide timely notice to the military judge and to counsel for the accused. The defense may enter an objection at that time and the military judge may make such orders as are required in the interest of justice.

C) If evidence is disclosed as derivative evidence under this subsection (d) prior to arraignment, any motion to suppress or objection under this subsection (d) shall be made in accordance with the procedure for challenging evidence under subsection (d)(2)(A). If the evidence has not been so disclosed prior to arraignment, the requirements of subsection (d)(2)(B) apply.

3) Specificity. The military judge may require the defense to specify the grounds upon which the defense moves to suppress or object to evidence. If defense counsel, despite the exercise of due diligence, has been unable to interview adequately those persons involved in the search or seizure, the military judge may enter any order required by the interests of justice, including authorization for the defense to make a general motion to suppress or general objection.

4) Rulings. A motion to suppress or an objection to evidence made prior to plea shall be ruled upon prior to plea unless the military judge, for good cause, orders that it be deferred for determination at the trial of the general issue or until after findings, but no such determination shall be deferred if a party's right to appeal the ruling is affected adversely. When factual issues are involved in ruling upon the motion or objection, the military judge shall state essential findings of fact on the record.

e) Burden of Proof

1) General. When an appropriate motion or objection has been made by the defense under subsection (d), the prosecution has the burden of proving by a preponderance of the evidence that the evidence was not obtained as a result of an unlawful search or seizure, that the evidence would have been obtained even if the unlawful search or seizure had not been made, or that the evidence was obtained by officials who reasonably and with good faith relied on the issuance of an authorization to search, seize or apprehend, a search warrant, or an arrest warrant.

2) Derivative Evidence. Evidence that is challenged under this Section as derivative evidence may be admitted against the accused if the military judge finds by a preponderance of the evidence that the evidence was not obtained as a result of an unlawful search or seizure, that the evidence ultimately would have been obtained by lawful means even if the unlawful search or seizure had not been made, or that the evidence was obtained by officials who reasonably and with good faith relied on the issuance of an authorization to search, seize or apprehend, a search warrant, or an arrest warrant. Notwithstanding other provisions of this subsection (e)(2), an apprehension made in a dwelling in a manner that violates Code Section 7 does not preclude the admission into evidence of a statement of an individual apprehended provided that:

A) the apprehension was based on probable cause;

B) the statement was made subsequent to the apprehension at a location outside the dwelling; and

C) the statement was otherwise in compliance with this Section.

3) Specific Motions or Objections. When a specific motion or objection has been required under subsection (d)(3), the burden on the prosecution extends only to the grounds upon which the defense moved to suppress or object to the evidence.

f) Defense Evidence. The defense may present evidence relevant to the admissibility of evidence as to which there has been an appropriate motion or objection under this Section. An accused may testify for the limited purpose of contesting the legality of the search or seizure giving rise to the challenged

evidence. Prior to the introduction of that testimony by the accused, the defense shall inform the military judge that the testimony is offered under this subsection (f). When the accused testifies under this subsection (f), the accused may be cross-examined only as to the matter on which he or she testifies. Nothing said by the accused on either direct or cross-examination may be used against the accused for any purpose other than in a prosecution for perjury, false swearing, or the making of a false official statement.

g) Scope of Motion and Objections Challenging Probable Cause

1) General. If the defense challenges evidence seized pursuant to a search warrant or search authorization on the grounds that the warrant or authorization was not based upon probable cause, the evidence relevant to the motion is limited to evidence concerning the information actually presented to, or otherwise known by, the authorizing officer, except as provided in subsection (g)(2).

2) False Statements. If the defense makes a substantial preliminary showing that a government agent included a false statement knowingly and intentionally or with reckless disregard for the truth in the information presented to the authorizing officer, and if the allegedly false statement is necessary to the finding of probable cause, the defense, upon request, shall be entitled to a hearing. At the hearing, the defense has the burden of establishing by a preponderance of the evidence the allegation of knowing and intentional falsity or reckless disregard for the truth. If the defense meets its burden, the prosecution has the burden of proving by a preponderance of the evidence, with the false information set aside, that the remaining information presented to the authorizing officer is sufficient to establish probable cause. If the prosecution does not meet its burden, the objection or motion shall be granted unless the search is otherwise lawful under this Section.

h) Objections to Evidence Seized Unlawfully. If a defense motion or objection under this Section is sustained in whole or in part, the members may not be informed of that fact except that the military judge must instruct the members to disregard evidence.

i) Effect of Guilty Plea. Except as otherwise expressly provided in Code Section 45, a plea of guilty to an offense that results in a finding of guilty waives all issues

under the Fourth Amendment to the U.S. Constitution, this Section, and Sections 400.640, 400.645, 400.650(a) and (b), and 400.655 with respect to the offense, whether or not raised prior to plea. **(**Il. Mil. R. Evid. 311)

Section 400.640 Body Views and Intrusions

a) General. Evidence obtained from body views and intrusions conducted in accordance with this Section is admissible at trial when relevant and not otherwise inadmissible under this Section.

b) Visual Examination of the Body

1) Consensual. Visual examination of the unclothed body may be made with the consent of the individual subject to the inspection in accordance with Section 400.650(a)(5).

2) Involuntary

A) An involuntary display of the unclothed body, including a visual examination of body cavities, may be required only if conducted in reasonable fashion and authorized under one or more of:

i) Section 400.645, Section 400.650(a)(2) and (3) if there is a reasonable suspicion that weapons, contraband or evidence of crime is concealed on the body of the person to be searched;

ii) Section 400.650(a)(8) if reasonably necessary to maintain the security of the jail or similar facility or its personnel;

iii) Section 400.650(a)(7) and (9) and Section 400.650(b).

B) An examination of the unclothed body under this subsection (b) should be conducted whenever practicable by a person of the same sex as that of the person being examined; provided, however, that failure to comply with this requirement does not make an examination an unlawful search within the meaning of Section 400.635.

c) Intrusion Into Body Cavities. A reasonable nonconsensual physical intrusion into the mouth, nose and ears may be made when a visual examination of the body under subsection (b) is permissible. Nonconsensual intrusions into other body cavities may be made:

1) For Purposes of Seizure. When there is a clear indication that weapons, contraband or other evidence of crime is present, to remove weapons, contraband or evidence of crime discovered under subsection (b) and (c)(2) or under Section 400.655(d)(4)(C) if the intrusion is made in a reasonable fashion by a person with appropriate medical qualifications; or

2) For Purposes of Search. To search for weapons, contraband or evidence of crime if authorized by a search warrant or search authorization under Section 400.650(b) and conducted by a person with appropriate medical qualifications. Notwithstanding this subsection (c)(2), a search under Section 400.650(a)(8) may be made without a search warrant or authorization if such search is based on a reasonable suspicion that the individual is concealing weapons, contraband or evidence of crime.

d) Extraction of Body Fluids. Nonconsensual extraction of body fluids, including blood and urine, may be made from the body of an individual pursuant to a search warrant or a search authorization under Section 400.650(b) and conducted by a person with appropriate medical qualifications. Nonconsensual extraction of body fluids may be made without a warrant or authorization, notwithstanding Section 400.650(b)(7) only when there is clear indication that evidence of crime will be found and that there is reason to believe that the delay that would result if a warrant or authorization were sought could result in the destruction of the evidence. Involuntary extraction of body fluids under this subsection (d) must be done in a reasonable fashion by a person with appropriate medical qualifications.

e) Other Intrusive Searches. Nonconsensual intrusive searches of the body made to locate or obtain weapons, contraband or evidence of crime and not within the scope of subsection (b) or (c) may be made only with a warrant or search authorization under Section 400.650(b) and only if the search is conducted in a reasonable fashion by a person with appropriate medical qualifications and does not endanger the health of the person to be searched. Compelling a person to ingest substances for the purposes of locating the weapon, contraband or evidence or to compel the bodily elimination of that property is a search within the meaning of this subsection (e). However, a person who is neither a suspect nor an accused

may not be compelled to submit to an intrusive search of the body for the sole purpose of obtaining evidence of crime.

f) Intrusions for Valid Medical Purposes. Nothing in this Section shall be deemed to interfere with the lawful authority of the SMF to take whatever action may be necessary to preserve the health of an SMF member. Evidence or contraband obtained from an examination or intrusion conducted for a valid medical purpose may be seized and is not evidence obtained from an unlawful search or seizure within the meaning of Section 400.650(a).

g) Medical Qualifications. The Adjutant General may prescribe appropriate medical qualifications for persons who conduct searches and seizures under this Section. (Il. Mil. R. Evid. 312)

Section 400.645 Inspections and Inventories in the Armed Forces

a) For purposes of this Section:

1) "Inspection" means an examination of the whole or part of a unit, organization, installation, vessel, aircraft, or vehicle, including an examination conducted at entrance and exit points, conducted as an incident of command the primary purpose of which is to determine and to ensure the security, military fitness, or good order and discipline of the unit, organization, installation, vessel, aircraft or vehicle. Inspections must be conducted in a reasonable fashion and, if applicable, must comply with Section 400.640. Inspections may utilize any reasonable natural or technological aid and may be conducted with or without notice to those inspected.

2) "Inventory" means a reasonable examination, accounting or other control measure used to account for or control property, assets or other resources. It is administrative and not prosecutorial in nature and, if applicable, the inventory must comply with Section 400.640. An examination made for the primary purpose of obtaining evidence for use in a trial by court-martial or in other disciplinary proceedings is not an inventory within the meaning of this Section.

b) An examination made for the primary purpose of obtaining evidence for use in a trial by court-martial or in other disciplinary proceedings is not an inspection within the meaning of this Section.

c) Evidence obtained from lawful inspections and inventories in the SMF is admissible at trial when relevant and not otherwise inadmissible under this Section. An unlawful weapon, contraband or other evidence of a crime discovered during a lawful inspection or inventory may be seized and is admissible in accordance with this Section.

d) An inspection may include, but is not limited to:

1) an examination to determine and to ensure that the command is:

A) properly equipped;

B) functioning properly;

C) maintaining proper standards of readiness, sea or airworthiness, sanitation and cleanliness; and

D) personnel are present, fit and ready for duty;

2) an order to produce body fluids, such as urine; and

3) an examination to locate and confiscate unlawful weapons and other contraband, provided subsection (b) is not violated. The prosecution must prove by clear and convincing evidence that the examination was an inspection within the meaning of this subsection (d)(3) if a purpose of an examination is to locate weapons or contraband and if:

A) the examination was directed immediately following a report of a specific offense in the unit, organization, installation, vessel, aircraft, or vehicle and was not previously scheduled;

B) specific individuals are selected for examination; or

C) persons examined are subjected to substantially different intrusions during the same examination. (Il. Mil. R. Evid. 313)

ILLINOIS DEPARTMENT OF MILITARY AFFAIRS

NOTICE OF ADOPTED RULES

Section 400.650 Searches

a) Searches Not Requiring Probable Cause

1) General Rule. Evidence obtained from reasonable searches not requiring probable cause conducted pursuant to this subsection (a) is admissible at trial when relevant and not otherwise in admissible under this Section or the U.S. Constitution as applicable to the armed forces.

2) Border Searches. Border searches for customs or immigration purposes may be conducted when authorized by Act of Congress.

3) Searches Upon Entry or Exit from Illinois National Guard Installations, Aircraft and Vessels Abroad. In addition to the authority to conduct inspections under Section 400.645, the Adjutant General or any commander to whom he or she delegates authority, may authorize appropriate personnel to search persons or the property of those persons upon entry to or exit from the installation, enclave, aircraft or vessel to ensure the security, military fitness, or good order and discipline of the command. These searches may not be conducted at a time or in a manner contrary to an express provision of a treaty or agreement to which the United States is a party. Failure to comply with a treaty or agreement, however, does not render a search unlawful within the meaning of Section 400.645. A search made for the primary purpose of obtaining evidence for use in a trial by court-martial or other disciplinary proceedings is not authorized by this Section.

4) Searches of Government Property. Government property may be searched under this Section unless the person to whom the property is issued or assigned has a reasonable expectation of privacy in the government property at the time of the search. Under normal circumstances, a person does not have a reasonable expectation of privacy in government property that is not issued for personal use. Wall or floor lockers in living quarters issued for the purpose of storing personal possessions normally are issued for personal use, but the determination as to whether a person has a reasonable expectation of privacy in government property issued for personal use depends on the facts and circumstances at the time of the search.

ILLINOIS DEPARTMENT OF MILITARY AFFAIRS

NOTICE OF ADOPTED RULES

5) Consent Searches

A) General Rule. Searches may be conducted of any person or property with lawful consent.

B) Who May Consent. A person may consent to a search of his or her person or property, or both, unless control over that property has been given to another. A person may grant consent to search property when the person exercises control over that property.

C) Scope of Consent. Consent may be limited in any way by the person granting consent, including limitations in terms of time, place or property and may be withdrawn at any time.

D) Voluntariness. To be valid, consent must be given voluntarily. Voluntariness is a question to be determined from all the circumstances. Although a person's knowledge of the right to refuse to give consent is a factor to be considered in determining voluntariness, the prosecution is not required to demonstrate that knowledge as a prerequisite to establishing a voluntary consent. Mere submission to the color of authority of personnel performing law enforcement duties or acquiescence in an announced or indicated purpose to search is not a voluntary consent.

E) Burden of Proof. Consent must be shown by clear and convincing evidence. The fact that a person was in custody while granting consent is a factor to be considered in determining the voluntariness of consent, but it does not affect the burden of proof.

6) Searches Incident to a Lawful Stop

A) Stops. A person authorized to apprehend under Code Section 7 and others performing law enforcement duties may stop another person temporarily when the person making the stop has information or observes unusual conduct that leads him or her reasonably to conclude in light of his or her experience that criminal activity may be afoot. The purpose of the stop must be investigatory in nature.

B) Frisks. When a lawful stop is performed, the person stopped may be frisked for weapons when that person is reasonably believed to be armed and presently dangerous. Contraband or evidence located in the process of a lawful frisk may be seized.

C) Motor Vehicles. When a person lawfully stopped is the driver or a passenger in a motor vehicle, the passenger compartment of the vehicle may be searched for weapons if the official who made the stop has a reasonable belief that the person stopped is dangerous and that the person stopped may gain immediate control of a weapon.

7) Searches Incident to a Lawful Apprehension. A person who has been lawfully apprehended may be searched.

A) Search for Weapons and Destructible Evidence. A search may be conducted for weapons or destructible evidence, in the area within the immediate control of a person who has been apprehended. The area within the person's "immediate control" is the area the individual searching could reasonably believe that the person apprehended could reach with a sudden movement to obtain the property; provided, that the passenger compartment of an automobile, and containers within the passenger compartment, may be searched as a contemporaneous incident of the apprehension of an occupant of the automobile, regardless whether the person apprehended has been removed from the vehicle.

B) Examination for Other Persons

i) When an apprehension takes place at a location in which other persons might be present who might endanger those conducting the apprehension and others in the area of the apprehension, a reasonable examination may be made of the general area in which the other persons might be located. A reasonable examination under this subsection (a)(7)(B) is permitted if the apprehending officials have a reasonable suspicion based on specific and articulable facts

that the area to be examined harbors an individual posing a danger to those in the area of the apprehension.

ii) Apprehending officials may, incident to apprehension, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of apprehension from which an attack could be immediately launched.

8) Searches Within Jails, Confinement Facilities, or Similar Facilities. Searches within jails, confinement facilities, or similar facilities may be authorized by persons with authority over the institution.

9) Emergency Searches to Save Life or for Related Purposes. In emergency circumstances to save life or for a related purpose, a search may be conducted of persons or property in a good faith effort to render immediate medical aid, to obtain information that will assist in the rendering of medical aid, or to prevent immediate or ongoing personal injury.

10) Searches of Open Fields or Woodlands. A search of open fields or woodlands is not an unlawful search within the meaning of Section 400.635.

11) Other Searches. A search of a type not otherwise included in this Section and not requiring probable cause under subsection (b) may be conducted when permissible under the U.S. Constitution as applied to members of the armed forces. (Il. Mil. R. Evid. 314)

b) Probable Cause Searches

1) General Rule. Evidence obtained from searches requiring probable cause conducted in accordance with this subsection (b) is admissible at trial when relevant and not otherwise inadmissible under this Section.

2) Definitions. As used in this subsection (b):

A) "Authorization to Search" means an express permission, written or oral, issued by competent military authority to search a person or

an area for specified property or evidence or for a specific person and to seize that property, evidence or person. It may contain an order directing subordinate personnel to conduct a search in a specified manner.

B) "Search Warrant" means an express permission to search and seize issued by competent civilian authority.

3) Scope of Authorization. A search authorization may be issued under this subsection (b) for a search of:

A) Persons. The person of anyone subject to military law or the law of war wherever found;

B) Military Property. Military property of the United States or the Illinois National Guard, or nonappropriated fund activities of U.S. armed forces, wherever located;

C) Persons and Property Within Military Control. Persons or property situated on or in a military installation, encampment, vessel, aircraft, vehicle, or any other location under military control, wherever located.

4) Power to Authorize. Authorization to search pursuant to this subsection (b) may be granted by an impartial individual in the following categories:

A) Commander. A commander or other person serving in a position designated by the Adjutant General as either a position analogous to an officer in charge or a position of command, who has control over the place where the property or person to be searched is situated or found, or, if that place is not under military control, having control over persons subject to military law or the law of war; or

B) Military Judge. A military judge or magistrate if authorized under regulations prescribed by the Adjutant General. An otherwise impartial authorizing official does not lose the character merely because he or she is present at the scene of a search or is otherwise readily available to persons who may seek the issuance of a search

authorization; nor does such an official lose impartial character merely because the official previously and impartially authorized investigative activities when these previous authorization is similar in intent or function to a pretrial authorization made pursuant to the laws of the jurisdiction where the search is to be conducted.

5) Power to Search. Any commissioned officer, warrant officer, petty officer, noncommissioned officer, and, when in the execution of guard or police duties, any criminal investigator, member of the Air Force security police, military police or shore patrol, or person designated by proper authority to perform guard or police duties, or any agent of any such person, may conduct or authorize a search when a search authorization has been granted under this subsection (b) or a search would otherwise be proper under subsection (b)(7).

6) Basis for Search Authorizations

A) Probable Cause Requirement. A search authorization issued under this subsection (b) must be based upon probable cause.

B) Probable Cause Determination. Probable cause to search exists when there is a reasonable belief that the person, property or evidence sought is located in the place or on the person to be searched. A search authorization may be based upon hearsay evidence in whole or in part. A determination of probable cause under this subsection (b)(6)(B) shall be based upon any or all of the following:

i) Written statements communicated to the authorizing officer;

ii) Oral statements communicated to the authorizing official in person, via telephone or by other appropriate means of communication; or

iii) Such information as may be known by the authorizing official that would not preclude the officer from acting in an impartial fashion.

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7) Exigencies. A search warrant or search authorization is not required under this subsection (b) for a search based on probable cause when:

A) Insufficient Time. There is a reasonable belief that the delay necessary to obtain a search warrant or search authorization would result in the removal, destruction or concealment of the property or evidence sought;

B) Lack of Communications. There is a reasonable military operational necessity that is reasonably believed to prohibit or prevent communication with a person empowered to grant a search warrant or authorization and there is a reasonable belief that the delay necessary to obtain a search warrant or search authorization would result in the removal, destruction or concealment of the property or evidence sought;

C) Search of Operable Vehicle. An operable vehicle is to be searched, except in the circumstances in which a search warrant or authorization is required by the U.S. Constitution, the Code or this Manual; or

D) Not Required by the Constitution. A search warrant or authorization is not otherwise required by the U.S. Constitution as applied to members of the armed forces. For purpose of this subsection (b)(7), a vehicle is "operable" unless a reasonable person would have known at the time of search that the vehicle was not functional for purposes of transportation.

8) Execution

A) Notice. If the person whose property is to be searched is present during a search conducted pursuant to a search authorization granted under this subsection (b), the person conducting the search should, when possible, notify the property holder of the act of authorization and the general substance of the authorization. The notice may be made prior to or contemporaneously with the search. Failure to provide notice does not make a search unlawful within the meaning of Section 400.635.

B) Inventory. Under regulations prescribed by the appropriate authority, and with such exceptions as may be authorized by the U.S. Secretary of Defense, an inventory of the property seized shall be made at the time of a seizure under this subsection (b) or as soon as practicable thereafter. At an appropriate time, a copy of the inventory shall be given to a person from whose possession or premises the property was taken. Failure to make an inventory, furnish a copy of the inventory, or otherwise comply with this subsection (b)(8)(B) does not render a search or seizure unlawful within the meaning of Section 400.635.

C) Foreign Searches. Execution of a search authorization outside the United States and within the jurisdiction of a foreign nation should be in conformity with existing agreements between the United States and the foreign nation. Noncompliance with such an agreement does not make an otherwise lawful search unlawful.

D) Search Warrants. Any civilian or military criminal investigator authorized to request search warrants pursuant to applicable law or regulation is authorized to serve and execute search warrants. The execution of a search warrant affects admissibility only insofar as exclusion of evidence is required by the U.S. Constitution or an applicable Act of Congress. (Il. Mil. R. Evid. 315)

Section 400.655 Seizures

a) General Rule. Evidence obtained from seizures conducted in accordance with this Section is admissible at trial if the evidence was not obtained as a result of an unlawful search and if the evidence is relevant and not otherwise inadmissible under this Section.

b) Seizure of Property. Probable cause to seize property or evidence exists when there is a reasonable belief that the property or evidence is an unlawful weapon, contraband or evidence of crime, or might be used to resist apprehension or to escape.

c) Apprehension. Apprehension is governed by Code Section 7.

d) Seizure of Property or Evidence

1) Abandoned Property. Abandoned property may be seized without probable cause and without a search warrant or search authorization. The seizure may be made by any person.

2) Consent. Property or evidence may be seized with consent consistent with the requirements applicable to consensual searches under Section 400.650(a).

3) Government Property. Government property may be seized without probable cause and without a search warrant or search authorization by any person listed in subsection (e), unless the person to whom the property is issued or assigned has a reasonable expectation of privacy, as provided in Section 400.650(a)(4), at the time of the seizure.

4) Other Property. Property or evidence not included in subsections (d)(1) through (3) may be seized for use in evidence by any person listed in subsection (e) if:

A) Authorization. The person is authorized to seize the property or evidence by a search warrant or a search authorization under Section 400.650(b);

B) Exigent Circumstances. The person has probable cause to seize the property or evidence and, under Section 400.650(b)(7), a search warrant or search authorization is not required; or

C) Plain View. The person, while in the course of otherwise lawful activity, observes in a reasonable fashion property or evidence that the person has probable cause to seize.

5) Temporary Detention. Nothing in this Section shall prohibit temporary detention of property on less than probable cause when authorized under the U.S. Constitution.

e) Power to Seize. Any commissioned officer, warrant officer, petty officer, noncommissioned officer, and, when in the execution of guard or police duties, any criminal investigator, member of the Air Force security police, military police or shore patrol, or individual designated by proper authority to perform guard or

police duties, or any agent of any such person, may seize property pursuant to this Section.

f) Other Seizures. A seizure of a type not otherwise included in this Section may be made when permissible under the U.S. and Illinois Constitutions, as applied to members of the armed forces. (Il. Mil. R. Evid. 316)

Section 400.660 Eyewitness Identification

a) Eyewitness identification in courts-martial shall be conducted in accordance with Section 107A-2 of the Illinois Code of Criminal Procedure (CCP).

b) When the Section 107A-2 uses the following terms, for the purposes of this Manual those terms shall have meanings ascribed in this subsection (b).

1) CCP Section 107A-2(b) requires law enforcement to adopt written guidelines for determining when simultaneous or sequential lineups shall be conducted. For purposes of this Manual, the NGIL-JA, in coordination with civilian law enforcement, will develop those guidelines.

2) References in CCP Section 107A-2(i) to "State's Attorney" shall be considered under this Manual to be references to the "government's counsel".

3) References in CCP Section 107A-2 to "the court" shall be read as "military judge".

Section 400.665 Relevant Evidence

a) Definition. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. (Il. Mil. R. Evid. 401)

b) General Admissibility of Relevant Evidence

1) All relevant evidence is admissible, except as otherwise provided by law.

2) Evidence that is not relevant is not admissible. (Il. Mil. R. Evid. 402)

c) Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion or Waste of Time
Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the members, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. (Il. Mil. R. Evid. 403)

Section 400.670 Character Evidence; Crimes or Other Acts

a) Character Evidence

1) Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity with that person's character on a particular occasion, except:

A) Character of the Accused. Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut that evidence;

B) Subject to the Limitations Imposed by Section 115-7 of the Code of Illinois Criminal Procedure:

i) evidence of a pertinent trait of character of the alleged victim of the crime offered by an accused, or by the prosecution to rebut that allegation; or

ii) evidence of a character trait of peacefulness of the alleged victim offered by the prosecution in a homicide or battery case to rebut evidence that the alleged victim was the first aggressor.

C) Evidence of the character of a witness, as provided in Section 400.705(g), (h) and (i).

2) Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity with that character, except as provided by Sections 115-7.3, 115-7.4 and 115-20 of the Code of Criminal Procedure. The evidence may be admissible for

other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident.

3) When the prosecution intends to offer evidence under subsection (a)(2), it must disclose the evidence, including statements of witnesses or a summary of the substance of any testimony, at a reasonable time in advance of trial or during trial if the military judge excuses pretrial notice on good cause shown. (Il. Mil. R. Evidence 404)

b) Admissible Methods of Proving Character

1) Definitions. For purposes of this subsection (b), the following definitions apply.

A) "Community", in the SMF, means post, camp, base, ship, station, unit or other military organization, regardless of size.

B) "Reputation" means the estimation in which a person generally is held in the community in which the person lives or pursues a business or profession. (Il. Mil. R. Evid. 405)

2) In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion.

3) In cases in which character or a trait of character of a person is an essential element of the charge, claim or defense, proof may also be made of specific instances of that person's conduct.

4) In criminal homicide or battery cases, when the accused raises the theory of self-defense and there is conflicting evidence as to whether the alleged victim was the aggressor, proof may also be made of specific instances of the alleged victim's prior conduct.

5) The defense may introduce affidavits or other written statements of persons other than the accused concerning the character of the accused. If the defense introduces affidavits or other written statements under this subsection (b)(5), the prosecution may, in rebuttal, also introduce affidavits or other written statements regarding the character of the

accused. Evidence of this type may be introduced by the defense or prosecution only if, aside from being contained in an affidavit or other written statement, it would otherwise be admissible under this Subpart. (Il. Mil. R. Evid. 405)

Section 400.675 Habit and Routine Practice

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice. (Il. Mil. R. Evid. 406)

Section 400.680 Subsequent Remedial Measures

When, after an injury or harm allegedly caused by an event, measures are taken that, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product, a defect in a product's design, or a need for a warning or instruction. This Section does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as:

a) proving ownership, control or feasibility of precautionary measures, if controverted; or

b) impeachment. (Il. Mil. R. Evid. 407)

Section 400.685 Compromise Offers; Offers of Reimbursement; Pleas

a) Compromise

1) Prohibited Uses of Evidence. Evidence of the following is not admissible on behalf of any party, when offered to prove liability for, invalidity of, or amount of, a claim that was disputed as to validity or amount, or to impeach through a prior inconsistent statement or contradiction:

A) Furnishing, offering or promising to furnish, or accepting, offering or promising to accept, a valuable consideration in compromising or attempting to compromise the claim; and

B) Conduct or statements made in the compromise negotiations regarding the claim.

2) Permitted Uses of Evidence

A) This Section:

i) does not require the exclusion of evidence otherwise discoverable merely because it is presented in the course of settlement negotiations; and

ii) does not require exclusion if the evidence is offered for purposes not prohibited by subsection (a)(1).

B) Examples of permissible purposes include proving a witness' bias or prejudice; negating an assertion of undue delay; establishing bad faith and proving an effort to obstruct a criminal investigation or prosecution. (Il. Mil. R. Evid. 408)

b) Offers to Pay Medical and Similar Expenses
In addition to the provisions of Section 8-1901 of the Code of Civil Procedure, evidence of furnishing, promising to pay, or offering to pay medical, hospital or similar expenses resulting from an injury is not admissible to prove liability for the injury. (Il. Mil. R. Evid. 409)

c) Pleas, Plea Discussions and Related Statements

1) Definitions

A) "Statement Made in the Course of Plea Discussions" means a statement made by the accused solely for the purpose of requesting disposition under an authorized procedure for administrative action in lieu of trial by court-martial.

B) "On the Record" means the written statement submitted by the accused in furtherance of a request for disposition.

2) Except as otherwise provided in this Section, evidence of the following is not admissible in any court-martial proceeding against the accused who made the plea or was a participant in the plea discussions:

A) a plea of guilty that was later withdrawn;

B) a plea of nolo contendere;

C) any statement made in the course of any judicial inquiry regarding either of the pleas is subsections (c)(2)(A) and (B); or

D) any statement made in the course of plea discussions with the convening authority, staff judge advocate, trial counsel or other counsel for the government that do not result in a plea of guilty or that result in a plea of guilty later withdrawn. However, such a statement is admissible:

i) in any proceeding in which another statement made in the course of the same plea or plea discussions has been introduced and the statement should, in fairness, be considered contemporaneously; or

ii) in a court-martial proceeding for perjury or false statement if the statement was made by the accused under oath, on the record and in the presence of counsel. (Il. Mil. R. Evid. 410)

Section 400.690 Liability Insurance

Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. The military judge may admit this evidence for another purpose, such as proving witness bias or prejudice or proving agency, ownership or control or bias or prejudice of a witness. (Il. Mil. R. Evid. 411)

Section 400.695 Admissibility of Prior Sexual Activity and Offenses

a) Admissibility

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1) When an accused is charged with *predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, aggravated criminal sexual abuse, criminal sexual abuse, or criminal transmission of HIV, and in prosecutions for battery/aggravated battery* that involve *sexual penetration or sexual conduct*, evidence of *the prior sexual activity or the reputation of the alleged victim or corroborating witness is inadmissible except*:

   A) *as evidence concerning the past sexual conduct of the alleged victim or corroborating witness under Section 115-7.3 of* the *Code* of Criminal Procedure *with the accused when* the *evidence is offered by the accused upon the issue of whether the alleged victim or corroborating witness consented to the sexual conduct with respect to which the offense is alleged; or*

   B) *when constitutionally required to be admitted.*

2) *No evidence admissible under this Section shall be introduced unless ruled admissible by the* military *judge after an offer of proof has been made at a hearing to be held in camera in order to determine whether the defense has evidence to impeach the witness in the event that prior sexual activity with the defendant is denied. The offer of proof shall include reasonably specific information as to the date, time and place of the past sexual conduct between the alleged victim or corroborating witness and the* accused.

3) *Unless the* military judge *finds that reasonably specific information as to* the *date, time or place, or some combination thereof, has been offered as to prior sexual activity with the* accused, *counsel for the* accused *shall be ordered to refrain from inquiring into prior sexual activity between the alleged victim or corroborating witness and the* accused.

4) *The* military judge *shall not admit evidence under this* Section *unless* he or she *determines at the hearing that the evidence is relevant and the probative value of the evidence outweighs the danger of unfair prejudice.*

5) *The evidence shall be admissible at trial to the extent an order made by the* military judge *specifies the evidence that may be admitted and the*

areas with respect to which the alleged victim or corroborating witness may be examined or cross-examined. [725 ILCS 5/115-7]

6) The military judge *may not order mental examination of a sex victim. Except when explicitly authorized by* the *Code of Criminal Procedure or by the Rules of the Supreme Court of Illinois, no* military judge *may require or order a witness who is the victim of an alleged sex offense to submit to or undergo either a psychiatric or psychological examination.* [725 ILCS 5/115-7.1]

7) Pursuant to Section 115-7.2 of the Code of Criminal Procedure, *in a prosecution for an illegal sexual act perpetrated upon a victim, testimony by an expert, qualified by the* military judge *relating to any recognized and accepted form of post-traumatic stress syndrome shall be admissible as evidence*. [725 ILCS 5/115-7.2] (Il. Mil. R. Evid. 412)

b) Similar Offenses

1) Evidence in Certain Cases. In a court-martial for an offense set forth in Section 115-7.3 of the Code of Criminal Procedure, or that of an identical or closely related offense under the law of the state where the offense occurred, evidence of the defendant's commission of another offense or offenses set forth in Section 115-7.3 is admissible, as provided in Section 115-7.3.

2) Evidence in Domestic Violence Cases. In a court-martial for an offense related to domestic violence as set forth in Section 115-7.4 of the Code of Criminal Procedure, to include that of a related offense under the law of the state where the offense occurred, evidence of the defendant's commission of another offense or offenses of domestic violence is admissible, as provided in Section 115-7.4.

3) Evidence of Prior Convictions. In a criminal case for the type of offenses set forth in Section 115-20 of the Code of Criminal Procedure, evidence of the defendant's conviction for an offense set forth in that Section is admissible when the victim is the same person who was the victim of the previous offense that resulted in the conviction of the defendant, as provided in Section 115-20.

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Section 400.700 Privilege

a) General

1) A person may not claim a privilege with respect to any matter except as required by or provided for in:

A) The U.S. Constitution as applied to members of the armed forces;

B) An Act of Congress applicable to trials by courts-martial;

C) This Manual; or

D) The principles of common law generally recognized in the trial of criminal cases in the United States district courts pursuant to Rule 501 of the Federal Rules of Evidence insofar as the application of those principles in trials by courts-martial is practicable and not contrary to or inconsistent with the Code or this Manual.

2) A claim of privilege includes, but is not limited to, the assertion by any person of a privilege to:

A) Refuse to be a witness;

B) Refuse to disclose any matter;

C) Refuse to produce any object or writing; or

D) Prevent another from being a witness or disclosing any matter or producing any object or writing.

3) The term "person" includes an appropriate representative of the federal government, a state or political subdivision thereof, or any other entity claiming to be the holder of a privilege. Including any other provision of this Section, information not otherwise privileged does not become privileged on the basis that it was acquired by a medical officer or civilian physician in a professional capacity. (Il. Mil. R. Evid. 501)

b) Lawyer-Client Privilege

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1) Definitions. As used in this Section:

A) "Client" means a person, public officer, corporation, association, organization or other entity, either public or private, who receives professional legal services from a lawyer, or who consults a lawyer with a view to obtaining professional legal services from the lawyer.

B) "Confidential Communication" or "Communication" means a communication not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

C) "Lawyer" means a person authorized, or reasonably believed by the client to be authorized, to practice law, or a member of the armed forces detailed, assigned or otherwise provided to represent a person in a court-martial case or in any military investigation or proceeding. The term "lawyer" does not include a member of the armed forces serving in a capacity other than as a judge advocate, legal officer, or law specialist as defined in Code Section 1, unless the member:

i) is detailed, assigned or otherwise provided to represent a person in a court-martial case or in any military investigation or proceeding;

ii) is authorized by the armed forces, or reasonably believed by the client to be authorized, to render professional legal services to members of the armed forces; or

iii) is authorized to practice law and render professional legal services during off-duty employment.

D) "Representative" means a lawyer or a person employed by or assigned to assist a lawyer in providing professional legal services.

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2) General Rule of Privilege. A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications made for the purpose of facilitating the rendition of professional legal services:

A) to the client;

B) between the client or the client's representative and the lawyer or the lawyer's representative;

C) between the lawyer and the lawyer's representative;

D) by the client or the client's lawyer to a lawyer representing another in a matter of common interest;

E) between representatives of the client or between the client and a representative of the client; or

F) between lawyers representing the client.

3) Who May Claim the Privilege. The privilege may be claimed by the client, the guardian or conservator of the client, the personal representative of a deceased client, or the successor, trustee or similar representative of a corporation, association or other organization, whether or not in existence. The lawyer or the lawyer's representative who received the communication may claim the privilege on behalf of the client. The authority of the lawyer to do so is presumed in the absence of evidence to the contrary.

4) Exceptions. There is no privilege under this Section in the following circumstances:

A) Crime or Fraud: If the communication clearly contemplated the future commission of a fraud or crime, or if services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

B) Claimants Through Same Deceased Client: As to a communication relevant to an issue between parties who claim, through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;

C) Breach of Duty by Lawyer or Client: As to a communication relevant to an issue of breach of duty by the lawyer to the client or by the client to the lawyer;

D) Document Attested to by Lawyer: As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness; or

E) Joint Clients: As to a communication relevant to a matter of common interest between 2 or more clients, if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients. (Il. Mil. R. Evid. 502)

c) Communications to Clergy

1) Definitions. As used in this subsection (c):

A) "Clergyman" means a minister, priest, rabbi, chaplain or other similar functionary of a religious organization, or an individual reasonably believed to be so by the person consulting the clergyman.

B) "Clergyman's Assistant" means a person employed by or assigned to assist a clergyman in his or her capacity as a spiritual advisor.

C) "Confidential Communication" or "Communication" means a communication made to a clergyman in the clergyman's capacity as a spiritual adviser, or to a clergyman's assistant in the assistant's official capacity, that is not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the purpose of the communication or to those reasonably necessary for the transmission of the communication.

2) General Rule of Privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman or to a clergyman's assistant if that communication is made either as a formal act of religion or as a matter of conscience.

3) Who May Claim the Privilege. The privilege may be claimed by the person, by the guardian or conservator, or by a personal representative if the person is deceased. The clergyman or clergyman's assistant who received the communication may claim the privilege on behalf of the person. The authority of the clergyman or clergyman's assistant to do so is presumed in the absence of evidence to the contrary. (Il. Mil. R. Evid. 503)

d) Husband-Wife Privilege

1) Definitions. As used in this subsection (d):

A) "Confidential Communication" or "Communication" means a confidential communication made privately by any person to the spouse of the person and is not intended to be disclosed to third persons other than those reasonably necessary for transmission of the communication.

B) "A Child of Either" includes not only a biological child, adopted child, or ward of one of the spouses, but also includes a child who is under the permanent or temporary physical custody of one of the spouses, regardless of the existence of a legal parent-child relationship. For purposes of this subsection (d) only, a child is:

i) an individual under the age of 18; or

ii) an individual over the age of 18 with a mental disability that results in the individual functioning at the capacity of a person under the age of 18.

C) "Temporary Physical Custody" includes instances in which a parent entrusts his or her child to another. There is no minimum amount of time necessary to establish temporary physical custody,

nor must there be a written agreement. Rather, the focus is on the parent's agreement with another for assuming parental responsibility for the child. For example, temporary physical custody may include instances in which a parent entrusts another with the care of his or her child for recurring care or during absences due to temporary duty or deployments.

2) Spousal Incapacity. A person has a privilege to refuse to testify against his or her spouse.

3) Confidential Communication Made During Marriage

A) General Rule of Privilege. A person has a privilege during and after the marital relationship to refuse to disclose, and to prevent another from disclosing, any confidential communication made to the spouse of the person while they were husband and wife and not separated as provided by law.

B) Who May Claim the Privilege. The privilege may be claimed by the spouse who made the communication or by the other spouse on his or her behalf. The authority of the latter spouse to do so is presumed in the absence of evidence of a waiver. The privilege will not prevent disclosure of the communication at the request of the spouse to whom the communication was made if that spouse is an accused, regardless of whether the spouse who made the communication objects to its disclosure.

4) Exceptions

A) Spousal Incapacity Only. There is no privilege under subsection (d)(2) when, at the time the testimony of one of the parties to the marriage is to be introduced in evidence against the other party, the parties are divorced or the marriage has been annulled.

