# 2018

# ILLINOIS REGISTER

Rules of
Governmental Agencies

Volume 42, Issue 51

December 21, 2018

Pages 23,311 - 24,322

Index Department
Administrative Code Division
111 E. Monroe St.
Springfield, IL 62756
217-782-7017

Printed by authority of the State of Illinois. December --- 70

PUBLISHED BY JESSE WHITE • SECRETARY OF STATE

## TABLE OF CONTENTS

**December 21, 2018 Volume 42, Issue 51**

**PROPOSED RULES**
EMPLOYMENT SECURITY, DEPARTMENT OF
General Application
56 Ill. Adm. Code 2712.....23311
Interstate and Federal Cooperation
56 Ill. Adm. Code 2714.....23318
Claims, Adjudication, Appeals and Hearings
56 Ill. Adm. Code 2720.....23324
Administrative Hearings and Appeals
56 Ill. Adm. Code 2725.....23370
Wages
56 Ill. Adm. Code 2730.....23379
Employment
56 Ill. Adm. Code 2732.....23386
Notices, Records, Reports
56 Ill. Adm. Code 2760.....23408
Payment of Unemployment Contributions, Interest and Penalties
56 Ill. Adm. Code 2765.....23419
Determination of Unemployment Contributions
56 Ill. Adm. Code 2770.....23443
Recovery of Benefits
56 Ill. Adm. Code 2835.....23452
Claimant's Reason for Separation from Work
56 Ill. Adm. Code 2840.....23457
Claimant's Availability for Work, Ability to Work and Active Search for Work
56 Ill. Adm. Code 2865.....23462
Alien Status
56 Ill. Adm. Code 2905.....23491
Academic Personnel
56 Ill. Adm. Code 2915.....23496
Disqualifying Income and Reduced Benefits
56 Ill. Adm. Code 2920.....23504
General Provisions
56 Ill. Adm. Code 2960.....23525
HUMAN SERVICES, DEPARTMENT OF
Office of the Inspector General Investigations of Alleged Abuse or Neglect in State-Operated Facilities and Community Agencies
59 Ill. Adm. Code 50.....23535
NATURAL RESOURCES, DEPARTMENT OF
The Illinois Oil and Gas Act

62 Ill. Adm. Code 240.....23546
General Definitions
62 Ill. Adm. Code 1701.....23587
Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction
62 Ill. Adm. Code 1703.....23620
Requirements for Permits and Permit Processing
62 Ill. Adm. Code 1773.....23624
Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights
62 Ill. Adm. Code 1774.....23636
Permit Applications - Minimum Requirements for Legal, Financial, Compliance, and Related Information
62 Ill. Adm. Code 1778.....23643
RACING BOARD, ILLINOIS
Definitions
11 Ill. Adm. Code 210.....23656
Illinois Race Track Rules for Fire Safety
11 Ill. Adm. Code 403.....23677
Race Track Surfaces (Repealer)
11 Ill. Adm. Code 411.....23703
Prohibited Conduct (Repealer)
11 Ill. Adm. Code 423.....23707
Horseman's Bookkeeping System Licensees (Repealer)
11 Ill. Adm. Code 450.....23711
**ADOPTED RULES**
COMMERCE AND ECONOMIC OPPORTUNITY, DEPARTMENT OF
Metropolitan Pier and Exposition Authority or Rosemont Incentive Fund Grant Program (Repealer)
14 Ill. Adm. Code 511.....23717
Illinois Network Opportunity Program (Repealer)
14 Ill. Adm. Code 530.....23719
Employee Ownership Assistance Program (Repealer)
14 Ill. Adm. Code 1230.....23721
Uniform Fiscal and Administrative Standards for the Job Training Partnership Act (Repealer)
56 Ill. Adm. Code 2630.....23723
POLLUTION CONTROL BOARD
Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
35 Ill. Adm. Code 725.....23725
Standards for Owners and Operators of Hazardous Waste Facilities Operating under a RCRA Standardized Permit
35 Ill. Adm. Code 727.....24055
Underground Injection Control Operating Requirements
35 Ill. Adm. Code 730.....24145

PUBLIC HEALTH, DEPARTMENT OF
Food Service Sanitation Code (Repealer)
77 Ill. Adm. Code 750.....24242
Food Code
77 Ill. Adm. Code 750.....24245
STATE UNIVERSITIES CIVIL SERVICE SYSTEM
State Universities Civil Service System
80 Ill. Adm. Code 250.....24268
**JCAR REVIEW OF EMERGENCY RULE**
**STATEMENT OF OBJECTION AND SUSPENSION**
FINANCIAL AND PROFESSIONAL REGULATION, DEPARTMENT OF
68 Ill. Adm. Code 1290……..24277
**SECOND NOTICES RECEIVED**
JOINT COMMITTEE ON ADMINISTRATIVE RULES
Second Notices Received….....24279
**REGULATORY AGENDA**
BOARD OF HIGHER EDUCATION, ILLINOIS
Illinois Financial Assistance Act for Nonpublic Institutions of Higher Learning
23 Ill. Adm. Code 1000.....24282
PROPERTY TAX APPEAL BOARD
Practice and Procedure for Appeals Before the Property Tax Appeal Board
86 Ill. Adm. Code 1910.....24291
**EXECUTIVE ORDERS AND PROCLAMATIONS**
PROCLAMATIONS
Constitutional Offices Proclamation
2018-235…….....24293
GA and US Reps Proclamation
2018-236…….....24294
Regional Superintendent of Schools
2018-237…….....24305
Judicial Vacancies Proclamation
2018-238…….....24308
Judicial Retention Proclamation
2018-239…….....24318

**Editor's Note:** The Secretary of State Index Department is providing this opportunity to remind you that the next filing period for your Regulatory Agenda will occur from October 15, 2018 until Wednesday, January 2, 2019.

## 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 2018

| Issue# | Rules Due Date | Date of Issue |
|---|---|---|
| 1 | December 26, 2017 | January 5, 2018 |
| 2 | January 2, 2018 | January 12, 2018 |
| 3 | January 8, 2018 | January 19, 2018 |
| 4 | January 16, 2018 | January 26, 2018 |
| 5 | January 22, 2018 | February 2, 2018 |
| 6 | January 29, 2018 | February 9, 2018 |
| 7 | February 5, 2018 | February 16, 2018 |
| 8 | February 13, 2018 | February 23, 2018 |
| 9 | February 20, 2018 | March 2, 2018 |
| 10 | February 26, 2018 | March 9, 2018 |
| 11 | March 5, 2018 | March 16, 2018 |
| 12 | March 12, 2018 | March 23, 2018 |
| 13 | March 19, 2018 | March 30, 2018 |
| 14 | March 26, 2018 | April 6, 2018 |
| 15 | April 2, 2018 | April 13, 2018 |
| 16 | April 9, 2018 | April 20, 2018 |
| 17 | April 16, 2018 | April 27, 2018 |
| 18 | April 23, 2018 | May 4, 2018 |

| | | |
|---|---|---|
| 19 | April 30, 2018 | May 11, 2018 |
| 20 | May 7, 2018 | May 18, 2018 |
| 21 | May 14, 2018 | May 25, 2018 |
| 22 | May 21, 2018 | June 1, 2018 |
| 23 | May 29, 2018 | June 8, 2018 |
| 24 | June 4, 2018 | June 15, 2018 |
| 25 | June 11, 2018 | June 22, 2018 |
| 26 | June 18, 2018 | June 29, 2018 |
| 27 | June 25, 2018 | July 6, 2018 |
| 28 | July 2, 2018 | July 13, 2018 |
| 29 | July 9, 2018 | July 20, 2018 |
| 30 | July 16, 2018 | July 27, 2018 |
| 31 | July 23, 2018 | August 3, 2018 |
| 32 | July 30, 2018 | August 10, 2018 |
| 33 | August 6, 2018 | August 17, 2018 |
| 34 | August 13, 2018 | August 24, 2018 |
| 35 | August 20, 2018 | August 31, 2018 |
| 36 | August 27, 2018 | September 7, 2018 |
| 37 | September 4, 2018 | September 14, 2018 |
| 38 | September 10, 2018 | September 21, 2018 |
| 39 | September 17, 2018 | September 28, 2018 |
| 40 | September 24, 2018 | October 5, 2018 |
| 41 | October 1, 2018 | October 12, 2018 |
| 42 | October 9, 2018 | October 19, 2018 |
| 43 | October 15, 2018 | October 26, 2018 |
| 44 | October 22, 2018 | November 2, 2018 |
| 45 | October 29, 2018 | November 9, 2018 |
| 46 | November 5, 2018 | November 16, 2018 |
| 47 | November 13, 2018 | November 26, 2018 |
| 48 | November 19, 2018 | November 30, 2018 |
| 49 | November 26, 2018 | December 7, 2018 |
| 50 | December 3, 2018 | December 14, 2018 |
| 51 | December 10, 2018 | December 21, 2018 |
| 52 | December 17, 2018 | December 28, 2018 |

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: General Application

2) Code Citation: 56 Ill. Adm. Code 2712

3)

| Section Numbers: | Proposed Actions: |
|---|---|
| 2712.1 | Amendment |
| 2712.100 | Repealed |
| 2712.105 | Amendment |
| 2712.203 | Amendment |

4) Statutory Authority: Implementing and authorized by Sections 802, 1700, 1701 and 1900 of the Unemployment Insurance Act [820 ILCS 405/802, 1700, 1701, 1900].