B) Spousal Incapacity and Confidential Communications. There is no privilege under subsection (d)(2) or (3):

i) In proceedings in which one spouse is charged with a crime against the person or property of the other spouse or a child

of either, or with a crime against the person or property of a third person committed in the course of committing a crime against the other spouse;

ii) When the marital relationship was entered into with no intention of the parties to live together as spouses, but only for the purpose of using the purported marital relationship as a sham, and:

- with respect to the privilege in subsection (d)(2), the relationship remains a sham at the time the testimony or statement of one of the parties is to be introduced against the other; or

- with respect to the privilege in subsection (d)(3), the relationship was a sham at the time of the communication;

iii) In proceedings in which a spouse is charged, in accordance with Code Section 133 or 134:

- with importing the other spouse as an alien for prostitution or other immoral purposes in violation of 8 USC 1328;

- with transporting the other spouse in interstate commerce for immoral purposes or other offense in violation of 18 USC 2421 through 2424; or

- with violation of other similar statutes under which the privilege may not be claimed in the trial of criminal cases in the United States district courts; or

iv) When both parties have been substantial participants in illegal activity, communications between the spouses during the marriage regarding the illegal activity in which they have jointly participated. (Il. Mil. R. Evid. 504)

e) Classified Information

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1) Definitions. As used in this subsection (e):

A) "Classified Information" means:

i) any information or material that has been determined by the U.S. government, pursuant to an executive order, statute or regulations, to require protection against unauthorized disclosure for reasons of national security; and

ii) any restricted data, as defined in Section 2014(6) of the federal Atomic Energy Act of 1954.

B) "National Security" means the national defense and foreign relations of the United States.

2) General Rule of Privilege. Classified information is privileged from disclosure if disclosure would be detrimental to the national security. As with other rules of privilege, this rule applies to all stages of the proceedings.

3) Who May Claim the Privilege. The privilege may be claimed by the head of the concerned executive or military department or government agency based on a finding that the information is properly classified and that disclosure would be detrimental to the national security. A person who may claim the privilege may authorize a witness or trial counsel to claim the privilege on his or her behalf. The authority of the witness or trial counsel to do so is presumed in the absence of evidence to the contrary.

4) Action Prior to Referral of Charges. Prior to referral of charges, the convening authority shall respond in writing to a request by the accused for classified information if the privilege in this subsection (e) is claimed for that information. The convening authority may:

A) Delete specified items of classified information from documents made available to the accused;

B) Substitute a portion or summary of the information for the classified documents;

C) Substitute a statement admitting relevant facts that the classified information would tend to prove;

D) Provide the document subject to conditions that will guard against the compromise of the information disclosed to the accused; or

E) Withhold disclosure if action under subsections (e)(4)(A) through (D) cannot be taken without causing identifiable damage to the national security. Any objection by the accused to withholding of information or to the conditions of disclosure shall be raised through a motion for appropriate relief at a pretrial session.

5) Pretrial Session. At any time after referral of charges and prior to arraignment, any party may move for a session under Code Section 39(a) to consider matters relating to classified information that may arise in connection with the trial. Following such motion or sua sponte, the military judge promptly shall hold a session under Code Section 39(a) to establish the timing of requests for discovery, the provision of notice under subsection (e)(8), and the initiation of the procedure under subsection (e)(9). In addition, the military judge may consider any other matters that relate to classified information or that may promote a fair and expeditious trial.

6) Action After Referral of Charges. If a claim of privilege has been made under this subsection (e) with respect to classified information that apparently contains evidence that is relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible in evidence in the court-martial proceeding, the matter shall be reported to the convening authority. The convening authority may:

A) institute action to obtain the classified information for use by the military judge in making a determination under subsection (e)(9);

B) dismiss the charges;

C) dismiss the charges or specifications, or both, to which the information relates; or

D) take such other action as may be required in the interests of justice. If, after a reasonable period of time, the information is not provided to the military judge in circumstances in which proceeding with the case without that information would materially prejudice a substantial right of the accused, the military judge shall dismiss the charges or specifications or both to which the classified information relates.

7) Disclosure of Classified Information to the Accused

A) Protective Order. If the government (i.e., the prosecution) agrees to disclose classified information to the accused, the military judge, at the request of the government, shall enter an appropriate protective order to guard against the compromise of the information disclosed to the accused. The terms of the protective order may include provisions:

i) Prohibiting the disclosure of the information, except as authorized by the military judge;

ii) Requiring storage of material in a manner appropriate for the level of classification assigned to the documents to be disclosed;

iii) Requiring controlled access to the material during normal business hours and at other times upon reasonable notice;

iv) Requiring appropriate security clearances for persons having a need to examine the information in connection with the preparation of the defense. All persons requiring security clearances shall cooperate with investigatory personnel in any investigations that are necessary to obtain a security clearance.

v) Requiring the maintenance of logs regarding access by all persons authorized by the military judge to have access to the classified information in connection with the preparation of the defense;

vi) Regulating the making and handling of notes taken from material containing classified information; or

vii) Requesting the convening authority to authorize the assignment of government security personnel and the provisions of government storage facilities.

B) Limited Disclosure

i) The military judge, upon motion of the government, shall authorize the deletion of specified items of classified information from documents to be made available to the defendant, the substitution of a portion or summary of the information for the classified documents, or the substitution of a statement admitting relevant facts that the classified information would tend to prove, unless the military judge determines that disclosure of the classified information itself is necessary to enable the accused to prepare for trial.

ii) The government's motion and any materials submitted in support of the motion shall, upon request of the government, be considered by the military judge in camera and shall not be disclosed to the accused.

C) Disclosure of Certain Statements Previously Made by a Witness

i) Scope. After a witness called by the government has testified on direct examination, the military judge, on motion of the accused, may order production of statements in the possession of the government under Code Section 46. This provision does not preclude discovery or assertion of a privilege otherwise authorized under this Manual.

ii) Closed Session. If the privilege in this subsection (e) is invoked during consideration of a motion under Code Section 46, the government may deliver the statement for the inspection only by the military judge in camera and may provide the military judge with an affidavit identifying the portions of the statement that are classified and the

basis for the classification assigned. If the military judge finds that disclosure of any portion of the statement identified by the government as classified could reasonably be expected to cause damage to the national security in the degree required to warrant classification under the applicable executive order, statute or regulation and that such portion of the statement is consistent with the witness' testimony, the military judge shall excise that portion from the statement. With the material excised, the military judge shall direct delivery of the statement to the accused for use by the accused. If the military judge finds that the portion of the statement is inconsistent with the witness' testimony, the government may move for a proceeding under subsection (e)(9).

D) Record of Trial. If, under this subsection (e), any information is withheld from the accused, the accused objects to that withholding, and the trial is continued to an adjudication of guilt of the accused, the entire unaltered text of the relevant documents, as well as the government's motion and any materials submitted in support of the motion, shall be sealed and attached to the record of trial as an appellate exhibit. This material shall be made available to reviewing authorities in closed proceedings for the purpose of reviewing the determination of the military judge.

8) Notice of the Accused's Intentions to Disclose Classified Information

A) Notice by the Accused. If the accused reasonably expects to disclose or to cause the disclosure of classified information in any manner in connection with a court-martial proceeding, the accused shall notify the trial counsel in writing of that intention and file a copy of the notice with the military judge. The notice shall be given within the time specified by the military judge under subsection (e)(5) or, if no time has been specified, prior to arraignment of the accused.

B) Continuing Duty to Notify. Whenever the accused learns of classified information not covered by a notice under subsection (e)(8)(A) that the accused reasonably expects to disclose at any

proceeding, the accused shall notify the trial counsel and the military judge in writing as soon as possible thereafter.

C) Content of Notice. The notice required by this subsection (e)(8) shall include a brief description of the classified information. The description, to be sufficient, must be more than a mere general statement of the areas about which evidence may be introduced. The accused must state, with particularity, which items of classified information he or she reasonably expects will be revealed by his or her defense.

D) Prohibition Against Disclosure. The accused may not disclose any information known or believed to be classified until notice has been given under this subsection (e)(8) and until the government has been afforded a reasonable opportunity to seek a determination under subsection (e)(9).

E) Failure to Comply. If the accused fails to comply with the requirements of this subsection (e)(8), the military judge may preclude disclosure of any classified information not made the subject of notification and may prohibit the examination by the accused of any witness with respect to any such information.

9) In Camera Proceedings for Cases Involving Classified Information

A) Definition. For purposes of this subsection (e)(9), an "in camera proceeding" is a session under Code Section 39(a) from which the public is excluded.

B) Motion for In Camera Proceeding. Within the time specified by the military judge for the filing of a motion under this subsection (e), the government may move for an in camera proceeding concerning the use at any proceeding of any classified information. Thereafter, either prior to or during trial, the military judge, for good cause shown or otherwise upon a claim of privilege under this subsection (e) may grant the government leave to move for an in camera proceeding concerning the use of additional classified information.

C) Demonstration of National Security Nature of the Information. In order to obtain an in camera proceeding under this subsection (e)(9), the government shall submit the classified information and an affidavit ex parte for examination by the military judge only. The affidavit shall demonstrate that disclosure of the information reasonably could be expected to cause damage to the national security in the degree required to warrant classification under the applicable executive order, statute or regulation.

D) In Camera Proceeding

i) Procedure. Upon finding that the government has met the standard set forth in subsection (e)(9)(C) with respect to some or all of the classified information at issue, the military judge shall conduct an in camera proceeding. Prior to the in camera proceeding, the government shall provide the accused with notice of the information that will be at issue. This notice shall identify the classified information that will be at issue whenever that information previously has been made available to the accused in connection with proceedings in the same case. The government may describe the information by generic category, in such form as the military judge may approve, rather than identifying the classified information, when the government has not previously made the information available to the accused in connection with pretrial proceedings. Following briefing and argument by the parties in the in camera proceeding, the military judge shall determine whether the information may be disclosed at the court-martial proceeding. When the government's motion under subsection (e)(5) is filed prior to the proceeding at which disclosure is sought, the military judge shall rule prior to the commencement of the relevant proceeding.

ii) Standard. Classified information is not subject to disclosure under this subsection (e) unless the information is relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible in evidence. In presentencing proceedings, relevant and

material classified information pertaining to the appropriateness of, or the appropriate degree of, punishment shall be admitted only if no unclassified version of that information is available.

iii) Ruling. Unless the military judge makes a written determination that the information meets the standard set forth in subsection (e)(9)(D)(ii), the information may not be disclosed or otherwise elicited at a court-martial proceeding. The record of the in camera proceeding shall be sealed and attached to the record of trial as an appellate exhibit. The accused may seek reconsideration of the determination prior to or during trial.

iv) Alternatives to Full Disclosure. If the military judge makes a determination under this subsection (e)(9) that would permit disclosure of the information, or if the government elects not to contest the relevance, necessity and admissibility of any classified information, the government may proffer a statement admitting, for purposes of the proceeding, any relevant facts the information would tend to prove. The government may submit a portion of summary to be used in lieu of the information. The military judge shall order that the statement, portion or summary be used by the accused in place of the classified information unless the military judge finds that use of the classified information itself is necessary to afford the accused a fair trial.

v) Sanctions. If the military judge determines that alternatives to full disclosure may not be used and the government continues to object to disclosure of the information, the military judge shall issue any order that the interests of justice require, including an order:

- striking or precluding all or part of the testimony of a witness;

- declaring a mistrial;

- finding against the government on any issue as to which the evidence is relevant and material to the defense;

- dismissing the charges, with or without prejudice; or

- dismissing the charges or specifications, or both, to which the information relates.

vi) Any such order shall permit the government to avoid the sanction for nondisclosure by permitting the accused to disclose the information at the pertinent court-martial proceeding.

10) Introduction of Classified Information

A) Classification Status. Writing, recordings and photographs containing classified information may be admitted into evidence without change in their classification status.

B) Precautions by the Military Judge. In order to prevent unnecessary disclosure of classified information, the military judge may order admission into evidence of:

i) only part of a writing, recording or photograph; or

ii) the whole writing, recording or photograph with excision of some or all of the classified information.

C) Contents of Writing, Recording or Photograph. The military judge may permit proof of the contents of a writing, recording or photograph that contains classified information without requiring introduction into evidence of the original or a duplicate.

D) Taking of Testimony. During the examination of a witness, the government (i.e., the prosecution) may object to any question or line of inquiry that may require the witness to disclose classified

information not previously found to be relevant and necessary to the defense. Following such an objection, the military judge shall take suitable action to determine whether the response is admissible, considering whether the action will safeguard against the compromise of any classified information. The action may include requiring:

i) the government to provide the military judge with a proffer or the witness' response to the question or line of inquiry; and

ii) the accused to provide the military judge with a proffer of the nature of the information the accused seeks to elicit.

E) Closed Session. The military judge may exclude the public during that portion of the presentation of evidence that discloses classified information.

F) Record of Trial. The record of trial with respect to any classified matter will be prepared in accordance with Code Section 54 and RCM 1103(h) and 1104(b)(1)(D).

11) Security Procedures to Safeguard Against Compromise of Classified Information Disclosed to Courts-Martial. The Secretary of Defense may prescribe security procedures for protection against the compromise of classified information submitted to courts-martial and appellate authorities. (Il. Mil. R. Evid. 505)

f) Government Information Other Than Classified Information

1) General Rule of Privilege. Except when disclosure is required by law, government information is privileged from disclosure if disclosure would be detrimental to the public interest.

2) Scope. "Government information" includes official communication and documents and other information within the custody or control of the government. This subsection (f) does not apply to classified information, which is addressed in subsection (e), or to the identity of an informant, which is addressed in subsection (g).

3) Who May Claim the Privilege. The privilege may be claimed by the head of the executive or military department or government agency concerned. The privilege for records and information of the Inspector General may be claimed by the immediate superior of the inspector general officer responsible for creation of the records or information, the Inspector General, or any other superior authority. A person who may claim the privilege may authorize a witness or the trial counsel to claim the privilege on his or her behalf. The authority of a witness or the trial counsel to do so is presumed in the absence of evidence to the contrary.

4) Action Prior to Referral of Charges. Prior to referral of charges, the government shall respond in writing to a request for government information if the privilege in this subsection (f) is claimed for that information. The government shall:

A) delete specified items of government information claimed to be privileged from documents made available to the accused;

B) substitute a portion or summary of the information for those documents;

C) substitute a statement admitting relevant facts that government information would tend to prove;

D) provide the document subject to conditions similar to those set forth in subsection (f)(7); or

E) withhold disclosure if actions under (f)(4)(A) through (D) cannot be taken without causing identifiable damage to the public interest.

5) Pretrial Session. At any time after referral of charges and prior to arraignment, any party may move for a session under Code Section 39(a) to consider matters relating to government information that may arise in connection with the trial. Following that motion, or sua sponte, the military judge promptly shall hold a pretrial session under Code Section 39(a) to establish the timing of requests for discovery, the provision of notice under subsection (f)(8), and the initiation of the procedure under subsection (f)(9). In addition, the military judge may consider any other

matters that relate to government information or that may promote a fair and expeditious trial.

6) Action After Motion for Disclosure of Information. After referral of charges, if the defense moves for disclosure of government information for which a claim of privilege has been made under this subsection (f), the matter shall be reported to the convening authority. The convening authority may:

A) institute action to obtain the information for use by the military judge in making a determination under subsection (f)(9);

B) dismiss the charges;

C) dismiss the charges or specifications, or both, to which the information relates; or

D) take other action as may be required in the interests of justice. If, after a reasonable period of time, the information is not provided to the military judge, the military judge shall dismiss the charges or specifications or both to which the information relates.

7) Disclosure of Government Information to the Accused. If the government agrees to disclose government information to the accused subsequent to a claim of privilege under this subsection (f), the military judge, at the request of the government, shall enter an appropriate protective order to guard against the compromise of the information disclosed to the accused. The terms of any such protective order may include provisions:

A) Prohibiting the disclosure of the information, except as authorized by the military judge;

B) Requiring storage of the material in a manner appropriate for the nature of the material to be disclosed, upon reasonable notice;

C) Requiring controlled access to the material during normal business hours and at other times upon reasonable notice;

D) Requiring the maintenance of logs recording access by persons authorized by the military judge to have access to the government information in connection with the preparation of the defense;

E) Regulating the making and handling of notes taken from material containing government information; or

F) Requesting the convening authority to authorize the assignment of government security personnel and the provision of government storage facilities.

8) Prohibition Against Disclosure. The accused may not disclose any information known or believed to be subject to a claim of privilege under this subsection (f) unless the military judge authorizes that disclosure.

9) In Camera Proceedings in Cases Involving Nonclassified Government Information

A) Definition. For the purpose of this subsection (f)(8), an "in camera proceeding" is a session under Code Section 39(a) from which the public is excluded.

B) Motion for In Camera Proceeding. Within the time specified by the military judge for the filing of a motion under this subsection (f)(9), the government may move for an in camera proceeding concerning the use at any proceeding of any government information that may be subject to a claim of privilege. Thereafter, either prior to or during trial, the military judge, for good cause shown, or otherwise upon a claim of privilege, may grant the government leave to move for an in camera proceeding concerning the use of additional government information.

C) Demonstration of Damage to the Public Interest. In order to obtain an in camera proceeding under this subsection (f)(9), the government shall demonstrate, through the submission of affidavits and information for examination only by the military judge, that disclosure of the information reasonably could be expected to cause identifiable damage to the public interest.

D) In Camera Proceedings

i) Finding of Identifiable Damage. Upon finding that the disclosure of some or all of the information submitted by the government under subsection (f)(9)(C) reasonably could be expected to cause identifiable damage to the public interest, the military judge shall conduct an in camera proceeding.

ii) Disclosure of the Information to the Defense. Subject to subsection (f)(9)(D)(vi), the government shall disclose government information for which a claim of privilege has been made to the accused, for the limited purpose of litigating in camera the admissibility of the information at trial. The military judge shall enter an appropriate protective order to the accused and all other appropriate trial participants concerning the disclosure of the information according to subsection (f)(7). The accused shall not disclose any information provided under this subsection (f)(9)(D)(ii) unless, and until, that information has been admitted into evidence by the military judge. In the in camera proceeding, both parties shall have the opportunity to brief and argue the admissibility of the government information at trial.

iii) Standard. Government information is subject to disclosure at the court-martial proceeding under this subsection (f)(9)(D)(iii) if the party making the request demonstrates a specific need for information containing evidence that is relevant to the guilt or innocence or to punishment of the accused and is otherwise admissible in the court-martial proceeding.

iv) Ruling. No information may be disclosed at the court-martial proceeding or otherwise unless the military judge makes a written determination that the information is subject to disclosure under the standard set forth in subsection (f)(9)(D)(iii). The military judge will specify in writing any information that he or she determines is subject

to disclosure. The record of the in camera proceeding shall be sealed and attached to the record of trial as an appellate exhibit. The accused may seek reconsideration of the determination prior to or during trial.

v) Alternatives to Full Disclosure. If the military judge makes a determination under this subsection (f)(9) that the information is subject to disclosure, or if the government elects not to contest the relevance, necessity and admissibility of the government information, the government may proffer a statement admitting, for purposes of the court-martial, any relevant facts the information would tend to prove. The government may submit a portion or summary to be used in lieu of the information. The military judge shall order that the statement, portion or summary, or some other form of information the military judge finds to be consistent with the interests of justice, be used by the accused in place of the government information unless the military judge finds that use of the government information itself is necessary to afford the accused a fair trial.

vi) Sanctions. Government information may not be disclosed over the government's objection. If the government continues to object to disclosure of the information following rulings by the military judge, the military judge shall issue any order that the interests of justice require, including an order:

- striking or precluding all or part of the testimony of a witness;

- declaring a mistrial;

- finding against the government on any issue as to which the evidence is relevant and necessary to the defense;

- dismissing the charges, with or without prejudice; or

- dismissing the charges or specifications, or both, to which the information relates.

10) Appeals of Orders and Rulings. In a court-martial in which a punitive discharge may be adjudged, the government may appeal an order or ruling of the military judge that terminates the proceedings with respect to a charge or specification, directs the disclosure of government information, or imposes sanctions for nondisclosure of government information. The government may also appeal an order or ruling in which the military judge refuses to issue a protective order sought by the State to prevent the disclosure of government information, or to enforce such an order previously issued by appropriate authority. The government may not appeal an order or ruling that is, or amounts to, a finding of not guilty with respect to the charge or specification.

11) Introduction of Government Information Subject to a Claim of Privilege

A) Precautions by Military Judge. In order to prevent unnecessary disclosure of government information after there has been a claim of privilege under this subsection (f), the military judge may order admission into evidence of:

i) only part of a writing, recording or photograph; or

ii) the whole writing, recording or photograph with excision of some or all of the government information.

B) Contents of Writing, Recording or Photograph. The military judge may permit proof of the contents of a writing, recording or photograph that contains government information that is the subject of a claim of privilege under this subsection (f) without requiring introduction into evidence of the original or a duplicate.

C) Taking of Testimony. During examination of a witness, the prosecution may object to any question or line of inquiry that may require the witness to disclose government information not

previously found relevant and necessary to the defense if that information has been or is reasonably likely to be the subject of a claim of privilege under this subsection (f). Following such an objection, the military judge shall take suitable action to determine if the response is admissible, considering whether the action will safeguard against the compromise of any government information. The action may include requiring:

i) the government to provide the military judge with a proffer of the witness' response to the question or line of inquiry; and

ii) the accused to provide the military judge with a proffer of the nature of the information the accused seeks to elicit.

12) Procedures to Safeguard Against Compromise of Government Information Disclosed to Courts-Martial. The Secretary of Defense or the Adjutant General may prescribe procedures for protection against the compromise of government information submitted to courts-martial and appellate authorities after a claim of privilege. (Il. Mil. R. Evid. 506)

g) Identity of Informants

1) Rule of Privilege. The United States or a State or subdivision thereof has a privilege to refuse to disclose the identity of an informant. An "informant" is a person who has furnished information relating to or assisting in an investigation of a possible violation of law to a person whose official duties include the discovery, investigation or prosecution of crime. Unless otherwise privileged under this Section, the communications of an informant are not privileged except to the extent necessary to prevent the disclosure of the informant's identity.

2) Who May Claim the Privilege. The privilege may be claimed by an appropriate representative of the United States, regardless of whether information was furnished to an officer of the United States or a State or subdivision thereof. The privilege may be claimed by an appropriate representative of a State or subdivision if the information was furnished to an officer thereof, except the privilege shall not be allowed if the prosecution objects.

3) Exceptions

A) Voluntary Disclosures; Informant as Witness. No privilege exists under this subsection (g):

i) if the identity of the informant has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informant's own action; or

ii) if the informant appears as a witness for the prosecution.

B) Testimony on the Issue of Guilt or Innocence. If a claim of privilege has been made under this subsection (g), the military judge shall, upon motion by the accused, determine whether disclosure of the identity of the informant is necessary to the accused's defense on the issue of guilt or innocence. Whether such a necessity exists will depend on the particular circumstances of each case, taking into consideration the offense charged, the possible defense, the possible significance of the informant's testimony, and other relevant factors. If it appears from the evidence in the case or from another showing by a party that an informant may be able to give testimony necessary to the accused's defense on the issue of guilt or innocence, the military judge may make any order required by the interests of justice.

C) Legality of Obtaining Evidence. If a claim of privilege has been made under this subsection (g) with respect to a motion under Section 400.635, the military judge shall, upon motion of the accused, determine whether disclosure of the identity of the informant is required by the U.S. Constitution as applied to members of the armed forces. In making this determination, the military judge may make any order required by the interests of justice.

4) Procedures. If a claim of privilege has been made under this subsection (g), the military judge may make any order required by the interests of justice. If the military judge determines that disclosure of the identity of the informant is required under the standards set forth in this subsection

(g), and the prosecution elects not to disclose the identity of the informant, the matter shall be reported to the convening authority. The convening authority may institute action to secure disclosure of the identity of the informant, terminate the proceedings, or take such other action as may be appropriate under the circumstances. If, after a reasonable period of time, disclosure is not made, the military judge, sua sponte or upon motion of either counsel and after a hearing, if requested by either party, may dismiss the charge or specifications, or both, to which the information regarding the informant would relate if the military judge determines that further proceedings would materially prejudice a substantial right of the accused. (Il. Mil. R. Evid. 507)

h) Political Vote. A person has a privilege to refuse to disclose the tenor of the person's vote at a political election conducted by secret ballot unless the vote was cast illegally. (Il. Mil. R. Evid. 508)

i) Deliberations of Courts and Juries. Except as provided in Section 400.705(f), the deliberations of courts, courts-martial, military judges, and grand and petit juries are privileged to the extent that the deliberations are privileged, but the results of the deliberations are not privileged. (Il. Mil. R. Evid. 509)

j) Waiver of Privilege by Voluntary Disclosure

1) A person upon whom this Section confers a privilege against disclosure of a confidential matter or communication waives the privilege if the person or the person's predecessor, while holder of the privilege, voluntarily discloses or consents to disclosure of any significant part of the matter or communication under such circumstances that it would be inappropriate to allow the claim of privilege. This subsection (j)(1) does not apply if the disclosure is itself a privileged communication.

2) Unless testifying voluntarily concerning a privileged matter or communication, an accused who testifies in his or her own behalf or a person who testifies under a grant or promise of immunity does not, merely by reason of testifying, waive a privilege to which he or she may be entitled pertaining to the confidential matter or communication. (Il. Mil. R. Evid. 510)

k) Disclosure Under Compulsion or Without Opportunity to Claim Privilege

1) Evidence of a statement or other disclosure of privileged matter is not admissible against the holder of the privilege if disclosure was compelled erroneously or was made without an opportunity for the holder of the privilege to claim the privilege.

2) The telephonic transmission of information otherwise privileged under this Section does not affect its privileged character. Use of electronic means of communication other than the telephone for transmission of information otherwise privileged under this Section does not affect the privileged character of that information if use of electronic means of communication is necessary and in furtherance of the communication. (Il. Mil. R. Evid. 511)

l) Comment Upon or Inference from Claim of Privilege; Instruction

1) The claim of a privilege by the accused, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by the military judge or counsel for any party. No inference may be drawn from that claim of privilege.

2) The claim of a privilege by a person other than the accused, whether in the present proceeding or upon a prior occasion, normally is not a proper subject of comment by the military judge or counsel for any party. An adverse inference may not be drawn from that claim of privilege except when determined by the military judge to be required by the interests of justice.

3) In a trial before a court-martial with members, proceedings must be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the members. This subsection (l)(3) does not apply to a special court-martial without a military judge.

4) Upon request, any party against whom the members might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn from the claim except as provided in subsection (l)(2). (Il. Mil. R. Evid. 512)

ILLINOIS DEPARTMENT OF MILITARY AFFAIRS

NOTICE OF ADOPTED RULES

m) Psychotherapist and Patient Privilege

1) Definitions. For purposes of this subsection (m):

A) "Assistant to a Psychotherapist" or "Assistant" means a person directed by or assigned to assist a psychotherapist in providing professional services, or who is reasonably believed by the patient to be an assistant to a psychotherapist.

B) "Confidential Communication" or " Communication" not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional services to the patient or those reasonably necessary for transmission of the communication.

C) "Evidence of a Patient's Records or Communications" means testimony of a psychotherapist or assistant psychotherapist, or patient records, that pertain to communications by a patient to a psychotherapist or assistant to a psychotherapist for the purposes of diagnosis or treatment of the patient's mental or emotional condition.

D) "Patient" means a person who consults with or is examined or interviewed by a psychotherapist for purposes of advice, diagnosis or treatment of a mental or emotional condition.

E) "Psychotherapist" means a psychiatrist, clinical psychologist or clinical social worker who is licensed in any state, territory, possession, the District of Columbia or Puerto Rico to perform professional services as such, or who holds credentials to provide these services from any military health care facility, or is a person reasonably believed by the patient to have the appropriate license or credentials.

2) General Rule of Privilege. A patient has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made between the patient and a psychotherapist or assistant, in a case arising under the UCMJ, if the communication was

made for the purpose of facilitating diagnosis or treatment of the patient's mental or emotional condition.

3) Who May Claim the Privilege. The privilege may be claimed by the patient or the guardian or conservator of the patient. A person who may claim the privilege may authorize trial counsel or defense counsel to claim the privilege on his or her behalf. The psychotherapist or assistant who received the communication may claim the privilege on behalf of the patient. The authority of such a psychotherapist, assistant, guardian, or conservator to so assert the privilege is presumed in the absence of evidence to the contrary.

4) Exceptions. There is no privilege under this subsection (m):

A) when the patient is dead;

B) when the communication is evidence of child abuse or neglect, or in a proceeding in which one spouse is charged with a crime against a child of either spouse;

C) when federal law, State law, or service regulation imposes a duty to report information contained in a communication;

D) when a psychotherapist or assistant believes that a patient's mental or emotional condition makes the patient a danger to any person, including the patient;

E) if the communication clearly contemplated the future commission of a fraud or crime or if the services of the psychotherapist are sought or obtained to enable or aid anyone to commit or plan to commit what the patient knew or reasonably should have known to be a crime or fraud;

F) when necessary to ensure the safety and security of military personnel, military dependents, military property, classified information or the accomplishment of a military mission;

G) when an accused offers statements or other evidence concerning his or her mental condition in defense, extenuation or mitigation,

under circumstances not covered by Section 400.615. In these situations, the military judge may, upon motion, order disclosure of any statement made by the accused to a psychotherapist as may be necessary in the interests of justice; or

H) when admission or disclosure of a communication is constitutionally required.

5) Procedure to Determine Admissibility of Patient Records or Communications

A) In any case in which the production or admission of records or communications of a patient other than the accused is a matter in dispute, a party may seek an interlocutory ruling by the military judge. In order to obtain such a ruling, the party shall:

i) file a written motion at least 5 days prior to entry of pleas specifically describing the evidence and stating the purpose for which it is sought or offered, or objected to, unless the military judge, for good cause shown, requires a different time for filing or permits filing during trial; and

ii) serve the motion on the opposing party and the military judge and, if practical, notify the patient or the patient's guardian, conservator or representative that the motion has been filed and that the patient has an opportunity to be heard as set forth in subsection (m)(5)(B).

B) Before ordering the production or admission of evidence of a patient's records or communication, the military judge shall conduct a hearing. Upon the motion of counsel for either party and upon good cause shown, the military judge may order the hearing closed. At the hearing, the parties may call witnesses, including the patient, and offer other relevant evidence. The patient shall be afforded a reasonable opportunity to attend the hearing and be heard at the patient's own expense unless the patient has been otherwise subpoenaed or ordered to appear at the hearing. However, the proceedings shall not be unduly delayed for this purpose. In a case before a court-martial composed of a military

judge and members, the military judge shall conduct the hearing outside the presence of the members.

C) The military judge shall examine the evidence or a proffer of evidence in camera, if that examination is necessary to rule on the motion.

D) To prevent unnecessary disclosure of evidence of a patient's records or communications, the military judge may issue protective orders or may admit only portions of the evidence.

E) The motion, related papers, and record of the hearing shall be sealed and shall remain under seal unless the military judge or an appellate court orders otherwise. (Il. Mil. R. Evid. 513)

n) Victim Advocate and Safe Helpline Privilege

1) Definitions. As used in this subsection (n):

A) "Assistant to a Victim Advocate" or "Assistant" means a person directed by or assigned to assist a victim advocate in providing victim and victim advocate services or who is reasonably believed by the victim to be an Assistant to a victim advocate.

B) "Confidential Communication" or "Communication" means a communication made to a victim advocate acting in the capacity of a victim advocate that is not intended to be disclosed to third persons other than:

i) those to whom disclosure is made in furtherance of the rendition of advice or assistance to the victim; or

ii) an assistant to a victim advocate reasonably necessary for transmission of the communication.

C) "Evidence of a Victim's Records or Communications" means testimony of a victim advocate, or record that pertains to communications by a victim to a victim advocate, for the purposes of advising or providing supportive assistance to the victim.

D) "Victim" means any person who suffered direct physical or emotional harm as the result of a sexual or violent offense.

E) "Victim Advocate" means a person who is:

i) designated in writing as a victim advocate;

ii) authorized to perform victim advocate duties in accordance with service regulations, and acting in the performance of those duties; or

iii) certified as a victim advocate pursuant to federal or State requirements.

2) General Rule of Privilege. A victim has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication between the victim and a victim advocate, in a case arising under the UCMJ, if that communication was made for the purpose of facilitating advice or supportive assistance to the victim.

3) Who May Claim the Privilege. The privilege may be claimed by the victim or any guardian or conservator of the victim. A person who may claim the privilege may authorize trial counsel or a defense counsel representing the victim to claim the privilege on his or her behalf. The victim advocate who received the communication may claim the privilege on behalf of the victim. The authority of the a victim advocate, guardian or conservator, or a defense counsel representing the victim, to so assert the privilege is presumed in the absence of evidence to the contrary.

4) Exceptions. There is no privilege under this subsection (n):

A) when the victim is dead;

B) when federal law, State law or service regulation imposes a duty to report information contained in a communication;

C) if the communication clearly contemplated the future commission of a fraud or crime or if the services of the victim advocate are

sought or obtained to enable or aid anyone to commit or plan to commit what the victim knew or reasonably should have known to be a crime or fraud;

D) when necessary to ensure the safety and security of military personnel, military dependents, military property, classified information or completion of a mission;

E) when necessary to ensure the safety of any other person (including the victim) when a victim advocate believes that a victim's mental or emotional condition makes the victim a danger; or

F) when admission or disclosure of a communication is constitutionally required.

5) Procedure to Determine Admissibility of Victim Records or Communications

A) In any case in which the production or admission of records or communications of a victim is a matter in dispute, a party may seek an interlocutory ruling by the military judge. In order to obtain such a ruling, the party shall:

i) file a written motion at least 5 days prior to entry of pleas specifically describing the evidence and stating the purpose for which it is sought or offered, or objected to, unless the military judge, for good cause shown, requires a different time for filing or permits filing during trial; and

ii) serve the motion on the opposing party and the military judge and, if practical, notify the victim or the victim's guardian, conservator or representative that the motion has been filed and that the victim has an opportunity to be heard as set forth in subsection (n)(5)(B).

B) Before ordering the production or admission of evidence of a victim's records or communication, the military judge shall conduct a hearing. Upon the motion of counsel for either party and upon good cause shown, the military judge may order the hearing

closed. At the hearing, the parties may call witnesses, including the victim, and offer other relevant evidence. The victim shall be afforded a reasonable opportunity to attend the hearing and be heard at the victim's own expense unless the victim has been otherwise subpoenaed or ordered to appear at the hearing. However, the proceedings shall not be unduly delayed for this purpose. In a case before a court-martial composed of a military judge and members, the military judge shall conduct the hearing outside the presence of the members.

C) The military judge shall examine the evidence or a proffer thereof in camera, if that examination is necessary to rule on the motion.

D) To prevent unnecessary disclosure of evidence of a victim's records or communications, the military judge may issue protective orders or may admit only portions of the evidence.

E) The motion, related papers, and record of the hearing shall be sealed and shall remain under seal unless the military judge or an appellate court orders otherwise. (Il. Mil. R. Evid. 514)

Section 400.705 Witnesses

a) Competency to Testify. Every person is competent to be a witness unless this Section provides otherwise. (Il. Mil. R. Evid. 601)

b) Need for Personal Knowledge. A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This subsection (b) is subject to the provisions of Section 400.715(a)(2) relating to the opinion testimony by expert witnesses. (Il. Mil. R. Evid. 602)

c) Oath or Affirmation to Testify Truthfully. Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so. (Il. Mil. R. Evid. 603)

d) Interpreter. An interpreter is subject to the provisions of this Section relating to qualifications as an expert and the administration of an oath or affirmation that the interpreter will make a true translation. (Il. Mil. R. Evid. 604)

e) Military Judge's Competency as a Witness

1) The presiding military judge may not testify as a witness at any proceeding of that court-martial. A party need not object to preserve the issue.

2) This Section does not preclude the military judge from placing on the record matters concerning docketing of the case. (Il. Mil. R. Evid. 605)

f) Member's Competency as a Witness

1) A member of a court-martial may not testify as a witness before the other members at any proceeding of that court-martial. If a member is called to testify, the military judge must, except in a special court-martial without a military judge, give the opposing party an opportunity to object outside the presence of the members.

2) During an inquiry into the validity of a finding or sentence, a member of a court-martial may not testify about any statement made or incident that occurred during the deliberations of that court-martial; the effect of anything on that member's or another member's vote; or any member's mental processes concerning the finding or sentence, except that a member may testify on the question of whether extraneous prejudicial information was improperly brought to the attention of the members of the court-martial and whether any outside influence was improperly brought to bear upon any member, or whether there was unlawful command influence. The military judge may not receive a member's affidavit or evidence of a member's statement on these matters.

3) Exception. A member may testify about whether:

A) extraneous prejudicial information was improperly brought to the member's attention;

B) unlawful command influence or any other outside influence was improperly brought to bear on any member; or

C) a mistake was made in entering the finding or sentence on the finding or sentence forms. (Il. Mil. R. Evid. 606)

g) Who May Impeach a Witness. The credibility of a witness may be attacked by any party, including the party calling the witness, except that the credibility of a witness may be attacked by the party calling the witness by means of a prior inconsistent statement only upon showing of an affirmative damage. This subsection (g) does not apply to statements admitted pursuant to Section 400.720(a)(2), (a)(3) or (c). (Il. Mil. R. Evid. 607)

h) A Witness's Character for Truthfulness or Untruthfulness

1) Opinion and Reputation Evidence of Character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, subject to these limitations:

A) the evidence may refer only to character for truthfulness or untruthfulness; and

B) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

2) Specific Instances of Conduct

A) Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' character for truthfulness, other than conviction of crime as provided in Section 400.705(i), may not be proved by extrinsic evidence.

B) They may, however, in the discretion of the military judge, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness:

i) concerning character of the witness for truthfulness or untruthfulness; or

ii) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

C) The giving of testimony, whether by an accused or by another witness, does not operate as a waiver of the privilege against self-incrimination when examined with respect to matters that relate only to character for truthfulness.

3) Evidence of Bias. Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced. (Il. Mil. R. Evid. 608)

i) Impeachment by Evidence of a Criminal Conviction

1) General Rule

A) For the purposes of attacking the credibility of a witness, evidence that the witness has been convicted of a crime, except on a plea of nolo contendere, is admissible but only if the crime:

i) was punishable by death, dishonorable discharge or imprisonment in excess of one year under the law under which the witness was convicted; or

ii) involved dishonesty or false statement regardless of the punishment.

B) In either instance described in subsection (i)(1)(A), the court shall determines whether the probative value of the evidence of the crime is substantially outweighed by the danger of unfair prejudice.

2) Time limit. Evidence of a conviction under this Manual is not admissible if a period of more than 10 years has elapsed since the date of the conviction or of the release of the witness from confinement, whichever is later.

3) Effect of Pardon, Annulment or Certificate of Rehabilitation. Evidence of a conviction is not admissible under this subsection (i) if:

A) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure; and

B) the procedure under which the procedure listed in subsection (i)(3)(A) was granted or issued required a substantial showing of rehabilitation or was based on innocence.

4) Juvenile Adjudications. Evidence of juvenile adjudications is generally not admissible under this subsection (i). The military judge may, however, allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult, and the military judge is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

5) Pendency of Appeal. The pendency of an appeal from the underlying criminal conviction does not render evidence of that conviction inadmissible. Evidence of the pendency of an appeal is admissible. (Il. Mil. R. Evid. 609)

j) Religious Beliefs or Opinions. Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that, by reason of his or her nature, the witness' credibility is impaired or enhanced. (Il. Mil. R. Evid. 610)

k) Mode and Order of Examining Witnesses and Presenting Evidence

1) Control by the Military Judge. The military judge shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

A) make the interrogation and presentation effective for the ascertainment of the truth;

B) avoid needless consumption of time; and

C) protect witnesses from harassment or undue embarrassment.

2) Scope of Cross-Examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The military judge may, in the exercise of his or her discretion, permit inquiry into additional matters as if on direct examination.

3) Leading Questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the testimony of the witness. Ordinarily, leading questions should be permitted on cross-examination. When a party calls a hostile witness or an unwilling witness or an adverse party or an agent of an adverse party, as defined by Section 2-1102 of the Code of Civil Procedure, interrogation may be by leading questions.

4) Remote Live Testimony of a Child

A) In a case involving abuse of a child or domestic violence, the military judge shall, subject to the requirements of subsection (k)(4)(C), allow a child victim or witness to testify from an area outside the courtroom.

B) Definitions. For purposes of this subsection (k)(4):

i) "Child" means a person who is under the age of 16 at the time of his or her testimony;

ii) "Abuse of a Child" means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child;

iii) "Exploitation" means child pornography or child prostitution;

iv) "Negligent Treatment" means the failure to provide, for reasons other than poverty, adequate food, clothing, shelter or medical care, so as to endanger seriously the physical health of the child;

v) "Domestic Violence" means an offense that has as an element the use, attempted use, or threatened use of physical force against a person and is committed by:

- a current or former spouse, parent or guardian of the victim;
- a person with whom the victim shares a child in common;
- a person who is cohabiting with or has cohabited with the victim as a spouse, parent or guardian; or
- a person similarly situated to a spouse, parent or guardian.

C) Remote live testimony will be used only when the military judge makes a finding on the record that a child is unable to testify in open court in the presence of the accused, for any of the following reasons:

i) The child is unable to testify because of fear;

ii) There is substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying;

iii) The child suffers from a mental or other infirmity; or

iv) Conduct by an accused or defense counsel causes the child to be unable to continue testifying.

D) Remote live testimony of a child shall not be utilized when the accused elects to absent himself or herself from the court room. (Il. Mil. R. Evid. 612)

l) Writing Used to Refresh a Witness' Memory

1) If a witness uses a writing to refresh his or her memory for the purpose of testifying, either while testifying or before testifying, if the military judge determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness on that writing, and to introduce in evidence for the purpose of impeachment those portions that relate to the testimony of the witness.

2) If it is claimed that the writing contains privileged information or matters not related to the subject matter of the testimony, the military judge shall examine the writing in camera, excise any privileged information or unrelated portions, and order delivery of the remainder to the entitled party. Any portion withheld over objections shall be attached to the record of trial as an appellate exhibit.

3) If a writing is not produced or delivered pursuant to order under this subsection (l), the military judge shall make any order justice requires, except that, when the prosecution elects not to comply, the order shall:

A) strike the testimony; or

B) if, in his or her discretion, the military judge determines that the interests of justice so require, declare a mistrial.

4) This subsection (l) does not preclude disclosure of information required to be disclosed under other provisions of this Manual. (Il. Mil. R. Evid. 612)

m) Witness' Prior Statement

1) Examining Witness Concerning Prior Statement. In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request it shall be shown or disclosed to opposing counsel.

2) Extrinsic Evidence of Prior Inconsistent Statement of Witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is first afforded an opportunity to explain or deny the statement and the opposite party is afforded an opportunity to interrogate

the witness on the statement, or the interests of justice otherwise require. This provision does not apply to admissions in Section 400.720(a)(2)(B).

n) Calling and Interrogation of Witnesses by the Court-Martial

1) Calling by the Court-Martial. The military judge may, sua sponte, or at the request of the members or the suggestion of a party, call witnesses. All parties are entitled to cross-examine those witnesses. The military judge shall determine whether it is appropriate to recall a witness under this Manual.

2) Interrogation by the Court-Martial. The military judge or members may interrogate witnesses, whether called by the military judge, the members or a party. Members shall submit their questions to the military judge in writing so that a ruling may be made on the propriety of the questions or the course of questioning and so that questions may be asked on behalf of the court by the military judge in a form acceptable to the military judge. When a witness who has not testified previously is called by the military judge or the members, the military judge may conduct the direct examination or may assign the responsibility to counsel for any party.

3) Objections. Objections to calling of witnesses by the military judge or the members or to the interrogation by the military judge or the members may be made at the time, or at the next available opportunity when the members are not present. (Il. Mil. R. Evid. 614)

o) Excluding Witnesses
At the request of the prosecution or defense, the military judge shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and the military judge may make the orders sua sponte. This subsection (o) does not authorize exclusion of:

1) the accused;

2) a member of an armed service or an employee of the United States or of the State of Illinois designated as a representative of the United States or of the State of Illinois by the trial counsel;

3) a person whose presence is shown by a party to be essential to the presentation of the party's case;

4) a person authorized by statute to be present at courts-martial; or

5) any victim of an offense from the trial of an accused for that offense because that victim may testify or present any information in relation to the sentence or that offense during the presentencing proceedings. (Il. Mil. R. Evid. 615)

Section 400.710 Opinion Testimony by Lay Witnesses

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences that are:

a) rationally based on the perception of the witness;

b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue; and

c) not based in scientific, technical or other specialized knowledge within the scope of Section 400.715(a). (Il. Mil. R. Evid. 701)

Section 400.715 Expert Testimony; Polygraph Examinations

a) Expert Witnesses

1) Testimony by Expert Witnesses

A) If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify in the form of an opinion or otherwise.

B) When an expert witness testifies to an opinion based on a new or novel scientific methodology or principle, the proponent of the opinion has the burden of showing the methodology or scientific principle on which the opinion is based is sufficiently established

to have gained general acceptance in the particular field in which it belongs. (Il. Mil. R. Evid. 702)

2) Bases of an Expert's Opinion Testimony

A) The facts or date in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing.

B) If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. (Il. Mil. R. Evid. 703)

3) Opinion on an Ultimate Issue
Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact. (Il. Mil. R. Evid. 704)

4) Disclosing the Facts or Data Underlying an Expert's Opinion

A) The expert may testify in terms of opinion or inference and give the expert's reason for the opinion or reference without prior disclosure of the underlying facts or data, unless the military judge requires otherwise.

B) The expert may, in any event, be required to disclose the underlying facts or data on cross-examination. (Il. Mil. R. Evid. 705)

5) Court-Appointed Expert Witnesses

A) Appointment and Compensation. The trial counsel, the defense counsel, and the court-martial have equal opportunity to obtain expert witnesses under Code Section 46.

B) Disclosure of Employment. In the exercise of discretion, the military judge may authorize disclosure to the members of the fact that the military judge called an expert witness.

C) Accused's Experts of Own Selection. Nothing in this subsection (a)(5) limits the accused in calling expert witnesses of the accused's own selection and at the accused's own expense. (Il. Mil. R. Evid. 706)

b) Polygraph Examinations

1) Notwithstanding any other provision of law, the results of a polygraph examination, the opinion of a polygraph examiner, or any reference to an offer to take, failure to take, or taking of a polygraph examination, shall not be admitted into evidence.

2) Nothing in this subsection (b) is intended to exclude from evidence statements made during a polygraph examination that are otherwise admissible. (Il. Mil. R. Evid. 707)

Section 400.720 Hearsay Exclusions

a) Definitions. The following definitions apply to this Section:

1) "Declarant" means a person who makes a statement.

2) "Hearsay" means a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. A statement is not hearsay if it is:

A) a prior statement by the witness. In a criminal case, the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

i) *inconsistent with* the declarant's *testimony at the trial or hearing, and:*

- *was made under oath at a trial, hearing or* other *proceeding or in a deposition;*

- *narrates, describes or explains an event or condition of which* the declarant *had personal*

knowledge, and *the statement is proved to have been written or signed by* the declarant;

- the declarant *acknowledged under oath the making of the statement in his* or her *testimony at the hearing or trial in which the admission into evidence of the prior statement is being* sought; *at* another *trial, hearing or other proceeding; or in a deposition; or*

- *the statement is proved to have been accurately recorded by a tape recorder, videotape recording,* or *any other similar electronic means of sound recording;* or [725 ILCS 5/115-10.1]

ii) *one of identification of a person made after perceiving* the person; or [725 ILCS 5/115-12]

B) an admission by a party-opponent offered against a party and is:

i) the party's own statement in either the party's individual or representative capacity;

ii) a statement of which the party has manifested the party's adoption or belief in its truth;

iii) a statement by a person authorized by the party to make a statement concerning the subject;

iv) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment of the agent or servant, made during the existence of the relationship;

v) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy; or

vi) a statement by a person, or a person on behalf of an entity, in privity with the party or jointly interested with the party.

3) "Statement" means:

A) an oral or written assertion; or

B) nonverbal conduct of a person, if it is intended by the person as an assertion. (Il. Mil. R. Evid. 801)

b) Hearsay Rule
Hearsay is not admissible except as provided by this Manual or by any Act of Congress applicable in trials by court-martial or by Illinois Supreme Court Rules. (Il. Mil. R. Evid. 802)

c) Exceptions to Hearsay Regardless of Declarant Availability
The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

1) Illinois has not adopted the federal Present Sense Impression to the hearsay rule (Federal Rules of Evidence 803(1)).

2) Excited Utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

3) A statement of the declarant's then existing state of mind, emotion, sensation or physical condition (such as intent, plan, motive, design, mental feeling, pain and bodily health), but not including:

A) A statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification or terms of declarant's will; or

B) A statement of declarant's then existing state of mind, emotion, sensation or physical condition to prove the state of mind, emotion, sensation or physical condition of another declarant at the time or at any other time when the state of the other declarant is an issue in the action.

4) Statements for Purposes of Medical Diagnosis or Treatment

A) Statements made for the purpose of medical treatment or medical diagnosis in contemplation of treatment and describing medical history, or past or present symptoms, pain or sensations, or the inception or general character of the cause or external source of the symptoms, pain or sensations insofar as reasonably pertinent to diagnosis or treatment but, subject to Section 400.715(a)(2), not including statements made to a healthcare provider consulted solely for the purpose of preparing for litigation or obtaining testimony for trial; or

B) In prosecution for violation of Sections 11-1.20, 11-1.30, 11-1.40, 11-1.50 and 11-1.60 of the Criminal Code of 2012 or of a violation of an identical or closely-related provision of the criminal law of the state where the offense occurred, and assimilated under Code Section 149, statements made by the victim to medical personnel for purposes of medical diagnoses or treatment, including a description of the cause of symptom, pain or sensations, or the inception or general character of the cause or external source of the symptoms, pain or sensation insofar as reasonably pertinent to diagnosis or treatment.

5) Recorded Recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence, but may not itself be received as an exhibit unless offered by an adverse party.

6) Record of Regularly Conducted Activity

A) A memorandum, report, record or data compilation, in any form, of acts, events, conditions, opinions or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record or data compilation. This evidence shall be presented by the testimony of the custodian or

other qualified witness, or by certification that complies with Section 400.725(b)(2)(K) or any other statute permitting certification in a criminal proceeding in a court of the United States. This exception from the hearsay rule applies unless the source of the information or the method or circumstances of preparation indicate a lack of trustworthiness. The exception does not, in criminal cases, include medical records.

B) The term "business" as used in this subsection (c)(6) includes the armed forces, a business, institution, association, profession, occupation and calling of every kind, whether or not conducted for profit.

C) The following are admissible under this subsection (c)(6) as a record of a fact or event if made by a person within the scope of the person's official duties and those duties included a duty to know or to ascertain through appropriate and trustworthy channels of information the truth of the fact or event and to record that fact or event:

i) enlistment papers;

ii) physical examination papers;

iii) outline figure and fingerprint cards;

iv) forensic laboratory reports;

v) chain of custody documents;

vi) morning reports and other personnel accountability documents;

vii) service records;

viii) officer and enlisted qualification records;

ix) records of court-martial convictions;

x) logs;

xi) unit personnel diaries;

xii) individual equipment records;

xiii) guard reports;

xiv) daily strength records of prisoners; and

xv) rosters of prisoners.

7) Absence of Entry in Records Kept in Accordance with the Provisions of subsection (c)(6). Evidence that a matter is not included in the memoranda reports, records or data compilations, in any form, kept in accordance with the provisions of subsection (c)(6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

8) Public Records and Reports

A) Records, reports, statements or data compilations in any form, of public offices or agencies, setting forth:

i) the activities of the office or agency;

ii) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, police accident reports and, in criminal cases, medical records and matters observed by police officers and other law enforcement personnel; or

iii) against the government, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

B) Notwithstanding subsection (c)(8)(A)(ii), the following are admissible under this Section as a record of a fact or event if made by a person within the scope of the person's official duties and those duties include a duty to know or ascertain through appropriate and trustworthy channels of information that truth of the fact or event and to record that fact or event:

i) enlistment papers;

ii) physical examination papers;

iii) outline figure and finger print cards;

iv) forensic laboratory reports;

v) chain of custody documents;

vi) morning reports and other personnel accountability documents;

vii) service records;

viii) officer and enlisted qualification records;

ix) records of court-martial convictions;

x) logs;

xi) unit personnel diaries;

xii) individual equipment records;

xiii) guard reports;

xiv) daily strength records of prisoners; and

xv) rosters of prisoners.

9) Records of Vital Statistics. Facts contained in records or data compilations, in any form, of births, fetal deaths, deaths or marriages, if the report was made to a public office pursuant to requirements of law.

10) Absence of Public Record or Entry. To prove the absence of a record, report, statement or data compilation in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Section 400.725(b) or testimony, that diligent search failed to disclose the record, report, statement, data compilation or entry.

11) Records of Religious Organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history contained in a regularly kept record of a religious organization.

12) Marriage, Baptismal and Similar Certificates. Statements of fact obtained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a time thereafter.

13) Family Records. Statements of facts concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscription on family portraits, engravings on urns, crypts or tombstones, etc.

14) Records of Documents Affecting an Interest in Property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of the kind in that office.

15) Statements in Documents Affecting an Interest in Property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document,

unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

16) Statements in Ancient Documents. Statements in a document in existence 20 years or more, the authenticity of which is established.

17) Market Reports; Commercial Publications. Market quotations, tabulations, directories, lists (including government price lists), or other published compilations generally used and relied upon by the public or by persons in particular occupations.

18) Reputation Concerning Personal or Family History

A) Reputation:

i) among members of the person's family by blood, adoption or marriage;

ii) among the person's associates; or

iii) in the community.

B) The reputation investigation shall concern the person's birth, adoption; marriage; divorce; death; legitimacy; relationship by blood; adoption or marriage; ancestry; or other similar fact of the person's personal or family history.

19) Reputation Concerning Boundaries or General History. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or State or nation in which located.

20) Reputation as to Character. Reputation of a person's character among the person's associates or in the community.

21) Judgment of Previous Conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death, dishonorable discharge, or imprisonment in excess of one year, to prove

any fact essential to sustain the judgment, but not including, when offered by the government for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility. In determining whether a crime tried by court-martial was punishable by death, dishonorable discharge, or imprisonment in excess of one year, the maximum punishment prescribed by Code Section 56 at the time of the conviction applies without regard to whether the case was tried by general, special or summary court-martial.

22) Judgment as to Personal, Family or General History or to Boundaries. Judgments as proof of matters of personal, family or general history, or boundaries essential to the judgment, if the same would be provable by evidence of reputation.

23) Receipt or Paid Bill. A receipt of a paid bill as prima facie evidence of the fact of payment and a prima facie evidence that the charge was reasonable. (Il. Mil. R. Evid. 803)

d) Exceptions to Hearsay When the Declarant is Unavailable

1) Definition. *"Unavailability as a Witness" means situations in which* the *declarant*:

A) *is exempted by ruling of the* military judge *on the ground of privilege from testifying concerning the subject matter* of the *declarant's statement*;

B) *persists in refusing to testify concerning the subject matter of the declarant's statement despite an order* of the military judge *to do so;* [725 ILCS 5/113-10.2(c) and 725 ILCS 4/115-10.2a(c)]

C) *testifies to a lack of memory of the subject matter of the declarant's statement;*

D) *is unable to be present or to testify at the hearing because of health or then existing physical or mental illness or infirmity;*

E) *is absent from the hearing and the proponent of the declarant's statement has been unable to procure the declarant's attendance*

(or, in the case of a hearsay exception under subsection (d)(3)(B), (C) or (D), the declarant's attendance or testimony *by process or other reasonable means*; or [725 ILCS 5/115-10.2a(c)]

F) is unavailable within the meaning of Code Section 49(d)(2).

2) *A declarant is not unavailable as a witness if the* declarant's *exemption, refusal, claim of lack of memory, inability or absence is due to the procurement or wrongdoing of the proponent of* the *declarant's statement for* the purpose *of preventing the witness from attending or testifying*.

3) Hearsay Exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness.

A) Former Testimony. Testimony given as a witness at another hearing of the same or different proceeding, or in an evidence deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered had an opportunity and similar motive to develop the testimony by direct, cross- or redirect examination. A record of testimony given before courts-martial, courts of inquiry, military commissions, or other military tribunals, and before proceedings pursuant to or equivalent to those required by Code Section 32 is admissible under this subsection (d)(3)(A) if that record is a verbatim record. This subsection (d)(3)(A) is subject to the limitations set forth in Code Sections 49 and 50.

B) Statement Under Belief of Impending Death. In a prosecution for homicide or for any offense resulting in the death of the alleged victim, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be the declarant's impending death.

C) Statement Against Interest. A statement that was, at the time of its making, so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability or to render invalid a claim by the declarant against another, that a reasonable person in the position of the declarant

would not have made the statement unless the person believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

D) Statement of Personal or Family History

i) A statement concerning the declarant's own: birth; adoption; marriage; divorce; legitimacy; relationship by blood, adoption or marriage; ancestry; or other similar fact of personal or family history, even though the declarant had no means of acquiring personal knowledge of the matter stated; or

ii) a statement concerning the matters listed in subsection (d)(3)(D)(i), and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

E) Forfeiture by Wrongdoing. A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness. (Il. Mil. R. Evid. 804)

e) Hearsay Within Hearsay
Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception or exclusion to the hearsay rule. (Il. Mil. R. Evid. 805)

f) Attacking and Supporting the Declarant's Credibility

1) When a hearsay statement, or a statement described in subsections (a)(2)(B)(iii), (iv) or (v), has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness.

2) The military judge may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it.

3) If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination. (Il. Mil. R. Evid 806)

Section 400.725 Authenticating Evidence

a) Authenticating or Identifying Evidence

1) General. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

2) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this Section:

A) Testimony of Witness with Knowledge. Testimony that a matter is what it is claimed to be.

B) Nonexpert Opinion on Handwriting. Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

C) Comparison by Trier or Expert Witness. Comparison by the trier of fact or by expert witnesses, with specimens that have been authenticated.

D) Distinctive Characteristics. Appearance, contents, substance, internal patterns or other distinctive characteristics, taken in conjunction with circumstances.

E) Voice Identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or

recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

F) Telephone Conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular persons or business, if:

i) in the case of a person, circumstances, including self-identification, show the person answering to be the one called; or

ii) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

G) Public Records or Reports. Evidence that a writing authorized by law to be recorded or filed, and in fact recorded or filed in a public office, or a purported public record, report, statement or data compilation, in any form, is from the public office where items of this nature are kept.

H) Ancient Documents or Data Compilation. Evidence that a document or data compilation, in any form:

i) is in such condition as to create no suspicion concerning its authenticity;

ii) was in place where it, if authentic, would likely be; and

iii) has been in existence 20 years or more at the time it is offered.

I) Processor System. Evidence describing a processor system used to produce a result and showing that the process or system produces an accurate result.

J) Methods Provided by Statute or Rule. Any method of authentication or identification provided by statute, Illinois

Supreme Court rules, or other applicable rules prescribed pursuant to statutory authority. (Il. Mil. R. Evid. 901)

b) Evidence that Is Self-Authenticating

1) Definitions. Terms used in this subsection (b) have the meanings ascribed in Section 400.730(b).

2) Extrinsic evidence of authenticity as a condition precedent to admissibility is not required for the following:

A) Domestic Public Documents Under Seal. A document bearing a seal, with a signature purporting to be an attestation or execution of that seal, purporting to be that of:

i) the United States;

ii) any state;

iii) any U.S. district, commonwealth, territory or insular possession;

iv) the Panama Canal Zone;

v) the Trust Territory of the Pacific Islands; or

vi) a political subdivision, department, officer or agency of any of these political subdivisions.

B) Domestic Public Documents Not Under Seal. A document purporting to bear the signature in the official capacity of an officer or employee of any entity described in subsection (b)(2)(A) having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

C) Foreign Public Documents

i) A document purporting to be executed or attested to in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position of:

- the executing or attesting person; or

- any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution of attestation.

ii) A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown:

- order that those documents be treated as presumptively authentic without final certification; or

- permit them to be evidenced by an attested summary with or without final certification.

D) Certified Copies of Public Records. A copy of an official record or report of entry into those records, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with subsection (b)(2)(A), (B) or (C) or complying with any Act of Congress, rule prescribed by the Supreme Court pursuant to statutory authority, or an applicable regulation prescribed pursuant to statutory authority.

E) Documents or Records of the United States Accompanied by Attesting Certificates. Documents or records kept under the authority of the United States by any U.S. department, bureau, agency, office or court when attached to or accompanied by an attesting certificate of the custodian of the document or record without further authentication.

F) Official Publications. Books, pamphlets or other publications purporting to be issued by public authority.

G) Newspapers and Periodicals. Printed material purporting to be newspapers or periodicals.

H) Trade Inscriptions, Etc. Inscriptions, signs, tags or labels purporting to have been affixed in the course of business and indicating ownership, control, content, ingredients or origin.

I) Acknowledged Documents. Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

J) Commercial Paper and Related Documents. Commercial paper, signatures on those papers, and documents relating to those papers, to the extent provided by general commercial law.

K) Presumptions Under Acts of Congress and Regulations. Any signature, document or other matter declared by Act of Congress or by applicable regulation prescribed pursuant to statutory authority to be presumptively, or prima facie, genuine or authentic.

L) Certified Domestic Records of Regularly Conducted Activity The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under Section 400.720(c)(6) if accompanied by a written certification of its custodian or other qualified person, in a manner complying with any Act of Congress or rule prescribed by the Supreme Court pursuant to statutory authority, certifying that the record was:

i) made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of these matters;

ii) kept in the course of the regularly conducted activity; and

iii) made by the regularly conducted activity as a regular practice. The word "certification" as used in this subsection (b)(2)(L) means, with respect to a domestic record, a written declaration under oath subject to the penalty of perjury and, with respect to a record maintained or located in a foreign country, a written declaration signed in a country that, if falsely made, would subject the maker to criminal penalty under the laws of that country. A party intending to offer a record into evidence under this subsection (b)(2)(L) must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them. (Il. Mil. R. Evid. 902)

Section 400.730 Documentary Evidence

a) Subscribing Witnesses' Testimony. The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing. (Il. Mil. R. Evid. 903)

b) Contents of Writings, Recordings and Photographs
For purposes of this Section, the following definitions apply:

1) "Duplicate" means a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic rerecording, or by chemical reproduction, or by other equivalent techniques that accurately reproduce the original. (Il. Mil. R. Evid. 1001; see also Il. Mil. R. Evid. 902)

2) "Original" of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original".

3) "Photographs" means still photographs, X-ray films, video tapes, and motion pictures and similar or other products or processes that produce a recorded image.

4) "Writings" and "Recordings" means letters, words, sounds or numbers, or their equivalent, set down by handwriting, typewriting, printing, photocopying, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation. (Il. Mil. R. Evid. 1001)

c) Requirement of the Original
To prove the content of a writing, recording or photograph, the original writing, recording or photograph is required, except as otherwise provided in this Manual, Illinois Statute or Act of Congress. (Il. Mil. R. Evid. 1002)

d) Admissibility of Duplicates
A duplicate is admissible to the same extent as an original unless:

1) a genuine question is raised as to the authenticity of the original; or

2) in the circumstances it would be unfair to admit the duplicate in lieu of the original. (Il. Mil. R. Evid. 1003)

e) Admissibility of Other Evidence of Content
The original is not required, and other evidence of the contents of a writing, recording or photograph is admissible if:

1) Originals Lost or Destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith;

2) Original Not Obtainable. No original can be obtained by any available judicial process or procedure;

3) Original in Possession of Opponent. At a time when an original was under the control of the party against whom offered, the party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and the party does not produce the original at the hearing; or

4) Collateral Matters. The writing, recording or photograph is not closely related to a controlling issue. (Il. Mil. R. Evid. 1004)

f) Copies of Public Records to Prove Content

1) The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct or attested to in accordance with Section 400.725(b) or testified to be correct by a witness who has compared it with the original.

2) If a copy that complies with the foregoing cannot be obtained by the exercise of reasonable diligence, other evidence of the contents may be given. (Il. Mil. R. Evid. 1005)

g) Summaries to Prove Content

1) The contents of voluminous writings, recordings or photographs that cannot conveniently be examined in court may be presented in the form of a chart, summary or calculation.

2) The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The military judge may order that they be produced in court. (Il. Mil. R. Evid. 1006)

h) Testimony or Statement of a Party to Prove Content
Contents of writings, recordings or photographs may be proved by the testimony or deposition of the party against whom offered or by the party's written admission, without accounting for the nonproduction of the original. (Il. Mil. R. Evid. 1007)

i) Functions of the Military Judge

1) When the admissibility of other evidence of contents of writings, recordings or photographs under this Section depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the military judge to determine in accordance with the provisions of Section 400.600(e).

2) As in the case of other issues of fact, when an issue is raised, the issue for the trier of fact to determine is:

A) whether the asserted writing ever existed;

B) whether another writing, recording or photograph produced at trial is the original; or

C) whether other evidence of contents correctly reflects the contents. (Il. Mil. R. Evid. 1008)

Section 400.735 Applicability of This Subpart

a) Except as otherwise provided in this Manual, this Subpart applies generally to:

1) all courts-martial, including summary court-martial;

2) Code Section 39 hearings;

3) limited fact-finding proceedings ordered on review;

4) proceedings in revision; and

5) contempt proceedings other than contempt proceedings in which the judge may act summarily.

b) The application of this Subpart may be relaxed in presentencing proceedings. They do not apply to a military judge's preliminary questions of fact governing admissibility, pretrial investigations under Code Section 32, and proceedings for vacation of suspension of a sentence under Code Section 72, search authorizations, pretrial restraint, pretrial confinement, or other pretrial motions hearing.

c) The rules on privilege apply at all stages of a case or proceeding. (Il. Mil. R. Evid. 1101)

SUBPART G: TRIAL PROCEDURES

Section 400.800 Unlawfully Influencing Action of the Court

a) *No authority convening a general, special or summary court-martial, nor any other commanding officer, or officer serving on the staff* of the commanding officer*, may censure, reprimand or admonish the court or any member, the military judge, or counsel* of the court*, with respect to the findings or sentence adjudged by the court or with respect to any other exercise of its or their functions in the conduct of the proceedings. No person subject to* the *Code may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or court of inquiry or any member of these bodies, in reaching the findings or sentence in any case, or the action of any convening, approving or reviewing authority with respect to their judicial acts. This subsection (a) shall not apply with respect to:*

1) *general instructional or informational courses in military justice if those courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial; or*

2) *statements and instructions given in open court by the military judge, summary court-martial officer, or counsel.*

b) *In the preparation of an effectiveness, fitness or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the SMF is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the SMF, or in determining whether a member of the SMF should be retained on active status, no person subject to the Code may, in preparing any such report:*

1) *consider or evaluate the performance of duty of any SMF member as a member of a court-martial or witness in a court-martial; or*

2) *give a less favorable rating or evaluation of any counsel of the accused because of zealous representation before a court-martial*. (Code Section 37)

c) Code Section 37 does not extend to protection from prosecution of crimes such as perjury or false official statement.

Section 400.805 Duties of Trial Counsel and Defense Counsel

a) Trial Counsel. *The trial counsel of a general or special court-martial shall be a member in good standing of the State bar and shall prosecute in the name of the State of Illinois, and shall, under the direction of the court, prepare the record of the proceedings.*

b) Counsel for the Accused

1) *The accused has the right to be represented in defense before a general or special court-martial or at an investigation under Code Section 32 as provided in this subsection (b).*

2) *The accused may be represented by civilian counsel at the provision and expense of the accused.*

3) *The accused may be represented by:*

A) *military counsel detailed under Code Section 27; or*

B) *military counsel of the accused's own selection if that counsel is reasonably available as determined under subsection (b)(9).*

4) *If the accused is represented by civilian counsel, military counsel detailed or selected under subsection (b)(3) shall act as associate counsel unless excused at the request of the accused*.

5) *Except as provided under subsection (b)(6), if the accused is represented by military counsel of his or her own selection under* subsection *(b)(3)(B), any military counsel detailed under subsection (b)(3)(A) shall be excused*.

6) *The accused is not entitled to be represented by more than one military counsel.* However, the convening authority, in his or her sole discretion, may:

A) *detail additional military counsel as assistant defense counsel*; and

B) *if the accused is represented by military counsel of the accused's own selection under subsection (b)(3)(B), approve a request from the accused that military counsel detailed under subsection (b)(3)(A) act as associate defense counsel*. (Code Section 38(b)(1) through (6))

7) Under the supervision of the defense counsel, an assistant defense counsel may perform any act or duty that a defense counsel may perform under the Code or this Manual.

8) Defense counsel may be excused only with the express consent of the accused or by the military judge upon application for withdrawal by the defense counsel for good cause shown, unless defense counsel faces immediate ethical or moral dilemma in ongoing representation.

9) *The senior judge advocate of the same* force *of which the accused is a member shall determine whether the military counsel selected by an accused is reasonably available*. (Code Section 38(b)(7))

c) *In any court-martial proceeding resulting in a conviction, the defense counsel may:*

1) *forward for attachment to the record of proceedings a brief of such matters as counsel determines should be considered on behalf of the accused on review, including any objection to the contents of the record that counsel considers appropriate;*

2) *assist the accused in the submission of any matter under* Code Section 60; *and*

3) *take other action authorized by the Code*. (Code Section 38(c))

Section 400.810 Sessions

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a) Call to Session

1) *At any time after the service of charges that have been referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to Code Section 35, call the court into session without the presence of the members for the purpose of:*

A) *hearing and determining motions raising defenses or objections that are capable of determination without trial of the issues raised by a plea of not guilty;*

B) *hearing and ruling upon any matter that may be ruled upon by the military judge under the Code, whether or not the matter is appropriate for later consideration or decision by the members of the court;*

C) *holding the arraignment and receiving the pleas of the accused; and*

D) *performing any other procedural function that does not require the presence of the members of the court under the Code.*

2) *These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record. These proceedings may be conducted notwithstanding the number of court members and without regard to Code Section 29.* (Code Section 39(a))

b) Assembly of the Court-Martial. The military judge shall announce verbally, on the record, that the court-martial has assembled and shall constitute the court-martial for hearing the case.

c) Proceedings. A court-martial trial conducted under the Code will proceed with respect to findings as provided in RCM 901 through 924.

d) Deliberation and Voting. *When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge,*

shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and the military judge. (Code Section 39(b))

e) Procedures. The presiding military judge may, in his or her discretion, issue any protocol, procedure or guidance that is reasonably calculated to more efficiently, practically or thoroughly resolve the pending court-martial. Those procedures shall remain in place until post-trial motions have concluded or until the military judge withdraws them, whichever comes first.

Section 400.815 Continuances

a) The military judge may issue, in writing or by oral order, any continuance as necessary, and may do so without conducting a formal motions hearing so long as all parties are promptly notified.

b) *A military judge may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.* (Code Section 40)

Section 400.820 Challenges

a) Challenges in General

1) *The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge or the court shall determine the relevancy and validity of challenges for cause and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.*

2) *If exercise of a challenge for cause reduces the court below the minimum number of members required by Code Section 16, all parties shall, notwithstanding Code Section 29, either exercise or waive any challenge for cause then apparent against the remaining members of the court before additional members are detailed to the court. However, peremptory challenges shall not be exercised at that time.*

b) Number of Challenges

1) *Each accused and the trial counsel are entitled initially to one peremptory challenge of members of the court. The military judge may not be challenged except for cause.*

2) *If exercise of a peremptory challenge reduces the court below the minimum number of members required by Code Section 16, the parties shall, notwithstanding Code Section 29, either exercise or waive any remaining peremptory challenge, not previously waived, against the remaining members of the court before additional members are detailed to the court.*

c) *Whenever additional members are detailed to the court, and after any challenges for cause against those additional members are presented and decided, each accused and the trial counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge*. (Code Section 41)

Section 400.825 Oaths

a) Oath by Trial Participants. *Before performing their respective duties, military judges, general and special courts-martial members, trial counsel, defense counsel, reporters, and interpreters shall take an oath or affirmation in the presence of the accused to perform their duties faithfully. The form of the oath or affirmation* is prescribed in subsection (f). *The time and place of the taking of the oath or affirmation, the manner of recording the oath or affirmation, and whether the oath or affirmation shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in statute or this Manual. These regulations may provide that an oath or affirmation to perform faithfully the duties as a military judge, trial counsel or defense counsel may be taken at any time by any judge advocate or other person certified or designated to be qualified or competent for the duty* (e.g., a court reporter or notary public). *If an oath or affirmation is taken, it need not again be taken at the time the judge advocate or other person is detailed to that duty.*

b) Oath by Witnesses. *Each witness before a court-martial shall be examined under oath or affirmation.* (Code Section 42)

c) Administrators of Oaths. *The following persons may administer oaths for the purposes of military justice:*

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1) *All judge advocates.*

2) *All summary courts-martial.*

3) *All adjutants, assistant adjutants acting adjutants, and personnel adjutants.*

4) *The president, military judge and trial counsel for all general and special courts-martial.*

5) *The president and the counsel for the court of any court of inquiry* (see Section 400.1300).

6) *All officers designated to take a deposition.*

7) *All persons detailed to conduct an investigation.*

8) *All other persons designated by U.S. Army regulation 27-55* (notary services) *or by* 10 USC 1041a (authority to act as a notary). (Code Section 136(a) and (b))

d) Prescription of Oaths
Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant or associate defense counsel, reporters and interpreters shall take an oath to perform their duties faithfully.

1) Oath for Military Judge. When the military judge is not previously sworn, the trial counsel will administer the following oath to the military judge:

"Do you (swear) (affirm) that you will faithfully and impartially perform, according to your conscience and the laws applicable to trial by court-martial, all the duties incumbent upon you as military judge of this court-martial (so help you God)?"

2) Oath for Members. The following oath, as appropriate, will be administered to the members by the trial counsel:

"Do you (swear) (affirm) that you will answer truthfully the questions concerning whether you should serve as a member of this court-martial; that you will faithfully and impartially try, according to the evidence, your conscience, and the laws applicable to trial by court-martial, the case of the accused now before this court; and that you will not disclose or discover the vote or opinion of any particular member of the court (upon a challenge or) upon the findings or sentence unless required to do so in due course of law (so help you God)?"

3) Oaths for Counsel. When counsel for either side, including any associate or assistant, is not previously sworn, the following oath, as appropriate, will be administered by the military judge:

"Do you (swear) (affirm) that you will faithfully perform all the duties of (trial) (assistant trial) (defense) (associate defense) (assistant defense) counsel in the case now in hearing (so help you God)?"

4) Oath for Reporter. The trial counsel will administer the following oath to every reporter of a court-martial who has not been previously sworn:

"Do you (swear) (affirm) that you will faithfully perform the duties of reporter to this court-martial (so help you God)?"

5) Oath for Interpreter. The trial counsel or the summary court-martial shall administer the following oath to every interpreter in the trial of any case before a court-martial:

"Do you (swear) (affirm) that, in the case now in hearing, you will interpret truly the testimony you are called upon to interpret (so help you God)?"

6) Oath for Witnesses. The trial counsel or the summary court-martial will administer the following oath to each witness before the witness first testifies in a case:

"Do you (swear) (affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth (so help you God)?"

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Section 400.830 Statute of Limitations

a) *Except as otherwise provided in this* Section*, a person charged with any offense is not liable to be tried by court-martial or punished under Code Section 15 if the offense was committed more than* 3 years *before the receipt of sworn charges and specifications by an officer exercising court-martial jurisdiction over the command or before the imposition of punishment under Code Section 15.*

b) *Periods in which the accused is absent without authority or fleeing from justice shall be excluded in computing the period of limitation prescribed in this Section.*

c) *The following periods shall be excluded in computing the period of limitation prescribed in this Section:*

1) *Periods in which the accused was absent from territory in which the State has the authority to apprehend the accused;*

2) *Periods when the accused was in the custody of civil authorities; or*

3) *Periods when the accused was in the hands of the enemy.*

d) Wartime suspension

1) *When the United States is at war or armed conflict authorized by law, the running of any statute of limitations is suspended for any offense under the Code:*

A) *involving fraud or attempted fraud against the United States, any state, or any agency of either in any manner, whether by conspiracy or not;*

B) *committed in connection with the acquisition, care, handling, custody, control or disposition of any real or personal property of the United States or any state; or*

C) *committed in connection with the negotiation, procurement, award, performance, payment, interim financing, cancellation or other termination or settlement of any contract, subcontract or purchase order that is connected with or related to the prosecution of the*

war, or with any disposition of termination inventory by any war contractor or government agency.

2) *The suspension remains effective until 2 years after the termination of hostilities or armed conflict as proclaimed by the President or by a joint resolution of Congress.* (Code Section 43(a) through (d))

Section 400.835 Former Jeopardy

a) *No person may, without his or her consent, be tried a second time for the same offense.*

b) *No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this Section until the finding of guilty has become final after review of the case has been fully completed.*

c) *A proceeding that, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this Section.* (Code Section 44)

Section 400.840 Arraignment and Pleas of the Accused

a) Arraignment shall be conducted in a court-martial session and shall consist of reading the charges and specifications to the accused and calling on the accused to plead. The accused may waive the reading.

b) Persons subject to the Code are presumed innocent and cannot be found guilty without either:

1) being found guilty at courts-martial; or

2) knowingly and voluntarily entering an open or negotiated plea of guilty.

c) Prior to accepting a plea of guilty, the military judge shall comply with Illinois Supreme Court Rule 402.

d) *If an accused, after arraignment, makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused*

has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though the accused had pleaded not guilty. (Code Section 45(a))

e) *With respect to any charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence. In that event, the proceedings shall continue as though the accused had pleaded not guilty.* (Code Section 45(b))

Section 400.845 Opportunity to Obtain Witnesses and Other Evidence

a) Trial counsel shall assist defense counsel and issue subpoenas or other process as reasonably requested by defense counsel. Trial counsel shall not withhold evidence from defense counsel.

b) *The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence as prescribed by regulations and provided by law. Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall apply the principles of law and the rules of courts-martial generally recognized in military criminal cases in the courts of the armed forces of the United States, but may not be contrary to or inconsistent with the Code. Process shall run to any part of the United States, or the U.S. territories, commonwealths and possessions, and may be executed by civil officers as prescribed by the laws of the place where the witness or evidence is located or of the United States.* (Code Section 46)

Section 400.850 Refusal to Appear or Testify

a) The military judge may issue such warrants or body attachments for the arrest of any person refusing to appear pursuant to Code Section 47, in addition to any other relief deemed just and appropriate under Illinois law.

b) *The military court may punish in the same manner as a criminal court of the State any person not subject to the Code who:*

1) *has been duly subpoenaed to appear as a witness or to produce books and records before a court-martial or court of inquiry, or before any military or civil officer designated to take a deposition to be read in evidence before such a court;*

2) *has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending a criminal court of the State; and*

3) *willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence that person may have been legally subpoenaed to produce.*

c) *The fees and mileage of witnesses shall be advanced or paid* by the State. (Code Section 47)

Section 400.855 Contempt

a) *A military judge may punish for contempt any person who refuses a court order, is disrespectful to the court, or who uses any menacing word, sign or gesture in its presence, or who disturbs its proceedings by any riot or disorder.*

b) *A person subject to the Code may be punished for contempt by confinement not to exceed 30 days or a fine up to $500, or both.*

c) *A person not subject to the Code may be punished for contempt by a military court in the same manner as a criminal court of the State*. (Code Section 48)

d) Any appeal shall be to the Fourth District of the Illinois Appellate Court.