5) A Complete Description of the Subjects and Issues Involved: Removes obsolete reference to IDES Board of Review Reporter. Clarifies that all claimants are eligible for legal services, not just those whose claims were denied. Updates obsolete references.

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

7) Will this 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? No

11) Statement of Statewide Policy Objective: These proposed amendments neither create nor expand a State mandate.

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit written comments to:

Thomas D. Chan, Acting General Counsel
Illinois Department of Employment Security
33 South State Street – Room 933
Chicago IL 60603

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

312/793-2338
fax: 312/793-5645
e-mail: Thomas.D.Chan@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].

The proposed rulemaking may have an impact on small businesses, small municipalities and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80 and 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as a small business, small municipality or not-for-profit corporation as part of any written comments submitted to the Department.

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: This rulemaking has no direct effect on small businesses, small municipalities and not-for-profit corporations.

B) Reporting, bookkeeping or other procedures required for compliance: No reporting or bookkeeping is required for compliance.

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 2 most recent agendas because: the revisions were not anticipated at the time.

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

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER IV: DEPARTMENT OF EMPLOYMENT SECURITY
SUBCHAPTER a: GENERAL PROVISIONS

PART 2712
GENERAL APPLICATION

SUBPART A: FACSIMILE MACHINES

Section
2712.1 Use of~~Of~~ Facsimile Machines

SUBPART B: DIGESTS AND REPORTERS

Section
2712.100 IDES Board of Review Reporter (Repealed)
2712.105 Digest of Adjudication Precedents

SUBPART C: LEGAL SERVICES PROGRAM

Section
2712.201 Definitions
2712.202 Agreement To Hold the Department Of Employment Security And Its Employees Harmless
2712.203 Eligibility Requirements For Legal Services For Individuals
2712.205 Eligibility Requirements For Legal Services For Small Employers
2712.207 Attorney Eligibility for Reimbursement
2712.210 Maximum Fees Allowed

AUTHORITY: Implementing and authorized by Sections 802, 1700, 1701 and 1900 of the Unemployment Insurance Act [820 ILCS 405/802, 1700, 1701, 1900].

SOURCE: Adopted at 10 Ill. Reg. 16679, effective September 23, 1986; amended at 13 Ill. Reg. 795, effective January 4, 1989; amended at 17 Ill. Reg. 3194, effective March 2, 1993; amended at 21 Ill. Reg. 9472, effective July 2, 1997; amended at 33 Ill. Reg. 9617, effective July 1, 2009; amended at 43 Ill. Reg. _____, effective _____.

SUBPART A: FACSIMILE MACHINES

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

**Section 2712.1 Use of~~Of~~ Facsimile Machines**

Notwithstanding~~As of January 1, 1998, and notwithstanding~~ any other provisions of this Chapter to the contrary, any document that ~~which~~ is a response to or protest of a statement or notice that has been issued by the Department or the Director to which there are protest or appeal rights may be filed by facsimile transmission sent to the designated Department address. The date imprinted on the document by the Department's telefax machine shall have the same effect as the U.S. Postal Service's postmark. The individual or entity filing a document by telefax transmission bears the risk that the transmission will not be successful. The date imprinted on the transmission confirmation document by the sender's telefax machine may be presented as evidence of successful transmission and filing of the document.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

SUBPART B: DIGESTS AND REPORTERS

**Section 2712.100 IDES Board of Review Reporter (Repealed)**

~~a) The Department of Employment Security (IDES) publishes a compilation of all Board of Review decisions in a complete reporter as the IDES Board of Review Reporter (the Reporter).~~

~~b) Microfilm copies of the Reporter and its included cases, or copies on CD-ROM if so requested by the libraries, shall be available for public review at:~~

~~1) The Illinois Document Depository Libraries in: Carbondale; Champaign/Urbana; Charleston; Chicago; Edwardsville; Normal; Peoria; Rockford; Rock Island; and Springfield.~~

~~2) Public Libraries in: Geneva; Galesburg; Joliet; Kankakee; Mt. Vernon; Ottawa; and Waukegan.~~

(Source: Repealed at 43 Ill. Reg. _____, effective _____)

**Section 2712.105 Digest of Adjudication Precedents**

a) The Department of Employment Security publishes as an abridged reporter a compilation of selected Board of Review decisions, court orders and published appellate court decisions in the Digest of Adjudication Precedents (the Digest). It

is available as part of a larger publication known as the UI Handbook.

b) Availability of Handbook
~~1)Copies of the UI Handbook and its updates shall be available at a price equal to the Agency's publication cost by writing to:~~

~~Illinois Department of Employment Security~~
~~Office of Legal Counsel~~
~~33 South State Street – 9th Floor~~
~~Chicago, Illinois 60603~~

~~2)~~Copies of the UI Handbook shall be available free of charge at the Department's website, www.ides.state.il.us.

c) Any individual desiring to submit a decision or order for inclusion in the Digest may do so by submitting a copy of that~~such~~ decision or order and his or her rationale for the~~such~~ inclusion to: ~~the address provided in subsection (b).~~

Illinois Department of Employment Security
Office of Legal Counsel
33 South State Street – 9th Floor
Chicago, Illinois 60603

d) To be considered for inclusion in the Digest, a decision must fulfill any one of the following criteria:

1) The decision resolves an issue not already included in the Digest;

2) The decision modifies, creates an exception to, overrules, reverses, extends or changes a ruling previously included in the Digest;

3) The decision presents a fact pattern likely to repeat itself in future cases; or~~,~~

4) The decision provides a statement of applicable facts and states a general principle of law that~~which~~ is readily applicable to the daily work of an Adjudicator, Referee or the Board of Review.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

SUBPART C: LEGAL SERVICES PROGRAM

**Section 2712.203 Eligibility Requirements For Legal Services For Individuals**

a) If funding is available for the service, individuals whose claims are in dispute before~~who are held to be ineligible with respect to a week of unemployment insurance benefits by~~ either a claims adjudicator or a referee can qualify for legal services under this Part to pursue their appeals to the referee, the Director, the Director's representatives or the Board of Review if they can present a valid claim or defense.

EXAMPLE~~Example~~: An individual quits his job in Chicago to relocate in California where he can pursue his dream of becoming an internationally renowned surfer. The claims adjudicator holds that he quit his job without good cause attributable to his employer. The individual admits that he quit his job solely to pursue his surfing goal but wishes to appeal the claims adjudicator's determination because he needs his unemployment benefits to finance his ambitions. This individual would not qualify for legal services under this Part because he has presented no legal justification under existing precedent for his appeal.

b) Whether a claim or defense is valid will be determined by the attorney assigned to the case by the legal service provider. If the individual disagrees with the judgment of the attorney assigned to the matter by the legal service provider, the individual may pursue the internal review process established by the legal service provider. If the internal review process of the legal service provider still results in a decision that the individual does not have a " valid" claim or if the individual decides to forego the legal service provider's internal review process, he or she can hire a private attorney who may then be eligible for reimbursement pursuant to Section 2712.207(b).

c) Application for legal services under this Part must be made at least three working days prior to the date of a scheduled hearing before the referee. Failure to make application for services prior to three working days before the hearing shall disqualify the individual from receiving these~~such~~ services if the attorney assigned by the legal service provider finds that the reason that the individual failed to apply for the~~such~~ services prior to the~~such~~ three day period would not constitute good cause for a continuance under 56 Ill. Adm. Code 2720.240.

1) EXAMPLE~~Example~~ 1: On the date of his hearing, the individual appears at the office of the legal services provider and requests an attorney to represent him at his hearing later in the day. If the attorney assigned to his case finds that the reason that this individual failed to seek legal assistance prior to this time would constitute good cause for a continuance under 56 Ill. Adm. Code 2720.240, then, if the claimant meets the other criteria for eligibility for this program, the attorney will agree to represent this individual.

2) EXAMPLE~~Example~~ 2: On the date of her hearing before the referee, the individual appears at the office of the legal services provider and requests an attorney to appear on her behalf at the scheduled hearing that day. If the individual's reason for failing to seek legal assistance prior to this time would not constitute good cause for a continuance under 56 Ill. Adm. Code 2720.240 in the judgment of the assigned attorney, then the attorney will deny the individual the requested representation at the referee hearing. However, if the individual is otherwise eligible for the program, the fact that she was denied assistance under this subsection at the hearing before the referee would not preclude the individual from seeking assistance in preparing her appeal to the Board of Review if the referee rules against her after her hearing.

d) Even if individuals do not qualify for legal services under this Section because they do not have a valid claim or defense, they shall be entitled to a maximum of one-half hour of legal advice regarding their unemployment insurance claim from the attorney assigned to the matter by the legal services provider.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Interstate and Federal Cooperation

2) Code Citation: 56 Ill. Adm. Code 2714

3)

| Section Numbers: | Proposed Actions: |
|---|---|
| 2714.205 | Amendment |
| 2714.305 | Amendment |
| 2714.315 | Amendment |

4) Statutory Authority: Implementing and authorized by Sections 210, 229, 409, 605, 700, 1700, 1701, 1706, 2700, 2701, and 2702 of the Unemployment Insurance Act [820 ILCS 405/210, 229, 409, 605, 700, 1700, 1701, 1706, 2700, 2701, and 2702].