Section 400.860 Depositions

a) Trial and defense counsel should be mindful of the accused's constitutional rights and shall not seek deposition except as a last resort when other methods to secure attendance of the witness has failed.

b) *At any time after charges have been signed as provided in Code Section 30, any party may take oral or written depositions unless the military judge hearing the case or, if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause.*

c) *The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition*.

d) *Depositions may be taken before and authenticated by any military or civil officer authorized by the laws of the State or by the laws of the place where the deposition is taken to administer oaths*.

e) *A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence or, in the case of audiotape, videotape, digital image or file, or similar material, may be* admitted *in evidence before any military court if it appears that*:

1) *the witness resides or is beyond the state in which the court is ordered to sit, or beyond 100 miles from the place of trial or hearing;*

2) *the witness, by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of the trial or hearing; or*

3) *the present whereabouts of the witness is unknown*. (Code Section 49)

Section 400.865 Admissibility of Records of Courts of Inquiry

a) *In any case not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of that evidence.*

b) *The testimony may be read in evidence only by the defense in cases extending to the dismissal of a commissioned officer.*

c) *The testimony may also be read in evidence before a court of inquiry*. (Code Section 50)

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NOTICE OF ADOPTED RULES

Section 400.870 Defense of Lack of Mental Responsibility

a) *It is an affirmative defense in a trial by court-martial that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.*

b) *The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.*

c) *Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall instruct the members of the court as* to *the defense of lack of mental responsibility under Code Section 50a and charge them to find the accused* guilty, *not guilty or not guilty only by reason of lack of mental responsibility.*

d) *Subsection (c) does not apply to a court-martial composed of a military judge only. In the case of a court-martial composed of a military judge only, whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall find the accused guilty, not guilty or not guilty only by reason of lack of mental responsibility.*

e) *Notwithstanding the provisions of Code Section 52, the accused shall be found not guilty only by reason of lack of mental responsibility if*:

1) *a majority of the members of the court-martial present at the time the vote is taken determines that the defense of lack of mental responsibility has been established; or*

2) *in the case of a court-martial composed of a military judge only, the military judge determines that the defense of lack of mental responsibility has been established*. (Code Section 50a)

Section 400.875 Voting By the Court-Martial

a) Voting and Ruling

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1) *Voting by members of a general or special court-martial on the findings and on the sentence shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court*.

2) *The military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused is final and constitutes the ruling of the court. However, the military judge may change the ruling at any time during the trial. Unless the ruling is final, if any member objects to the ruling, the court shall be cleared and closed and the question decided by a voice vote as provided in Code Section 52, beginning with the junior in rank.*

3) *Before a vote is taken on the findings, the military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them that:*

   A) *the accused must be presumed to be innocent until his or her guilt is established by legal and competent evidence beyond reasonable doubt;*

   B) *in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and the accused must be acquitted;*

   C) *if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and*

   D) *the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the State*.

4) *Subsections* (a)(1), (2) and (3) *do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The*

military judge of such a court-martial shall make a general finding and shall in addition, on request, make special findings as provided in RCM 918(b). *If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear in that document.* (Code Section 51) The military judge may give any instructions necessary to clarify the members' questions after the conclusions of evidence, or to decline to answer any question in the event that response implicates inadmissible evidence.

5) Included Offenses. Members shall not vote on a lesser included offense unless a finding of not guilty of the offense charged has been reached. If a finding of not guilty of an offense charged has been reached, the members shall vote on each included offense on which they have been instructed, in order of severity beginning with the most severe. The members shall continue the vote on each included offense on which they have been instructed until a finding of guilty results or findings of not guilty have been reached as to each offense.

b) Procedure for Voting

1) Order. Each specification shall be voted on separately before the corresponding charge. The order of voting on several specifications under a charge or on several charges shall be determined by the president unless a majority of the members object.

2) Counting Votes. The junior member shall collect the ballots and count the votes. The president shall check the count and inform the other members of the result.

c) Number of Votes Required

1) *No person may be convicted of an offense except as provided in Code Section 45(b) or by the concurrence of ⅔ of the members present at the time the vote is taken.*

2) *All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote, but a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by any lesser vote that indicates the*

reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused. (Code Section 52)

3) Acquittal. If fewer than ⅔ of the members present vote for a finding of guilty, a finding of not guilty has resulted as to the charge or specification on which the vote was taken.

d) Court to Announce Action

1) *A court-martial shall announce its findings and sentence to the parties as soon as determined*. (Code Section 53)

2) The military judge may take such actions as it deems reasonably necessary to secure the courtroom and safety of persons within the courtroom prior to, and after, the announcement of court-martial findings.

Section 400.880 Withdrawal of Guilty Plea

An accused may withdraw a plea of guilty as provided in RCM 910(h)(1) and (2).

SUBPART H: SENTENCING

Section 400.900 Presentencing Procedure

In a court-martial trial conducted under the Code resulting in a finding of guilt, the court shall follow the presentencing procedures provided in RCM 1001 through 1003 and 1005 through 1011 (RCM Chapter X (Sentencing, Rule)), except that neither death nor confinement in excess of 10 years may be adjudged.

Section 400.905 Sentencing

a) Cruel and Unusual Punishment Prohibited

1) Persons subject to the Code will be afforded all constitutional protections against cruel and unusual punishment, in accordance with U.S. Supreme Court and Illinois Supreme Court case law.

2) *Punishment by flogging, or by branding, marking or tattooing on the body, or any other cruel or unusual punishment may not be adjudged by a court-martial or inflicted upon any person subject to the Code. The use of irons, single or double, except for the purpose of safe custody, is prohibited*. (Code Section 55)

b) Maximum Limits

1) *The punishment a court-martial may direct for an offense may not exceed the limits prescribed by the Code, but in no instance may a sentence exceed more than 10 years for a military offense, nor shall a sentence of death be adjudged. A conviction by general court-martial of any military offense for which an accused may receive a sentence of confinement for more than one year is a felony offense. All other military offenses are misdemeanors*.

2) *The limits of punishment for violations of the punitive articles described in Subpart J shall be equal to, or the lesser of, the sentences prescribed by the MCM. In no instance shall any punishment exceed that authorized by the Code*. (Code Section 56)

c) *Effective Dates of Sentences*

1) Forfeiture of Pay or Allowances. *Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay or allowances accrued before that date*.

2) Confinement. *Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement*.

3) *All other sentences of courts-martial are effective on the date ordered executed*, subject to Code Section 71 (see Section 400.1075). (Code Section 57)

d) Reconsideration of Sentence

1) Reconsideration. A sentence may be reconsidered at any time before it is announced in open session of the court.

2) The procedures detailed in RCM 1009 shall apply.

e) Report of Result of Trial; Post-Trial Restraint

1) After final adjournment of the court-martial, trial counsel shall promptly notify the accused's immediate commander, the convening authority or designee and, if appropriate, the officer in charge of the confinement facility of the findings and the sentence.

2) Confinement

A) General. An accused may be placed in post-trial confinement if the sentence adjudged by the court-martial includes confinement.

B) Who May Order. Unless limited by superior authority, a commander of the accused may order the accused into post-trial confinement when post-trial confinement is authorized under this subsection (e)(2). A commander authorized to order post-trial confinement may delegate this authority to the trial counsel.

f) *Deferment of Sentences*

1) *On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under that person's jurisdiction, the person exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may, in that person's sole discretion, defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time*

by the person who granted it or, if the accused is no longer under that person's jurisdiction, by the person exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

2) Process

A) *In any case in which a court-martial sentences an accused referred to in* subsection (f)(2)(B) *to confinement, the convening authority may defer the service of the sentence to confinement, without the consent of the accused, until after the accused has been permanently released to the SMF by a state, the United States, or a foreign country*.

B) Subsection (f)(2)(A) *applies to a person subject to* the *Code who*:

i) *while in the custody of a state, the United States or a foreign country is temporarily returned by that state, the United States or foreign country to the SMF for trial by court-martial; and*

ii) *after the court-martial, is returned to that state, the United States or foreign country under the authority of a mutual agreement or treaty, as the case may be*.

3) *In any case in which a court-martial sentences an accused to confinement and the sentence to confinement has been ordered executed, but in which review of the case under Code Section 57a(a) is pending, the Adjutant General may defer further service of the sentence to confinement while that review is pending*. (Code Section 57a)

g) Execution of Confinement

1) Confinement for one year or more. If a person subject to the Code and this Manual is convicted at court-martial for an offense punishable by more than one year confinement, and is sentenced to confinement of one year or more, at the conclusion of post-trial motions, that person will be transported to, and incarcerated with, the Illinois Department of Corrections.

2) Confinement for less than one year. If a person subject to the Code and this Manual is convicted at court-martial for an offense punishable by less than one year confinement, and is sentenced to confinement, that person will be transported to, and incarcerated in, the county jail.

3) Notwithstanding subsections (g)(1) and (2), the military judge, in his or her discretion, may always order confinement at any civilian county jail, department of corrections facility, or military confinement facility authorized under the Code that he or she deems reasonable and appropriate. The military judge should consider the interests of national security, State security, good order and discipline, and other applicable federal or State laws and this Manual.

4) *A sentence of confinement adjudged by a court-martial, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place authorized by the Code. Persons so confined are subject to the same discipline and treatment as persons regularly confined or committed to that place of confinement*.

5) *The omission of hard labor as a sentence authorized under the Code does not deprive the State confinement facility from employing it, if it otherwise is within the authority of that facility to do so*.

6) *No place of confinement may require payment of any fee or charge for receiving or confining a person, except as otherwise provided by law*. (Code Section 58)

h) *Sentences: Reduction in Enlisted Grade Upon Approval*

1) *A court-martial sentence of an enlisted member in a pay grade above E-1, as approved by the convening authority, reduces that member to pay grade E-1, effective on the date of that approval,* if the sentence includes:

A) *a dishonorable or bad-conduct discharge; or*

B) *confinement*. (Code Section 58a(a))

2) *If the sentence of a member who is reduced in pay grade under subsection* (h)(1) *is set aside or disapproved, or, as finally approved, does not include any punishment named in subsection* (h)(1)*, the rights and privileges of which the person was deprived because of that reduction shall be restored, including pay and allowances*. (Code Section 58a(b))

i) *Sentences: Forfeiture of Pay and Allowances During Confinement*

1) General

A) *A court-martial sentence described in subsection* (i)(1)(B) *shall result in the forfeiture of pay, or of pay and allowances, due that member during any period of confinement or parole. The forfeiture pursuant to this subsection* (i) *shall take effect on the date determined under Code Section 57(a) and may be deferred as provided by that Section. The pay and allowances forfeited, in the case of a general court-martial, shall be all pay and allowances due that member during the period of confinement or parole and, in the case of a special court-martial, shall be ⅔ of all pay due the member during that period.*

B) *A sentence covered by this subsection* (i) *is any sentence that includes*:

i) *confinement for more than 6 months; or*

ii) *confinement for 6 months or less and a dishonorable or bad-conduct discharge or dismissal.*

2) *In a case involving an accused who has dependents, the convening authority or other person acting under Code Section 60 may waive any or all of the forfeitures of pay and allowances required by subsection* (i)(1) *for a period not to exceed 6 months. Any amount of pay or allowances subject to the waiver will be paid, as the convening authority or other person taking action directs, to the dependents of the accused.*

3) *If the sentence of a member who forfeits pay and allowances under subsection* (i)(1) *is set aside or disapproved or, as finally approved, does not provide for a punishment referred to in subsection* (i)(1)(B)*, the*

member shall be paid the pay and allowances that he or she would have been paid, except for the forfeiture, for the period during which the forfeiture was in effect. (Code Section 58b)

SUBPART I: POST-TRIAL PROCEDURE AND REVIEWS

Section 400.1000 Post-Trial Procedure and Reviews

a) Appellate procedures for all convictions under the Code and this Manual shall be in accordance with those of the Illinois Appellate Court, Fourth District.

b) In each general and special court-martial, prior to adjournment, the military judge shall ensure that the defense counsel has informed the accused orally and in writing of:

1) The right to submit matters to the convening authority to consider before taking action;

2) The right to appellate review, as applicable, and the effect of waiver or withdrawal of that right; and

3) The right to the advice and assistance of counsel in the exercise of the rights described in subsections (b)(1) and (2) or any decision to waive them. The written advice to the accused concerning post-trial and appellate rights shall be signed by the accused and the defense counsel and inserted in the record of trial as an appellate exhibit.

Section 400.1005 Error of Law; Lesser Included Offenses

a) *A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused*.

b) *Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense*. (Code Section 59)

c) Any challenges to an error of law must be raised in a timely post-trial motion. Constitutional challenges may be raised at any time, including on appeal.

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NOTICE OF ADOPTED RULES

Section 400.1010 Preparation of the Record of Trial; Authentication; Service; Loss; Correction

In every court-martial trial conducted under the Code, the record of trial shall be prepared, authenticated and served substantially in accordance with RCMs 1103 through 1104. Any reference in those RCMs to the "Court of Criminal Appeals" shall instead refer to the "Illinois Appellate Court".

Section 400.1015 Recommendation of the State Judge Advocate

a) Before acting on a finding of guilt on any general or special court-martial in which there is a finding of guilt, the convening authority must obtain the written concurrence of the State Judge Advocate or designee by means of legal review. The convening authority will refer the authenticated record of trial to the State Judge Advocate who shall use it in preparation of the review.

b) Content. The legal review shall be in writing and shall contain the following:

1) Conclusions as to whether:

A) The court had jurisdiction over the accused and the offense;

B) The charge and specification stated an offense;

C) The sentence was within the limits prescribed as a matter of law.

2) A recommendation as to the appropriate action to be taken and an opinion as to whether corrective action is required as a matter of law.

c) The State Judge Advocate's recommendation and a copy of the authenticated record of trial will be served on the accused and his or her defense counsel who may submit matters to the convening authority as provided in Section 400.1020.

d) Disqualification. No person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, associate or assistant defense counsel, or investigating officer in any case may later act as State Judge Advocate or designee to any reviewing or convening authority in the same case.

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NOTICE OF ADOPTED RULES

Section 400.1020 Matters Submitted by the Accused

a) General. After a sentence is adjudged in any court-martial under the Code, the accused may submit matters to the convening authority in accordance with this Section.

b) Matters That May Be Submitted

1) The accused may submit to the convening authority any matters that may reasonably tend to affect the convening authority's decision whether to disapprove any findings of guilty or to approve the sentence. Submissions must be in writing.

2) Submissions may include allegations of errors affecting the legality of the proceedings, portions or summaries of the record and copies of documentary evidence offered or introduced at trial, matters in mitigation not available at trial, and clemency recommendations from any person.

3) The accused may waive his or her right to make a submission to the convening authority, provided the waiver is in writing. Once accepted by the convening authority, waiver may not be revoked.

4) Failure to object to matters in the State Judge Advocate's recommendation waives the right to object to that matter.

c) Time Periods

1) The accused may submit matters under this Section *within* the later of *30 days after the accused has been given an authenticated* copy of the *record of trial or, if applicable, the recommendation of a* State Judge Advocate, or an addendum to the recommendation containing a new matter is served on the accused.

2) *If*, within the 30-day period, *the accused shows that additional time is required to submit the matters, the convening authority or other person taking action, for good cause* shown, *may extend the period* to submit matters for an additional 20 days. (Code Section 60(b)(1) and (2))

Section 400.1025 State Judge Advocate's Addendum

a) The State Judge Advocate or designee may, by addendum, supplement the recommendation after the accused and counsel have been served with the recommendation and given an opportunity to submit matters and comment.

b) If the addendum introduces new matter after the accused and counsel have examined the recommendation, the accused and counsel must be served with the addendum containing new matter and given 30 days from service of the addendum to submit comments.

Section 400.1030 Action by the Convening Authority

a) Who May Take Action. The convening authority shall take action on the sentence and, in the discretion of the convening authority, the findings, unless it is impractical. If it is impracticable for the convening authority to act, the convening authority shall, in accordance with regulations promulgated by the Adjutant General, forward the case to an officer exercising general court-martial jurisdiction who may take action. See NGIL Reg. 27-10/NGIL-ANGI 51-202, paragraph 9-1(b)(1).

b) Discretion to Modify. The authority *to modify the findings and sentence of a court-martial is a matter of command prerogative involving the sole discretion of the convening authority* or other officer authorized to take action.

c) Action on the Sentence. *Action may be taken only after consideration of any matters submitted by the accused, or after the time* to submit them has expired, *whichever is earlier*. In his or her sole discretion, *the convening authority or other* officer authorized to *take action may approve, disapprove, commute or suspend the sentence in whole or in part*. The action may mitigate the sentence and change punishment to one of a different nature as long as the severity of the punishment is not increased. The action may not increase the punishment imposed by the court-martial. The action shall explicitly state approval or disapproval of the adjudged sentence.

d) Action on the Findings. *The convening authority or other* officer *acting on the sentence is not required* to take action on the findings. *However, that person, in his or her sole discretion, may*:

1) *Dismiss any charge or specification by setting aside a finding of guilty; or*

2) *Change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification*. (Code Section 60(c))

e) Revision and Rehearing. The convening authority or other person taking action, in the person's sole discretion, may order a proceeding in revision or rehearing.

1) Rehearing. *The convening authority or other person taking action may, in his or her sole discretion, order a rehearing if that person disapproves the findings and sentence, and states the reasons of disapproval of the findings. If that person disapproves the findings and sentence and does not order a rehearing, he or she shall dismiss the charges. A rehearing as to findings shall not be ordered if there is a lack of sufficient evidence in the record to support the findings. A rehearing on the sentence may be ordered if the convening authority or other person taking action disapproves the sentence.* Rehearing will be in accordance with this Manual.

2) Revision. *A proceeding in revision may be ordered if there is an apparent error or omission in the record or if the record shows improper or inconsistent action by a court-martial with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused. In no case, however, may a proceeding in revision*:

A) *Reconsider a finding of not guilty of any specification or a ruling that amounts to a finding of not guilty;*

B) *Reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under the charge that sufficiently alleges a violation of some Section of the Code; or*

C) *Increases the severity of the sentence*. (Code Section 60(e))

Section 400.1035 General and Special Courts-Martial in Which There is a Finding of Guilty; Review by Senior Force Judge Advocate; Action by the Adjutant General

a) In addition to the judge advocate's recommendation under Code Section 60, *in a general and special court-martial in which there is a finding of guilt, the State*

Judge Advocate or designee shall review the case. No person *may review the case who has acted as an accuser, member, military judge, trial counsel, assistant trial counsel, defense counsel, associate or assistant defense counsel, or investigating officer in that case. The review shall be in writing and shall contain the following:*

1) *Conclusions as to whether:*

A) *The court had jurisdiction over the accused and the offense;*

B) *The charge and specification stated an offense;*

C) *The sentence was within the limits prescribed as a matter of law.*

2) *A response to each allegation of error made in writing by the accused.*

3) *If the case is sent for action under subsection (b), a recommendation as to the appropriate action to be taken and an opinion as to whether corrective action is required as a matter of law.*

b) *The record of trial and related documents in each case reviewed under subsection (a) shall be sent for action to the Adjutant General if:*

1) *The judge advocate who reviewed the case recommends corrective action;*

2) *The sentence approved by the convening authority under Code Section 60 extends to dismissal, bad-conduct discharge, dishonorable discharge, or confinement for more than 6 months; or*

3) *The action is required under regulations prescribed by the Adjutant General.*

c) *The Adjutant General may:*

1) *Disapprove or approve the findings or sentence, in whole or in part;*

2) *Remit, commute or suspend the sentence in whole or in part;*

3) *Except when evidence is insufficient at the trial to support the findings, order a rehearing on the findings, sentence or on both; or*

4) *Dismiss the charges.*

d) *If* the Adjutant General *orders a rehearing but the convening authority finds a hearing impractical, the convening authority shall dismiss the charges.*

e) *If, in the State Judge Advocate's opinion, corrective action is required as a matter of law, and if the Adjutant General does not take action that is at least as favorable to the accused as that recommended by the judge advocate, the record of the trial and the action shall be sent to the Governor for review and action as deemed appropriate.*

f) *The State Judge Advocate, or designee, may review any case in which there has been a finding of not guilty of all charges and specifications. However, the State Judge Advocate may not review the case if he or she has acted as an accuser, member, military judge, trial counsel, assistant trial counsel, defense counsel, associate or assistant defense counsel, or investigating officer in that case. The review shall be limited to questions of subject matter jurisdiction.*

g) *The records of trial and related documents in each case reviewed under subsection (f) shall be sent for action to the Adjutant General who may:*

1) *Void the court-martial ab initio when subject matter jurisdiction is found lacking, with or without prejudice to the government, as the Adjutant General deems appropriate;*

2) *Return the record of trial and related documents to the State Judge Advocate for appeal by the government as provided by law.* (Code Section 64)

Section 400.1040 Withdrawal of Appeal

a) The accused has a right to appeal. This right to appeal is permissive and not automatic. There are no exceptions to the right to appeal.

b) *In each case subject to appellate review under the Code, the accused may file with the convening authority a statement expressly withdrawing the right of the*

accused to appeal. The withdrawal shall be signed by both the accused and his or her defense counsel and must be filed in accordance with appellate procedures as provided by Article VI of the Illinois Supreme Court Rules (Appeals in Criminal Cases, Post-Conviction Cases and Juvenile Court Proceedings).

c) *The accused may withdraw an appeal at any time in accordance with appellate procedures as provided by* Supreme Court Rules, Article VI. The withdrawal must be in writing. (Code Section 61)

Section 400.1045 Appeal by the State

a) General

1) *In a trial by court-martial in which a punitive discharge may be adjudged, the State may appeal the following, other than a finding of not guilty with respect to the charge or specification by the members of the court-martial, or by a judge in a bench trial, so long as it is not made in reconsideration*:

A) *An order or ruling of the military judge that terminates the proceedings with respect to a charge or specification*;

B) *An order or ruling that excludes evidence that is substantial proof of a fact material in the proceeding*;

C) *An order or ruling that directs the disclosure of classified information*;

D) *An order or ruling that imposes sanctions for nondisclosure of classified information*;

E) *A refusal of the military judge to issue a protective order sought by the State to prevent the disclosure of classified information*; or

F) *A refusal by the military judge to enforce an order described in subsection (a)(1)(E) that has previously been issued by appropriate authority*.

2) *An appeal of an order or ruling may not be taken unless the trial counsel provides the military judge with written notice of appeal from the order or*

ruling within 72 hours after the order or ruling. The notice shall include a certification by the trial counsel that the appeal is not taken for the purpose of delay and, if the order or ruling appealed is one that excludes evidence, that the evidence excluded is substantial proof of a fact material in the proceeding.

3) *An appeal under this Section shall be diligently prosecuted as provided by law*.

b) *An appeal under this Section shall be forwarded to the court prescribed in Code Section 67a. In ruling on an appeal under Code Section 62, that court may act only with respect to matters of law*.

c) *Any period of delay resulting from an appeal under Code Section* 62 *shall be excluded in deciding any issue regarding denial of a speedy trial unless an appropriate authority determines that the appeal was filed solely for the purpose of delay, with the knowledge that it was totally frivolous and without merit*. (Code Section 62)

d) Appellate procedures will be governed by the Fourth District of the Illinois Appellate Court.

Section 400.1050 Rehearing

a) *Each rehearing under the Code shall take place before a court-martial composed of members not members of the court-martial that first heard the case*.

b) *Upon a rehearing, the accused may not be tried for any offense of which he or she was found not guilty by the first court-martial, and no sentence in excess of, or more severe than, the original sentence may be approved, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings or unless the sentence prescribed for the offense is mandatory*.

c) *If the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes a plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the approved sentence as*

to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-martial. (Code Section 63)

Section 400.1055 Procedures for Rehearing, New Trials and Other Trials

a) General

1) Definition. "Other trial" means another trial of a case in which the original proceedings were declared invalid because of lack of jurisdiction or failure of a charge to state an offense.

2) Rehearing in Full and New or Other Trials. In rehearings that require findings on all charges and specifications referred to a court-martial and in new or other trials, the procedure shall be the same as in an original trial except as otherwise provided in this Section.

3) Rehearing on Sentence Only. In a rehearing on sentence only, the procedure shall be the same as in an original trial, except that the portion of the procedure that ordinarily occurs after challenges, and through the findings, is omitted, and except as otherwise provided in this Section.

b) Contents of the Record. The contents of the record of the original trial consisting of evidence properly admitted on the merits relating to each offense of which the accused stands convicted but not sentenced may be established by any party whether or not testimony so read is otherwise admissible under Section 400.720(d) and whether or not it was given through an interpreter.

c) Plea. The accused at a rehearing only on sentence may not withdraw any plea of guilty upon which findings of guilty are based. However, if that plea is found to be improvident, the rehearing shall be suspended and the matter reported to the authority ordering the rehearing.

d) Combined Rehearings. When a rehearing on sentence is combined with a trial on the merits of one or more specifications referred to the court-martial, whether or not those specifications are being tried for the first time or reheard, the trial will proceed first on the merits, without reference to the offenses being reheard on sentence only. After findings on the merits are announced, the members, if any, shall be advised of the offenses on which the rehearing on sentence has been directed. Additional challenges for cause may be permitted, and the sentencing

procedure shall be the same as at an original trial, except as otherwise provided in this Section. A single sentence shall be adjudged for all offenses.

e) Composition

1) Members. No member of the court-martial that previously heard the case may sit as a member of the court-martial at any rehearing, new trial or other trial of the same case.

2) Military Judge. The military judge at a rehearing may be the same military judge who presided over a previous trial of the same case. The existence or absence of a request for trial by military judge alone at a previous hearing shall have no effect on the composition of a court-martial on rehearing.

3) Accused's Election. The accused at a rehearing or new or other trial shall have the same right to request enlisted members or trial by military judge alone as the accused would have at an original trial.

f) Examination of Record of Former Proceedings. No member may, upon a rehearing or upon a new or other trial, examine the record of any former proceedings in the same case except:

1) When permitted to do so by the military judge after those matters have been received in evidence; or

2) That the president of a special court-martial without a military judge may examine that part of the record of former proceedings that relates to errors committed at the former proceedings when necessary to decide the admissibility of offered evidence or other questions of law, and that part of the record may be read to the members when necessary for them to consider a matter, subject to objection by any member

g) Sentence Limitations

1) General. Sentences at rehearings, new trials or other trials shall be adjudged within the limitations set forth in Code Sections 55 through 58, except as otherwise provided in subsection (g)(2). Offenses on which a rehearing, new trial or other trial has been ordered shall not be the basis

for an approved sentence in excess of, or more severe than, the sentence ultimately approved by the convening or higher authority following the previous trial or hearing, unless the sentence prescribed for the offense is mandatory. When a rehearing or sentencing is combined with trial on new charges, the maximum punishment that may be approved by the convening authority shall be the maximum punishment under Code Sections 55 through 58 for the offenses being reheard (except as otherwise provided in subsection (g)(2)), plus the total maximum punishment under Code Sections 55 through 58 for any new charges of which the accused has been found guilty. In the case of an "other trial", no sentence limitations apply if the original trial was invalid because a summary or special court-martial improperly tried an offense involving mandatory punishment or otherwise considered capital.

2) Plea Agreement. If, after the earlier court martial, the sentence was approved in accordance with a plea agreement and at the rehearing the accused fails to comply with the pretrial agreement, by failing to enter a plea of guilty or otherwise, the approved sentence resulting at a rehearing of the affected charges and specifications may include any otherwise lawful punishment not in excess of, or more serious than, lawfully adjudged at the earlier court-martial.

Section 400.1060 Disposition of Records After Review by the Convening Authority

a) The original record of trial and all related documents shall be retained at Joint Force Headquarters, Office of the Staff Judge Advocate, 1301 N. MacArthur Blvd., Springfield IL 62702.

b) Court-martial convictions shall be reported to other necessary authorities in accordance with Illinois law (e.g., the FOID Act, etc.).

Section 400.1065 Review by State Appellate Authority

a) *Decisions of a court-martial are from a court with jurisdiction to issue misdemeanor and felony convictions*.

b) *All appeals from final decisions of a court-martial shall be to the Illinois Appellate Court in the same manner as are final decisions of a circuit court in accordance with the Illinois Appellate Court Act*.

c) The senior force judge advocate shall coordinate with the Clerk of the Illinois Appellate Court, Fourth District to ensure that all filing requirements and State deadlines on appeal are met.

d) Upon request, the senior force judge advocate will ensure that a copy of this Manual and the Code are provided to the Clerk of the Illinois Appellate Court, Fourth District for reference during proceedings.

e) *No appeal from a judgment entered upon a plea of guilty shall be taken except in accordance with* Article VI of the Illinois Supreme Court Rules (Appeals in Criminal Cases, Post-Conviction Cases and Juvenile Court Proceedings)

f) *Unless waived, an accused may appeal as a matter of right a finding of guilt resulting in an approved sentence of one-year confinement or more, or in a dismissal for a commissioned officer or warrant officer, a dishonorable discharge, or a bad-conduct discharge* in the case of an enlisted member.

g) *The appellate rights and procedures to be followed shall be those provided by applicable law and* Supreme Court Rules, Article VI. (Code Section 67a)

Section 400.1070 Appellate Counsel

a) The senior force judge advocate shall coordinate with the Attorney General regarding review or appeal of cases specified in Code Section 67a. *The Attorney General may appoint a judge advocate nominated by the senior force judge advocate as Special Assistant Attorney General to act as appellate government counsel to represent the State. The appointment as Special Assistant Attorney General shall be at the discretion of the Attorney General*. Appellate government counsel must be a member in good standing of the Illinois bar.

b) *Upon an appeal by the State, an accused has the right to be represented by detailed military counsel before any reviewing authority and before any appellate court*.

c) *Upon the appeal by an accused, the accused has the right to be represented by military counsel before any reviewing authority*.

d) *Upon the request of an accused entitled to be so represented, the senior force judge advocate shall appoint a judge advocate to represent the accused in the review or appeal of cases specified in subsections (b) and (c).*

e) *An accused may be represented by civilian appellate counsel at no expense to the State*. (Code Section 70)

Section 400.1075 Execution of Sentence

a) *Suspension of Sentence*

1) *If the* approved *sentence of the court-martial extends to dismissal or a dishonorable or bad-conduct discharge, and if the right of the accused to appellate review is not waived, and an appeal is not withdrawn under Code Section 61, that part of the sentence extending to dismissal or a dishonorable or bad-conduct discharge may not be executed until there is a final judgment as to the legality of the proceedings. A judgment as to the legality of the proceedings is final in these cases when review is completed by the* Illinois Appellate Court for the Fourth District (see Code Section 67a) *and is deemed final by the law of this State*.

2) *If the sentence of the court-martial extends to dismissal or a dishonorable or bad-conduct discharge, and if the right of the accused to appellate review is waived, or an appeal is withdrawn under Code Section 61, that part of the sentence extending to dismissal or a dishonorable or bad-conduct discharge may not be executed until review of the case by the senior force judge advocate and any action on that review under Code Section 64 is completed. Any other part of a court-martial sentence may be ordered executed by the convening authority or other person acting on the case under Code Section 60 when so approved under that* statute. (Code Section 71)

b) *Vacation of Suspension*

1) *Before the vacation of the suspension of a special court-martial sentence that, as approved, includes a bad-conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on an alleged*

violation of probation. The probationer shall be represented at the hearing by military counsel if the probationer so desires.

2) *The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the officer exercising general court-martial jurisdiction over the probationer. If the officer vacates the suspension, any unexecuted part of the sentence, except a dismissal, shall be executed, subject to applicable restrictions in the Code*.

3) *The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence*. (Code Section 72)

Section 400.1080 Petition for a New Trial

a) *At any time within 2 years after approval by the convening authority of a court-martial sentence, the accused may petition the Adjutant General for a new trial on the grounds of newly discovered evidence or fraud on the court-martial*. (Code Section 73)

b) A petition for a new trial of the facts may not be submitted on the basis of newly discovered evidence when the petitioner was found guilty of the relevant offense pursuant to a guilty plea.

c) The form of the petition shall comply with RCM 1210.

d) Newly Discovered Evidence. A new trial shall not be granted on the grounds of newly discovered evidence unless the petition shows that:

1) The evidence was discovered after trial;

2) The evidence is not such that it would have been discovered by the petitioner at the time of trial in the exercise of due diligence; and

3) The newly discovered evidence, if considered by a court martial in light of all other pertinent evidence, would probably produce a substantially more favorable result for the accused.

e) Fraud on Court-martial. No fraud on the court-martial warrants a new trial unless it had a substantial contributing effect on a finding of guilty or the sentenced adjudged.

Section 400.1085 Remission and Suspension of Sentence; Restoration

a) Remission and Suspension of Sentence

1) *Any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures other than a sentence approved by the Governor*.

2) *The Governor may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial*. (Code Section 74)

b) Restoration

1) *Under such regulations as may be prescribed, all rights, privileges and property affected by an executed part of a court-martial sentence that has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and the executed part is included in a sentence imposed upon the new trial or rehearing*.

2) *If a previously executed sentence of dishonorable or bad-conduct discharge is not imposed on a new trial, the Governor may substitute a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of the accused's enlistment*.

3) *If a previously executed sentence of dismissal is not imposed on a new trial, the Governor may substitute a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the Governor alone to the commissioned grade and with such rank as, in the opinion of the Governor, he or she would have attained had he or she not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a*

vacancy and shall affect the promotion status of other officers only insofar as the Governor may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances, as permitted by applicable financial management regulations. (Code Section 75)

Section 400.1090 Finality of Proceedings, Findings and Sentence

a) *The appellate review of records of trial provided by* the *Code, the proceedings, findings, and sentences of courts-martial as approved, reviewed or affirmed as required by* the *Code, and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review or affirmation as required by* the *Code, are final and conclusive*.

b) *Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies and officers of the United States and the several states, subject only to action upon a petition for a new trial as provided in Code Section 73 and to action under Code Section 74*. (Code Section 76)

Section 400.1095 Leave Required to be Taken Pending Review of Certain Court-Martial Convictions

a) *Under regulations prescribed, an accused who has been sentenced by a court-martial may be required to take leave pending completion of action if the sentence, as approved under Code Section 60, includes an unsuspended dismissal or an unsuspended dishonorable or bad-conduct discharge*.

b) *The accused may be required to begin leave on the date on which the sentence is approved under Code Section 60 or at any time after that date. The leave may be continued until it is completed or may be terminated at any earlier time* in accordance with applicable regulations of the armed forces. (Code Section 76a)

SUBPART J: PUNITIVE ARTICLES

Section 400.1100 Military Offenses

a) This Subpart J outlines the military offenses, also referred to as Punitive Articles, for which charges can be brought under the Code and this Manual.

ILLINOIS DEPARTMENT OF MILITARY AFFAIRS

NOTICE OF ADOPTED RULES

b) Directory of Military Offenses

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c) Military Offenses

1) Accessory After the Fact
Any person subject to the *Code who, knowing that an offense punishable by* the *Code has been committed, receives, comforts or assists the offender in order to hinder or prevent his or her apprehension, trial or punishment shall be punished as a court-martial may direct*. (Code Section 78)

2) Conviction of a Lesser Included Offense
An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included in the charge. (Code Section 79)

3) Attempts

A) *An act, done with specific intent to commit an offense under* the *Code, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense*.

B) *Any person subject to the* Code *who attempts to commit any offense punishable by the Code shall be punished as a court-martial may direct, unless otherwise specifically prescribed*.

C) *Any person subject to the Code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated*. (Code Section 80)

4) Conspiracy
Any person subject to the Code who conspires with any other person to commit an offense under the Code shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct. (Code Section 81)

5) Solicitation

A) *Any person subject to the Code who solicits or advises another or others to desert in violation of Code Section 85 or mutiny in violation of Code Section 94 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, the person shall be punished as a court-martial may direct*.

B) *Any person subject to the Code who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of Code Section 99 or sedition in violation of Code Section 94 shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, the person shall be punished as a court-martial may direct*. (Code Section 82)

6) Fraudulent Enlistment, Appointment or Separation

Any person who procures his or her own enlistment or appointment in the SMF by knowingly false representation or deliberate concealment as to his or her qualifications for that enlistment or appointment and receives pay or allowance thereunder, or procures his or her own separation from the SMF by knowingly providing false representation or deliberate concealment as to his or her eligibility for that separation, shall be punished as a court-martial may direct. (Code Section 83)

7) Unlawful Enlistment, Appointment or Separation
Any person subject to the Code who effects an enlistment or appointment in or a separation from the SMF of any person who is known to him or her to be ineligible for that enlistment, appointment or separation because it is prohibited by law, regulation or order shall be punished as a court-martial may direct. (Code Section 84)

8) Desertion

A) *Any member of the SMF is guilty of desertion who*:

i) *without authority goes or remains absent from his or her unit, organization, or place of duty with intent to remain away permanently*;

ii) *quits his or her unit, organization or place of duty with intent to avoid hazardous duty or to shirk important service; or*

iii) *without being regularly separated from one of the State military forces enlists or accepts an appointment in the same or another state military force, or in one of the armed forces of the United States, without fully disclosing the fact that he or she has not been regularly separated, or enters any foreign armed service except when authorized by the United States.*

B) *Any commissioned SMF officer who, after tender of his or her resignation and before notice of its acceptance, quits his or her post or proper duties without leave and with intent to remain away permanently is guilty of desertion*.