5) A Complete Description of the Subjects and Issues Involved: Makes technical updates to the names of documents and cross references to other citations.

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

7) Will this 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? No

11) Statement of Statewide Policy Objective: These proposed amendments neither create nor expand a State mandate.

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit written comments to:

Thomas D. Chan, Acting General Counsel
Illinois Department of Employment Security
33 South State Street – Room 933
Chicago IL 60603

312/793-2338

fax: 312/793-5645
e-mail: Thomas.D.Chan@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].

The proposed rulemaking may have an impact on small businesses, small municipalities and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80 and 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as a small business, small municipality or not-for-profit corporation as part of any written comments submitted to the Department.

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: This rulemaking has no direct effect on small businesses, small municipalities and not-for-profit corporations.

B) Reporting, bookkeeping or other procedures required for compliance: No reporting or bookkeeping is required for compliance.

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 2 most recent agendas because: the revisions were not anticipated at the time.

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

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER IV: DEPARTMENT OF EMPLOYMENT SECURITY
SUBCHAPTER a: GENERAL PROVISIONS

PART 2714
INTERSTATE AND FEDERAL COOPERATION

SUBPART A: GENERAL PROVISIONS

Section
2714.10 Definitions

SUBPART B: INTERSTATE BENEFIT PAYMENTS

Section
2714.200 Application
2714.205 Registration For Work
2714.210 Benefit Rights Of Interstate Claimants
2714.215 Claim for Benefits
2714.220 Determination of Claims
2714.225 Appeal Procedures

SUBPART C: EMPLOYER ELECTIONS TO COVER MULTI-STATE WORKERS

Section
2714.300 Application
2714.305 Submission And Approval Of Coverage Elections Under The Interstate Reciprocal Coverage Arrangement
2714.310 Effective Periods Of Election
2714.315 Reports And Notices By The Electing Units

AUTHORITY: Implementing and authorized by Sections 210, 229, 409, 605, 700, 1700, 1701, 1706, 2700, 2701, and 2702 of the Unemployment Insurance Act [820 ILCS 405/210, 229, 409, 605, 700, 1700, 1701, 1706, 2700, 2701, and 2702].

SOURCE: Illinois Department of Labor, Bureau of Employment Security, Regulation 20, filed as amended September 30, 1969, effective October 10, 1969; Regulation 29, filed as amended June 23, 1977, effective July 3, 1977; rules repealed by operation of law October 1, 1984; new

rules adopted at 9 Ill. Reg. 17785, effective October 31, 1985; amended at 35 Ill. Reg. 6108, effective March 25, 2011; amended at 43 Ill. Reg. _____, effective _____.

SUBPART B: INTERSTATE BENEFIT PAYMENTS

**Section 2714.205 Registration For Work**

a) Each interstate claimant shall be registered for work through any public employment office in the agent State when and as required by the law, regulations, rules or procedures of the agent State.

b) Each agent State shall duly report to the liable State whether each interstate claimant meets the registration for work requirements of that agent State, as determined in accordance with the law of the~~such~~ agent State. Illinois, as an agent State, shall determine the registration for work requirements in accordance with the provisions of 56 Ill. Adm. Code 2865.100(a)(1)~~2720.125(a)(1)~~.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

SUBPART C: EMPLOYER ELECTIONS TO COVER MULTI-STATE WORKERS

**Section 2714.305 Submission And Approval Of Coverage Elections Under The Interstate Reciprocal Coverage Arrangement**

a) Any employing unit may file an election, on a form provided by the Department~~Form RC-1~~, to cover under the law of a single participating jurisdiction all of the services performed for the employing unit by any individual who customarily works for the~~such~~ employing unit in more than one participating jurisdiction. That~~Such~~ election may be filed, with respect to an individual, with Illinois as the elected jurisdiction if:

1) The employer is otherwise liable in Illinois; and~~,~~

2) One or more of the following conditions exist:

A) *Any part of the individual's services are performed in Illinois; or~~,~~*

B) *The individual has his* or her *residence in Illinois; or~~,~~*

C) *The employing unit maintains a place of business* [820 ILCS 405/2700A]~~(Ill. Rev. Stat. 1983, ch. 48, par. 760(A))~~ in Illinois and the individual does not reside in or perform services in another jurisdiction where the employer is liable; and~~,~~

3) The form referenced in subsection (a) is~~Forms RC-1 and RC-2A are~~ filed as provided in this Subpart; and~~,~~

4) All other interested jurisdictions have approved of the~~such~~ election as provided in this Subpart; and~~,~~

5) All affected workers have approved of the~~such~~ election as provided in Section 2714.315.

b) The agency of the elected jurisdiction (thus selected and determined) shall initially approve or disapprove the election (Illinois will approve if the requirements of Section 2714.305(a) are met):

1) If the agency approves the election, it shall forward a copy of that~~such~~ approval to the agency of each participating jurisdiction specified on the election, under whose unemployment insurance~~compensation~~ law the individual or individuals in question might, in the absence of the election, be covered. Each interested agency shall approve or disapprove the election as promptly as practicable and shall notify the agency of the elected jurisdiction accordingly.

2) If its law so requires, an interested agency may, before taking such action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in, the election. The~~Such~~ acquiescence is required in Illinois pursuant to Section 2714.315(a).

c) If the agency of the elected jurisdiction, or the agency of any interested jurisdiction, disapproves the election, the disapproving agency shall notify the elected jurisdiction and the electing employing unit of its action and of its reasons therefor.

d) An election shall take effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies. An election thus approved shall

take effect, as to any interested agency, only if it has been approved by such agency.

e) If an election is approved only in part, or is disapproved by some agencies, the electing employing unit may withdraw its election within 10 days after being notified of that~~such~~ action.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2714.315 Reports And Notices By The Electing Units**

a) The electing unit shall promptly notify each individual affected by its approved election~~, on Form RC-2A supplied by the elected jurisdiction,~~ and shall furnish the elected agency a copy of the form provided by the Department~~RC-2A~~ signed by each such affected individual.

b) Whenever an individual covered by an election under this Subpart is separated from his or her employment, the electing unit shall again inform the individual, immediately, as to the jurisdiction under whose unemployment compensation law his or her services have been covered. If, at the time of separation, the individual is not located in the elected jurisdiction, the electing unit shall notify that individual~~him~~ as to the procedure for filing interstate benefit claims.

c) The electing unit shall immediately report to the elected jurisdiction any change that~~which~~ occurs in the conditions of employment pertinent to its election, such as when an individual's services for the employer cease to be performed in more than one participating jurisdiction or when a change in work assigned to an individual requires him or her to perform services in a new participating jurisdiction outside Illinois.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Claims, Adjudication, Appeals and Hearings

2) Code Citation: 56 Ill. Adm. Code 2720

3)

| Section Numbers: | Proposed Actions: |
|---|---|
| 2720.1 | Amendment |
| 2720.5 | Amendment |
| 2720.7 | Amendment |
| 2720.10 | Amendment |
| 2720.11 | Amendment |
| 2720.20 | Amendment |
| 2720.25 | Amendment |
| 2720.30 | Amendment |
| 2720.101 | Amendment |
| 2720.105 | Amendment |
| 2720.106 | Amendment |
| 2720.107 | Amendment |
| 2720.108 | Amendment |
| 2720.112 | Amendment |
| 2720.115 | Amendment |
| 2720.120 | Amendment |
| 2720.132 | Amendment |
| 2720.135 | Amendment |
| 2720.140 | Amendment |
| 2720.145 | Amendment |
| 2720.150 | Amendment |
| 2720.155 | Amendment |
| 2720.160 | Amendment |
| 2720.200 | Amendment |
| 2720.205 | Amendment |
| 2720.227 | Amendment |
| 2720.245 | Amendment |
| 2720.250 | Amendment |
| 2720.255 | Amendment |
| 2720.270 | Amendment |
| 2720.277 | Amendment |
| 2720.300 | Amendment |
| 2720.315 | Amendment |
| 2720.335 | Amendment |

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

4) Statutory Authority: Implementing and authorized by Sections 239, 409, 500, 604, 700, 701, 702, 703, 705, 706, 800, 801, 803, 804, 805, 1000, 1001, 1002, 1004, 1200, 1700, 1701, 2300, 2301, 2302 and 2304 of the Unemployment Insurance Act [820 ILCS 405/239, 409, 500, 604, 700, 701, 702, 703, 705, 706, 800, 801, 803, 804, 805, 1000, 1001, 1002, 1004, 1200, 1700, 1701, 2300, 2301, 2302 and 2304].