C) *Any person found guilty of desertion or attempt to desert shall be punished, if the offense is committed in time of war, by confinement of not more than 10 years or such other punishment as a court-martial may direct, but if the desertion or attempt to desert occurs at any other time, by such punishment as a court-martial may direct*. (Code Section 85)

9) Absence Without Leave
Any person subject to the Code who, without authority, fails to go to his or her appointed place of duty at the time prescribed, goes from that place, or absents himself or herself or remains absent from his or her unit, organization, or place of duty at which he or she is required to be at the time prescribed, shall be punished as a court-martial may direct. (Code Section 86)

10) Missing Movement
Any person subject to the Code who, through neglect or design, misses the movement of a ship, aircraft or unit with which he or she is required in the course of duty to move shall be punished as a court-martial may direct. (Code Section 87)

11) Contempt Toward Officials
Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Homeland Security, or the Illinois Governor or General Assembly shall be punished as a court-martial may direct. (Code Section 88)

12) Disrespect Toward a Superior Commissioned Officer
Any person subject to the Code who behaves with disrespect toward his or her superior commissioned officer shall be punished as a court-martial may direct. (Code Section 89)

13) Assaulting or Willfully Disobeying a Superior Commissioned Officer
Any person subject to the Code who strikes his or her superior commissioned officer or draws or lifts up any weapon or offers any violence against his or her superior commissioned officer while that officer is in the execution of his or her office, or who willfully disobeys a

lawful command of his or her superior commissioned officer, shall be punished, if the offense is committed in a time of war, by confinement of not more than 10 years or such other punishment as a court-martial may direct. If the offense is committed at any other time, the punishment shall be as a court-martial may direct. (Code Section 90)

14) Insubordinate Conduct Toward a Warrant Officer, Noncommissioned Officer, or Petty Officer
Any warrant officer or enlisted member who commits any of the following offenses shall be punished as a court-martial may direct:

A) *strikes or assaults a warrant officer, noncommissioned officer or petty officer while that officer is in the execution of his or her office*;

B) *willfully disobeys the lawful order of a warrant officer, noncommissioned officer or petty officer; or*

C) *treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer or petty officer, while that officer is in execution of his or her office*. (Code Section 91)

15) Failure to Obey Order or Regulation
Any person subject to the Code who commits any of the following offenses shall be punished as a court-martial may direct:

A) *violates or fails to obey any lawful general order or regulation;*

B) *having knowledge of any other lawful order issued by an SMF member that it is his or her duty to obey, fails to obey the order; or*

C) *is derelict in the performance of his or her duties*. (Code Section 92)

16) Cruelty and Maltreatment
Any person subject to the Code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his or her orders shall be punished as a court-martial may direct. (Code Section 93)

17) Mutiny or Sedition

A) Offenses Defined

i) Mutiny. *Any person subject to the Code who, with intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his or her duty or creates any violence or disturbance is guilty of mutiny*.

ii) Sedition. *Any person subject to the Code who, with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence or other disturbance against that authority is guilty of sedition*; *or*

iii) Failure to Suppress or Report a Mutiny or Sedition. *Any person subject to the Code who fails to do his or her utmost to prevent and suppress a mutiny or sedition being committed in his or her presence, or fails to take all reasonable means to inform his or her superior commissioned officer or commanding officer of a mutiny or sedition that he or she knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition*.

B) *A person who is found guilty of* committing *or attempting to commit an offense defined in subsection* (c)(17) *shall be punished as a court-martial may direct*. (Code Section 94)

18) Resistance, Flight, Breach of Arrest and Escape
Any person subject to the Code who commits any of the following shall be punished as a court-martial may direct:

A) *resists apprehension*;

B) *flees from apprehension*;

C) *breaks arrest; or*

D) *escapes from custody or confinement*. (Code Section 95)

19) Releasing Prisoner Without Proper Authority
Any person subject to the Code who, without proper authority, releases any prisoner committed to his or her charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law. (Code Section 96)

20) Unlawful Detention
Any person subject to the Code who, except as provided by law or regulation, apprehends, arrests or confines any person shall be punished as a court-martial may direct. (Code Section 97)

21) Noncompliance with Procedural Rules
Any person subject to the Code who is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under the Code, or knowingly and intentionally fails to enforce or comply with any provision of the Code regulating the proceedings before, during or after trial of an accused, shall be punished as a court-martial may direct. (Code Section 98)

22) Misbehavior Before the Enemy
Any person subject to the Code who, before or in the presence of the enemy, commits any of the following shall be punished as a court-martial may direct:

A) *runs away;*

B) *shamefully abandons, surrenders or delivers up any command, unit, place or military property that it is his or her duty to defend;*

C) *through disobedience, neglect or intentional misconduct endangers the safety of any command, unit, place or military property;*

D) *casts away his or her arms or ammunition;*

E) *is guilty of cowardly conduct;*

F) *quits his or her place of duty to plunder or pillage;*

G) *causes false alarms in any command, unit or place under control of the armed forces of the United States or the SMF;*

H) *willfully fails to do his or her utmost to encounter, engage, capture or destroy any enemy troops, combatants, vessels, aircraft, or any other thing that it is his or her duty to encounter, engage, capture or destroy; or*

I) *does not afford all practicable relief and assistance to any troops, combatants, vessels or aircraft of the armed forces belonging to the United States or its allies, to the State, or to any other state, when engaged in battle.* (Code Section 99)

23) Subordinate Compelling Surrender
Any person subject to the Code who compels or attempts to compel the commander of the military forces of this State or of any other state, place, vessel, aircraft or other military property, or of any body of members of the armed forces to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished as a court-martial may direct. (Code Section 100)

24) Improper Use of Countersign
Any person subject to the Code who in time of war discloses the parole (i.e., watchword) *or countersign to any person not entitled to receive it or who gives to another, who is entitled to receive and use the parole or countersign, a different parole or countersign from that which, to his or her knowledge, he or she was authorized and required to give, shall be punished as a court-martial may direct.* (Code Section 101)

25) Forcing a Safeguard
Any person subject to the Code who forces a safeguard shall be punished as a court-martial may direct. (Code Section 102)

26) Captured or Abandoned Property

A) *All persons subject to the Code shall secure all public property taken for the service of the United States or* the *State, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody or control*.

B) *Any person subject to the Code shall be punished as a court-martial may direct who*:

i) *fails to carry out the duties prescribed in subsection* (c)(26)*(A);*

ii) *buys, sells, trades or in any way deals in or disposes of taken, captured or abandoned property, whereby he or she receives or expects any profit, benefit or advantage to himself or another directly or indirectly connected with himself; or*

iii) *engages in looting or pillaging*. (Code Section 103)

27) Aiding the Enemy
Any person subject to the Code shall be punished as a court-martial may direct who:

A) *aids, or attempts to aid, the enemy with arms, ammunition, supplies, money or other things; or*

B) *without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly*. (Code Section 104)

28) Misconduct as a Prisoner
Any person subject to the Code shall be punished as a court-martial may direct who, while in the hands of the enemy in time of war:

A) *for the purpose of securing favorable treatment by his or her captors, acts without proper authority in a manner contrary to law,*

custom or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

B) *while in a position of authority over other military or civilian prisoners, maltreats them without justifiable cause*. (Code Section 105)

29) False Official Statements
Any person subject to the Code who, with intent to deceive, signs any false record, return, regulation, order or other official document made in the line of duty, knowing it to be false, or makes any other false official statement made in the line of duty, knowing it to be false, shall be punished as a court-martial may direct. (Code Section 107)

30) Military Property − Loss, Damage, Destruction or Wrongful Disposition
Any person subject to the Code who, without proper authority, sells or otherwise disposes of, willfully or through neglect damages, destroys or loses, or willfully or through neglect suffers to be lost, damaged, destroyed, sold or wrongfully disposed of, any military property of the United States or of any state shall be punished as a court-martial may direct. (Code Section 108)

31) Property Other Than Military Property – Waste, Spoliation or Destruction
Any person subject to the Code who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the State of Illinois, the United States, or any other state shall be punished as a court-martial may direct. (Code Section 109)

32) Improper Hazarding of Vessel

A) *Any person subject to the Code who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces of the State of Illinois, the United States, or any other state shall suffer such punishment as a court-martial may direct*.

B) *Any person subject to the Code who negligently hazards or suffers to be hazarded any vessel of the armed forces of the State of*

Illinois, the United States, or any other state shall be punished as a court-martial may direct. (Code Section 110)

33) Drunk on Duty
Any person subject to the Code, other than a sentinel or look-out (see subsection (c)(35)), *who is found drunk on duty shall be punished as a court-martial may direct.* (Code Section 112)

34) Wrongful Use, Possession, Etc., of Controlled Substances

A) *Any person subject to the Code who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle or aircraft used by or under the control of the armed forces of the United States or of any state military forces a substance described in subsection* (c)(34)*(B) shall be punished as a court-martial may direct*.

B) *The substances referred to in subsection* (c)(34)*(A) are the following*:

i) *Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid and marijuana, and any compound or derivative of any of these substances*.

ii) *Any substance not specified in* subsection (c)(34)(B)(i) *that is listed on a schedule of controlled substances prescribed by the President for the purposes of the Uniform Code of Military Justice of the armed forces of the United States*.

iii) *Any other substance not specified in* subsection (c)(34)(B)(i) *or contained on a list prescribed by the President under* subsection (c)(34)(B)(ii) *that is a Schedule I through V substance under Article 202 of the federal Controlled Substances Act*. (Code Section 112A)

35) Misbehavior of a Sentinel

Any sentinel or look-out who is found drunk or sleeping at his or her post, or leaves it before being regularly relieved, shall be punished, if the offense is committed in time of war, by confinement of not more than 10 years or other punishment as a court-martial may direct. If the offense is committed at any other time, punishment shall be as a court-martial may direct. (Code Section 113)

36) Dueling
Any person subject to the Code who fights, promotes, is concerned in, or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority, shall be punished as a court-martial may direct. (Code Section 114)

37) Malingering
Any person subject to the Code who, for the purpose of avoiding work, duty or service, feigns illness, physical disablement, mental lapse or derangement, or intentionally inflicts self-injury, shall be punished as a court-martial may direct. (Code Section 115)

38) Riot or Breach of Peace
Any person subject to the Code who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct. (Code Section 116)

39) Provoking Speeches or Gestures
Any person subject to the Code who uses provoking or reproachful words or gestures towards any other person subject to the Code shall be punished as a court-martial may direct. (Code Section 117)

40) Frauds Against the Government
Any person subject to the Code shall be punished as a court-martial may direct who:

A) *knowing it to be false or fraudulent:*

i) *makes any claim against the United States,* the *State, or any officer of either; or*

ii) *presents to any person in the civil or military service, for approval or payment, any claim against the United States,* the *State, or any officer of either;*

B) *for the purpose of obtaining the approval, allowance or payment of any claim against the United States,* the *State, or any officer of either*:

i) *makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;*

ii) *makes any oath, affirmation or certification to any fact or to any writing or other paper knowing the oath, affirmation or certification to be false; or*

iii) *forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;*

C) *having charge, possession, custody or control of any money or other property of the United States or* the *State, furnished or intended for the armed forces of the United States or the SMF, knowingly delivers to any person having authority to receive it, any amount less than that for which he or she receives a certificate or receipt; or*

D) *being authorized to make or deliver any paper certifying the receipt of any property of the United States or* the *State, furnished or intended for the armed forces of the United States or the SMF, makes or delivers to any person that writing without having full knowledge of the truth of the statements in the writing and with intent to defraud the United States or this State*. (Code Section 132)

41) Conduct Unbecoming an Officer and a Gentleman
Any commissioned officer, cadet, candidate or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct. (Code Section 133)

42) General Article
Though not specifically mentioned in the Code, all disorders and neglects to the prejudice of good order and discipline in the SMF and all conduct of a nature to bring discredit upon the SMF shall be taken cognizance of by a court-martial and punished at the discretion of a military court. However, when a crime constitutes an offense that violates both the *Code and the criminal laws of the state where the offense occurs or criminal laws of the United States, jurisdiction of the military court must be determined in accordance with Code* Section 2(b). (Code Section 134)

SUBPART K: NONJUDICIAL PUNISHMENT

Section 400.1200 Definitions

"AGR" means Active Guard Reserve.

"ANG" means the Illinois Air National Guard.

"Appropriate Nonpunitive Administrative Measures" means such actions as reprimands, administrative reduction in rank, administrative separation from SMF, etc.).

"ARNG" means the Illinois Army National Guard.

"Commander", as used in this Subpart, means a commissioned or warrant officer who, by virtue of his or her or grade and assignment, exercises primary command authority over a military unit or organization recognized as a command. This term includes active duty and SMF commanders, whether in a Title 10 (U.S. Military) or Title 32 (National Guard) status, of installations or schools when a member's SMF commander is not also at the installation or school.

"Department" or "DMA" means the Illinois Department of Military Affairs.

"ETS" means expiration of term of service.

"Federal Uniform Code of Military Justice" or "UCMJ" means 10 USC 801 et seq.

"IDT" means inactive duty training.

ILLINOIS DEPARTMENT OF MILITARY AFFAIRS

NOTICE OF ADOPTED RULES

"Illinois Code of Military Justice" or "Code" means 20 ILCS 1807.

"Imposing Commander" refers to the commander who actually imposes the NJP. The Adjutant General shall not act as an imposing commander, and he or she shall delegate NJP authority to an officer he or she deems appropriate. This delegation may be oral or in writing, and the delegation may specify a category of cases or only a particular case.

"Manual" means this Part, the Illinois Manual for Courts-Martial and Nonjudicial Punishment.

"Member" means a member of the State Military Force.

"Members of His or Her Command" refers to the assigned members of the unit or organization commanded, and to other members who are on temporary duty with, or otherwise attached to, the unit or organization. Attachment orders are not necessary if the commander exercises the usual responsibilities and attributes of command over the member.

"Minor Offense" means an offense made punishable by the military law of the United States, the laws of the State of Illinois, or the laws of the state in which the offense is committed (e.g., absence without leave (AWOL), disrespect).

"Next Superior Commander" refers to the next superior in the chain of command, or another authority designated by the Adjutant General as being next superior for NJP purposes.

"NGIL Forms" means the forms initiating and recording all nonjudicial punishment proceedings. Those forms can be seen on the websites at www.il.ngb.army.mil or www.goang.com/locations/illinois. The following are the NGIL Forms referenced in this Subpart:

> "NGIL Form 60-R" means the form titled Record of Nonjudicial Punishment Proceedings. This form includes identifying information, the allegations, the record of the proceedings, and the outcome of the proceedings.

"NGIL Form 61-R" means the form titled Record of Supplementary Nonjudicial Punishment Action. This form is used when the outcome recorded on the NGIL Form 60-R is appealed and an appropriate authority suspends, mitigates, remits or sets aside a punishment.

"NGIL Form 62-R" means the form titled Record of Vacation of Suspended Nonjudicial Punishment.

"NGIL Form 63-R" means the form titled Request to Superior to Exercise Nonjudicial Punishment Authority. This form is used when a notifying commander who does not have certain punishment authorities pertaining to the SMF member through the NJP procedure requests that a superior commander who does exercise NJP authority reduce the rank.

"NGIL-HRO" means the Illinois National Guard Human Resources Office.

"NGIL-JA" means an Illinois National Guard Office of the Staff Judge Advocate.

"Nonjudicial Punishment" or "NJP" means disciplinary action without a judicial process (i.e., court-martial).

"Notifying Commander" refers to the commander who initiates NJP proceedings and completes item 1 of NGIL Form 60-R.

"Remission of Punishment" or "Remit Punishment" means to rescind punishment that has been imposed.

"SMF" means the State Military Forces subject to the Illinois Code of Military Justice.

Section 400.1205 Nonjudicial Punishment

a) General. This Subpart prescribes the requirements, policies, limitations and procedures for the imposition of nonjudicial punishment (NJP) pursuant to the Adjutant General's authority under Code Section 15. It is a modification of Part V of the MCM and should be interpreted consistent with the MCM. Unless modified by the Code or this Part, the applicable procedures contained in NGIL 27-10 and NGIL ANG Instruction 51-202 (both 2010; no later amendments or additions are incorporated) apply to NJP administered under this Subpart.

b) Use of Nonjudicial Punishment

1) Commander's Responsibility. Commanders are responsible for good order and discipline in their commands. Generally, discipline can be maintained through effective leadership, including administrative corrective measures. A commander should use nonpunitive disciplinary tools (e.g., counseling and reprimands) to the fullest extent to further the efficiency of the command before resorting to NJP. However, NJP may be used in all misconduct cases involving minor offenses for which the commander considers nonpunitive measures to be inadequate or inappropriate. In determining the method of discipline, commanders should consider the nature of the offense, the record of the service member, the need for good discipline, and the effect of punitive measures on the service member's record. All disciplinary measures shall be resolved at the lowest appropriate level and shall use the least severe discipline appropriate to the offense.

2) Statute of Limitations. Prompt action is essential for NJP to have the proper corrective effect. NJP may not be imposed for offenses committed more than 3 years before the date of initiation of NJP.

3) Applicability of Army or Air Force NJP Regulations
When the use of NJP is appropriate, the procedures of this Subpart shall be used in lieu of the administrative reduction in rank procedures created by applicable personnel regulations (Army Regulation (AR) 600-8-19, NGR (AR) 600-200 or ANGI 36-2503, etc.). When a situation arises that is not addressed by this Subpart, the Army or Air Force regulations concerning NJP should be consulted for guidance, as appropriate (e.g., AR 27-10, Air Force Instruction (AFI) 51-202).

4) Restriction on Punishment after Exercise of Jurisdiction by Civilian Authorities. An SMF member who has been tried in a civilian court may, but normally will not, be disciplined under this Subpart for the same acts over which the civilian court exercised jurisdiction. NJP action should not be used to discipline SMF members for civil court convictions because, in that instance, civil authorities have already disposed of criminal allegations and imposed criminal punishments. In cases of civil court convictions, the chain of command should normally consider appropriate

administrative (i.e., nonpunitive) measures. Prior to imposition of NJP on SMF members for offenses that have been disposed of by civilian courts, commanders must obtain written approval of the Adjutant General or designee. Requests for that approval shall be staffed through command channels to:

Office of the Adjutant General
ATTN: NGIL-JA
1301 N. MacArthur Blvd.
Springfield IL 62702-2317

c) Personal Exercise of Discretion

1) A commander shall personally exercise discretion in the NJP process by:

A) Evaluating the case to determine whether NJP proceedings should be initiated.

B) Determining whether the member committed the offenses for which NJP proceedings are initiated.

C) Determining the amount and nature of any punishment, if punishment is appropriate.

2) No superior may direct any subordinate commander to impose NJP on any individual.

3) No superior may issue regulations or guidance that either directly or indirectly suggests to subordinate commanders that:

A) Certain categories of offenders or offenses should be disposed of by NJP (e.g., AWOL members shall be processed for NJP).

B) Predetermined kinds or amounts of punishment should be imposed for certain categories of offenders or offenses (e.g., AWOL NCOs shall be reduced one grade).

d) Multiple Punishments

1) When a commander determines that NJP is appropriate for a particular service member, all known offenses determined to be appropriate for disposition by NJP and ready to be considered at that time, including all the applicable offenses arising from a single incident or course of conduct, shall ordinarily be considered together and not made the basis for multiple punishments.

2) Double Jeopardy Prohibited
When a punishment has been imposed under NJP, or NJP proceedings are terminated for a reason tantamount to a finding of not guilty, further punishment may not be imposed for the same offense. Same offense means an offense that was part of a single incident or course of action. Administrative action, including administrative discharge proceedings, can be taken for an offense previously punished under NJP proceedings and does not constitute double punishment under this Subpart.

e) Cases Involving State or Federal Prosecution Interest
If an offense is subject to both NJP proceedings and to criminal trial in a State or federal court, the commander shall consult NGIL-JA prior to initiation of NJP proceedings.

f) Standard of Proof

1) NJP determinations must be supported by substantial evidence. For NJP purposes, this means a measure or degree of proof that reasonably convinces the imposing commander of the SMF member's guilt, considering:

A) all available direct evidence, i.e., evidence based on actual knowledge or observation of witnesses; and

B) all available indirect evidence, i.e., facts or statements from which reasonable inferences, deductions and conclusions may be drawn to establish an unobserved fact, knowledge or state of mind.

2) When considering the evidence, no distinction shall be made between the relative value of direct and indirect evidence. In some cases, direct evidence may be more convincing than indirect evidence and, in other

cases, indirect evidence may be more convincing than the statement of an eyewitness.

g) Effect of Errors. Failure to comply with any of the procedural provisions in this Subpart shall not invalidate a punishment imposed under the Code, unless the error materially prejudiced a substantial right of the service member on whom the punishment was imposed.

Section 400.1210 Authority

a) Who May Impose Nonjudicial Punishment

1) Unless otherwise specified in this Subpart, or if authority to impose NJP has been limited or withheld by a superior commander (see subsection (a)(2)), any commander may impose NJP on members of his or her command for minor offenses.

2) A commander at any level may withhold from any subordinate commander all or part of the NJP authority that he or she would otherwise have had under this Subpart, such as over certain categories of military personnel, offenses or individual cases. The withholding action may be oral, in writing, or incorporated in a permanent directive, but it must clearly set out the specific authority withheld.

3) To impose NJP on officers, warrant officers, or enlisted personnel in grades E-8 or E-9, the commander must be in the rank of colonel or above and be assigned to at least a brigade/group/wing command position.

4) If a commander is the victim of a crime in his or her personal capacity (e.g., victim of an assault or larceny), as opposed to his or her official capacity (e.g., violation of commander's order), that commander shall forward a report of the incident to the next superior commander for review and appropriate action.

b) Persons on Whom Nonjudicial Punishment May Be Imposed
NJP may be imposed on the following persons, regardless of whether the offense was committed inside or outside the State of Illinois:

1) Members of the SMF for offenses committed while in a military duty or training status pursuant to 32 USC.

2) Members of the SMF for offenses committed while in a State Active Duty status pursuant to orders of the Governor.

3) All other persons lawfully ordered to duty in or with the SMF for the time period stated in the order or other directive.

Section 400.1215 Procedure

a) General. The authority to impose NJP charges a commander with the responsibility of exercising his or her authority in an absolutely fair and judicious manner. The commander's action must be temperate, just and conducive to good order and discipline.

b) Preliminary Inquiry. The commander of the alleged offender must ensure that the matter is promptly and adequately investigated. The preliminary investigation is usually informal and consists of interviews with witnesses and/or review of police/investigative reports, if available. The investigation should cover:

1) Whether an offense was committed;

2) The nature and circumstances of the offense; and

3) The age, maturity, experience and military record of the offender.

c) Initiation of Proceedings and Referral to Superior. A commander who, after a preliminary inquiry, determines that NJP proceedings may be appropriate, should consult with his or her Staff Judge Advocate for advice and assistance. NJP action should be initiated at the lowest level of command commensurate with the needs of discipline. If a commander determines his or her authority under NJP is insufficient to impose a proper punishment, the matter may be referred to a superior commander for initiation of proceedings (e.g., the offense may warrant reduction but the immediate commander does not have reduction authority). In such a case, all relevant documents shall be forwarded through command channels to the appropriate commander using NGIL Form 63-R (Request to Superior to Exercise Nonjudicial Punishment Authority). The superior

commander shall either initiate the NJP action or refer the matter for other appropriate action.

d) Notification

1) The appropriate commander shall complete item 1 of NGIL Form 60-R (Record of Nonjudicial Punishment Proceedings) as follows:

A) State the allegation following the guidance provided by DMA and consult the appropriate Staff Judge Advocate for assistance. However, an NJP action remains valid even if the specification fails to include all the elements of an offense, provided that the member is reasonably informed of the nature of the alleged misconduct.

B) Inform the SMF member of his or her rights with respect to the NJP proceeding.

C) State the name, rank and duty title of the next superior commander.

D) Contact the appropriate Staff Judge Advocate or NGIL-JA for assignment of a military counsel to assist the member. At a minimum, the military counsel's name, rank and business telephone number shall be listed on the form, but his or her home addresses or telephone numbers shall not be included.

E) State the date and time at which the member must report to you to make his or her elections and presentation, if applicable. In this regard, the member shall be given a reasonable period of time to consult with counsel, to prepare his or her case, and to decide what rights noted under subsection (e) he or she shall exercise. The length of the decision period shall be determined by the notifying commander after considering such factors as the complexity of the case and the availability of counsel and witnesses. An NJP action may be initiated and completed within an inactive duty training (IDT) weekend if:

i) it is a non-complex case, i.e., an uncontested case;

ii) the notifying commander ensures availability of counsel and witnesses; and

iii) the member is provided sufficient duty time to prepare his or her defense.

F) Sign in the commander's signature block. The signature of the commander is nondelegable.

2) The notifying commander shall personally notify the member of the initiation of NJP proceedings in accordance with DMA guidance. However, when circumstances prevent the commander from personally notifying and serving the NGIL Form 60-R on the member, or the notifying commander elects not to do so, the notifying commander may direct a subordinate who is senior in rank to the member to notify and serve the member. The commander or the subordinate, as appropriate, shall date and sign item 2 (proof of service) of the NGIL Form 60-R when the member is served. Regardless of who serves the member, a copy of the NGIL Form 60-R shall be given to the member at that time. If personal notification is impractical because of the member's unauthorized absence or other reason, the member may be notified by certified mail, and the commander shall document the reason for the service by mail in item 11 of the NGIL Form 60-R. The member also has the right to examine all statements and evidence upon which the commander intends to rely in arriving at a decision whether to impose punishment, and the type and amount of punishment to be imposed, unless those matters are privileged or restricted by law or regulation (e.g., Office of Special Investigation (OSI) or Criminal Investigation Command (CID) reports, classified information, etc.). In this case, NJP proceedings may proceed if the member's counsel has access to the records, or a summary of the information, for use in preparing a defense to the allegations.

3) The SMF member shall be informed of the maximum punishment that may be imposed under Appendix A if he or she is found guilty of the alleged offenses; however, the member is not entitled to be informed of the type or amount of punishment he or she will receive if NJP ultimately is imposed.

4) If a new commander takes command after NJP proceedings are initiated, but before the member presents his or her case to the imposing commander, a new NGIL Form 60-R shall be initiated by the new commander. Once again, the member shall be given a reasonable decision period in which to consult counsel.

5) When evidence of an additional offense or offenses arises following initiation of NJP proceedings, and before the member is notified of the punishment, a commander may:

A) Withdraw the initial NGIL Form 60-R and reinitiate NJP proceedings to include the additional offenses; or

B) Proceed with the initial NJP proceeding and create a second NGIL Form 60-R for the additional offenses.

e) Member's Election of Rights

1) The member has the following rights during NJP proceedings:

A) To remain silent and not make any statement concerning the allegations. However, if the member waives this right, any statements made may be used against him in the NJP proceedings or in any other proceedings.

B) To consult with appointed military counsel. The member is not entitled to request military counsel of his or her choice, but the member may consult with civilian counsel retained at the member's own expense.

C) To make a personal presentation before the next superior commander in lieu of presenting his or her case before the notifying commander. To fully present his or her case before the imposing commander in writing or in person, or both (subject to subsection (f)). This includes the right to call witnesses if determined reasonably available by the imposing commander, the right to present evidence, to be represented by a spokesperson (if reasonably available), and to examine available evidence.

2) The member has the right to consult with appointed military counsel (in person or by telephone) prior to making his or her elections under subsection (e)(1)(C). If necessary, the member or his or her counsel may request an extension of the time period stated in item 1 of the NGIL Form 60-R. Such a request should be in writing, stating the reasons for the request. The commander may grant an extension for good cause shown by the member or his or her counsel.

3) A member requesting a personal presentation before the notifying commander shall indicate that request in item 3 of the NGIL Form 60-R. The presentation shall be made at that time or at such time as the commander directs.

4) If the member requests a personal presentation before the next superior commander, the member shall so indicate in item 3 of the NGIL Form 60-R. The notifying commander shall forward all documents, statements and evidence to that commander. The next superior commander shall then review the information, collect any additional information he or she feels is necessary, and notify the member and his or her counsel of the date and time of the presentation.

5) If the member does not notify the commander of his or her decision within the specified time and does not request a delay, or if the member refuses to complete or sign item 3 of the NGIL Form 60-R, the notifying commander may continue the proceedings based on available information. If punishment is imposed, that information shall be recorded in item 4 (commander's decision) of the NGIL Form 60-R, along with the following entry: "Advised of his/her rights and (member failed to respond within the specified time) (member refused to complete and sign item 3)".

f) Member's Presentation

1) Following DMA guidance, the member shall be allowed to personally present matters in defense, extenuation or mitigation to the imposing commander, except when a personal appearance is prevented by unavailability of the commander or by extraordinary circumstances (e.g., the member is stationed at a geographic location remote from that of the imposing commander and cannot be readily brought before the commander). When a personal appearance is requested, but is not granted,

the imposing commander shall appoint a commissioned officer who is superior to the member to conduct the presentation, and the member shall be entitled to make a personal presentation before that designated officer. The designated officer shall then prepare a memorandum summarizing the member's presentation and shall forward it to the imposing commander, along with all written matters submitted by the member.

2) The purpose of the personal presentation is to allow the member to present information to the commander in a manner that may be more effective or more persuasive than a written presentation. Formal rules of evidence are not applicable. The commander may consider any matter, including unsworn statements, that he or she believes to be relevant to the offense. The commander may ask questions to clarify facts or issues; however, the member's presentation is not an adversarial proceeding. The commander shall not present "government" witnesses or evidence, and neither the member nor a spokesperson (including any attorney present on behalf of the member) may examine or cross-examine witnesses, unless permitted by the imposing commander.

3) NJP presentations may be open or closed to members of the public at the discretion of the imposing commander. However, even when closed, the commander may have a member of his or her staff (e.g., the First Sergeant) attend the proceedings as he or she determines appropriate.

4) At the presentation, the member shall be entitled to:

A) Examine any relevant documents or physical objects on which the commander intends to rely in deciding whether to impose punishment or how much punishment to impose (subject to the limitations of subsection (d)(2)).

B) Be accompanied by a spokesperson provided or arranged for by the member. The member's spokesperson may be his or her appointed military counsel or civilian counsel retained at his or her own expense. However, the member has no right to legal counsel at the presentation, and the commander need not grant a delay for the appearance of any spokesperson if that person is not reasonably available, as determined by the commander.

C) Present relevant witnesses in defense, extenuation or mitigation who are reasonably available, as determined by the commander, and can be presented without legal process. To determine whether a witness is reasonably available, the imposing commander shall consider the fact that written statements are acceptable. Neither witness nor transportation fees are authorized to be paid. Reasonably available witnesses will normally include only personnel at the installation concerned, and those personnel whose attendance shall not unnecessarily delay the proceedings.

5) The imposing commander must carefully consider all matters submitted by the member in defense, extenuation or mitigation. If, after evaluation of all pertinent matters, the imposing commander determines that NJP is not warranted, the commander shall so indicate in item 4 of the NGIL Form 60-R, the member shall be notified, and the proceedings shall be terminated.

6) If, after evaluation of all pertinent matters, the imposing commander determines that NJP is warranted, the commander shall line out and initial the allegations, if any, that he or she determines the member did not commit. The commander shall then determine an appropriate punishment and complete item 4 of the NGIL Form 60-R, using the model punishment formats established by DMA. Whenever possible, the commander should impose NJP on the member in person. The commander may also counsel the member at this time concerning the misconduct. If appropriate, the commander shall refer the member to military or civilian agencies that can assist in resolving any personal problems that may have contributed to the misconduct. The commander shall then explain appellate rights and procedures to the member, following DMA guidance. The member shall complete item 5 (member's appeal decision) of the NGIL Form 60-R.

g) Appeals of Nonjudicial Punishment

1) General. A member may appeal an NJP action if he or she considers the punishment to be unjust or disproportionate to the offense. The member may appeal either the findings, the punishment or both. The member shall appeal through the imposing commander to the next superior commander, or to such other authority designated by the Adjutant General for NJP purposes. If the appellate authority is the Adjutant General, he or she shall

act on the appeal in the cases of officers, warrant officers or enlisted personnel in the grades of E-8 or E-9. In all other cases, he or she may delegate the power to act on the appeal to the Assistant Adjutant General (Army) or to the Assistant Adjutant General (Air). All matters to be considered on appeal must be submitted by the member in writing, the member has no right to an oral presentation on appeal, and only one appeal is permissible under NJP proceedings.

2) Procedure for Submitting an Appeal

A) At the time the punishment is announced to the member, he or she shall be informed of his or her right to appeal and shall be directed to state whether he or she is appealing the commander's action. The member shall indicate his or her appeal decision in item 5 (appeal decision) of the NGIL Form 60-R. If the member elects to appeal, the member may request 10 calendar days to submit any additional written matters in support of the appeal. The commander may grant an extension of the 10-day period for good cause shown by the member or his or her counsel. If written matters are not presented to the imposing commander within the prescribed time, the appeal shall be sent to the appellate authority for his or her decision with a statement to that effect.

B) The member is not required to state the reasons for his or her appeal or to submit any written matters. However, if the member elects to submit written matters in support of the appeal, these matters must be presented initially to the imposing commander. They may not be presented directly to the appellate authority.

C) Punishments are not stayed pending final decision on an appeal unless no action is taken within 10 calendar days after the appeal was submitted. In that case, if the member requests, any unexecuted punishment involving restriction or extra duty shall be stayed until action is taken on the appeal.

D) If the member refuses to complete or sign item 5 of the NGIL Form 60-R, that refusal shall not be treated as an appeal. The commander shall process the NGIL Form 60-R as if the member declined to appeal and shall make the following entry in item 5:

"Advised of punishment and appellate rights and member refused to (complete) (sign)."

3) Action by Imposing Commander. The imposing commander may take any action on the appeal that he or she deems appropriate, except that punishments may not be increased on appeal. The commander's action shall be indicated in item 6 (action on appeal) of the NGIL Form 60-R. The commander may suspend, mitigate, remit or set aside any part of the punishment. If the imposing commander grants the full relief requested by the member, the appeal is not forwarded to the appellate authority. In all other cases, the commander shall forward the appeal to the appellate authority, through the Staff Judge Advocate, along with all written materials considered in imposing the punishment. The commander may also forward appropriate comments addressing any matters raised by the member in his or her appeal, a statement of the commander's rationale for imposing the punishment, and a recommendation for action on the appeal.

4) Action by Staff Judge Advocate. The Staff Judge Advocate, or designee, shall advise the appellate authority as to the appropriateness of the punishment and whether the proceedings were conducted in accordance with the Illinois Code of Military Justice and this Subpart. The legal opinion may be either oral or written, and shall be documented in item 7 (review of appeal) of the NGIL Form 60-R.

5) Action by Appellate Authority. Action by the appellate authority shall be entered in item 8 of the NGIL Form 60-R. The appellate authority shall take action expeditiously, normally within 10 calendar days after the appeal was submitted. The appellate authority may conduct an independent inquiry into the case, if the appellate authority so desires, and the appellate authority may exercise the same powers with respect to the punishment as may be exercised by the imposing commander. After the appellate authority takes action, the member shall be promptly notified of the results and shall complete item 9 (member acknowledgment of appeal action) of the NGIL Form 60-R. However, if all punishment is disapproved, the entire action must be set aside and removed from the member's record. A final NJP action cannot consist of "no punishment".

h) Notification by Certified Mail

1) All NJP proceedings shall be conducted in person with the member, whenever possible, to ensure the member understands the proceedings and has a full opportunity to exercise all rights granted under this Subpart. However, if the commander determines the member is not reasonably available to conduct any portion of the proceedings in person, the member may be notified by certified mail of the following matters:

A) Initiation of NJP proceedings, if the commander or his or her designee determines that personal notification is impractical, and the commander documents the reason for service by mail in item 11 of the NGIL Form 60-R.

B) Additional NJP matters, such as date and time of the personal presentation, the member's punishment, the member's right to appeal, and action taken on the appeal.

C) Supplementary NJP actions under Section 400.2040. However, vacation of suspension proceedings shall be initiated in person unless the commander or his or her designee determines that personal notification is impractical, and the commander documents the reason for service by mail in item 7 of the NGIL Form 62-R (Record of Vacation of Suspended Nonjudicial Punishment).

2) In all of the situations described in subsection (h)(1), the commander shall annotate the appropriate items on the NGIL Forms 60-R, 61-R (Record of Supplementary Nonjudicial Punishment Action) or 62-R showing notification by certified mail. The certified mail receipts shall be forwarded with the applicable form.

Section 400.1220 Punishment

a) General. Whether to impose punishment, and the amount and nature of the punishment, are the sole decisions of the imposing commander. However, the commander is encouraged to discuss appropriate punishments with his or her Staff Judge Advocate after the SMF member has had an opportunity to present matters in defense, mitigation or extenuation. Commanders are also encouraged to consult with their NCOs and other subordinates on the appropriate type, duration and limits of punishment to be imposed. Additionally, as NCOs are often in the best position to observe a member undergoing punishment, and to evaluate

performance and attitude, their views on clemency should be given careful consideration.

1) When forfeiture of pay will be imposed, the commander should consider imposing a forfeiture below the maximum authorized. Maximum forfeitures should be reserved for serious cases or repeat offenders.

2) Unsuspended reduction in grade should only be imposed in the same punishment with forfeiture of pay when the maximum exercise of nonjudicial punishment authority is warranted.

b) Rules for Imposing Punishment. Unsuspended reduction in grade and forfeitures of pay are effective on the date of imposition, which is the date item 4 of the NGIL Form 60-R is signed by the imposing commander. All other unsuspended punishments take effect immediately upon notification to the member, unless otherwise stated by the commander in item 4. In this regard, the commander cannot choose a date earlier than the date he or she signed that item, but he or she may delay the punishment for legitimate reasons (e.g., the member is hospitalized or on authorized emergency leave). In those cases, the execution of the punishment should begin immediately after the cause of the delay has abated. Also, if a member to be punished is currently undergoing a punishment involving restriction or extra duties under a prior NJP action, the commander can prescribe an additional punishment of restriction or extra duties to begin after the completion of the earlier punishment. Maximum punishments are prescribed in Appendix A.

1) Restriction. Restriction may be imposed with or without suspension from duties, and the limits of the restriction shall be announced at the time punishment is imposed.

2) Extra Duties. Extra duties may be required to be performed at any time and, within the duration of the punishment, for any length of time. However, when extra duties are performed during IDT periods, one day of extra duty shall be counted against each unit training assembly for that day. Extra duties may include the performance of fatigue duty or of any other military duty; however, no extra duty may be imposed that:

A) Constitutes cruel or unusual punishment, or a punishment not sanctioned by the customs of the service (e.g., using the offender as a personal servant);

B) Is a duty normally intended as an honor, such as assignment to a guard of honor;

C) Is required to be performed in a ridiculous or unnecessarily degrading manner (e.g., an order to clean a barracks floor with a toothbrush);

D) Constitutes a safety or health hazard to the offender; or

E) Would demean the member's grade or position.

3) Forfeiture of Pay. Forfeiture of one day's pay shall, in the case of IDT, constitute the pay for one unit training assembly (UTA; a paid IDT of no less than 4 hours). Forfeitures of pay may apply to pay accruing on or after the date punishment is imposed and to any pay accrued, but not yet paid, before that date.

4) Reduction in Grade

A) Reduction Authority

i) Members in the grade of E-9 may be reduced by the Assistant Adjutant General for Army or Air, as appropriate, but that reduction shall be effective only upon the written approval of the Adjutant General.

ii) Members in the grades up to and including E-8 may be reduced by a commander in a Brigade or Wing command position, or higher.

iii) Members in the grades up to and including E-6 may be reduced by a commander in a Battalion or Squadron command position, or higher.

iv) Members in the grades up to and including E-4 may be reduced by a commander in a Company or Flight command position, or higher.

B) Date of Rank. When a member is reduced in grade as a result of an unsuspended reduction, his or her date of rank in the grade to which reduced is the date the punishment of reduction was imposed. If, however, the reduction is suspended either on or after the time the punishment was imposed, or is later set aside or mitigated to forfeiture, the date of rank in the grade held before the punishment was imposed remains unchanged. For example, if an E-5 has a date of rank of May 1, the member receives nonjudicial punishment on June 1 consisting of a reduction in rank, and the commander subsequently suspends, sets aside or mitigates the reduction on July 1, the date of rank for the restored grade is May 1.

C) Entitlement to Pay. When a member is restored to a higher pay grade because of a suspension or because a reduction is mitigated to forfeiture, entitlement to pay at the higher grade is effective on the date of the suspension or mitigation, even though an earlier date of rank is assigned. If, however, a reduction is set aside and all rights, privileges and property are restored, the member concerned will be entitled to pay as though the reduction had never been imposed.