5) A Complete Description of the Subjects and Issues Involved: Provides for the delivery of notices, decisions and orders by electronic means, if agreed to by the parties. Makes updates to reflect online claim filing procedures. Explains that certain hearsay statements may be considered by a referee. Clarifies the process for submitting written argument or additional evidence to the Board of Review. Updates obsolete references.

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? Yes

| Section Numbers: | Proposed Actions: | *Illinois Register* Citation: |
|---|---|---|
| 2720.35 | New Section | 42 Ill. Reg. 16965; September 28, 2018 |
| 2720.100 | Amendment | 42 Ill. Reg. 16965; September 28, 2018 |
| 2720.130 | Amendment | 42 Ill. Reg. 16965; September 28, 2018 |

11) Statement of Statewide Policy Objective: These proposed amendments neither create nor expand a State mandate.

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit written comments to:

Thomas D. Chan, Acting General Counsel
Illinois Department of Employment Security
33 South State Street – Room 933
Chicago IL 60603

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

312/793-2338
fax: 312/793-5645
e-mail: Thomas.D.Chan@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].

The proposed rulemaking may have an impact on small businesses, small municipalities and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80 and 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as a small business, small municipality or not-for-profit corporation as part of any written comments submitted to the Department.

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: This rulemaking has no direct effect on small businesses, small municipalities and not-for-profit corporations.

B) Reporting, bookkeeping or other procedures required for compliance: No reporting or bookkeeping is required for compliance.

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 2 most recent agendas because: the revisions were not anticipated at the time.

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

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER IV: DEPARTMENT OF EMPLOYMENT SECURITY
SUBCHAPTER a: GENERAL PROVISIONS

PART 2720
CLAIMS, ADJUDICATION, APPEALS AND HEARINGS

SUBPART A: GENERAL PROVISIONS

Section
2720.1 Definitions
2720.3 "Week" In Relation To "Benefit Year"
2720.5 Service of~~Of~~ Notices, Decisions, Orders
2720.7 Application for~~For~~ Electronic Data Transmission
2720.10 Computation of~~Of~~ Time
2720.11 Methods of~~Of~~ Payment
2720.15 Disqualification Of Adjudicator, Referee, Or Board Of Review
2720.20 Attorney Representation of~~Of~~ Claimants
2720.25 Form of Papers Filed
2720.30 Correction of~~Of~~ Technical Errors

SUBPART B: APPLYING FOR UNEMPLOYMENT INSURANCE BENEFITS

Section
2720.100 Filing a Claim
2720.101 Filing, Registering and~~And~~ Reporting by~~By~~ Mail Under Special Circumstances
2720.105 Time for~~For~~ Filing an~~An~~ Initial Claim for~~For~~ Benefits
2720.106 Dating of~~Of~~ Claims for~~For~~ Weeks of~~Of~~ Partial Unemployment
2720.107 Employing Unit Reports for Partial Unemployment
2720.108 Alternative "Base Period"
2720.110 Required Second Visit To Local Office (Repealed)
2720.112 Telephone or Internet Certification
2720.115 Continuing Eligibility Requirements
2720.120 Time for~~For~~ Filing Claim Certification for~~For~~ Continued Benefits
2720.125 Work Search Requirements For Regular Unemployment Insurance Benefits (Repealed)
2720.126 Availability For Part Time Work Only (Repealed)
2720.127 Director's Approval Of Training (Repealed)
2720.128 Active Search For Work: Attendance At Training Courses (Repealed)

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

2720.129 Regular Attendance In Approved Training (Repealed)
2720.130 Employing Unit Protest Of Benefit Payment
2720.132 Required Notice by an~~By An~~ Employer of~~Of~~ Separation for~~For~~ Alleged Felony or~~Or~~ Theft Connected with the~~With The~~ Work
2720.135 Adjudicator Investigation
2720.140 Adjudicator Determination
2720.145 Payment of~~Of~~ Unemployment Insurance Benefits for~~For~~ Initial Claims
2720.150 Applying for~~For~~ Unemployment Insurance Benefits Under Extension Programs
2720.155 Non-Resident Application for~~For~~ Benefits
2720.160 Reconsidered Findings or~~Or~~ Determination

SUBPART C: APPEALS TO REFEREE

Section
2720.200 Filing of Appeal
2720.201 Application For Electronic Data Transmission Of Notice Of Hearing
2720.205 Notice of~~Of~~ Hearing
2720.207 Untimely Appeals
2720.210 Preparation for the Hearing
2720.215 Format Of Hearings
2720.220 Ex Parte (One Party Only) Communications
2720.225 Subpoenas
2720.227 Depositions
2720.230 Consolidation Or Severance Of Proceedings
2720.235 Withdrawal Of Appeal
2720.240 Continuances
2720.245 Conduct of~~Of~~ Hearing
2720.250 Rules of~~Of~~ Evidence
2720.255 Failure of~~Of~~ Party to~~To~~ Appear at the~~At The~~ Scheduled Hearing
2720.265 The Record
2720.270 Referee's Decision
2720.275 Labor Dispute Appeals
2720.277 Prehearing Conference in~~In~~ Labor Dispute Appeal

SUBPART D: APPEALS TO THE BOARD OF REVIEW

Section
2720.300 Filing of Appeal
2720.305 Notice of~~Of~~ Appeal

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

2720.310 Request for Oral Argument
2720.315 Submission of Written Argument or Request to Submit Additional Evidence
2720.320 Access To Record
2720.325 Withdrawal of~~Of~~ Appeal
2720.330 Consolidation Or Severance Of Appeals
2720.335 Decision of the~~Of The~~ Board of~~Of~~ Review
2720.340 Extensions Of Time In Which To Issue A Board Of Review Decision
2720.345 Issuance Of Notice Of Right To Sue

AUTHORITY: Implementing and authorized by Sections 239, 409, 500, 604, 700, 701, 702, 703, 705, 706, 800, 801, 803, 804, 805, 1000, 1001, 1002, 1004, 1200, 1700, 1701, 2300, 2301, 2302 and 2304 of the Unemployment Insurance Act [820 ILCS 405/239, 409, 500, 604, 700, 701, 702, 703, 705, 706, 800, 801, 803, 804, 805, 1000, 1001, 1002, 1004, 1200, 1700, 1701, 2300, 2301, 2302 and 2304].

SOURCE: Adopted at 8 Ill. Reg. 24957, effective January 1, 1985; amended at 10 Ill. Reg. 12620, effective July 7, 1986; amended at 11 Ill. Reg. 14338, effective August 20, 1987; amended at 11 Ill. Reg. 18671, effective October 29, 1987; amended at 12 Ill. Reg. 14660, effective September 6, 1988; emergency amendments at 13 Ill. Reg. 11890, effective July 1, 1989, for a maximum of 150 days; amended at 13 Ill. Reg. 18263, effective November 9, 1989; amended at 14 Ill. Reg. 15334, effective September 10, 1990; amended at 14 Ill. Reg. 18489, effective November 5, 1990; amended at 16 Ill. Reg. 2556, effective January 30, 1992; emergency amendment at 16 Ill. Reg. 7506, effective April 22, 1992, for a maximum of 150 days; emergency expired September 19, 1992; amended at 17 Ill. Reg. 17937, effective October 4, 1993; amended at 18 Ill. Reg. 16340, effective October 24, 1994; amended at 21 Ill. Reg. 9441, effective July 7, 1997; amended at 21 Ill. Reg. 12129, effective August 20, 1997; emergency amendment at 27 Ill. Reg. 4217, effective February 15, 2003, for a maximum of 150 days; emergency expired July 15, 2003; amended at 29 Ill. Reg. 1909, effective January 24, 2005; amended at 32 Ill. Reg. 13177, effective July 24, 2008; amended at 33 Ill. Reg. 9623, effective August 1, 2009; amended at 35 Ill. Reg. 6114, effective March 25, 2011; amended at 43 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

**Section 2720.1 Definitions**

All other terms used in this Part shall have the meaning set forth in definitions, Sections 200 through 247 of the Unemployment Insurance Act [820 ILCS 405~~/200 through 247~~], unless the context requires otherwise. ~~Throughout this Part, the use of terms imparting the masculine~~

~~gender shall also apply to the feminine gender.~~

"Act" means the Unemployment Insurance Act [820 ILCS 405].

"Adjudicator" means the person authorized to make findings, determinations or recoupment decisions relating to a claimant's eligibility for unemployment insurance benefits.

"Appeal" means the process of Department~~agency~~ or judicial review of a finding, determination or decision.

"Appellant" means a party who appeals a Department~~an Agency~~ finding, determination or decision.

"Appellee" means a party to a finding, determination or decision appealed by the appellant.

"Board" means the Board of Review of the Department of Employment Security.

"Call Center" is the modern day equivalent of the local office where claimants and employing units can contact the Department for the resolution of issues involving claims for unemployment insurance benefits.

~~"Call Day" means the day a claimant actually calls to access the Telephone Certification System.~~

"Certification" means an individual's attestation to facts regarding his or her eligibility for benefits for a particular period. The Department may provide for certification in person, by telephone, ~~or~~ by mail, or through the internet. In many instances, depending upon the context, the terms "certification" and "certification form" and "claim certification" or the like should be considered synonymous.

"Certification Day" means the day of the week designated for a telephone or internet filer to ~~call to~~ certify for benefits.

"Certification Detail Screen" means the record maintained by the Department~~Telephone Certification System~~ of the claimant's responses to questions asked during a completed telephone or internet certification, and the date of the claimant's call or internet ~~to~~ access to the Department's system with

respect to that completed certification.

"Claims Series" means a week or series of consecutive weeks for which benefit or waiting week credit is granted.

"Claimant" means a person who applies for benefits under the Act.

"Claimant Identification Number" means the unique personal identification number the Department~~Agency~~ assigns to a claimant. The Department~~Agency~~ will use the Claimant Identification Number instead of the claimant's Social Security Number on all material it sends to the claimant.

"CMS" means the Illinois Department of Central Management Services.

"Customary Occupation" means the work in which the individual was last engaged or the occupation for which he or she is best qualified by training, experience, and education.

"Decision" means the statement made by a Referee, the Director or the Board of Review with respect to any appeal from a finding or determination relating to rights or obligations under the Act, or a statement by an Adjudicator that an employing unit's protest is insufficient.

"Department" means the Illinois Department of Employment Securities.

"Determination" means *an Adjudicator's statement of whether or not a claimant is eligible for benefits or waiting week credit, and the dollar amount of such benefits for each week with respect to which a claim is made* [820 ILCS 405/702].

"Director's Representative" means an employee of the Department~~Agency~~ designated by the Director of Employment Security to conduct hearings and to recommend decisions to the Director.

"Electronic Data Transmission" is a means by which the Director provides an electronic transfer of the Notice of Claim to Last Employing Unit and Last Employer or other Interested Party to the data center of the Illinois Department of Central Management Services where the transmission can be retrieved by the employing unit (see Section 2720.7).

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

"Employing Unit" shall have the~~ same~~ meaning ascribed~~as that set forth~~ in Section 204 of the Act.

"Filing Date" means the date a document was mailed to or received by the Department~~Agency~~, whichever is earlier.

"Finding" means *a statement by an Adjudicator of the amount of wages for insured work paid to a claimant during each quarter in the claimant's base period by each employer* [820 ILCS 405/701].

"Full-time Work" is the number of hours a class of workers would customarily work if the employing unit had all the work it could handle without working overtime. Except when the contrary is provided by a collective bargaining agreement or company policy, full-time work is customarily 40 hours per week. For example, 37.5 hours per week is full-time work for Illinois State employees because it is so provided by State personnel policy.

"Initial Claim" means an application for benefits that, meeting all monetary eligibility requirements, commences a claim series.

"Internet Filer" means a claimant who uses the internet to certify.

"Local Office" means the office of the Department~~Agency~~ servicing claimants who live in a specific geographical area.

"Mail Filer" means a claimant who, although he or she may use the telephone or internet~~Telephone Certification System~~, is permitted to certify by mail.

"Monetary Eligibility" means a claimant's eligibility for a weekly benefit amount of unemployment insurance and the amount of dependency allowance, if any, based on the amount of qualifying wages paid.

"Nonmonetary Eligibility" means that the claimant has established monetary eligibility and has not been found ineligible or subject to disqualification under the Act from receiving unemployment insurance benefits.

"Part-time Work" means *services not* normally *required for the customary schedule of full-time hours or days prevailing in the establishment* in which the~~such~~ services are performed, or services performed by a person who, owing to

his or her personal circumstances or the nature of the work he or she is qualified to perform, *does not customarily work the schedule of full-time hours or days prevailing in the establishment in which he* or she *is employed* [820 ILCS 405/407]. Generally, part-time work will be less than 40 hours per week except when~~where~~ company policy or a collective bargaining agreement provides for a lesser number of hours per week as full-time work. In these~~such~~ cases, part-time work shall be work less than the number of full-time hours set by the collective bargaining agreement or company policy.

"Part-total Employment" means part-time work with an employing unit other than one's regular employing unit.

> EXAMPLE: The claimant is laid off by Company A, his or her regular employing unit, as defined in this Section, and accepts temporary, part-time work with Company B, an employing unit other than his or her regular employing unit. The part-time work with Company B constitutes "part-total employment~~.~~".

"Partial Employment" means part-time work with one's regular employing unit.

"Party" means, with respect to issues of nonmonetary eligibility, the claimant and any employing unit that files a timely and sufficient protest pursuant to Section 2720.130. Only a party under Section 702 of the Act may appeal a nonmonetary determination or decision of the Department~~Agency~~ regarding eligibility for benefits. With respect to findings under Section 701 of the Act, "party~~Party~~" means the claimant and any employer whose base period wages are in question. With respect to the issues of sufficiency and timeliness of a protest pursuant to Section 2720.130~~ of this Part~~, "party~~Party~~" means only the employing unit that files the protest.

"Personal Identification Number" or "PIN" means a number that enables the claimant to access the Telephone Certification System. Valid use of a PIN serves as the claimant's signature.

"Protest" means the Department~~Agency~~ form Employer Notice of Possible Ineligibility, or a letter in lieu thereof, that~~which~~ alleges ~~that~~ the claimant is not entitled to unemployment insurance benefits.

"Referee" means the administrative law judge assigned to conduct hearings on

appealed Adjudicator findings, determinations or recoupment decisions and to make decisions on the matters appealed.

"Regular Employing Unit" is either the employing unit for which an individual expects to continue working and to work full time if business warrants it, or any employing unit for which the individual worked full time for 9 consecutive weeks during the preceding 52 weeks.

"Service Area" means a geographical area served by a local office.

"Services" means not only work actually performed, but the entire employer-employee relationship. Any attachment to an employing unit for which wages are payable constitutes a service for that employing unit.

"Telephone Certification System" or "TCS" means a system implemented by the Department~~Agency~~ that enables a claimant to certify for benefits or obtain information by touch-tone telephone.

"Telephone Filer" means a claimant who has established a PIN and uses the Telephone Certification System to certify.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.5 Service of~~Of~~ Notices, Decisions, Orders**

a) Except as provided in subsection (b), a notice, decision or order shall be served on every party, either by:

1) Personal service; ~~or~~

2) Mailing in an envelope, sealed and properly addressed to the last known address of the party, with the correct amount of postage prepaid; or

3) If agreed to by the party, posting on a secure website accessible to the person or entity and sending notice of the posting to the last known e-mail address of the person or entity.

b) When an agreement is made between the Department~~agency~~ and the employing unit (or its authorized agent) and the necessary identifying information is

available, the "Notice of Claim to Last Employing Unit and Last Employer or other Interested Party" shall be sent to the employing unit (or its authorized agent) by means of an electronic data transmission rather than by mailing a document to the employing unit.

c) A person may designate an agent to receive his or her notices and decisions by filing the name and address of the agent with the DepartmentAgency. In thesesuch cases, notice to the agent so designated is notice to the person. A person's designation of the agent shall remain in effect until the DepartmentAgency receives a notice that the Departmentagency relationship no longer exists.

d) Notwithstanding the appointment of an agent in accordance with subsection (c), the "Notice of Claim to Last Employing Unit and Last Employer or other Interested Party" (see Section 2720.130) shall be sent to the employing unit identified by the claimant at the time he or she files his or her claim for benefits.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.7 Application forFor Electronic Data Transmission**

a) In lieu of receiving its "Notice of Claim to Last Employing Unit and Last Employer or other Interested Party" as a paper document sent through the U.S. Postal ServiceUnited States mail, an employing unit (or its authorized agent) may apply to have thesuch document sent to it through electronic data transmission.

b) The Director shall approve thesuch application if the employing unit (or its authorized agent) agrees to:

1) At its own expense, on a daily basis, retrieve its electronically transmitted data from the data center of CMSthe Illinois Department of Central Management Services, designated by the Director;

2) Accept the date shown on the Department'sagency's records as conclusive evidence of the date that the electronically transmitted data was sent to the data center of the Illinois Department of Central Management Services;

3) Demonstrate to the Director that the volume of claims filed against it justifies the cost to the Departmentagency of putting the employing unit

on the electronic data transmission system.

c) The Director must also find that the employing unit's (or its authorized agent's) electronic data processing equipment is compatible with that used by the Director.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.10 Computation ofOf Time**

a) The calendar day on which any notice, decision or order is mailed or electronically transmitted by the Departmentagency shall be excluded in computing time.

b) The calendar day on which notice is due from a party or from an employing unit thatwhich is seeking to become a party pursuant to (see Section 2720.130(a)) or action is required by a party or by an employing unit thatwhich is seeking to become a party pursuant to Section 2720.130(a) shall be included in the computation of time.

c) If the last day a document may be filed by a party or by an employing unit thatwhich is seeking to become a party pursuant to Section 2720.130(a) is a day on which the DepartmentAgency facility is closed, the due date is extended to the end of the next day on which the facility is open.