D) Void Reduction. Any portion of a reduction imposed under NJP beyond the imposing commander's authority to reduce is void and must be set aside; however, if a commander reduces a member below a grade to which the commander is authorized to reduce, and if the circumstances of the case indicate that the commander was authorized and intended to reduce the member at least one grade, a one-grade reduction may be approved.

5) Admonition and Reprimand. Admonitions or reprimands imposed on commissioned or warrant officers must be in writing. Admonitions or reprimands imposed on enlisted members may be administered orally or in writing. Written admonitions and reprimands imposed as a punishment may be included on the NGIL Form 60-R or may be written in

memorandum format and listed as an attachment to the NGIL Form 60-R. Oral admonitions and reprimands shall be identified as such in item 4 of the NGIL Form 60-R.

c) Limitations on Punishments

1) Restriction. Restriction shall not be imposed on or served by members performing IDT. Restriction may be imposed and served only when the member is at an installation, camp or field-type duty away from home station, or under circumstances in which commuting home on a daily basis is not normally authorized.

2) Combination. All authorized punishments may be imposed in a single case in the maximum amounts, except that, when restriction and extra duties are combined, the combination may not exceed the maximum imposable for extra duties.

d) Announcement of Punishment. The results of NJP actions may be announced after punishment is imposed or, if appealed, after final decision on the appeal. The results of NJP proceedings may include a summary of the offense, rank of the offender, and the punishment imposed, but shall not include the offender's name or Social Security Number (SSN). The results may be announced orally at the next unit formation, may be posted on the unit bulletin board, or may be included in an appropriate newsletter or publication. The purpose of announcing punishments is to preclude the perception of unfairness of punishment and to deter similar misconduct by other members. However, an inconsistent or arbitrary policy regarding the announcement of punishments must be avoided, as that might result in the appearance of vindictiveness or favoritism.

Section 400.1225 Suspension, Vacation, Mitigation, Remission and Set Aside of Punishment

a) General. The imposing commander, his or her successor in command, or any superior commander may suspend, mitigate or remit punishment as a means of correcting behavior and rehabilitating the offender. If used correctly, these can be valuable tools in maintaining morale and discipline. This action can be taken on the commander's own initiative, or the SMF member can request the action. These commanders also have the authority to vacate suspended punishments or set aside punishments when appropriate.

1) Successor in Command. For these purposes, the successor in command may be either:

A) The officer who has succeeded to the command or position occupied by the imposing commander, if that officer has authority to impose the punishment involved on the member, and providing the member is still assigned to that command; or

B) The officer authorized to impose the punishment on the member, if the member has been reassigned.

2) Recording of Action. The imposing commander may suspend a punishment when completing item 4 of the NGIL Form 60-R. Any supplementary action involving suspension, mitigation, remission or set aside shall be recorded on NGIL Form 61-R. Any action involving vacation of a suspended punishment shall be recorded on NGIL Form 62-R.

3) A commander can suspend, mitigate, remit or set aside punishment only if the commander had the authority to impose that punishment. For example, a company commander cannot suspend, mitigate, remit or set aside a reduction imposed on an E-7. A commander not empowered to act may, however, recommend that action to the next superior commander authorized to impose the punishment involved.

b) Suspension. To suspend punishment is to postpone application of all or part of it for a specified probationary period, with the understanding that it will be automatically remitted at the end of that period if the offender does not engage in further misconduct. Suspension is often warranted for a first offender or when there are persuasive matters in extenuation or mitigation.

1) A commander may, at any time, suspend any part or amount of the imposed punishment that remains unexecuted. Furthermore, an executed punishment of reduction in grade or forfeiture of pay may be suspended, at any time, provided the suspension is accomplished within a period of 4 months after the date of imposition.

2) Punishment may not be suspended for longer than 6 calendar months from the date of the suspension, or beyond an enlistment or the member's expiration of term of service (ETS). This 6-month limitation on suspensions may or may not be 180 days. For example, a punishment imposed on March 1 may be suspended until August 31, even though this period is 183 days. The suspension action shall set a specific date when, unless it is vacated sooner, the suspension shall terminate and the punishment shall be automatically remitted without further action.

3) Suspension of a punishment automatically includes a condition that the member does not violate, for the period of the suspension, any punitive articles of the UCMJ, criminal laws of the State of Illinois, or this Subpart. Commanders may specify other conditions as well, but any such conditions must be reasonably related to the offense. The commander must consult with his or her Staff Judge Advocate before imposing conditions. Furthermore, any additional conditions of suspension must be clearly stated within the punishment endorsement, and they must be capable of being completed during the period of suspension.

c) Vacation of Suspension. A commander may vacate any suspended punishment, provided the punishment is of a type and amount he or she could impose, if the commander determines that the member has committed an offense during the period of suspension or has failed to meet a condition upon which the suspension was based. Vacation proceedings shall be recorded on NGIL Form 62-R. The action must be initiated before the end of the suspension period.

1) The commander or his or her designee shall personally notify the member of the basis of the proposed vacation, date and sign item 2 of the NGIL Form 62-R when the member is served, and give the member an opportunity to rebut the information on which the proposed vacation is based. If personal notification is impractical because of the member's unauthorized absence or other reason, the member may be notified by certified mail, and the commander shall document the reason for that service in item 7 of the form. The member may consult with counsel prior to submitting a rebuttal. The member does not have to make any statement concerning the allegations, but does not have the same procedural rights granted under Section 400.1220. The member shall be given the opportunity to present rebuttal matters, in person and/or in writing as determined by the commander, and the commander shall consider any

such matters presented. However, the commander shall schedule the proceedings at his or her discretion, and the member has no right to appeal the commander's decision.

2) A single offense may be the basis for both vacation action and a new NJP proceeding only when the new offense warrants substantial additional punishment. Also, in a suitable case, the original punishment may be continued in a suspended status and a separate NJP proceeding may be initiated for the new offense.

3) If a reduction in grade is suspended and the suspension is later vacated, the reduction is effective on the date of vacation, but the member's date of rank in the grade to which reduced is the date the reduction was initially imposed. For example, if a member receives NJP on June 1 consisting of a suspended reduction in grade for 6 months, and the commander subsequently vacates the suspension on September 1, the effective date of the reduction is September 1, but the member's new date of rank is June 1.

d) Mitigation. To mitigate punishment is to change it to a less severe punishment in quantity or type; however, the general nature of the punishment must remain the same. For example, restraints on liberty (i.e., restriction or extra duties) may not be mitigated to monetary punishments (i.e., forfeitures of pay), and a forfeiture of pay may be mitigated only to a lesser forfeiture of pay. Mitigation may be appropriate when the offender's subsequent good conduct merits a reduction in severity of the punishment, or when the punishment imposed was disproportionate to the offense or the offender.

1) With the exception of reduction in grade, the power to mitigate exists only with respect to a punishment or portion of the punishment that is unexecuted.

2) A reduction in grade, whether or not executed, can be mitigated to a forfeiture of pay, but not to a lesser reduction or no reduction, provided the action is taken within 4 months after execution of the punishment.

3) Extra duties can be mitigated to restriction, but restriction, being the least severe restraint on liberty, cannot be mitigated to a different form of punishment. Also, when a restraint on liberty is mitigated, the lesser punishment may not run for a period greater than the remainder of the

period for which the punishment was initially imposed. For example, when a person is given 15 days of extra duties, 5 days of this punishment has been served, and the punishment is then mitigated to restriction, the mitigated punishment may not exceed restriction for a period of 10 days.

e) Remission. To remit punishment is to excuse the offender from the unexecuted portion of the punishment, and remission may be appropriate under the same circumstances as for mitigation. In this regard, an unsuspended reduction is executed on imposition and cannot be remitted, but it may be suspended, mitigated or set aside if appropriate. In addition, the member's death, separation or discharge automatically remits any unexecuted punishment, and a member shall not be involuntarily held beyond his or her ETS to complete any unexecuted punishment.

f) Set Aside. When a commander determines that a member who was punished, or is being punished, has suffered a "clear injustice", the commander may cancel the punishment and restore the member's rights, privileges or property accordingly.

1) For these purposes, "clear injustice" means that there exists an unwaived legal or factual error that materially prejudices a substantial right of the member. For example, a clear injustice would exist when information later comes to the commander's attention that casts substantial doubt on the member's guilt or establishes persuasive extenuation for the commission of the offense.

2) A punishment cannot be set aside merely because a member avoids future misconduct, or because the member's subsequent performance of duty has been exemplary, or because the punishment may have a future adverse impact on the retention or promotion potential of the member.

3) Setting aside a punishment in its entirety restores the member to the position he or she was in before the punishment was imposed, as if the nonjudicial punishment action had never been initiated. For example, if an E-5 receives NJP on June 1 consisting of a reduction in grade, and the punishment is set aside on September 1, the date of rank and effective date for the restored grade reverts to that held before reduction, and the member shall be entitled to pay at the E-5 grade for the 3 months he or she was paid at the reduced grade.

4) Action to set aside punishment must be taken within 4 months after execution of the punishment, unless the commander determines unusual circumstances exist. In such a case, the commander must explain those circumstances in item 1b of the NGIL Form 61-R.

Section 400.1230 Records of Punishment

a) NGIL Form 60-R: Record of Nonjudicial Punishment Proceedings. All NJP actions, including notification, election of rights, imposition of punishment, appeal, Staff Judge Advocate review, and action on appeal, shall be recorded on NGIL Form 60-R. After the SMF member indicates in item 5 that he or she does not appeal, or after completion of item 9 if the member appeals, a copy of the completed NGIL Form 60-R shall be given to the member. The original of the NGIL Form 60-R, with all attachments and supporting documents (see subsection (f)), shall then be mailed to the Office of the Adjutant General, ATTN: NGIL-JA, at the address specified in Section 400.1205(b)(4). The Office shall review the form for legal sufficiency, then shall distribute the form as indicated in subsections (a)(1) through (5).

1) For Army National Guard (ARNG) members, the original of the NGIL Form 60-R shall be filed in the member's Military Personnel Records Jacket (MPRJ). For Air National Guard (ANG) members, the original of NGIL Form 60-R shall be filed in the commander's Personnel Information File (PIF). These originals shall normally be destroyed by the custodian of the file at the end of 2 years from the date of imposition of punishment, unless:

A) the filing authority directs filing for either a shorter or longer period of time in accordance with applicable service regulations; or

B) the member has received an additional NJP in the interim. In the latter case, both NJP records shall be retained in the MPRJ or PIF and shall be destroyed at the end of 2 years from the latest date of imposition of punishment, or at the end of the time period determined by the commander in accordance with applicable service regulations.

2) One copy, with attachments and supporting documents, shall be filed with the NGIL-JA for one year from the date punishment was imposed, after

which it shall be destroyed. NGIL-JA shall also forward a copy of the form to NGIL-HRO if the member is in an Active Guard Reserve (AGR) status.

3) One copy, with attachments, shall be permanently filed in the member's vault file (ARNG) or State 201 file (ANG).

4) If the punishment affects the member's pay (i.e., an unsuspended reduction in grade or forfeiture of pay), one copy of the NGIL Form 60-R shall be sent to the appropriate ARNG or ANG office that processes that member's military pay records.

5) If the punishment includes an unsuspended reduction in grade, one copy of the NGIL Form 60-R shall be sent to the appropriate reduction authority to process the reduction orders.

b) NGIL Form 61-R: Record of Supplementary Nonjudicial Punishment Action. All supplementary actions, except vacation of suspension, shall be recorded on NGIL Form 61-R. Supplementary action is any action taken by an appropriate authority to suspend, mitigate, remit or set aside a punishment after action has been taken on an appeal or the NGIL Form 60-R has been distributed according to subsection (a). After completion of item 1 on the NGIL Form 61-R, a copy of the completed form shall be given to the member. The original of the NGIL Form 61-R, with all attachments and supporting documents, shall then be mailed to the Office of the Adjutant General, ATT: NGIL-JA, at the address specified in Section 400.1205(b)(4). The Office shall review the form for legal sufficiency, then shall distribute the form as indicated in subsections (b)(1) through (5).

1) The original of the NGIL Form 61-R shall be filed in the MPRJ for ARNG members or in the commander's PIF for ANG. The NGIL Form 61-R shall be destroyed at the same time as the NGIL Form 60-R that it supplements.

2) One copy, with all attachments and supporting documents, shall be filed at NGIL-JA for one year from the date of the supplementary action, after which it shall be destroyed. NGIL-JA shall also forward a copy of the form to NGIL-HRO if the member is in an AGR status.

3) One copy, with attachments, shall be permanently filed in the member's vault file (ARNG) or State 201 file (ANG).

4) If the supplementary action affects the member's pay (e.g., set aside of a punishment), one copy of the NGIL Form 61-R and a copy of the initial NGIL Form 60-R shall be sent to the appropriate ARNG or ANG office that processes that member's military pay records.

5) If the supplementary action affects the member's grade (e.g., restoration to a higher grade), then one copy of the NGIL Form 61-R and a copy of the initial NGIL Form 60-R shall be forwarded to the appropriate promotion authority to process the order.

c) NGIL Form 62-R (Record of Vacation of Suspended Nonjudicial Punishment). Vacation of suspension proceedings shall be recorded on NGIL Form 62-R. After completion of item 4 on the NGIL Form 62-R, a copy of the completed form shall be given to the member. The original of the NGIL Form 62-R, with all attachments and supporting documents, shall then be mailed to the Office of the Adjutant General, ATTN: NGIL-JA, at the address specified in Section 400.1205(b)(4). The Office shall review the form for legal sufficiency, then shall distribute the form as indicated in subsections (c)(1) through (5).

1) The original of the NGIL Form 62-R shall be filed in the MPRJ for ARNG members or in the commander's PIF for ANG members. The NGIL Form 62-R shall be destroyed at the same time as the NGIL Form 60-R that it supplements.

2) One copy, with all attachments and supporting documents, shall be filed at NGIL-JA for one year from the date of the supplementary action, after which it shall be destroyed. NGIL-JA shall also forward a copy of the form to NGIL-HRO if the member is in an AGR status.

3) One copy, with attachments, shall be permanently filed in the member's vault file (ARNG) or State 201 file (ANG).

4) If the vacation action affects the member's pay (e.g., vacation of a suspended reduction), then one copy of the NGIL Form 62-R and a copy of the initial NGIL Form 60-R shall be sent to the appropriate ARNG or ANG office that processes that member's military pay records.

5) If the vacation action affects the member's grade, then one copy of the NGIL Form 62-R and a copy of the initial NGIL Form 60-R shall be forwarded to the appropriate reduction authority to process the order.

d) Set Aside Actions. All copies of NGIL Forms 60-R and 61-R reflecting NJP actions that are later set aside in their entirety shall be destroyed, except for the permanent copies filed in the member's vault file (ARNG) or State 201 file (ANG).

e) Effect of Errors. A NJP proceeding is not legally sufficient if it contains an error that materially prejudices a substantial right of the member. If such an error exists and cannot be remedied within the same proceeding, the appropriate NJP authority shall set aside the defective action. A new NJP action may be initiated for the same misconduct, but any punishment imposed as a result of the new proceeding may be no more severe than that originally imposed. If a material error exists and can be remedied within the same proceeding without prejudicing the member's rights, the commander shall notify the member of the error by endorsement to the form and thoroughly explain the correction to the record. The member shall sign an acknowledgement and may submit comments. The endorsement and acknowledgement shall become attachments to the form. Administrative or clerical errors, and minor errors that do not affect a substantial right of the member, do not require correction to make the proceedings legally sufficient. These errors may be corrected with pen-and-ink changes initialed by the commander and the member, as appropriate.

f) Contents of Record

1) The record of NJP consists of the NGIL Forms 60-R, 61-R and 62-R, as applicable, and any of their attachments. All attachments shall be annotated in item 11 of the NGIL Form 60-R or 62-R in item 7 and shall be sent to NGIL-JA with the record. Attachments include, at a minimum:

A) evidence (see Army Regulation 15-6 (Procedures for Investigating Officers and Boards of Officers)) and other written materials relied on by the imposing commander;

B) statements of offenses;

C) any memorandum of reprimand imposed as punishment;

D) change of commander notification;

E) endorsements correcting errors that required explanation; and

F) written materials considered as a basis for vacating a suspended punishment or submitted by the member in mitigation, extenuation, defense or on appeal.

2) Except for memoranda of reprimand imposed as punishment that shall be filed in the member's personnel file as part of the record, attachments shall be filed at NGIL-JA and shall not be filed in the member's personnel file.

g) Use of Record

1) Records of NJP proceedings may be used as directed by the Adjutant General or as authorized by applicable regulations. Attachments transmitted with the originals or copies of NGIL Forms 60-R, 61-R and 62-R, or when filed with any of these forms, shall be considered to be maintained separately for the purpose of determining the admissibility of the originals or copies of those forms at administrative proceedings.

2) A record of NJP, not otherwise inadmissible, may be admitted at administrative proceedings from any file in which it is properly maintained pursuant to this Subpart.

SUBPART L: MISCELLANEOUS PROVISIONS

Section 400.1300 Courts of Inquiry

a) *Courts of inquiry to investigate any matter of concern to the SMF may be convened by any person authorized to convene a general court-martial, whether or not the persons involved have requested such an inquiry*.

b) *A court of inquiry consists of 3 or more commissioned officers. For each court of inquiry, the convening authority shall also appoint counsel for the court*.

c) *Any person subject to the Code whose conduct is subject to inquiry shall be designated as a party. Any person subject to the Code who has a direct interest in*

the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

d) *Members of a court of inquiry may be challenged by a party, but only for cause stated to the court*.

e) *The members, counsel, the reporter and interpreters of courts of inquiry shall take an oath to faithfully perform their duties* (see Section 400.825).

f) *Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.*

g) *Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority*.

h) *Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel*. (Code Section 135)

Section 400.1305 Authority to Act as Notary

The signature without seal of any commissioned *notary, together with the title of his or her office, is prima facie evidence of the person's authority*. (Code Section 136)

Section 400.1310 Sections of the Code to be Explained

a) When Sections of the Code will be explained;

1) *The Sections of the Code specified in* subsection (a)(3) *shall be carefully explained to each enlisted member at the time of, or within 30 days after, the member's initial entrance into a duty status with the SMF*.

2) *The Sections shall be explained again:*

A) *after the member has completed basic or recruit training; and*

B) at the time when the member re-enlists.

3) *This subsection (a) applies with respect to Code Sections 2* (persons subject to the Code), *3* (jurisdiction to try certain personnel), *7 through 15* (apprehension, restraint, pretrial punishment, delivery of offenders to civil authorities, and NJP), *25* (composition of courts-martial), *27* (trial and defense counsel), *31* (self-incrimination prohibited), *37* (unlawfully influencing the court), *38* (duties of trial and defense counsel), *55* (cruel and unusual punishment), *77 through 134* (punitive Sections), *and 137 through 139* (miscellaneous).

b) *The text of the Code and of the regulations or orders prescribed under the Code shall be made available to a member of the SMF, upon request by the member, for the member's personal examination, but the Code is effective and binding upon the SMF as of 1/1/17, and regulations or orders are effective upon their proper promulgation*. (Code Section 137)

Section 400.1315 Complaints of Wrongs

a) *Any member of the SMF who believes himself or herself wronged by a commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made*.

b) *The officer exercising general court-martial jurisdiction shall examine the complaint and take proper measures for redressing the alleged wrong. As soon as possible, that officer shall send to the Adjutant General a true statement of the complaint, along with a description of any proceedings that have occurred*. (Code Section 138)

Section 400.1320 Redress of Injuries to Property

a) *Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that the person's property has been wrongfully taken by members of the SMF, that person may convene a board to investigate the complaint. The board shall consist of from one to 3 commissioned*

officers. For the purpose of this investigation, the board has power to summon witnesses and examine them upon oath, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, who shall also approve the amount of the assessment. The assessment shall be charged against the pay of the offenders. The order of the commanding officer authorizing the assessment amount is conclusive instruction *for any disbursing officer* to make *payment to the injured parties of the damages assessed and approved*.

b) *If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be considered just upon the individual members who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board*. (Code Section 139)

Section 400.1325 Delegation by the Governor

The Governor may delegate any authority vested in the Governor under the Code and provide for the subdelegation of any such authority, except for the power given the Governor by Code Section 22 (convening of a court-martial). (Code Section 140)

Section 400.1330 Payment of Fees, Costs and Expenses

a) *The following shall be paid out of the* Illinois *State Military Justice Fund* (see Section 5.875 of the State Finance Act):

1) *fees and authorized travel expenses of all witnesses, experts, victims, court reporters and interpreters;*

2) *fees for the service of process;*

3) *the costs of collection, apprehension, detention and confinement;*

4) *and all other necessary expenses of prosecution and the administration of military justice, not otherwise payable by any other source*.

b) The State Military Justice Fund *is created in the State Treasury*. The fund *shall be administered by the Adjutant General. Expenses of military justice shall be paid from the Fund in the amounts and manner prescribed by law. The General Assembly may appropriate and have deposited into the* Fund or other appropriate State *fund such* funds *as it deems necessary to carry out the purposes of* the *Code*. (Code Section 141)

Section 400.1335 Payment and Disposition of Fines

a) *Fines imposed by a military court or through imposition of nonjudicial punishment shall be paid to the* Illinois Department of Military Affairs *and delivered to the court or imposing officer, or to a person executing their process. Fines may be collected in the following manner*:

1) *By cash or money order;*

2) *By retention of any pay or allowances due or to become due the person fined from any state or the United States; or*

3) *By garnishment or levy, together with costs, on the wages, goods and chattels of a person delinquent in paying a fine, as provided by law.*

b) *Any sum so received or retained shall be deposited into the Fund or to whomever the court so directs*. (Code Section 142)

Section 400.1340 Immunity for Action of Military Courts

All persons acting under the provisions of the Code, whether as a member of the military or as a civilian, shall be immune from any personal liability for any of the acts or omissions they did or failed to do as part of their duties under the Code. (Code Section 144)

Section 400.1345 Civilian Crimes Assimilated

Any person subject to the Code who commits an offense not enumerated in the Code but that is an offense under the laws of the United States, Illinois, or another state, U.S. commonwealth, territory, possession, or district (i.e., the laws of the jurisdiction), *while that person is subject to the jurisdiction of the Code, is guilty of any act or omission that, although not made punishable by any enactment of this State, is punishable if committed or omitted within the jurisdiction of the laws of the* jurisdiction. *In accordance with Code Section 134, the offense may be charged as an*

offense under the substantive law of the jurisdiction where the offense was committed, in force at the time of the offense, and shall be punished pursuant to the law of that jurisdiction, subject only to the maximum punishment prescribed by Appendix A. (Code Section 149)

ILLINOIS DEPARTMENT OF MILITARY AFFAIRS

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Section 400.APPENDIX A Table of Maximum Punishments

Enlisted Personnel

Punishment	**Imposed by Company or Flight Commander (cannot impose any punishment on E-8 or E-9)**	**Imposed by Battalion or Squadron/Group Commander (see Section 400.2010(a)(3) for E-8 or E-9)**	**Imposed by Brigade or Wing Commander or AAG**
Reduction			
E-1 to E-4	1 Grade	2 Grades	2 Grades
E-5 to E-6	No	1 Grade	1 Grade
E-7 to E-8	No	No	1 Grade
E-9	No	No	[1]
Forfeiture	4 Days' Pay	6 Days' Pay[2]	6 Days' Pay[2]
Reprimand	Yes	Yes	Yes
Extra Duties	7 Days	14 Days[3]	14 Days[3]
Restriction	14 Days[1]	21 Days[4 & 5]	21 Days[4 & 5]

NOTES:

[1] May recommend reduction as part of NJP, but reduction is not effective unless and until approved in writing by the Adjutant General.

[2] May order forfeiture of 8 days' pay if acting as "next superior commander".

[3] May impose 21 days extra duties if acting as "next superior commander".

[4] Restriction cannot be imposed unless in a field environment or while performing duty away from home station.

[5] May impose 28 days restriction if acting as "next superior commander".

Officers and Warrant Officers

Punishment	**Imposed by Brigade,**	**Imposed by**

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	Group or Wing Commander	**General Officer**
Reduction	No	No
Forfeiture	4 Days' Pay	6 Days' Pay[1]
Reprimand	Yes	Yes
Extra Duties	No	No
Restriction	14 Days[2]	21 Days[2 & 3]

NOTES:

[1] May order forfeiture of 8 days' pay if acting as "next superior commander".

[2] Restriction cannot be imposed unless in a field environment or while performing duty away from home station.

[3] May impose 28 days restriction if acting as "next superior commander".

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENTS

1) Heading of the Part: Pay Plan

2) Code Citation: 80 Ill. Adm. Code 310

3)

Section Numbers:	Peremptory Actions:
310.Appendix A Table S	Amendment
310.Appendix A Table W	Amendment

4) Reference to the Specific State or Federal Court Order, Federal Rule or Statute which Requires this Peremptory Rulemaking: The Department of Central Management Services (CMS) is amending the Pay Plan (80 Ill. Adm. Code 310) Section 310.Appendix A Table S to reflect a Memorandum of Understanding (MOU) between the State of Illinois and the Laborers' International Union of North America – Illinois State Employees Association, Local 2002 and the Southern and Central Illinois Laborers' District Council for the Food Services Program Manager title positions at the Department of Corrections signed August 14, 2017. The MOU assigns the Food Services Program Manager title positions at the Department of Corrections the rates in the pay grade VR-704-24 assigned to the Public Service Administrator (PSA) title Option 8J (working title of Dietary Manager) effective January 26, 2015. That is the same date that the Illinois Labor Relations Board issued the Certification of Unit Clarification (Case No. S-UC-(S)-15-077) including the Food Services Program Manager, employed at the Department of Corrections (New title is successor to the PSA, Option 8J, working title Dietary Manager) in the VR-704 bargaining unit. The Food Services Program Manager title was established with the approval of the Civil Service Commission effective August 1, 2013.

CMS is amending Section 310.Appendix A Table W to reflect a MOU between the State of Illinois and the American Federation of State, County, and Municipal Employees (AFSCME) for the Retirement Benefits Representative, Retirement Benefits Representative Supervisor, and Retirement Benefits Representative Trainee titles positions at the State Retirement System signed August 31, 2017. The MOU assigns RC-062-12, RC-062-14, and RC-062-10 to the Retirement Benefits Representative, Retirement Benefits Representative Supervisor, and Retirement Benefits Representative Trainee titles, respectively, positions at the State Retirement System effective July 19, 2017. That is the date that the Illinois Labor Relations Board issued the Certifications of Unit Clarification (Case Nos. S-UC-(S)-17-106, S-UC-(S)-17-107 and S-UC-(S)-17-108) including the Retirement Benefits Representative, Retirement Benefits Representative Supervisor, and Retirement Benefits Representative Trainee titles, respectively, positions at the State Retirement System in the RC-062 bargaining unit. The Retirement Benefits Representative, Retirement Benefits Representative Supervisor, and Retirement Benefits

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Representative Trainee titles were established with the approval of the Civil Service Commission effective January 1, 2017.

5) Statutory Authority: Authorized by Sections 8, 8a and 9(7) of the Personnel Code [20 ILCS 415/8, 20 ILCS 415/8a and 20 ILCS 415/9(7)], subsection (d) of Section 1-5 of the Illinois Administrative Procedure Act [5 ILCS 100/1-5(d)] and by Sections 4, 6, 15 and 21 of the Illinois Public Labor Relations Act [5 ILCS 315/4, 5 ILCS 315/6, 5 ILCS 315/15 and 5 ILCS 315/21].

6) Effective Date: September 13, 2017

7) A Complete Description of the Subjects and Issues Involved: In Section 310.Appendix A Table S and the title table, "(Department of Corrections)" is added to the Food Services Program Manager title.

In Section 310.Appendix A Table W and the title table, the Retirement Benefits Representative (State Retirement Systems) title, its title code 38313, bargaining unit RC-062, and pay grade 12, the Retirement Benefits Representative Supervisor (State Retirement Systems) title, its title code 38314, bargaining unit RC-062, and pay grade 14, the Retirement Benefits Representative Trainee (State Retirement Systems) title, its title code 38316, bargaining unit RC-062, and pay grade 10 are added.

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

9) Date Filed with the Index Department: September 13, 2017

10) This and other Pay Plan amendments are available in the Division of Technical Services of the Bureau of Personnel.

11) Is this in compliance with Section 5-50 of the Illinois Administrative Procedure Act? Yes

12) Are there any other proposed rulemakings pending on this Part? Yes

Section Numbers:	Proposed Actions:	*Illinois Register* Citations:
310.410	Amendment	41 Ill. Reg. 11645; Sept. 22, 2017
310.Appendix A Table W	Amendment	41 Ill. Reg. 11645; Sept. 22, 2017

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENTS

13) Statement of Statewide Policy Objective: The amendments to the Pay Plan affect only the employees subject to the Personnel Code and do not set out any guidelines that affect local or other jurisdictions in the State.

14) Information and questions regarding the peremptory rulemaking shall be directed to:

Mr. Jason Doggett
Manager
Compensation Section
Division of Technical Services
Bureau of Personnel
Department of Central Management Services
503 William G. Stratton Building
Springfield IL 62706

217/524-1055
fax: 217-558-4497
CMS.PayPlan@Illinois.gov

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

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENTS

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES
SUBTITLE B: PERSONNEL RULES, PAY PLANS, AND POSITION CLASSIFICATIONS
CHAPTER I: DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

PART 310
PAY PLAN

SUBPART A: NARRATIVE

Section
310.20 Policy and Responsibilities
310.30 Jurisdiction
310.40 Pay Schedules
310.45 Comparison of Pay Grades or Salary Ranges Assigned to Classifications
310.47 In-Hire Rate
310.50 Definitions
310.60 Conversion of Base Salary to Pay Period Units
310.70 Conversion of Base Salary to Daily or Hourly Equivalents
310.80 Increases in Pay
310.90 Decreases in Pay
310.100 Other Pay Provisions
310.110 Implementation of Pay Plan Changes (Repealed)
310.120 Interpretation and Application of Pay Plan
310.130 Effective Date
310.140 Reinstitution of Within Grade Salary Increases (Repealed)
310.150 Fiscal Year 1985 Pay Changes in Schedule of Salary Grades, effective July 1, 1984 (Repealed)

SUBPART B: SCHEDULE OF RATES

Section
310.205 Introduction
310.210 Prevailing Rate
310.220 Negotiated Rate
310.230 Part-Time Daily or Hourly Special Services Rate (Repealed)
310.240 Daily or Hourly Rate Conversion
310.250 Member, Patient and Inmate Rate
310.260 Trainee Rate

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

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310.270 Legislated Rate (Repealed)
310.280 Designated Rate
310.290 Out-of-State Rate (Repealed)
310.295 Foreign Service Rate (Repealed)
310.300 Educator Schedule for RC-063 and HR-010
310.310 Physician Specialist Rate
310.320 Annual Compensation Ranges for Executive Director and Assistant Executive Director, State Board of Elections (Repealed)
310.330 Excluded Classes Rate (Repealed)

SUBPART C: MERIT COMPENSATION SYSTEM

Section
310.410 Jurisdiction
310.415 Merit Compensation Salary Range Assignments
310.420 Objectives
310.430 Responsibilities
310.440 Merit Compensation Salary Schedule
310.450 Procedures for Determining Annual Merit Increases and Bonuses
310.455 Intermittent Merit Increase (Repealed)
310.456 Merit Zone (Repealed)
310.460 Other Pay Increases
310.470 Adjustment
310.480 Decreases in Pay
310.490 Other Pay Provisions
310.495 Broad-Band Pay Range Classes
310.500 Definitions
310.510 Conversion of Base Salary to Pay Period Units (Repealed)
310.520 Conversion of Base Salary to Daily or Hourly Equivalents
310.530 Implementation
310.540 Annual Merit Increase and Bonus Guidechart
310.550 Fiscal Year 1985 Pay Changes in Merit Compensation System, effective July 1, 1984 (Repealed)
310.560 Merit Incentive Program
310.570 Gain Sharing Program

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

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENTS

Section
310.600 Jurisdiction (Repealed)
310.610 Pay Schedules (Repealed)
310.620 In-Hiring Rate (Repealed)
310.630 Definitions (Repealed)
310.640 Increases in Pay (Repealed)
310.650 Other Pay Provisions (Repealed)
310.660 Effective Date (Repealed)
310.670 Negotiated Rate (Repealed)
310.680 Trainee Rate (Repealed)
310.690 Educator Schedule for Frozen RC-063 and Frozen HR-010 (Repealed)

310.APPENDIX A Negotiated Rates of Pay
310.TABLE A RC-104 (Conservation Police Supervisors, Illinois Fraternal Order of Police Labor Council)
310.TABLE B VR-706 (Assistant Automotive Shop Supervisors, Automotive Shop Supervisors and Meat and Poultry Inspector Supervisors, Laborers' − ISEA Local #2002)
310.TABLE C RC-056 (Site Superintendents and Departments of Veterans' Affairs, Natural Resources, Human Services and Agriculture and Historic Preservation Agency Managers, IFPE)
310.TABLE D HR-001 (Teamsters Local #700)
310.TABLE E RC-020 (Teamsters Locals #330 and #705)
310.TABLE F RC-019 (Teamsters Local #25)
310.TABLE G RC-045 (Automotive Mechanics, IFPE)
310.TABLE H RC-006 (Corrections Employees, AFSCME)
310.TABLE I RC-009 (Institutional Employees, AFSCME)
310.TABLE J RC-014 (Clerical Employees, AFSCME)
310.TABLE K RC-023 (Registered Nurses, INA)
310.TABLE L RC-008 (Boilermakers)
310.TABLE M RC-110 (Conservation Police Lodge)
310.TABLE N RC-010 (Professional Legal Unit, AFSCME)
310.TABLE O RC-028 (Paraprofessional Human Services Employees, AFSCME)
310.TABLE P RC-029 (Paraprofessional Investigatory and Law Enforcement Employees, Meat and Poultry Inspectors and Meat and Poultry Inspector Trainees, IFPE)
310.TABLE Q RC-033 (Meat Inspectors, IFPE) (Repealed)
310.TABLE R RC-042 (Residual Maintenance Workers, AFSCME)
310.TABLE S VR-704 (Departments of Corrections, Financial and Professional

Regulation, Juvenile Justice and State Police Supervisors, Laborers' – ISEA Local #2002)

310.TABLE T HR-010 (Teachers of Deaf, IFT)

310.TABLE U HR-010 (Teachers of Deaf, Extracurricular Paid Activities)

310.TABLE V CU-500 (Corrections Meet and Confer Employees)

310.TABLE W RC-062 (Technical Employees, AFSCME)

310.TABLE X RC-063 (Professional Employees, AFSCME)

310.TABLE Y RC-063 (Educators, Educator Trainees, Juvenile Justice School Counselors and Special Education Resources Coordinators, AFSCME)

310.TABLE Z RC-063 (Physicians, AFSCME)

310.TABLE AA NR-916 (Departments of Central Management Services, Natural Resources and Transportation, Teamsters)

310.TABLE AB RC-150 (Public Service Administrators Option 6, AFSCME) (Repealed)

310.TABLE AC RC-036 (Public Service Administrators Option 8L Department of Healthcare and Family Services, INA)

310.TABLE AD RC-184 (Blasting Experts, Blasting Specialists and Blasting Supervisors Department of Natural Resources, SEIU Local 73)

310.TABLE AE RC-090 (Internal Security Investigators, Metropolitan Alliance of Police Chapter 294)

310.APPENDIX B Frozen Negotiated-Rates-of-Pay (Repealed)

310.TABLE A Frozen RC-104-Rates-of-Pay (Conservation Police Supervisors, Laborers' – ISEA Local #2002) (Repealed)

310.TABLE C Frozen RC-056-Rates-of-Pay (Site Superintendents and Departments of Veterans' Affairs, Natural Resources, Human Services and Agriculture and Historic Preservation Agency Managers, IFPE) (Repealed)

310.TABLE H Frozen RC-006-Rates-of-Pay (Corrections Employees, AFSCME) (Repealed)

310.TABLE I Frozen RC-009-Rates-of-Pay (Institutional Employees, AFSCME) (Repealed)

310.TABLE J Frozen RC-014-Rates-of-Pay (Clerical Employees, AFSCME) (Repealed)

310.TABLE K Frozen RC-023-Rates-of-Pay (Registered Nurses, INA) (Repealed)

310.TABLE M Frozen RC-110-Rates-of-Pay (Conservation Police Lodge) (Repealed)

310.TABLE N Frozen RC-010 (Professional Legal Unit, AFSCME) (Repealed)

310.TABLE O Frozen RC-028-Rates-of-Pay (Paraprofessional Human Services Employees, AFSCME) (Repealed)

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

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310.TABLE P	Frozen RC-029-Rates-of-Pay (Paraprofessional Investigatory and Law Enforcement Employees, IFPE) (Repealed)
310.TABLE R	Frozen RC-042-Rates-of-Pay (Residual Maintenance Workers, AFSCME) (Repealed)
310.TABLE S	Frozen VR-704-Rates-of-Pay (Departments of Corrections, Financial and Professional Regulation, Juvenile Justice and State Police Supervisors, Laborers' – ISEA Local #2002) (Repealed)
310.TABLE T	Frozen HR-010-Rates-of-Pay (Teachers of Deaf, IFT) (Repealed)
310.TABLE V	Frozen CU-500-Rates-of-Pay (Corrections Meet and Confer Employees) (Repealed)
310.TABLE W	Frozen RC-062-Rates-of-Pay (Technical Employees, AFSCME) (Repealed)
310.TABLE X	Frozen RC-063-Rates-of-Pay (Professional Employees, AFSCME) (Repealed)
310.TABLE Y	Frozen RC-063-Rates-of-Pay (Educators and Educator Trainees, AFSCME) (Repealed)
310.TABLE Z	Frozen RC-063-Rates-of-Pay (Physicians, AFSCME) (Repealed)
310.TABLE AB	Frozen RC-150-Rates-of-Pay (Public Service Administrators Option 6, AFSCME) (Repealed)
310.TABLE AD	Frozen RC-184-Rates-of-Pay (Public Service Administrators Option 8X Department of Natural Resources, SEIU Local 73) (Repealed)
310.TABLE AE	Frozen RC-090-Rates-of-Pay (Internal Security Investigators, Metropolitan Alliance of Police Chapter 294) (Repealed)

310.APPENDIX C Comparison of Pay Grades or Salary Ranges Assigned to Classifications

310.ILLUSTRATION A	Classification Comparison Flow Chart: Both Classes are Whole
310.ILLUSTRATION B	Classification Comparison Flow Chart: One Class is Whole and One is Divided
310.ILLUSTRATION C	Classification Comparison Flow Chart: Both Classes are Divided

310.APPENDIX D Merit Compensation System Salary Schedule
310.APPENDIX E Teaching Salary Schedule (Repealed)
310.APPENDIX F Physician and Physician Specialist Salary Schedule (Repealed)
310.APPENDIX G Broad-Band Pay Range Classes Salary Schedule

AUTHORITY: Implementing and authorized by Sections 8 and 8a of the Personnel Code [20 ILCS 415/8 and 8a].

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

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SOURCE: Filed June 28, 1967; codified at 8 Ill. Reg. 1558; emergency amendment at 8 Ill. Reg. 1990, effective January 31, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 2440, effective February 15, 1984; emergency amendment at 8 Ill. Reg. 3348, effective March 5, 1984, for a maximum of 150 days; emergency amendment at 8 Ill. Reg. 4249, effective March 16, 1984, for a maximum of 150 days; emergency amendment at 8 Ill. Reg. 5704, effective April 16, 1984, for a maximum of 150 days; emergency amendment at 8 Ill. Reg. 7290, effective May 11, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 11299, effective June 25, 1984; emergency amendment at 8 Ill. Reg. 12616, effective July 1, 1984, for a maximum of 150 days; emergency amendment at 8 Ill. Reg. 15007, effective August 6, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 15367, effective August 13, 1984; emergency amendment at 8 Ill. Reg. 21310, effective October 10, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 21544, effective October 24, 1984; amended at 8 Ill. Reg. 22844, effective November 14, 1984; emergency amendment at 9 Ill. Reg. 1134, effective January 16, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 1320, effective January 23, 1985; amended at 9 Ill. Reg. 3681, effective March 12, 1985; emergency amendment at 9 Ill. Reg. 4163, effective March 15, 1985, for a maximum of 150 days; emergency amendment at 9 Ill. Reg. 9231, effective May 31, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 9420, effective June 7, 1985; amended at 9 Ill. Reg. 10663, effective July 1, 1985; emergency amendment at 9 Ill. Reg. 15043, effective September 24, 1985, for a maximum of 150 days; amended at 10 Ill. Reg. 3230, effective January 24, 1986; peremptory amendment at 10 Ill. Reg. 3325, effective January 22, 1986; emergency amendment at 10 Ill. Reg. 8904, effective May 13, 1986, for a maximum of 150 days; peremptory amendment at 10 Ill. Reg. 8928, effective May 13, 1986; emergency amendment at 10 Ill. Reg. 12090, effective June 30, 1986, for a maximum of 150 days; peremptory amendment at 10 Ill. Reg. 13675, effective July 31, 1986; peremptory amendment at 10 Ill. Reg. 14867, effective August 26, 1986; amended at 10 Ill. Reg. 15567, effective September 17, 1986; emergency amendment at 10 Ill. Reg. 17765, effective September 30, 1986, for a maximum of 150 days; peremptory amendment at 10 Ill. Reg. 19132, effective October 28, 1986; peremptory amendment at 10 Ill. Reg. 21097, effective December 9, 1986; amended at 11 Ill. Reg. 648, effective December 22, 1986; peremptory amendment at 11 Ill. Reg. 3363, effective February 3, 1987; peremptory amendment at 11 Ill. Reg. 4388, effective February 27, 1987; peremptory amendment at 11 Ill. Reg. 6291, effective March 23, 1987; amended at 11 Ill. Reg. 5901, effective March 24, 1987; emergency amendment at 11 Ill. Reg. 8787, effective April 15, 1987, for a maximum of 150 days; emergency amendment at 11 Ill. Reg. 11830, effective July 1, 1987, for a maximum of 150 days; peremptory amendment at 11 Ill. Reg. 13675, effective July 29, 1987; amended at 11 Ill. Reg. 14984, effective August 27, 1987; peremptory amendment at 11 Ill. Reg. 15273, effective September 1, 1987; peremptory amendment at 11 Ill. Reg. 17919, effective October 19, 1987; peremptory amendment at 11 Ill. Reg. 19812, effective November 19, 1987; emergency amendment at 11 Ill. Reg. 20664, effective December 4, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 20778, effective December 11, 1987; peremptory

amendment at 12 Ill. Reg. 3811, effective January 27, 1988; peremptory amendment at 12 Ill. Reg. 5459, effective March 3, 1988; amended at 12 Ill. Reg. 6073, effective March 21, 1988; emergency amendment at 12 Ill. Reg. 7734, effective April 15, 1988, for a maximum of 150 days; peremptory amendment at 12 Ill. Reg. 7783, effective April 14, 1988; peremptory amendment at 12 Ill. Reg. 8135, effective April 22, 1988; peremptory amendment at 12 Ill. Reg. 9745, effective May 23, 1988; emergency amendment at 12 Ill. Reg. 11778, effective July 1, 1988, for a maximum of 150 days; emergency amendment at 12 Ill. Reg. 12895, effective July 18, 1988, for a maximum of 150 days; peremptory amendment at 12 Ill. Reg. 13306, effective July 27, 1988; corrected at 12 Ill. Reg. 13359; amended at 12 Ill. Reg. 14630, effective September 6, 1988; amended at 12 Ill. Reg. 20449, effective November 28, 1988; peremptory amendment at 12 Ill. Reg. 20584, effective November 28, 1988; peremptory amendment at 13 Ill. Reg. 8080, effective May 10, 1989; amended at 13 Ill. Reg. 8849, effective May 30, 1989; peremptory amendment at 13 Ill. Reg. 8970, effective May 26, 1989; emergency amendment at 13 Ill. Reg. 10967, effective June 20, 1989, for a maximum of 150 days; emergency amendment expired November 17, 1989; amended at 13 Ill. Reg. 11451, effective June 28, 1989; emergency amendment at 13 Ill. Reg. 11854, effective July 1, 1989, for a maximum of 150 days; corrected at 13 Ill. Reg. 12647; peremptory amendment at 13 Ill. Reg. 12887, effective July 24, 1989; amended at 13 Ill. Reg. 16950, effective October 20, 1989; amended at 13 Ill. Reg. 19221, effective December 12, 1989; amended at 14 Ill. Reg. 615, effective January 2, 1990; peremptory amendment at 14 Ill. Reg. 1627, effective January 11, 1990; amended at 14 Ill. Reg. 4455, effective March 12, 1990; peremptory amendment at 14 Ill. Reg. 7652, effective May 7, 1990; amended at 14 Ill. Reg. 10002, effective June 11, 1990; emergency amendment at 14 Ill. Reg. 11330, effective June 29, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 14361, effective August 24, 1990; emergency amendment at 14 Ill. Reg. 15570, effective September 11, 1990, for a maximum of 150 days; emergency amendment expired February 8, 1991; corrected at 14 Ill. Reg. 16092; peremptory amendment at 14 Ill. Reg. 17098, effective September 26, 1990; amended at 14 Ill. Reg. 17189, effective October 2, 1990; amended at 14 Ill. Reg. 17189, effective October 19, 1990; amended at 14 Ill. Reg. 18719, effective November 13, 1990; peremptory amendment at 14 Ill. Reg. 18854, effective November 13, 1990; peremptory amendment at 15 Ill. Reg. 663, effective January 7, 1991; amended at 15 Ill. Reg. 3296, effective February 14, 1991; amended at 15 Ill. Reg. 4401, effective March 11, 1991; peremptory amendment at 15 Ill. Reg. 5100, effective March 20, 1991; peremptory amendment at 15 Ill. Reg. 5465, effective April 2, 1991; emergency amendment at 15 Ill. Reg. 10485, effective July 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 11080, effective July 19, 1991; amended at 15 Ill. Reg. 13080, effective August 21, 1991; amended at 15 Ill. Reg. 14210, effective September 23, 1991; emergency amendment at 16 Ill. Reg. 711, effective December 26, 1991, for a maximum of 150 days; amended at 16 Ill. Reg. 3450, effective February 20, 1992; peremptory amendment at 16 Ill. Reg. 5068, effective March 11, 1992; peremptory amendment at 16 Ill. Reg. 7056, effective April 20, 1992; emergency amendment at 16 Ill. Reg. 8239,

effective May 19, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 8382, effective May 26, 1992; emergency amendment at 16 Ill. Reg. 13950, effective August 19, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 14452, effective September 4, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 238, effective December 23, 1992; peremptory amendment at 17 Ill. Reg. 498, effective December 18, 1992; amended at 17 Ill. Reg. 590, effective January 4, 1993; amended at 17 Ill. Reg. 1819, effective February 2, 1993; amended at 17 Ill. Reg. 6441, effective April 8, 1993; emergency amendment at 17 Ill. Reg. 12900, effective July 22, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 13409, effective July 29, 1993; emergency amendment at 17 Ill. Reg. 13789, effective August 9, 1993, for a maximum of 150 days; emergency amendment at 17 Ill. Reg. 14666, effective August 26, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 19103, effective October 25, 1993; emergency amendment at 17 Ill. Reg. 21858, effective December 1, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 22514, effective December 15, 1993; amended at 18 Ill. Reg. 227, effective December 17, 1993; amended at 18 Ill. Reg. 1107, effective January 18, 1994; amended at 18 Ill. Reg. 5146, effective March 21, 1994; peremptory amendment at 18 Ill. Reg. 9562, effective June 13, 1994; emergency amendment at 18 Ill. Reg. 11299, effective July 1, 1994, for a maximum of 150 days; peremptory amendment at 18 Ill. Reg. 13476, effective August 17, 1994; emergency amendment at 18 Ill. Reg. 14417, effective September 9, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 16545, effective October 31, 1994; peremptory amendment at 18 Ill. Reg. 16708, effective October 28, 1994; amended at 18 Ill. Reg. 17191, effective November 21, 1994; amended at 19 Ill. Reg. 1024, effective January 24, 1995; peremptory amendment at 19 Ill. Reg. 2481, effective February 17, 1995; peremptory amendment at 19 Ill. Reg. 3073, effective February 17, 1995; amended at 19 Ill. Reg. 3456, effective March 7, 1995; peremptory amendment at 19 Ill. Reg. 5145, effective March 14, 1995; amended at 19 Ill. Reg. 6452, effective May 2, 1995; peremptory amendment at 19 Ill. Reg. 6688, effective May 1, 1995; amended at 19 Ill. Reg. 7841, effective June 1, 1995; amended at 19 Ill. Reg. 8156, effective June 12, 1995; amended at 19 Ill. Reg. 9096, effective June 27, 1995; emergency amendment at 19 Ill. Reg. 11954, effective August 1, 1995, for a maximum of 150 days; peremptory amendment at 19 Ill. Reg. 13979, effective September 19, 1995; peremptory amendment at 19 Ill. Reg. 15103, effective October 12, 1995; amended at 19 Ill. Reg. 16160, effective November 28, 1995; amended at 20 Ill. Reg. 308, effective December 22, 1995; emergency amendment at 20 Ill. Reg. 4060, effective February 27, 1996, for a maximum of 150 days; peremptory amendment at 20 Ill. Reg. 6334, effective April 22, 1996; peremptory amendment at 20 Ill. Reg. 7434, effective May 14, 1996; amended at 20 Ill. Reg. 8301, effective June 11, 1996; amended at 20 Ill. Reg. 8657, effective June 20, 1996; amended at 20 Ill. Reg. 9006, effective June 26, 1996; amended at 20 Ill. Reg. 9925, effective July 10, 1996; emergency amendment at 20 Ill. Reg. 10213, effective July 15, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 10841, effective August 5, 1996; peremptory amendment at 20 Ill. Reg. 13408, effective September 24, 1996; amended at 20 Ill. Reg. 15018, effective November 7, 1996; peremptory amendment at 20

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Ill. Reg. 15092, effective November 7, 1996; emergency amendment at 21 Ill. Reg. 1023, effective January 6, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 1629, effective January 22, 1997; amended at 21 Ill. Reg. 5144, effective April 15, 1997; amended at 21 Ill. Reg. 6444, effective May 15, 1997; amended at 21 Ill. Reg. 7118, effective June 3, 1997; emergency amendment at 21 Ill. Reg. 10061, effective July 21, 1997, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 12859, effective September 8, 1997, for a maximum of 150 days; peremptory amendment at 21 Ill. Reg. 14267, effective October 14, 1997; peremptory amendment at 21 Ill. Reg. 14589, effective October 15, 1997; peremptory amendment at 21 Ill. Reg. 15030, effective November 10, 1997; amended at 21 Ill. Reg. 16344, effective December 9, 1997; peremptory amendment at 21 Ill. Reg. 16465, effective December 4, 1997; peremptory amendment at 21 Ill. Reg. 17167, effective December 9, 1997; peremptory amendment at 22 Ill. Reg. 1593, effective December 22, 1997; amended at 22 Ill. Reg. 2580, effective January 14, 1998; peremptory amendment at 22 Ill. Reg. 4326, effective February 13, 1998; peremptory amendment at 22 Ill. Reg. 5108, effective February 26, 1998; peremptory amendment at 22 Ill. Reg. 5749, effective March 3, 1998; amended at 22 Ill. Reg. 6204, effective March 12, 1998; peremptory amendment at 22 Ill. Reg. 7053, effective April 1, 1998; peremptory amendment at 22 Ill. Reg. 7320, effective April 10, 1998; peremptory amendment at 22 Ill. Reg. 7692, effective April 20, 1998; emergency amendment at 22 Ill. Reg. 12607, effective July 2, 1998, for a maximum of 150 days; peremptory amendment at 22 Ill. Reg. 15489, effective August 7, 1998; amended at 22 Ill. Reg. 16158, effective August 31, 1998; peremptory amendment at 22 Ill. Reg. 19105, effective September 30, 1998; peremptory amendment at 22 Ill. Reg. 19943, effective October 27, 1998; peremptory amendment at 22 Ill. Reg. 20406, effective November 5, 1998; amended at 22 Ill. Reg. 20581, effective November 16, 1998; amended at 23 Ill. Reg. 664, effective January 1, 1999; peremptory amendment at 23 Ill. Reg. 730, effective December 29, 1998; emergency amendment at 23 Ill. Reg. 6533, effective May 10, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 7065, effective June 3, 1999; emergency amendment at 23 Ill. Reg. 8169, effective July 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 11020, effective August 26, 1999; amended at 23 Ill. Reg. 12429, effective September 21, 1999; peremptory amendment at 23 Ill. Reg. 12493, effective September 23, 1999; amended at 23 Ill. Reg. 12604, effective September 24, 1999; amended at 23 Ill. Reg. 13053, effective September 27, 1999; peremptory amendment at 23 Ill. Reg. 13132, effective October 1, 1999; amended at 23 Ill. Reg. 13570, effective October 26, 1999; amended at 23 Ill. Reg. 14020, effective November 15, 1999; amended at 24 Ill. Reg. 1025, effective January 7, 2000; peremptory amendment at 24 Ill. Reg. 3399, effective February 3, 2000; amended at 24 Ill. Reg. 3537, effective February 18, 2000; amended at 24 Ill. Reg. 6874, effective April 21, 2000; amended at 24 Ill. Reg. 7956, effective May 23, 2000; emergency amendment at 24 Ill. Reg. 10328, effective July 1, 2000, for a maximum of 150 days; emergency expired November 27, 2000; peremptory amendment at 24 Ill. Reg. 10767, effective July 3, 2000; amended at 24 Ill. Reg. 13384, effective August 17, 2000; peremptory amendment at 24 Ill. Reg. 14460, effective September 14, 2000;

peremptory amendment at 24 Ill. Reg. 16700, effective October 30, 2000; peremptory amendment at 24 Ill. Reg. 17600, effective November 16, 2000; amended at 24 Ill. Reg. 18058, effective December 4, 2000; peremptory amendment at 24 Ill. Reg. 18444, effective December 1, 2000; amended at 25 Ill. Reg. 811, effective January 4, 2001; amended at 25 Ill. Reg. 2389, effective January 22, 2001; amended at 25 Ill. Reg. 4552, effective March 14, 2001; peremptory amendment at 25 Ill. Reg. 5067, effective March 21, 2001; amended at 25 Ill. Reg. 5618, effective April 4, 2001; amended at 25 Ill. Reg. 6655, effective May 11, 2001; amended at 25 Ill. Reg. 7151, effective May 25, 2001; peremptory amendment at 25 Ill. Reg. 8009, effective June 14, 2001; emergency amendment at 25 Ill. Reg. 9336, effective July 3, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 9846, effective July 23, 2001; amended at 25 Ill. Reg. 12087, effective September 6, 2001; amended at 25 Ill. Reg. 15560, effective November 20, 2001; peremptory amendment at 25 Ill. Reg. 15671, effective November 15, 2001; amended at 25 Ill. Reg. 15974, effective November 28, 2001; emergency amendment at 26 Ill. Reg. 223, effective December 21, 2001, for a maximum of 150 days; amended at 26 Ill. Reg. 1143, effective January 17, 2002; amended at 26 Ill. Reg. 4127, effective March 5, 2002; peremptory amendment at 26 Ill. Reg. 4963, effective March 15, 2002; amended at 26 Ill. Reg. 6235, effective April 16, 2002; emergency amendment at 26 Ill. Reg. 7314, effective April 29, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 10425, effective July 1, 2002; emergency amendment at 26 Ill. Reg. 10952, effective July 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 13934, effective September 10, 2002; amended at 26 Ill. Reg. 14965, effective October 7, 2002; emergency amendment at 26 Ill. Reg. 16583, effective October 24, 2002, for a maximum of 150 days; emergency expired March 22, 2003; peremptory amendment at 26 Ill. Reg. 17280, effective November 18, 2002; amended at 26 Ill. Reg. 17374, effective November 25, 2002; amended at 26 Ill. Reg. 17987, effective December 9, 2002; amended at 27 Ill. Reg. 3261, effective February 11, 2003; expedited correction at 28 Ill. Reg. 6151, effective February 11, 2003; amended at 27 Ill. Reg. 8855, effective May 15, 2003; amended at 27 Ill. Reg. 9114, effective May 27, 2003; emergency amendment at 27 Ill. Reg. 10442, effective July 1, 2003, for a maximum of 150 days; emergency expired November 27, 2003; peremptory amendment at 27 Ill. Reg. 17433, effective November 7, 2003; amended at 27 Ill. Reg. 18560, effective December 1, 2003; peremptory amendment at 28 Ill. Reg. 1441, effective January 9, 2004; amended at 28 Ill. Reg. 2684, effective January 22, 2004; amended at 28 Ill. Reg. 6879, effective April 30, 2004; peremptory amendment at 28 Ill. Reg. 7323, effective May 10, 2004; amended at 28 Ill. Reg. 8842, effective June 11, 2004; peremptory amendment at 28 Ill. Reg. 9717, effective June 28, 2004; amended at 28 Ill. Reg. 12585, effective August 27, 2004; peremptory amendment at 28 Ill. Reg. 13011, effective September 8, 2004; peremptory amendment at 28 Ill. Reg. 13247, effective September 20, 2004; peremptory amendment at 28 Ill. Reg. 13656, effective September 27, 2004; emergency amendment at 28 Ill. Reg. 14174, effective October 15, 2004, for a maximum of 150 days; emergency expired March 13, 2005; peremptory amendment at 28 Ill. Reg. 14689, effective October 22, 2004; peremptory amendment at 28 Ill. Reg. 15336, effective

November 15, 2004; peremptory amendment at 28 Ill. Reg. 16513, effective December 9, 2004; peremptory amendment at 29 Ill. Reg. 726, effective December 15, 2004; amended at 29 Ill. Reg. 1166, effective January 7, 2005; peremptory amendment at 29 Ill. Reg. 1385, effective January 4, 2005; peremptory amendment at 29 Ill. Reg. 1559, effective January 11, 2005; peremptory amendment at 29 Ill. Reg. 2050, effective January 19, 2005; peremptory amendment at 29 Ill. Reg. 4125, effective February 23, 2005; amended at 29 Ill. Reg. 5375, effective April 4, 2005; peremptory amendment at 29 Ill. Reg. 6105, effective April 14, 2005; peremptory amendment at 29 Ill. Reg. 7217, effective May 6, 2005; peremptory amendment at 29 Ill. Reg. 7840, effective May 10, 2005; amended at 29 Ill. Reg. 8110, effective May 23, 2005; peremptory amendment at 29 Ill. Reg. 8214, effective May 23, 2005; peremptory amendment at 29 Ill. Reg. 8418, effective June 1, 2005; amended at 29 Ill. Reg. 9319, effective July 1, 2005; peremptory amendment at 29 Ill. Reg. 12076, effective July 15, 2005; peremptory amendment at 29 Ill. Reg. 13265, effective August 11, 2005; amended at 29 Ill. Reg. 13540, effective August 22, 2005; peremptory amendment at 29 Ill. Reg. 14098, effective September 2, 2005; amended at 29 Ill. Reg. 14166, effective September 9, 2005; amended at 29 Ill. Reg. 19551, effective November 21, 2005; emergency amendment at 29 Ill. Reg. 20554, effective December 2, 2005, for a maximum of 150 days; peremptory amendment at 29 Ill. Reg. 20693, effective December 12, 2005; peremptory amendment at 30 Ill. Reg. 623, effective December 28, 2005; peremptory amendment at 30 Ill. Reg. 1382, effective January 13, 2006; amended at 30 Ill. Reg. 2289, effective February 6, 2006; peremptory amendment at 30 Ill. Reg. 4157, effective February 22, 2006; peremptory amendment at 30 Ill. Reg. 5687, effective March 7, 2006; peremptory amendment at 30 Ill. Reg. 6409, effective March 30, 2006; amended at 30 Ill. Reg. 7857, effective April 17, 2006; amended at 30 Ill. Reg. 9438, effective May 15, 2006; peremptory amendment at 30 Ill. Reg. 10153, effective May 18, 2006; peremptory amendment at 30 Ill. Reg. 10508, effective June 1, 2006; amended at 30 Ill. Reg. 11336, effective July 1, 2006; emergency amendment at 30 Ill. Reg. 12340, effective July 1, 2006, for a maximum of 150 days; peremptory amendment at 30 Ill. Reg. 12418, effective July 1, 2006; amended at 30 Ill. Reg. 12761, effective July 17, 2006; peremptory amendment at 30 Ill. Reg. 13547, effective August 1, 2006; peremptory amendment at 30 Ill. Reg. 15059, effective September 5, 2006; peremptory amendment at 30 Ill. Reg. 16439, effective September 27, 2006; emergency amendment at 30 Ill. Reg. 16626, effective October 3, 2006, for a maximum of 150 days; peremptory amendment at 30 Ill. Reg. 17603, effective October 20, 2006; amended at 30 Ill. Reg. 18610, effective November 20, 2006; peremptory amendment at 30 Ill. Reg. 18823, effective November 21, 2006; peremptory amendment at 31 Ill. Reg. 230, effective December 20, 2006; emergency amendment at 31 Ill. Reg. 1483, effective January 1, 2007, for a maximum of 150 days; peremptory amendment at 31 Ill. Reg. 2485, effective January 17, 2007; peremptory amendment at 31 Ill. Reg. 4445, effective February 28, 2007; amended at 31 Ill. Reg. 4982, effective March 15, 2007; peremptory amendment at 31 Ill. Reg. 7338, effective May 3, 2007; amended at 31 Ill. Reg. 8901, effective July 1, 2007; emergency amendment at 31 Ill. Reg. 10056, effective July 1, 2007, for a maximum of 150 days;

peremptory amendment at 31 Ill. Reg. 10496, effective July 6, 2007; peremptory amendment at 31 Ill. Reg. 12335, effective August 9, 2007; emergency amendment at 31 Ill. Reg. 12608, effective August 16, 2007, for a maximum of 150 days; emergency amendment at 31 Ill. Reg. 13220, effective August 30, 2007, for a maximum of 150 days; peremptory amendment at 31 Ill. Reg. 13357, effective August 29, 2007; amended at 31 Ill. Reg. 13981, effective September 21, 2007; peremptory amendment at 31 Ill. Reg. 14331, effective October 1, 2007; amended at 31 Ill. Reg. 16094, effective November 20, 2007; amended at 31 Ill. Reg. 16792, effective December 13, 2007; peremptory amendment at 32 Ill. Reg. 598, effective December 27, 2007; amended at 32 Ill. Reg. 1082, effective January 11, 2008; peremptory amendment at 32 Ill. Reg. 3095, effective February 13, 2008; peremptory amendment at 32 Ill. Reg. 6097, effective March 25, 2008; peremptory amendment at 32 Ill. Reg. 7154, effective April 17, 2008; expedited correction at 32 Ill. Reg. 9747, effective April 17, 2008; peremptory amendment at 32 Ill. Reg. 9360, effective June 13, 2008; amended at 32 Ill. Reg. 9881, effective July 1, 2008; peremptory amendment at 32 Ill. Reg. 12065, effective July 9, 2008; peremptory amendment at 32 Ill. Reg. 13861, effective August 8, 2008; peremptory amendment at 32 Ill. Reg. 16591, effective September 24, 2008; peremptory amendment at 32 Ill. Reg. 16872, effective October 3, 2008; peremptory amendment at 32 Ill. Reg. 18324, effective November 14, 2008; peremptory amendment at 33 Ill. Reg. 98, effective December 19, 2008; amended at 33 Ill. Reg. 2148, effective January 26, 2009; peremptory amendment at 33 Ill. Reg. 3530, effective February 6, 2009; peremptory amendment at 33 Ill. Reg. 4202, effective February 26, 2009; peremptory amendment at 33 Ill. Reg. 5501, effective March 25, 2009; peremptory amendment at 33 Ill. Reg. 6354, effective April 15, 2009; peremptory amendment at 33 Ill. Reg. 6724, effective May 1, 2009; peremptory amendment at 33 Ill. Reg. 9138, effective June 12, 2009; emergency amendment at 33 Ill. Reg. 9432, effective July 1, 2009, for a maximum of 150 days; amended at 33 Ill. Reg. 10211, effective July 1, 2009; peremptory amendment at 33 Ill. Reg. 10823, effective July 2, 2009; peremptory amendment at 33 Ill. Reg. 11082, effective July 10, 2009; peremptory amendment at 33 Ill. Reg. 11698, effective July 23, 2009; peremptory amendment at 33 Ill. Reg. 11895, effective July 31, 2009; peremptory amendment at 33 Ill. Reg. 12872, effective September 3, 2009; amended at 33 Ill. Reg. 14944, effective October 26, 2009; peremptory amendment at 33 Ill. Reg. 16598, effective November 13, 2009; peremptory amendment at 34 Ill. Reg. 305, effective December 18, 2009; emergency amendment at 34 Ill. Reg. 957, effective January 1, 2010, for a maximum of 150 days; peremptory amendment at 34 Ill. Reg. 1425, effective January 5, 2010; peremptory amendment at 34 Ill. Reg. 3684, effective March 5, 2010; peremptory amendment at 34 Ill. Reg. 5776, effective April 2, 2010; peremptory amendment at 34 Ill. Reg. 6214, effective April 16, 2010; amended at 34 Ill. Reg. 6583, effective April 30, 2010; peremptory amendment at 34 Ill. Reg. 7528, effective May 14, 2010; amended at 34 Ill. Reg. 7645, effective May 24, 2010; peremptory amendment at 34 Ill. Reg. 7947, effective May 26, 2010; peremptory amendment at 34 Ill. Reg. 8633, effective June 18, 2010; amended at 34 Ill. Reg. 9759, effective July 1, 2010; peremptory amendment at 34 Ill. Reg. 10536, effective

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NOTICE OF PEREMPTORY AMENDMENTS

July 9, 2010; peremptory amendment at 34 Ill. Reg. 11864, effective July 30, 2010; emergency amendment at 34 Ill. Reg. 12240, effective August 9, 2010, for a maximum of 150 days; peremptory amendment at 34 Ill. Reg. 13204, effective August 26, 2010; peremptory amendment at 34 Ill. Reg. 13657, effective September 8, 2010; peremptory amendment at 34 Ill. Reg. 15897, effective September 30, 2010; peremptory amendment at 34 Ill. Reg. 18912, effective November 15, 2010; peremptory amendment at 34 Ill. Reg. 19582, effective December 3, 2010; amended at 35 Ill. Reg. 765, effective December 30, 2010; emergency amendment at 35 Ill. Reg. 1092, effective January 1, 2011, for a maximum of 150 days; peremptory amendment at 35 Ill. Reg. 2465, effective January 19, 2011; peremptory amendment at 35 Ill. Reg. 3577, effective February 10, 2011; emergency amendment at 35 Ill. Reg. 4412, effective February 23, 2011, for a maximum of 150 days; peremptory amendment at 35 Ill. Reg. 4803, effective March 11, 2011; emergency amendment at 35 Ill. Reg. 5633, effective March 15, 2011, for a maximum of 150 days; peremptory amendment at 35 Ill. Reg. 5677, effective March 18, 2011; amended at 35 Ill. Reg. 8419, effective May 23, 2011; amended at 35 Ill. Reg. 11245, effective June 28, 2011; emergency amendment at 35 Ill. Reg. 11657, effective July 1, 2011, for a maximum of 150 days; emergency expired November 27, 2011; peremptory amendment at 35 Ill. Reg. 12119, effective June 29, 2011; peremptory amendment at 35 Ill. Reg. 13966, effective July 29, 2011; peremptory amendment at 35 Ill. Reg. 15178, effective August 29, 2011; emergency amendment at 35 Ill. Reg. 15605, effective September 16, 2011, for a maximum of 150 days; peremptory amendment at 35 Ill. Reg. 15640, effective September 15, 2011; peremptory amendment at 35 Ill. Reg. 19707, effective November 23, 2011; amended at 35 Ill. Reg. 20144, effective December 6, 2011; amended at 36 Ill. Reg. 153, effective December 22, 2011; peremptory amendment at 36 Ill. Reg. 564, effective December 29, 2011; peremptory amendment at 36 Ill. Reg. 3957, effective February 24, 2012; peremptory amendment at 36 Ill. Reg. 4158, effective March 5, 2012; peremptory amendment at 36 Ill. Reg. 4437, effective March 9, 2012; amended at 36 Ill. Reg. 4707, effective March 19, 2012; amended at 36 Ill. Reg. 8460, effective May 24, 2012; peremptory amendment at 36 Ill. Reg. 10518, effective June 27, 2012; emergency amendment at 36 Ill. Reg. 11222, effective July 1, 2012, for a maximum of 150 days; peremptory amendment at 36 Ill. Reg. 13680, effective August 15, 2012; peremptory amendment at 36 Ill. Reg. 13973, effective August 22, 2012; peremptory amendment at 36 Ill. Reg. 15498, effective October 16, 2012; amended at 36 Ill. Reg. 16213, effective November 1, 2012; peremptory amendment at 36 Ill. Reg. 17138, effective November 20, 2012; peremptory amendment at 37 Ill. Reg. 3408, effective March 7, 2013; amended at 37 Ill. Reg. 4750, effective April 1, 2013; peremptory amendment at 37 Ill. Reg. 5925, effective April 18, 2013; peremptory amendment at 37 Ill. Reg. 9563, effective June 19, 2013; amended at 37 Ill. Reg. 9939, effective July 1, 2013; emergency amendment at 37 Ill. Reg. 11395, effective July 1, 2013, for a maximum of 150 days; peremptory amendment at 37 Ill. Reg. 11524, effective July 3, 2013; peremptory amendment at 37 Ill. Reg. 12588, effective July 19, 2013; peremptory amendment at 37 Ill. Reg. 13762, effective August 8, 2013; peremptory amendment at 37 Ill. Reg. 14219, effective August 23,

2013; amended at 37 Ill. Reg. 16925, effective October 8, 2013; peremptory amendment at 37 Ill. Reg. 17164, effective October 18, 2013; peremptory amendment at 37 Ill. Reg. 20410, effective December 6, 2013; peremptory amendment at 38 Ill. Reg. 2974, effective January 9, 2014; amended at 38 Ill. Reg. 5250, effective February 4, 2014; peremptory amendment at 38 Ill. Reg. 6725, effective March 6, 2014; emergency amendment at 38 Ill. Reg. 9080, effective April 11, 2014, for a maximum of 150 days; peremptory amendment at 38 Ill. Reg. 9136, effective April 11, 2014; amended at 38 Ill. Reg. 9207, effective April 21, 2014; peremptory amendment at 38 Ill. Reg. 13416, effective June 11, 2014; amended at 38 Ill. Reg. 14818, effective July 1, 2014; peremptory amendment at 38 Ill. Reg. 15739, effective July 2, 2014; peremptory amendment at 38 Ill. Reg. 17481, effective July 29, 2014; amended at 38 Ill. Reg. 17556, effective August 6, 2014; peremptory amendment at 38 Ill. Reg. 18791, effective August 26, 2014; peremptory amendment at 38 Ill. Reg. 19806, effective September 26, 2014; amended at 38 Ill. Reg. 20695, effective October 14, 2014; amended at 38 Ill. Reg. 24005, effective December 9, 2014; peremptory amendment at 39 Ill. Reg. 728, effective December 23, 2014; emergency amendment at 39 Ill. Reg. 708, effective December 26, 2014, for a maximum of 150 days; peremptory amendment at 39 Ill. Reg. 6964, effective April 29, 2015; amended at 39 Ill. Reg. 7878, effective May 22, 2015; amended at 39 Ill. Reg. 11220, effective July 28, 2015; peremptory amendment at 39 Ill. Reg. 12004, effective August 13, 2015; peremptory amendment at 39 Ill. Reg. 15807, effective November 25, 2015; amended at 40 Ill. Reg. 5893, effective March 28, 2016; peremptory amendment at 40 Ill. Reg. 8462, effective June 1, 2016; peremptory amendment at 40 Ill. Reg. 9658, effective June 30, 2016; amended at 40 Ill. Reg. 9356, effective July 1, 2016; peremptory amendment at 40 Ill. Reg. 11207, effective August 5, 2016; peremptory amendment at 41 Ill. Reg. 1210, effective January 19, 2017; amended at 41 Ill. Reg. 1695, effective January 25, 2017; peremptory amendment at 41 Ill. Reg. 2078, effective February 2, 2017; amended at 41 Ill. Reg. 3191, effective March 6, 2017; amended at 41 Ill. Reg. 4615, effective April 24, 2017; peremptory amendment at 41 Ill. Reg. 5822, effective May 15, 2017; peremptory amendment at 41 Ill. Reg. 6695, effective May 24, 2017; peremptory amendment at 41 Ill. Reg. 7227, effective June 9, 2017; amended at 41 Ill. Reg. 8314, effective July 1, 2017; peremptory amendment at 41 Ill. Reg. 10974, effective August 10, 2017; peremptory amendment at 41 Ill. Reg. 11447, effective August 25, 2017; peremptory amendment at 41 Ill. Reg. 12179, effective September 13, 2017.

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENTS

Section 310.APPENDIX A Negotiated Rates of Pay

Section 310.TABLE S VR-704 (Departments of Corrections, Financial and Professional Regulation, Juvenile Justice and State Police Supervisors, Laborers' − ISEA Local #2002)

Title	Title Code	Bargaining Unit	Pay Grade
Clinical Services Supervisor	08260	VR-704	24
Computer Evidence Recovery Specialist	08980	VR-704	25
Corrections Command Center Supervisor	09500	VR-704	25
Corrections Family Services Coordinator	09600	VR-704	25
Corrections Intelligence Program Unit Manager	09798	VR-704	24
Corrections Placement Resources Regional Supervisor	09839	VR-704	24
Corrections Program Administrator	09849	VR-704	24
Corrections Psychologist Administrator	09855	VR-704	25
Corrections Regional Mental Health Services Administrator	09857	VR-704	25
Corrections Training Program Supervisor	09860	VR-704	25
Corrections Unit Superintendent	09868	VR-704	25
Criminal Intelligence Analyst Supervisor	10169	VR-704	25
Developmental Psychological Services Administrator	12380	VR-704	25
Firearms Eligibility Administrator	15280	VR-704	25
Food Services Program Manager (Department of Corrections)	15800	VR-704	24
Forensic Science Administrator I	15911	VR-704	24
Forensic Science Administrator II	15912	VR-704	25
Forensic Science Administrator III	15913	VR-704	26
Internal Investigations Principal Evaluation Supervisor	21735	VR-704	24
Internal Investigations Supervisor	21740	VR-704	24
Juvenile Justice Chief of Security	21965	VR-704	24
Juvenile Justice Psychologist Administrator	21967	VR-704	25
Juvenile Justice Unit Superintendent	21985	VR-704	25
Law Enforcement Training Administrator	23260	VR-704	25
Licensing Investigations Supervisor	23577	VR-704	25
Narcotics and Currency Unit Supervisor	28750	VR-704	25

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENTS

Police Lieutenant	32977	VR-704	24
Public Service Administrator, Option 8L (at Department of Corrections)	37015	VR-704	24
Senior Public Service Administrator, Option 7 (research and development unit chief function at Department of State Police)	40070	VR-704	24
Senior Public Service Administrator, Option 7 (protected services unit operations commander and senior terrorism advisor functions at Department of State Police)	40070	VR-704	25
Senior Public Service Administrator, Option 7 (deputy laboratory director function at Department of State Police)	40070	VR-704	27
Sex Offender Registration Unit Supervisor	40700	VR-704	26
Shift Supervisor at Department of Corrections Correctional Work Camps – Hired before or on June 30, 2014	40800	VR-704	24
Shift Supervisor at Department of Corrections Correctional Work Camps – Hired on or after July 1, 2014	40800	VR-704	22
Shift Supervisor not at Department of Corrections Correctional Work Camps – Hired before August 1, 2010 and on or after April 1, 2013 prior to December 31, 2014; all effective December 31, 2014	40800	VR-704	24
Shift Supervisor not at Department of Corrections Correctional Work Camps – Hired on or after August 1, 2010 through and including March 31, 2013 prior to December 31, 2014	40800	VR-704	23
State Police Inspector	42100	VR-704	26

NOTES: Shift Differential Pay – All Shift Supervisors shall conduct roll on scheduled work days and shall be compensated for 15 minutes for the roll call period at the appropriate rate. Unless specified below, Shift Supervisors shall receive ½ hour compensation for shift preparation at the appropriate rate. Those Shift Supervisors at facilities with 300 or more security staff shall receive 45 minutes preparation at the appropriate rate.

Option Clarification – The positions allocated to the Public Service Administrator title that are assigned to the negotiated VR-704 pay grade have the Option 8L. The

positions allocated to the Senior Public Service Administrator title that are assigned to the negotiated VR-704 pay grade have the Option 7. See the definition of option in Section 310.50.

Longevity Pay – Effective July 1, 2010, the Step 8 rate shall be increased by $50 per month for those employees who attain 10 years of continuous service and have three or more years of creditable service on Step 8 in the same or higher pay grade on or before July 1, 2010. For those employees who attain 15 years continuous service and have three or more years of creditable service on Step 8 in the same or higher pay grade on or before July 1, 2010, the Step 8 rate shall be increased by $75 per month. Effective July 1, 2013, an employee on Step 8, having 10 years of continuous service and three years creditable service at Step 8, shall be paid an additional $75 per month. An employee with 15 years continuous service and three years of creditable service at Step 8 shall receive an additional $100 per month.

Shift Supervisor – Pay Grade VR-704-23 is not assigned to the Shift Supervisor title effective December 31, 2014.