d) The date on the document shall be rebuttable evidence that it was mailed on that date; a postmark placed on the envelope by the U.S.United States Postal Service shall be conclusive evidence of the date of mailing; whenwhere a "Notice of Claim to Last Employing Unit and Last Employer or other Interested Party" is electronically transmitted to an employing unit (or its authorized agent), the date of transmission shown on the Department'sagency's records shall be conclusive evidence of the date of service of the Notice.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.11 Methods ofOf Payment**

a) For purposes of this Section, "benefits" includes payments to a claimant pursuant to the Unemployment Insurance Act; trade readjustment allowances and alternative trade adjustment assistance payable pursuant to the Trade Act of 1974,

as amended (19 USC 2101 et seq.); disaster unemployment assistance payable pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 USC 5121 et seq.); and any other payments the Department may make with respect to unemployment.

b) Except as otherwise provided in subsection (c), the Department will pay benefits to a claimant by crediting the benefits to a financial institution account that the Department shall establish for the claimant and against which the claimant may electronically draw funds through the use of a debit card. The issuance of a debit card pursuant to this Section does not entitle a claimant to draw funds unless:

1) the claimant has activated the card in accordance with the instructions of the financial institution with which the account was established; and

2) the account has a positive balance. The claimant's use of a card pursuant to this Section shall be subject to the terms of the cardholder agreement provided by the financial institution with which the claimant's account has been established. The Department may make adjustments to an account established pursuant to this Section when necessary to correct credit or debit entries made in error.

c) Notwithstanding subsection (b), the Department will pay benefits to a claimant by direct deposit into a financial institution account designated by the claimant if the designation is in effect at the time the benefit payment is processed. A designation made pursuant to this subsection shall be made on a Direct Deposit Authorization Form provided by the Department and shall subject the claimant to the terms and conditions set forth on the form. The Department may make adjustments to an account designated pursuant to this Section when necessary to correct credit or debit entries made in error.

~~d) This Section applies to trade readjustment allowance payments made on or after July 22, 2008, payments made pursuant to the Unemployment Insurance Act with respect to benefit years beginning on or after July 22, 2008, and all other benefit payments made on or after November 1, 2008, except alternative trade adjustment assistance payments. This Section applies to alternative trade adjustment assistance payments made on or after April 1, 2009. Paper checks will not be issued through the regular benefit payment system with regard to benefit payments to which this Section applies.~~

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.20 Attorney Representation ofOf Claimants**

a) Attorneys for claimants must file an "Attorney Appearance and Authorization for Representation" form signed by the claimant and his or her attorney. This form must be filed with the DepartmentAgency prior to a hearing before an Adjudicator or Referee, or prior to the decision of an Adjudicator, Referee, or Board of Review, whichever occurs first after the attorneyAttorney begins his or her representation of the claimant.

b) Absent prior approval by the Board of Review underpursuant to subsection (c), an attorney representing a claimant may not charge or receive more than:

1) 15% of the amount of the weekly benefits in a claim series received by the claimant after the claimant hires the attorney; or

2) $150 per hour, whichever is greater.

c) If an attorney believes that the fee arrived at pursuant to subsection (b) is inadequate, the attorney may file a request with the Board of Review setting forth the facts supporting the attorney's claim for additional fees. TheSuch requests shall include the attorney's certification that the claimant was served with a copy of the request. The Board of Review shall grant or deny the request in whole or in part based on whether the complexity of the case, the result obtained, the expertise required and the time expended in rendering legal services warrant a fee in excess of that allowable underpursuant to subsection (b).

d) A claimant wishing to comment on or object to a request for additional fees under subsection (c) shall do so in writing to the Board of Review within 10 days after the request is served on him or her. All decisions regarding requests for additional fees shall articulate the reasons for the grant or denial of the request and shall be final administrative decisions. Nothing in this Section shall be construed as prohibiting an attorney from collecting the sum allowable under subsection (b) prior to the decision of the Board of Review.

e) A claimant or employer may authorize an attorney or his or her designated agent to review the Departmentagency file regarding the claimant or employer for the purpose of determining whether to represent the claimant or employer in

proceedings before the Department~~Agency~~. The authorization shall be in writing and may be delivered to the Department~~Agency~~ office applicable to the particular claimant's or employer's case. Upon delivery of the authorization to the applicable Department~~Agency~~ office, the attorney or his or her~~its~~ designated agent may review the file without filing an appearance form or becoming the claimant's or employer's counsel of record.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.25 Form of Papers Filed**

a) Each form provided by the Department~~Agency~~ that specifies the information to be provided shall be completed in full as indicated. Every other document prepared by claimants, parties, or their representatives shall bear the name of the claimant, either the Social Security or Claimant Identification Number of the claimant, the name and address of the employer, the name, address, and telephone number of the person filing the document, and, if a person has received notice of appeal, the docket number of that appeal.

b) The omission of necessary information described in subsection (a) may lead to substantial delay in the review process of the document and could prevent any consideration of the document or its contents. In instances in which information cannot be obtained by other means, the Department~~Agency~~ shall immediately return the document with a description of the needed information to the person who filed it. If the document with all required information is returned within 10 days after the date the Department~~Agency~~ mailed it back to the person, the document shall be considered filed on the date the Department~~Agency~~ originally received it.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.30 Correction of~~Of~~ Technical Errors**

a) Subject to the provisions of this Section, the Department~~Agency~~ shall, on its own motion or the motion of a party, correct any technical error in any Finding, Determination or Decision necessary to effectuate the intent of the originating authority by issuing a corrected Finding, Determination or Decision. Production of new evidence shall not be a technical error under the provisions of this Section.

EXAMPLE~~Example~~: The Referee issues a Decision, that~~which~~ states the facts and applicable law. The text of the Decision indicates that benefits will be allowed. However, the conclusion of the Decision states that benefits are denied. Either on its own motion or the motion of a party, the Department~~Agency~~ shall correct this Decision so that the conclusion follows from the facts and the law as set out in the text of the Decision.

b) Any corrected Decision shall set forth the matter being corrected in a different type font than the original text.

c) No corrected Finding, Determination or Decision shall be issued when~~where~~:

1) The issue in question has been appealed to a higher authority; ~~or,~~

2) More than 13~~thirteen~~ weeks have passed since the end of the benefit year affected by the finding, or more than a year has passed since the last day of the week for which the Determination was made; or~~,~~

3) More than 30 days have passed since the date of mailing of the Decision of the Referee or the Board of Review.

d) When~~Where~~ the Department~~Agency~~ denies a motion of a party to issue a corrected Finding, Determination, or Decision, the motion shall be considered an appeal to the original Finding, Determination or Decision to the next higher level of review within the Department~~Agency~~. The~~Such~~ motion does not stay the period for filing an appeal to the circuit court.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

SUBPART B: APPLYING FOR UNEMPLOYMENT INSURANCE BENEFITS

**Section 2720.101 Filing, Registering and~~And~~ Reporting by~~By~~ Mail Under Special Circumstances**

a) The application of this Section is limited to individuals who fall within the following general categories who have no access to a telephone or the internet and who meet the requirements set forth in subsection (c):

1) Persons residing in any area or community where no transportation is

readily or cheaply available, where no local office exists and where itinerant service is not furnished;

2) Persons working less than full time and residing in any area or community where itinerant service is furnished but who are employed at the time itinerant service is available to them;

3) Persons in the armed forces of the United States;

4) Persons whose physical condition prevents filing, registering and reporting in person;

5) Persons in full time employment under ~~such~~ circumstances in which that reporting, registering or filing in person would be inconsistent with the purposes of the Act;

6) Persons claiming benefits with respect to a week of partial employment, defined as a calendar week of less than full time work with respect to which wages payable to an individual are less than his or her weekly benefit amount and are earned from his or her regular employing unit.

b) Except when otherwise specified in Rules by the Director, the requirements of Section 500(A) of the Act, with respect to the persons described in subsection (a), are waived.

c) General Provisions

1) Notwithstanding the provisions of any other Section of 56 Ill. Adm. Code: Chapter IV, any unemployed individual in any of the categories of subsection (a) shall, under those circumstances and subject to those conditions set forth in this Section, be permitted to file a claim for benefits by mail and register for work mail. The~~Such~~ permission shall be granted only in cases when~~where~~ all of the following circumstances and conditions exist:

A) A request by the individual or his or her authorized agent orally or in writing has been made;

B) The individual has furnished such information as the Claims

Adjudicator may require to determine the propriety of the request;

C) The Claims Adjudicator has found that failure to grant permission would be inconsistent with the purposes of the Act.

2) The Claims Adjudicator shall have the right to withdraw permission with respect to any week if he or she finds that reporting in person would not be inconsistent with the purposes of the Act.

d) Effects of~~Of~~ Filing by~~By~~ Mail

1) Filing, registering and reporting by mail in accordance with the provisions of this Section shall have the same effect as filing, registering, and reporting in person at an unemployment office.

2) When~~Where~~ permission to file by mail has been granted, the date of the request for permission (as evidenced by the postmark if the request is by mail) shall be considered as the date of claim; provided, however, that backdating for good cause shall be granted to the same extent that it is granted to persons who file claims in person. (See Sections 2720.105(b) and 2720.120.)~~.~~

3) Except with respect to the necessity for appearing in person at an unemployment office, all provisions of 56 Ill. Adm. Code: Chapter IV, applicable to filing, registering, and reporting in person shall be applicable to filing, registering, and reporting by mail in accordance with this Section.