Hired Before or On March 31, 2013

Effective December 31, 2014
Bargaining Unit: VR-704

Pay Grade	Pay Plan Code	STEPS 1	2	3	4	5	6	7	8
22	Q	5871	6058	6245	6573	6896	7219	7552	7870
22	S	5957	6146	6336	6656	6982	7304	7641	7960
24	B	6745	7103	7478	7834	8197	8566	9104	9467
24	Q	7051	7427	7812	8189	8564	8952	9515	9894
24	S	7139	7509	7898	8273	8653	9041	9599	9984
25	B	7190	7583	7982	8380	8779	9178	9768	10159
25	Q	7510	7923	8337	8761	9177	9592	10208	10617
25	S	7599	8012	8426	8844	9262	9676	10295	10708

26	B	7671	8092	8522	8953	9370	9790	10424	10840
26	Q	8042	8479	8928	9378	9816	10255	10920	11356
27	B	8190	8635	9092	9552	9999	10448	11123	11568

Hired On or After April 1, 2013

Effective July 1, 2014
Bargaining Unit: VR-704

Pay Grade	Pay Plan Code	STEPS 1	2	3	4	5	6	7	8
22	Q	5871	6058	6245	6573	6896	7219	7552	7870
22	S	5957	6146	6336	6656	6982	7304	7641	7960
24	B	6408	6748	7104	7442	7787	8266	8922	9467
24	Q	6698	7056	7421	7780	8136	8639	9325	9894
24	S	6782	7134	7503	7859	8220	8725	9407	9984
25	B	6831	7204	7583	7961	8340	8857	9573	10159
25	Q	7135	7527	7920	8323	8718	9256	10004	10617
25	S	7219	7611	8005	8402	8799	9337	10089	10708
26	B	7287	7687	8096	8505	8902	9447	10216	10840
26	Q	7640	8055	8482	8909	9325	9896	10702	11356
27	B	7781	8203	8637	9074	9499	10082	10901	11568

(Source: Amended by peremptory rulemaking at 41 Ill. Reg. 12179, effective September 13, 2017)

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENTS

Section 310.APPENDIX A Negotiated Rates of Pay

Section 310.TABLE W RC-062 (Technical Employees, AFSCME)

Title	Title Code	Bargaining Unit	Pay Grade
Accountant	00130	RC-062	14
Accountant Advanced	00133	RC-062	16
Accountant Supervisor	00135	RC-062	18
Accounting and Fiscal Administration Career Trainee	00140	RC-062	12
Activity Therapist	00157	RC-062	15
Activity Therapist Coordinator	00160	RC-062	17
Activity Therapist Supervisor	00163	RC-062	20
Actuarial Assistant	00187	RC-062	16
Actuarial Examiner	00195	RC-062	16
Actuarial Examiner Trainee	00196	RC-062	13
Actuarial Senior Examiner	00197	RC-062	19
Actuary I	00201	RC-062	20
Actuary II	00202	RC-062	24
Agricultural Market News Assistant	00804	RC-062	12
Agricultural Marketing Reporter	00807	RC-062	18
Agricultural Marketing Representative	00810	RC-062	18
Agriculture Land and Water Resource Specialist I	00831	RC-062	14
Agriculture Land and Water Resource Specialist II	00832	RC-062	17
Agriculture Land and Water Resource Specialist III	00833	RC-062	20
Aircraft Pilot I	00955	RC-062	19
Aircraft Pilot II	00956	RC-062	22
Aircraft Pilot II – Dual Rating	00957	RC-062	23
Appraisal Specialist I	01251	RC-062	14
Appraisal Specialist II	01252	RC-062	16
Appraisal Specialist III	01253	RC-062	18
Arts Council Associate	01523	RC-062	12
Arts Council Program Coordinator	01526	RC-062	18
Arts Council Program Representative	01527	RC-062	15
Assignment Coordinator	01530	RC-062	20
Bank Examiner I	04131	RC-062	16
Bank Examiner II	04132	RC-062	19
Bank Examiner III	04133	RC-062	22
Behavioral Analyst Associate	04355	RC-062	15

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Behavioral Analyst I	04351	RC-062	17
Behavioral Analyst II	04352	RC-062	19
Business Administrative Specialist	05810	RC-062	16
Business Manager	05815	RC-062	18
Buyer	05900	RC-062	18
Cancer Registrar I	05951	RC-062	14
Cancer Registrar II	05952	RC-062	16
Cancer Registrar III	05953	RC-062	20
Cancer Registrar Assistant Manager	05954	RC-062	22
Cancer Registrar Manager	05955	RC-062	24
Capital Development Board Account Technician	06515	RC-062	11
Capital Development Board Art in Architecture Technician	06533	RC-062	12
Capital Development Board Construction Support Analyst	06520	RC-062	11
Capital Development Board Project Technician	06530	RC-062	12
Chemist I	06941	RC-062	16
Chemist II	06942	RC-062	19
Chemist III	06943	RC-062	21
Child Protection Advanced Specialist	07161	RC-062	19
Child Protection Associate Specialist	07162	RC-062	16
Child Protection Specialist	07163	RC-062	18
Child Support Specialist I	07198	RC-062	16
Child Support Specialist II	07199	RC-062	17
Child Support Specialist Trainee	07200	RC-062	12
Child Welfare Associate Specialist	07216	RC-062	16
Child Welfare Staff Development Coordinator I	07201	RC-062	17
Child Welfare Staff Development Coordinator II	07202	RC-062	19
Child Welfare Staff Development Coordinator III	07203	RC-062	20
Child Welfare Staff Development Coordinator IV	07204	RC-062	22
Children and Family Service Intern – Option I	07241	RC-062	12
Children and Family Service Intern – Option II	07242	RC-062	15
Clinical Laboratory Technologist I	08220	RC-062	18
Clinical Laboratory Technologist II	08221	RC-062	19
Clinical Laboratory Technologist Trainee	08229	RC-062	14
Communications Systems Specialist	08860	RC-062	23
Community Management Specialist I	08891	RC-062	15
Community Management Specialist II	08892	RC-062	17
Community Management Specialist III	08893	RC-062	19
Community Planner I	08901	RC-062	15
Community Planner II	08902	RC-062	17

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Community Planner III	08903	RC-062	19
Conservation Education Representative	09300	RC-062	12
Conservation Grant Administrator I	09311	RC-062	18
Conservation Grant Administrator II	09312	RC-062	20
Conservation Grant Administrator III	09313	RC-062	22
Construction Program Assistant	09525	RC-062	12
Correctional Counselor I	09661	RC-062	15
Correctional Counselor II	09662	RC-062	17
Correctional Counselor III	09663	RC-062	19
Corrections Apprehension Specialist	09750	RC-062	19
Corrections Industries Marketing Representative	09803	RC-062	17
Corrections Law Library Assistant	09819	RC-062	14
Corrections Leisure Activities Specialist I	09811	RC-062	15
Corrections Leisure Activities Specialist II	09812	RC-062	17
Corrections Leisure Activities Specialist III	09813	RC-062	19
Corrections Parole Agent	09842	RC-062	17
Corrections Senior Parole Agent	09844	RC-062	19
Criminal Intelligence Analyst I	10161	RC-062	18
Criminal Intelligence Analyst II	10162	RC-062	20
Criminal Intelligence Analyst Specialist	10165	RC-062	22
Criminal Justice Specialist I	10231	RC-062	16
Criminal Justice Specialist II	10232	RC-062	20
Criminal Justice Specialist Trainee	10236	RC-062	13
Curator of the Lincoln Collection	10750	RC-062	16
Data Processing Supervisor I	11435	RC-062	11
Data Processing Supervisor II	11436	RC-062	14
Data Processing Supervisor III	11437	RC-062	18
Day Care Licensing Representative I	11471	RC-062	16
Developmental Disabilities Council Program Planner I	12361	RC-062	12
Developmental Disabilities Council Program Planner II	12362	RC-062	16
Developmental Disabilities Council Program Planner III	12363	RC-062	18
Dietary Manager I	12501	RC-062	16
Dietary Manager II	12502	RC-062	18
Dietitian	12510	RC-062	15
Disability Appeals Officer	12530	RC-062	22
Disability Claims Adjudicator I	12537	RC-062	16
Disability Claims Adjudicator II	12538	RC-062	18
Disability Claims Adjudicator Trainee	12539	RC-062	13
Disability Claims Analyst	12540	RC-062	21

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NOTICE OF PEREMPTORY AMENDMENTS

Disability Claims Specialist	12558	RC-062	19
Disaster Services Planner	12585	RC-062	19
Document Examiner	12640	RC-062	22
Economic Development Representative I	12931	RC-062	17
Economic Development Representative II	12932	RC-062	19
Educational Diagnostician	12965	RC-062	12
Employment Security Field Office Supervisor	13600	RC-062	20
Employment Security Manpower Representative I	13621	RC-062	12
Employment Security Manpower Representative II	13622	RC-062	14
Employment Security Program Representative	13650	RC-062	14
Employment Security Program Representative – Intermittent	13651	RC-062	14H
Employment Security Service Representative	13667	RC-062	16
Employment Security Service Representative (Intermittent)	13667	RC-062	16H
Employment Security Specialist I	13671	RC-062	14
Employment Security Specialist II	13672	RC-062	16
Employment Security Specialist III	13673	RC-062	19
Employment Security Tax Auditor I	13681	RC-062	17
Employment Security Tax Auditor II	13682	RC-062	19
Energy and Natural Resources Specialist I	13711	RC-062	15
Energy and Natural Resources Specialist II	13712	RC-062	17
Energy and Natural Resources Specialist III	13713	RC-062	19
Energy and Natural Resources Specialist Trainee	13715	RC-062	12
Engineering Technician IV (Department of Public Health)	13734	RC-062	18
Environmental Health Specialist I	13768	RC-062	14
Environmental Health Specialist II	13769	RC-062	16
Environmental Health Specialist III	13770	RC-062	18
Environmental Protection Associate	13785	RC-062	12
Environmental Protection Specialist I	13821	RC-062	14
Environmental Protection Specialist II	13822	RC-062	16
Environmental Protection Specialist III	13823	RC-062	18
Environmental Protection Specialist IV	13824	RC-062	22
Equal Pay Specialist	13837	RC-062	17
Executive I	13851	RC-062	18
Executive II	13852	RC-062	20
Financial Institutions Examiner I	14971	RC-062	16
Financial Institutions Examiner II	14972	RC-062	19
Financial Institutions Examiner III	14973	RC-062	22
Financial Institutions Examiner Trainee	14978	RC-062	13
Firearms Eligibility Analyst I	15371	RC-062	13

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Firearms Eligibility Analyst II	15372	RC-062	16
Firearms Eligibility Analyst Trainee	15375	RC-062	11
Fire Protection Specialist I	15351	RC-062	16
Flight Safety Coordinator	15640	RC-062	22
Forensic Scientist I	15891	RC-062	18
Forensic Scientist II	15892	RC-062	20
Forensic Scientist III	15893	RC-062	22
Forensic Scientist Trainee	15897	RC-062	15
Gaming Licensing Analyst	17171	RC-062	13
Gaming Operations Supervisor	17181	RC-062	26
Gaming Senior Special Agent	17191	RC-062	23
Gaming Shift Supervisor	17187	RC-062	24
Gaming Special Agent	17192	RC-062	19
Gaming Special Agent Trainee	17195	RC-062	14
Gaming Unit Supervisor	17201	RC-062	26
Guardianship Representative	17710	RC-062	17
Habilitation Program Coordinator	17960	RC-062	17
Handicapped Services Representative I	17981	RC-062	11
Health Facilities Surveyor I	18011	RC-062	16
Health Facilities Surveyor II	18012	RC-062	19
Health Facilities Surveyor III	18013	RC-062	20
Health Information Administrator	18041	RC-062	15
Health Services Investigator I – Opt. A	18181	RC-062	19
Health Services Investigator I – Opt. B	18182	RC-062	20
Health Services Investigator II – Opt. A	18185	RC-062	22
Health Services Investigator II – Opt. B	18186	RC-062	22
Health Services Investigator II – Opt. C	18187	RC-062	25
Health Services Investigator II – Opt. D	18188	RC-062	25
Historical Documents Conservator I	18981	RC-062	13
Historical Exhibits Designer	18985	RC-062	15
Historical Research Editor II	19002	RC-062	14
Human Relations Representative	19670	RC-062	16
Human Resources Representative	19692	RC-062	17
Human Resources Specialist	19693	RC-062	20
Human Rights Investigator I	19774	RC-062	16
Human Rights Investigator II	19775	RC-062	18
Human Rights Investigator III	19776	RC-062	19
Human Rights Mediator	19771	RC-062	17
Human Rights Specialist I	19778	RC-062	14

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Human Rights Specialist II	19779	RC-062	16
Human Rights Specialist III	19780	RC-062	18
Human Services Casework Manager	19788	RC-062	20
Human Services Caseworker	19785	RC-062	16
Human Services Grants Coordinator I	19791	RC-062	14
Human Services Grants Coordinator II	19792	RC-062	17
Human Services Grants Coordinator III	19793	RC-062	20
Human Services Grants Coordinator Trainee	19796	RC-062	12
Human Services Sign Language Interpreter	19810	RC-062	16
Iconographer	19880	RC-062	12
Industrial and Community Development Representative I	21051	RC-062	17
Industrial and Community Development Representative II	21052	RC-062	19
Industrial Services Consultant I	21121	RC-062	14
Industrial Services Consultant II	21122	RC-062	16
Industrial Services Consultant Trainee	21125	RC-062	11
Industrial Services Hygienist	21127	RC-062	19
Industrial Services Hygienist Technician	21130	RC-062	16
Industrial Services Hygienist Trainee	21133	RC-062	12
Information Technology/Communication Systems Specialist I	21216	RC-062	19
Information Technology/Communication Systems Specialist II	21217	RC-062	24
Instrument Designer	21500	RC-062	18
Insurance Analyst III	21563	RC-062	14
Insurance Analyst IV	21564	RC-062	16
Insurance Company Claims Examiner II	21602	RC-062	19
Insurance Company Field Staff Examiner	21608	RC-062	16
Insurance Company Financial Examiner Trainee	21610	RC-062	13
Insurance Performance Examiner I	21671	RC-062	14
Insurance Performance Examiner II	21672	RC-062	17
Insurance Performance Examiner III	21673	RC-062	20
Intermittent Unemployment Insurance Representative	21689	RC-062	12H
Internal Auditor I	21721	RC-062	17
Internal Security Investigator I, not Department of Corrections	21731	RC-062	18
Internal Security Investigator II, not Department of Corrections	21732	RC-062	21
International Marketing Representative I, Department of Agriculture	21761	RC-062	14
Juvenile Justice Youth and Family Specialist, Option 1	21991	RC-062	18
Juvenile Justice Youth and Family Specialist, Option 2	21992	RC-062	20
KidCare Supervisor	22003	RC-062	20
Labor Conciliator	22750	RC-062	20

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Laboratory Equipment Specialist	22990	RC-062	18
Laboratory Quality Specialist I	23021	RC-062	19
Laboratory Quality Specialist II	23022	RC-062	21
Laboratory Research Specialist I	23027	RC-062	19
Laboratory Research Specialist II	23028	RC-062	21
Land Acquisition Agent I	23091	RC-062	15
Land Acquisition Agent II	23092	RC-062	18
Land Acquisition Agent III	23093	RC-062	21
Land Reclamation Specialist I	23131	RC-062	14
Land Reclamation Specialist II	23132	RC-062	17
Liability Claims Adjuster I	23371	RC-062	14
Liability Claims Adjuster II	23372	RC-062	18
Library Associate	23430	RC-062	12
Life Sciences Career Trainee	23600	RC-062	12
Liquor Control Special Agent II	23752	RC-062	15
Local Historical Services Representative	24000	RC-062	17
Local Housing Advisor I	24031	RC-062	14
Local Housing Advisor II	24032	RC-062	16
Local Housing Advisor III	24033	RC-062	18
Local Revenue and Fiscal Advisor I	24101	RC-062	15
Local Revenue and Fiscal Advisor II	24102	RC-062	17
Local Revenue and Fiscal Advisor III	24103	RC-062	19
Lottery Regional Coordinator	24504	RC-062	19
Lottery Sales Representative	24515	RC-062	16
Management Operations Analyst I	25541	RC-062	18
Management Operations Analyst II	25542	RC-062	20
Manpower Planner I	25591	RC-062	14
Manpower Planner II	25592	RC-062	17
Manpower Planner III	25593	RC-062	20
Manpower Planner Trainee	25597	RC-062	12
Medical Assistance Consultant I	26501	RC-062	13
Medical Assistance Consultant II	26502	RC-062	16
Medical Assistance Consultant III	26503	RC-062	19
Mental Health Administrator I	26811	RC-062	18
Mental Health Administrator II	26812	RC-062	20
Mental Health Administrator Trainee	26817	RC-062	16
Mental Health Recovery Support Specialist I	26921	RC-062	17
Mental Health Recovery Support Specialist II	26922	RC-062	18
Mental Health Specialist I	26924	RC-062	12

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Mental Health Specialist II	26925	RC-062	14
Mental Health Specialist III	26926	RC-062	16
Mental Health Specialist Trainee	26928	RC-062	11
Meteorologist	27120	RC-062	18
Methods and Procedures Advisor I	27131	RC-062	14
Methods and Procedures Advisor II	27132	RC-062	16
Methods and Procedures Advisor III	27133	RC-062	20
Methods and Procedures Career Associate I	27135	RC-062	11
Methods and Procedures Career Associate II	27136	RC-062	12
Methods and Procedures Career Associate Trainee	27137	RC-062	09
Metrologist Associate	27146	RC-062	15
Microbiologist I	27151	RC-062	16
Microbiologist II	27152	RC-062	19
Museum Theater Systems Technician (Historic Preservation Agency)	28700	RC-062	15
Natural Resources Advanced Specialist	28833	RC-062	20
Natural Resources Coordinator	28831	RC-062	15
Natural Resources Specialist	28832	RC-062	18
Oral Health Consultant	30317	RC-062	18
Paralegal Assistant	30860	RC-062	14
Pension and Death Benefits Technician I	30961	RC-062	12
Pension and Death Benefits Technician II	30962	RC-062	19
Plumbing Consultant (Department of Public Health)	32910	RC-062	22
Police Training Specialist	32990	RC-062	17
Private Secretary I	34201	RC-062	16
Program Integrity Auditor I	34631	RC-062	16
Program Integrity Auditor II	34632	RC-062	19
Program Integrity Auditor Trainee	34635	RC-062	12
Property Consultant	34900	RC-062	15
Public Aid Investigator	35870	RC-062	19
Public Aid Investigator Trainee	35874	RC-062	14
Public Aid Lead Casework Specialist	35880	RC-062	17
Public Aid Program Quality Analyst	35890	RC-062	19
Public Aid Quality Control Reviewer	35892	RC-062	17
Public Aid Quality Control Supervisor	35900	RC-062	19
Public Aid Staff Development Specialist I	36071	RC-062	15
Public Aid Staff Development Specialist II	36072	RC-062	17
Public Health Educator Associate	36434	RC-062	14
Public Health Program Specialist I	36611	RC-062	14

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Public Health Program Specialist II	36612	RC-062	16
Public Health Program Specialist III	36613	RC-062	19
Public Health Program Specialist Trainee	36615	RC-062	12
Public Information Coordinator	36750	RC-062	18
Public Information Officer I	37001	RC-062	12
Public Information Officer II	37002	RC-062	14
Public Information Officer III	37003	RC-062	19
Public Information Officer IV	37004	RC-062	21
Public Safety Drug Screening Specialist	37006	RC-062	17
Public Safety Inspector	37007	RC-062	16
Public Safety Inspector Trainee	37010	RC-062	10
Public Service Administrator, Option 8Z	37015	RC-062	19
Public Service Administrator, Options 2, 6, 7 Gaming Board and Departments of Healthcare and Family Services and Revenue, 8C, 9A and 9B	37015	RC-062	24
Public Service Administrator, Options 8B and 8Y	37015	RC-062	23
Railroad Safety Specialist I	37601	RC-062	19
Railroad Safety Specialist II	37602	RC-062	21
Railroad Safety Specialist III	37603	RC-062	23
Railroad Safety Specialist IV	37604	RC-062	25
Real Estate Investigator	37730	RC-062	19
Real Estate Professions Examiner	37760	RC-062	22
Recreation Worker I	38001	RC-062	12
Recreation Worker II	38002	RC-062	14
Rehabilitation Counselor	38145	RC-062	17
Rehabilitation Counselor Senior	38158	RC-062	19
Rehabilitation Counselor Trainee	38159	RC-062	15
Rehabilitation Services Advisor I	38176	RC-062	20
Rehabilitation Workshop Supervisor I	38194	RC-062	12
Rehabilitation Workshop Supervisor II	38195	RC-062	14
Rehabilitation Workshop Supervisor III	38196	RC-062	16
Reimbursement Officer I	38199	RC-062	14
Reimbursement Officer II	38200	RC-062	16
Research Economist I	38207	RC-062	18
Research Scientist I	38231	RC-062	13
Research Scientist II	38232	RC-062	16
Research Scientist III	38233	RC-062	20
Residential Services Supervisor	38280	RC-062	15
Resource Planner I	38281	RC-062	17

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Resource Planner II	38282	RC-062	19
Resource Planner III	38283	RC-062	22
Retirement Benefits Representative (State Retirement Systems)	38313	RC-062	12
Retirement Benefits Representative Supervisor (State Retirement Systems)	38314	RC-062	14
Retirement Benefits Representative Trainee (State Retirement Systems)	38316	RC-062	10
Retirement System Disability Specialist	38310	RC-062	19
Revenue Audit Supervisor	38369	RC-062	25
Revenue Audit Supervisor (states other than IL and not assigned to RC-062-29 – Hired prior to April 1, 2013)	38369	RC-062	27
Revenue Audit Supervisor (See Note – Hired prior to April 1, 2013)	38369	RC-062	29
Revenue Auditor I	38371	RC-062	16
Revenue Auditor I (states other than IL and not assigned to RC-062-21 – Hired prior to April 1, 2013)	38371	RC-062	19
Revenue Auditor I (See Note – Hired prior to April 1, 2013)	38371	RC-062	21
Revenue Auditor II	38372	RC-062	19
Revenue Auditor II (states other than IL and not assigned to RC-062-24 – Hired prior to April 1, 2013)	38372	RC-062	22
Revenue Auditor II (See Note – Hired prior to April 1, 2013)	38372	RC-062	24
Revenue Auditor III	38373	RC-062	22
Revenue Auditor III (states other than IL and not assigned to RC-062-26 – Hired prior to April 1, 2013)	38373	RC-062	24
Revenue Auditor III (See Note – Hired prior to April 1, 2013)	38373	RC-062	26
Revenue Auditor Trainee	38375	RC-062	12
Revenue Auditor Trainee (states other than IL and not assigned to RC-062-15 – Hired prior to April 1, 2013)	38375	RC-062	13
Revenue Auditor Trainee (See Note – Hired prior to April 1, 2013)	38375	RC-062	15
Revenue Collection Officer I	38401	RC-062	15
Revenue Collection Officer II	38402	RC-062	17
Revenue Collection Officer III	38403	RC-062	19
Revenue Collection Officer Trainee	38405	RC-062	12
Revenue Computer Audit Specialist	38425	RC-062	23
Revenue Computer Audit Specialist (states other than IL and not assigned to RC-062-27 – Hired prior to April 1, 2013)	38425	RC-062	25

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Revenue Computer Audit Specialist (See Note – Hired prior to April 1, 2013)	38425	RC-062	27
Revenue Senior Special Agent	38557	RC-062	23
Revenue Special Agent	38558	RC-062	19
Revenue Special Agent Trainee	38565	RC-062	14
Revenue Tax Specialist I	38571	RC-062	12
Revenue Tax Specialist II (IL)	38572	RC-062	14
Revenue Tax Specialist II (states other than IL, CA or NJ)	38572	RC-062	17
Revenue Tax Specialist II (CA or NJ)	38572	RC-062	19
Revenue Tax Specialist III	38573	RC-062	17
Revenue Tax Specialist Trainee	38575	RC-062	10
Senior Public Service Administrator, Option 7 Gaming Board and Department of Revenue	40070	RC-062	26
Sex Offender Therapist I	40531	RC-062	17
Sex Offender Therapist II	40532	RC-062	19
Site Assistant Superintendent I	41071	RC-062	15
Site Assistant Superintendent II	41072	RC-062	17
Site Interpretive Coordinator	41093	RC-062	13
Site Services Specialist I	41117	RC-062	15
Site Services Specialist II	41118	RC-062	17
Social Service Consultant I	41301	RC-062	18
Social Service Consultant II	41302	RC-062	19
Social Service Program Planner I	41311	RC-062	15
Social Service Program Planner II	41312	RC-062	17
Social Service Program Planner III	41313	RC-062	20
Social Service Program Planner IV	41314	RC-062	22
Social Services Career Trainee	41320	RC-062	12
Social Worker I	41411	RC-062	17
Staff Development Specialist I	41771	RC-062	18
Staff Development Technician I	41781	RC-062	12
Staff Development Technician II	41782	RC-062	15
State Mine Inspector	42230	RC-062	19
State Mine Inspector-at-Large	42240	RC-062	21
State Police Field Specialist I	42001	RC-062	18
State Police Field Specialist II	42002	RC-062	20
Statistical Research Specialist I	42741	RC-062	12
Statistical Research Specialist II	42742	RC-062	14
Statistical Research Specialist III	42743	RC-062	17

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Storage Tank Safety Specialist	43005	RC-062	18
Telecommunications Specialist	45295	RC-062	15
Telecommunications Systems Analyst	45308	RC-062	17
Telecommunications Systems Technician I	45312	RC-062	10
Telecommunications Systems Technician II	45313	RC-062	13
Terrorism Research Specialist I	45371	RC-062	18
Terrorism Research Specialist II	45372	RC-062	20
Terrorism Research Specialist III	45373	RC-062	22
Terrorism Research Specialist Trainee	45375	RC-062	14
Unemployment Insurance Adjudicator I	47001	RC-062	11
Unemployment Insurance Adjudicator II	47002	RC-062	13
Unemployment Insurance Adjudicator III	47003	RC-062	15
Unemployment Insurance Revenue Analyst I	47081	RC-062	15
Unemployment Insurance Revenue Analyst II	47082	RC-062	17
Unemployment Insurance Revenue Specialist	47087	RC-062	13
Unemployment Insurance Special Agent	47096	RC-062	18
Vehicle Emission Compliance Supervisor, Environmental Protection Agency	47583	RC-062	15
Veterans Educational Specialist I	47681	RC-062	15
Veterans Educational Specialist II	47682	RC-062	17
Veterans Educational Specialist III	47683	RC-062	21
Veterans Employment Representative I	47701	RC-062	14
Veterans Employment Representative II	47702	RC-062	16
Volunteer Services Coordinator I	48481	RC-062	13
Volunteer Services Coordinator II	48482	RC-062	16
Volunteer Services Coordinator III	48483	RC-062	18
Wage Claims Specialist	48770	RC-062	09
Weatherization Specialist I	49101	RC-062	14
Weatherization Specialist II	49102	RC-062	17
Weatherization Specialist III	49103	RC-062	20
Weatherization Specialist Trainee	49105	RC-062	12
Workers Compensation Insurance Compliance Investigator	49640	RC-062	20

NOTES: Shift Differential Pay – Employees shall be paid a shift differential of $0.80 per hour in addition to their base salary rate for all hours worked if their normal work schedule for that day provides that they are scheduled to work and they work ½ or more of the work hours before 7 a.m. or after 3 p.m. The payment shall be for all paid time. Incumbents who currently receive a percentage shift differential providing more than the cents per hour indicated in this Note based

on the base rate of pay prior to the effective date shall have that percentage converted to the cents per hour equivalent rounded to the nearest cent and shall continue to receive the higher cents per hour rate. This provision shall not apply to employees who, because of "flex-time" scheduling made at their request, are scheduled and work hours that would otherwise qualify them for premium pay under this provision.

Option Clarification – The positions allocated to the Public Service Administrator title that are assigned to a negotiated RC-062 pay grade have the following Options: 2; 6; 7; 8B; 8C; 8Y; 8Z; 9A; and 9B. The positions allocated to the Senior Public Service Administrator title that are assigned to a negotiated RC-062 pay grade have the Option 7. See the definition of option in Section 310.50.

Longevity Pay – Effective January 1, 2002, the Step 8 rate shall be increased by $25 per month for those employees who attain 10 years of continuous service and have three or more years of creditable service on Step 7 in the same or higher pay grade on or before January 1, 2002. For those employees who attain 15 years of continuous service and have three or more years of creditable service on Step 7 in the same or higher pay grade on or before January 1, 2002, the Step 8 rate shall be increased by $50 per month. For employees not eligible for longevity pay on or before January 1, 2002, the Step 8 rate shall be increased by $25 per month for those employees who attain 10 years of continuous service and have three or more years of creditable service on Step 8 in the same or higher pay grade. For those employees who attain 15 years of continuous service and have three or more years of creditable service on Step 8 in the same or higher pay grade, the Step 8 rate shall be increased by $50 per month. Effective July 1, 2010, the Step 8 rate shall be increased by $50 per month for those employees who attain 10 years of continuous service and have three or more years of creditable service on Step 8 in the same or higher pay grade on or before July 1, 2010. For those employees who attain 15 years of continuous service and have three or more years of creditable service on Step 8 in the same or higher pay grade on or before July 1, 2010, the Step 8 rate shall be increased by $75 per month. Effective July 1, 2013, the Step 8 rate shall be increased by $25 per month to $75 a month for those employees who attain 10 years of continuous service and have three or more years of creditable service on Step 8 in the same or higher pay grade on or before July 1, 2013. For those employees who attain 15 years of continuous service and have three or more years of creditable service on Step 8 in the same or higher pay grade on or before July 1, 2013, the Step 8 rate shall be increased by $25 per month to $100 a month.

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Employees whose salaries are red-circled above the maximum Step rate continue to receive all applicable general increases and any other adjustments (except the longevity pay) provided for in the Agreement. For these employees, the longevity pay shall be limited to the amount that would increase the employee's salary to the amount that is equal to that of an employee on the maximum Step rate with the same number of years of continuous and creditable service. Employees receiving the longevity pay shall continue to receive the longevity pay as long as they remain in the same or successor classification as a result of a reclassification or reevaluation. Employees who are eligible for the increase provided for longevity pay on or before January 1, 2002, shall continue to receive longevity pay after being placed on Step 8 while they remain in the same or lower pay grade.

For the Revenue Tax Specialist II position classification title only – The pay grade assigned to the employee is based on the location of the position and the residence held by the employee. In the same position classification, the employee holding a position and residence outside the boundaries of the State of Illinois is assigned to a different pay grade than the pay grade assigned to the employee holding a position within the boundaries of the State of Illinois. The pay grade assigned to the employee holding a position located within the boundaries of the State of Illinois is the pay grade with the (IL) indication next to the position classification. The pay grade assigned to the employee holding the position located outside the boundaries of the State of Illinois is determined by the location of the employee's residence or position location (e.g., IL, CA or NJ or a state other than IL, CA or NJ). If the employee's residence moves to another state while the employee is in the same position located outside the boundaries of the State of Illinois, or moves into another position located outside the boundaries of the State of Illinois in the same position classification, the base salary may change depending on the location of the employee's new residence. In all cases, change in base salary shall be on a step for step basis (e.g., if the original base salary was on Step 5 in one pay grade, the new base salary will also be on Step 5 of the newly appropriate pay grade).

For the Revenue Audit Supervisor, Revenue Auditor I, II and III, Revenue Auditor Trainee, and Revenue Computer Audit Specialist position classification titles only – Effective July 1, 2010, State employees appointed to positions allocated to the Revenue Audit Supervisor, Revenue Auditor I, II and III, Revenue Auditor Trainee, and Revenue Computer Audit Specialist classifications shall be assigned to the pay grades:

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Revenue Audit Supervisor, RC-062-29
Revenue Auditor I, RC-062-21
Revenue Auditor II, RC-062-24
Revenue Auditor III, RC-062-26
Revenue Auditor Trainee, RC-062-15
Revenue Computer Audit Specialist, RC-062-27

if the employee lives in California, 50% or more of the employee's work is within a 200 mile radius of the Paramus NJ Illinois Department of Revenue office, or 50% or more of the employee's work is within the District of Columbia. This shall not apply to employees who are hired after April 1, 2013.

Effective July 1, 2014
Bargaining Unit: RC-062

Pay Grade	Pay Plan Code	STEPS 1c	1b	1a	1	2	3	4	5	6	7	8
9	B	3027	3127	3227	3327	3430	3539	3649	3766	3877	4061	4223
9	Q	3151	3254	3358	3462	3568	3683	3796	3920	4037	4230	4401
9	S	3215	3321	3427	3533	3641	3759	3874	3999	4116	4311	4484
10	B	3124	3227	3330	3433	3559	3664	3785	3905	4025	4231	4402
10	Q	3250	3358	3465	3572	3702	3814	3944	4067	4195	4418	4594
10	S	3318	3427	3536	3645	3776	3891	4020	4144	4280	4500	4679
11	B	3240	3347	3453	3560	3681	3800	3938	4067	4194	4416	4592
11	Q	3371	3481	3592	3704	3836	3961	4102	4240	4373	4610	4793
11	S	3436	3550	3663	3777	3910	4036	4181	4319	4456	4692	4879
12	B	3371	3481	3592	3704	3840	3965	4114	4248	4405	4641	4826
12	Q	3508	3625	3740	3856	3998	4130	4289	4435	4595	4846	5041
12	S	3577	3694	3813	3931	4074	4208	4371	4520	4681	4933	5132

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12H	B	20.74	21.42	22.10	22.79	23.63	24.40	25.32	26.14	27.11	28.56	29.70
12H	Q	21.59	22.31	23.02	23.73	24.60	25.42	26.39	27.29	28.28	29.82	31.02
12H	S	22.01	22.73	23.46	24.19	25.07	25.90	26.90	27.82	28.81	30.36	31.58
13	B	3498	3612	3728	3843	3984	4136	4290	4446	4614	4871	5063
13	Q	3642	3762	3883	4002	4148	4312	4481	4645	4816	5090	5294
13	S	3711	3834	3956	4078	4229	4396	4567	4727	4902	5178	5385
14	B	3647	3767	3887	4008	4159	4321	4511	4675	4852	5137	5342
14	Q	3803	3928	4053	4178	4336	4515	4709	4886	5073	5367	5580
14	S	3872	4000	4127	4255	4422	4594	4793	4973	5159	5453	5668
14H	B	22.44	23.18	23.92	24.66	25.59	26.59	27.76	28.77	29.86	31.61	32.87
14H	Q	23.40	24.17	24.94	25.71	26.68	27.78	28.98	30.07	31.22	33.03	34.34
14H	S	23.83	24.62	25.40	26.18	27.21	28.27	29.50	30.60	31.75	33.56	34.88
15	B	3792	3917	4042	4167	4351	4530	4706	4898	5082	5388	5601
15	Q	3957	4087	4218	4348	4538	4727	4918	5121	5310	5626	5854
15	S	4029	4163	4295	4428	4623	4810	5004	5208	5396	5715	5943
16	B	3969	4099	4230	4362	4556	4758	4954	5162	5368	5685	5913
16	Q	4141	4278	4415	4550	4758	4975	5182	5395	5610	5944	6184
16	S	4221	4361	4498	4638	4843	5060	5269	5480	5699	6027	6267
16H	B	24.42	25.22	26.03	26.84	28.04	29.28	30.49	31.77	33.03	34.98	36.39
16H	Q	25.48	26.33	27.17	28.00	29.28	30.62	31.89	33.20	34.52	36.58	38.06
16H	S	25.98	26.84	27.68	28.54	29.80	31.14	32.42	33.72	35.07	37.09	38.57
17	B	4159	4295	4432	4570	4780	4999	5212	5423	5643	5979	6218
17	Q	4338	4481	4625	4767	4996	5226	5444	5665	5898	6248	6500
17	S	4417	4562	4708	4853	5085	5314	5534	5753	5982	6339	6591
18	B	4377	4522	4665	4809	5041	5274	5516	5740	5971	6326	6581
18	Q	4571	4722	4873	5024	5271	5515	5766	6001	6240	6615	6878
18	S	4646	4800	4953	5106	5355	5601	5853	6088	6330	6697	6967

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19	B	4612	4764	4916	5067	5325	5577	5834	6083	6336	6722	6990
19	J	4612	4764	4916	5067	5325	5577	5834	6083	6336	6722	6990
19	Q	4821	4980	5138	5297	5568	5825	6103	6357	6624	7023	7304
19	S	4901	5062	5224	5387	5656	5915	6189	6445	6711	7109	7393
20	B	4873	5033	5194	5354	5625	5885	6167	6435	6701	7108	7392
20	Q	5092	5259	5427	5596	5877	6155	6447	6724	7003	7432	7729
20	S	5172	5344	5514	5684	5965	6240	6532	6810	7090	7514	7815
21	B	5146	5315	5485	5655	5946	6233	6523	6820	7105	7548	7849
21	U	5146	5315	5485	5655	5946	6233	6523	6820	7105	7548	7849
21	Q	5377	5555	5732	5910	6214	6513	6817	7129	7428	7889	8204
21	S	5457	5637	5817	5997	6299	6597	6906	7215	7511	7975	8293
22	B	5441	5619	5799	5978	6290	6595	6908	7228	7529	7998	8318
22	Q	5683	5871	6058	6245	6573	6896	7219	7552	7870	8358	8689
22	S	5766	5957	6146	6336	6656	6982	7304	7641	7960	8445	8783
23	B	5770	5961	6151	6341	6677	7020	7352	7690	8023	8531	8873
23	Q	6033	6233	6432	6630	6980	7337	7682	8040	8387	8912	9268
23	S	6111	6313	6514	6716	7065	7424	7769	8124	8474	9000	9357
24	B	6141	6344	6546	6749	7107	7482	7838	8202	8570	9109	9472
24	J	6141	6344	6546	6749	7107	7482	7838	8202	8570	9109	9472
24	Q	6419	6630	6843	7054	7431	7816	8194	8567	8956	9519	9900
24	S	6499	6714	6928	7142	7513	7901	8277	8657	9044	9604	9988
25	B	6547	6763	6979	7194	7586	7988	8385	8783	9184	9773	10163
25	J	6547	6763	6979	7194	7586	7988	8385	8783	9184	9773	10163
25	Q	6838	7065	7289	7514	7927	8342	8766	9183	9598	10212	10622
25	S	6919	7147	7376	7603	8014	8430	8849	9266	9681	10299	10714
26	B	6984	7214	7445	7676	8097	8527	8957	9375	9796	10427	10844
26	U	6984	7214	7445	7676	8097	8527	8957	9375	9796	10427	10844

26	Q	7323	7563	7805	8047	8482	8931	9382	9822	10259	10924	11361
26	S	7390	7634	7876	8120	8563	9018	9473	9914	10359	11032	11473
27	B	7456	7702	7949	8195	8641	9096	9556	10005	10455	11129	11576
27	J	7456	7702	7949	8195	8641	9096	9556	10005	10455	11129	11576
27	U	7456	7702	7949	8195	8641	9096	9556	10005	10455	11129	11576
27	Q	7794	8051	8308	8565	9031	9506	9992	10459	10928	11634	12100
28	B	7823	8081	8340	8598	9063	9544	10029	10499	10969	11679	12148
29	U	8211	8481	8752	9022	9513	10016	10523	11017	11511	12256	12745

(Source: Amended by peremptory rulemaking at 41 Ill. Reg. 12179, effective September 13, 2017)

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received during the period of September 12, 2017 through September 18, 2017. These rulemakings are scheduled for review at the Committee's October 17, 2017 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.

Second Notice Expires	Agency and Rule	Start of First Notice	JCAR Meeting
10/29/17	State Board of Education, Standards for School Support Personnel Endorsements (23 Ill. Adm. Code 23)	6/30/17 41 Ill. Reg. 7467	10/17/17
10/29/17	State Board of Education, Agriculture Education Program (23 Ill. Adm. Code 75)	6/30/17 41 Ill. Reg. 7481	10/17/17
10/29/17	Secretary of State, Cancellation, Revocation or Suspension of Licenses or Permits (92 Ill. Adm. Code 1040)	7/7/17 41 Ill. Reg. 7809	10/17/17
10/29/17	State Board of Education, Public Schools Evaluation, Recognition and Supervision (23 Ill. Adm. Code 1)	7/14/17 41 Ill. Reg. 8308	10/17/17
10/29/17	State Board of Education, Educator Licensure (23 Ill. Adm. Code 25)	7/14/17 41 Ill. Reg. 8310	10/17/17
10/29/17	State Board of Education, Programs for the Preparation of Principals in Illinois (23 Ill. Adm. Code 30)	7/14/17 41 Ill. Reg. 8312	10/17/17

ILLINOIS ADMINISTRATIVE CODE
Issue Index - With Effective Dates

Rules acted upon in Volume 41, Issue 39 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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