4) The Department~~Agency~~ may, when accepting mail filings, conduct interviews with the~~such~~ applicants by telephone or in person to review the written submissions.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.105 Time for~~For~~ Filing an~~An~~ Initial Claim for~~For~~ Benefits**

a) An initial claim for benefits should be filed no later than the end of the first week in which the claimant is separated from work. If it is filed later than the week the claimant became separated from work and backdating is not requested, the claim

shall begin in the week in which it was filed.

b) If an initial claim is filed later than the end of the first week after the separation, but less than one year thereafter, at the claimant's request the Department~~Agency~~ will backdate the claim to the appropriate date and determine eligibility for that period if:

1) the claimant shows:

A~~1~~) The individual's unawareness of his or her rights under the Act;

B~~2~~) Failure of either the employing unit or the Department~~Agency~~ to discharge its responsibilities or obligations under the Act or the rules;

C~~3~~) Any act of any employing unit in coercing, warning or instructing the individual not to pursue his or her benefit rights; or~~,~~

D~~4~~) Other circumstances beyond the claimant's control; and~~,~~

2~~5~~) The claimant shows he or she filed the~~his~~ claim within 14 days after the reasons for the failure to file no longer existed.

c) A claim with respect to a single week of total or part-total unemployment immediately preceded by a week of partial employment, shall be dated as of the first day of the week of total or part-total unemployment, if the claim is filed within the time limits for filing the claim with respect to the week of partial unemployment~~t, under~~(see Section 2720.106).

d) If a claim is filed by any person who is not unemployed at the time of filing, the~~such~~ claim shall be dated as of the first day of the next following week for which the individual is unemployed. It shall be the obligation of the individual to inform the Department~~Agency~~ when he or she does become unemployed.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.106 Dating of~~Of~~ Claims for~~For~~ Weeks of~~Of~~ Partial Unemployment**

a) An individual who files a claim for a week of partial unemployment shall present

valid evidence for the week, if the evidence has been furnished to him or her by the employing unit.

1) The failure of the individual to present valid evidence shall not be a ground for denial of benefits or waiting period credit with respect to the week.

2) If an individual fails to present valid evidence for the week, and it is not otherwise available, the Department~~Agency~~ shall request the employing unit to furnish evidence in accordance with the provisions of Section 2720.107.

b) A claim for a week of partial unemployment shall be dated as of the first day of that week if the individual files the claim within five weeks after the end of the calendar week in which he or she received valid evidence for the week of partial unemployment. A claim with respect to a week of partial unemployment may be filed by mail if the individual has previously filed a valid claim or if the individual had previously filed an invalid claim but the issue is under appeal for the current benefit year.

c) A claim for a week of partial unemployment, filed after the end of the period allowed in subsection (b) for good cause such as the inability to file within the five week period due to work schedule, illness or other circumstances beyond the claimant's control, may be dated as of the first day of that~~such~~ week, if it is filed at the first available opportunity, but not later than eight weeks after the end of the five week~~such~~ period.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.107 Employing Unit Reports for Partial Unemployment**

a) Valid evidence as used in this Section and Section 2720.106 means a pay stub, pay envelope or voucher for the week showing:

1) The worker's name;

2) His or her Social Security number;

3) The ending date of the calendar week;

4) The wages earned by the worker during the week;

5) The employing unit's name;

6) A statement that the earnings were for a week of less than full time work, due to lack of work;

7) The signature (actual or facsimile) of a person authorized by the employing unit to sign the~~such~~ forms, or other positive identification of the authority supplying the valid evidence; and

8) The date on which the valid evidence was issued.

b) Requirement to Furnish Worker~~furnish worker~~ with Valid Evidence~~valid evidence:~~

1) Not later than the payday for the period covered by the valid evidence, if so requested by the worker, the employing unit shall deliver the valid evidence to a worker for each calendar week during which the worker worked less than full time because of lack of work and earned less than his or her weekly benefit amount.

2) The employing unit shall deliver to the requesting claimant the valid evidence, whether or not the employing unit has received a Notice of Claim.

c) If the employing unit fails to provide the requested information to the individual, an employing unit shall respond to the Department's~~Agency's~~ request for valid evidence for the individual specified in the request~~,~~ by showing the individual's earnings and whether the individual worked less than full time because of lack of work and earned less than his or her weekly benefit amount in each calendar week covered by the request. The response shall be mailed to the address specified in the request, within 5 business days after receipt of the request. Failure of an employing unit to provide valid evidence when requested will result in the payment of benefits based on the individual's explanation of his or her earnings for the weeks in question.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.108 Alternative "Base Period"**

a) Section 237 of the Act provides a definition of the term "base period". That Section also provides that, when~~where~~ an individual does not qualify for the maximum weekly benefit amount provided under Section 401 of the Act because he or she had insufficient wages during his or her base period as a result of being unemployed and when he or she was awarded temporary total disability during the period under any workers' compensation or occupational diseases Act~~act~~, he or she shall be entitled to have his or her weekly benefit amount computed using an alternative base period, as described in ~~this~~ Section 401~~of the Act~~.

b) For the purpose of determining the applicability of the alternative base period described in Section 237 of the Act, "awarded" temporary total disability shall not be limited to awards made by the Illinois Workers' Compensation~~Industrial~~ Commission or similar agencies in other states but shall include settlements and voluntary payments by employing units or their insurers.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.112 Telephone or Internet Certification**

a) Except as provided in subsection (c), each claimant shall be a telephone or internet filer.

b) On his or her certification day~~"Certification Day,"~~, a telephone or internet filer shall call a designated telephone number and enter his or her PIN or log onto the Department's website, as applicable, as directed and respond to the questions concerning his or her claim for the prior two weeks. If a telephone or internet filer misses his or her assigned~~regular~~ certification day, he or she may call or certify online on Thursday or Friday of that week, or on his or her assigned~~certification~~ day or Thursday or Friday of the next week.

c) A mail filer will be sent a copy of the questions concerning his or her claim for the prior two weeks and shall respond in accordance with the provisions of Section 2720.115(a); provided, a claimant cannot file by mail unless he or she requests to do so and furnishes ~~such~~ information ~~as~~ the Claims Adjudicator may require to determine:

1) He or she speaks neither English nor Spanish; ~~or~~

2) He or she is hearing impaired; or

3) He or she has no reasonable access to a touch-tone telephone or internet. In determining whether a claimant has reasonable access to a touch-tone telephone or to the internet, consideration shall be given, but not necessarily limited to, the following factors: the claimant's known physical or mental limitations, the claimant's concerns for his or her safety, and the overall level of effort required to access a touch-tone telephone or the internet; an occasional inconvenience or mere preference does not mean a claimant has no reasonable access to a touch-tone telephone or the internet.

A) EXAMPLE: A telephone filer, who has no telephone in his apartment, but has used touch-tone telephones in the lobby of his building and elsewhere in his neighborhood to certify, requests to become a mail filer. His reason is that sometimes he must wait a few minutes for someone to get off the telephone, so he would prefer to be a mail filer. An occasional inconvenience or mere preference does not mean he has no reasonable access to a touch-tone telephone. He cannot be a mail filer.

B) EXAMPLE: An individual who has been a telephone filer fails to certify and more than two weeks have passed since his certification day. This raises a late reporting issue for the weeks under review, to be resolved by applying the provisions of Section 2720.120(b). Irrespective of how that issue is resolved, if it is found that the claimant no longer has reasonable access to a touch-tone telephone, then, for future weeks, the claimant may certify by mail.

d) A mail filer may become a telephone or internet filer by simply using those media~~upon his or her request~~.

e) A date shown (or absence of a date) on the "Certification Detail Screen" shall be rebuttable evidence that a telephone or internet filer certified (or failed to certify) on that date. If a telephone or internet filer attempts to certify more than two weeks after his or her certification day, this will result in a delay in the processing of benefit payments and raise a late reporting issue, to be resolved by the

application of Section 2720.120(b).

f) All provisions of this or any other Part that~~, which~~ are not inconsistent with the provisions of this Section, shall remain in effect.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.115 Continuing Eligibility Requirements**

a) After the claimant has filed his or her initial claim, the claimant must certify as to his or her continuing eligibility. Even if the claimant has been denied benefits, he or she must continue to certify and maintain his or her work search record, and meet other eligibility requirements of the Act, for each week for which he or she expects payment upon reversal of that denial. The claimant shall certify as a telephone or internet filer pursuant to Section 2720.112 unless he or she qualifies as a mail filer pursuant to Section 2720.112(c). If the claimant is a mail filer, the Department~~Agency~~ will mail the claimant~~him or her~~ a form called Claim Certification (BIS-653) every two weeks or will send the claimant~~him or her~~ a Notice explaining why the Claim Certification was not sent, but only if this is the claimant's first certification following the filing of his or her initial claim or if the claimant had certified for the prior two week period. The claimant must complete the Claim Certification and file it at the local office, either by mail or in person, on the "Date To Mail" indicated on the form (see Section 2720.120). If the claimant is a mail filer and does not receive a Claim Certification within 20 days after filing his or her initial claim or after he or she received the claimant~~his or her~~ last Claim Certification, the claimant~~he or she~~ must notify the local office and obtain a Claim Certification.

b) If at any time the Department~~Agency~~ has reason to investigate the claimant's continuing eligibility, the Department~~Agency~~ will so inform the claimant in writing. The claimant must cooperate~~co-operate~~ with the investigation by appearing at the time and place instructed by the Department~~Agency~~ on the "Notice of Claims Adjudicator's Interview," with all information he or she has regarding any question that~~which~~ has been raised. Failure to cooperate~~co-operate~~ will result in a Finding, Determination or Decision being issued without further information from the claimant.

c) A claimant certifying for benefits under this Section as a telephone, internet ~~filer~~ or mail filer shall maintain a work search record for each week he or she is

claiming benefits.

1) The work search record shall include the names and addresses of the employing units contacted, as well as the names of specific persons contacted, if possible; the dates and methods of the contacts; the type of work sought, including wages and hours requested or desired; and the results of the contacts.

2) The claimant shall provide his or her work search record to the Department~~Agency~~ upon the Department's~~Agency's~~ written request. The Department~~Agency~~ shall only request the claimant's work search record with regard to a week in which: an employing unit makes a sufficient protest regarding the claimant's work search for the week and requests the opportunity to review the claimant's work search record for that week; an employing unit requests to review the record for a week, on the condition that the request is made during that week; or the Department~~Agency~~ otherwise has information that would provide the basis for a review of the work search or the Department conducts a random work search audit of his or her claim. When the claimant provides a work search record, an employing unit, or the attorney or agent of the employing unit or the claimant, may review the record pursuant to subsection (e). When an employing unit requests to review the record for a week, the Department~~Agency~~ shall not request the claimant to provide his or her work search record if the primary purpose of the employing unit's request is to harass the claimant.

3) A claimant's failure to provide his or her work search record as requested may result in a determination or decision being issued that the claimant did not conduct an active work search.

d) Where an employing unit makes a timely and sufficient protest regarding work search pursuant to Section 2720.130, and benefits are allowed, a copy of the ~~claims adjudicator's investigation for the period involved will be sent to the protesting employing unit along with the~~ Adjudicator's Determination regarding the adequacy of the work search will be sent to the protesting employing unit (customarily within 20 days after receipt of the protest).

e) If the employing unit or claimant, or the attorney or agent of the employing unit or the claimant, wishes to review or obtain copies of other documents in the file

for the purpose of pursuing the employing unit's or claimant's~~their~~ rights under the Act, he or she may do so in the local office, where it shall be made available upon reasonable notice. To review or obtain a copy of a hearing transcript, see Section 2720.320~~ of this Part~~.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.120 Time for~~For~~ Filing Claim Certification for~~For~~ Continued Benefits**

Subject to the provisions of Section 2720.112:

a) The completed Claim Certification should be filed on the certification day~~"Date To Mail"~~ as indicated on the form UI Finding. Failure~~and failure~~ to file the completed Claim Certification on the scheduled certification day~~"Date To Mail"~~ will result in a delay in the processing of benefit payments.

b) If the Claim Certification is filed more than two weeks late but less than one year late, the Department~~Agency~~ will process it if the claimant shows:

1) The individual's unawareness of his or her rights under the Act; ~~or~~

2) Failure of either the employing unit or the Department~~agency~~ to discharge its responsibilities or obligations under the Act or the rules; ~~or~~

3) Any act of any employing unit in coercing, warning or instructing the individual not to pursue his or her benefit rights; or

4) Other circumstances beyond the individual's control if~~; and~~ the claimant shows he or she filed his or her claim within 14 days after the reasons for the failure to file no longer existed.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.132 Required Notice by an~~By An~~ Employer of~~Of~~ Separation for~~For~~ Alleged Felony or~~Or~~ Theft Connected with the~~With The~~ Work**

a) Whenever an employer discharges an individual for an alleged felony or theft in connection with his or her work, the employer shall notify the Department~~Agency~~ of the separation.

b) The notification required by subsection (a) shall include the name of the individual discharged, his or her social security number, the name of the employer, its mailing address, its Illinois Employer Account Number, and the date of separation.

c) If the notification required by subsection (a) meets the sufficiency requirements of Section 602B of the Act and is mailed or faxed to the Department~~Agency~~ within at least 10 days after the date that the individual files his or her next claim for benefits, then the~~such~~ employer shall be a party to the Department's~~Agency's~~ determination of eligibility under Section 602~~(~~B~~)~~ of the Act.

~~d) Except when the notification is being made in response to a "Notice of Claim to Last Employing Unit and Last Employer or Other Interested Party", the notification required by subsection (a) must be sent to:~~

~~Illinois Department of Employment Security~~
~~33 South State Street, 9th Floor~~
~~Chicago IL 60603~~
~~Attn: Felony and Theft Unit~~

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.135 Adjudicator Investigation**

a) If any question arises concerning the claimant's monetary or nonmonetary eligibility, the claimant will be notified in writing. The Adjudicator will inform the claimant of the precise factual question relating to his eligibility, the Sections of the law involved, and the source of the information that raised the question.

b) An Adjudicator will investigate all allegations in the employer's protest. He or she will contact the employer, claimant~~,~~ and, if possible, any other source that either party identifies to resolve the protest, provided that the Department~~Agency~~ will not contact witnesses identified by the claimant or the employer without notifying the claimant or the employer's designated contact person (see Section 2720.130(a)(2))~~ of this Part)~~, as appropriate. The claimant will be given an opportunity to provide the Adjudicator with any statements or other evidence to refute or explain the allegations and establish his or her rights to benefits.

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.140 Adjudicator Determination**

a) The Adjudicator's Determination will set forth, in writing, its factual and legal basis. The Department~~Agency~~ will mail a copy of the Adjudicator's Determination to all parties (see Section 2720.1~~ of this Part~~). For an employing unit that is not entitled to party status under Section 702 of the Act, the Department~~Agency~~ will mail to the nonparty employing unit:

1) A copy of the Determination regarding the claimant's eligibility for benefits as information only if the employing unit's protest is untimely pursuant to Section 2720.130~~ of this Part~~, or if the claimant is disqualified under a separation issue (Sections 601, 602 and~~,~~ 603 of the Act) and the employing unit from which the separation occurred filed no protest;

2) A copy of the Determination that the employing unit's protest is insufficient pursuant to Section 2720.130, from which the employing unit may make an appeal, after affording the employing unit an opportunity to submit a sufficient protest in accordance with Section 2720.130.

b) When the employing unit files a sufficient protest alleging that the claimant is not able to perform work, unavailable to accept work, or not actively seeking work, the Adjudicator's Determination shall be limited to the claim period set forth in the protest (or the date of the initial claim if the protest is timely pursuant to Section 2720.130) and not beyond the last week for which the claimant has certified for benefits at the time of the Adjudicator's Determination.

1) If the Adjudicator determines that the claimant is ineligible, the Adjudicator will send his or her written Determination to the claimant and protesting employing unit and continue to investigate the claimant's ability, availability, or work search, as appropriate, for each week for which the claimant files a Claim Certification. The claimant will not receive benefits for any subsequent weeks until and unless an Adjudicator determines that the condition alleged to cause the disqualification no longer exists or that the claimant is actively seeking work, as appropriate; in that case, the Adjudicator's written Determination that the claimant is eligible from a specific date will be sent to the claimant and the protesting employing unit.

2) Once an Adjudicator determines the claimant eligible, the Adjudicator will provide the employing unit with no further Determinations on the claimant's ability, availability, or work search for a subsequent period unless the employer files a sufficient protest for a subsequent period (see Section 2720.130~~ of this Part~~) or the Adjudicator has other reason to investigate the claimant's ability, availability, or work search.

3) If the~~such~~ determination of eligibility is appealed, reversed and benefits denied, parties to the appeal will receive a subsequent determination setting forth the date on which the claimant became able to work, available for work, or began actively seeking work, as appropriate.

c) When an employing unit files an untimely but otherwise sufficient protest alleging that the claimant was discharged for committing a felony or theft in connection with his or her work, the Adjudicator will make and issue a Determination under Section 602A of the Act~~,~~ (discharge for misconduct), though the employing unit shall not be a party to that~~such~~ Determination.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.145 Payment of~~Of~~ Unemployment Insurance Benefits for~~For~~ Initial Claims**

a) If no question is raised concerning a claimant's eligibility to receive benefits, the Department~~Agency~~ will begin promptly to pay benefits to the claimant following ~~its receipt of~~ the claimant's first certification~~ form~~. If the claimant does not receive his or her benefits within 15 days after~~of~~ the date of~~that he mailed~~ his or her first certification form~~ to the local office~~, he or she must contact~~report to~~ the local office or call center no later than the Friday of the second week following the week that he or she ~~mailed his~~ first certified~~certification form to the local office~~ to prevent further delay in the payment of benefits.

b) If a question is raised concerning claimant's eligibility to receive benefits, the Adjudicator will promptly investigate the matter pursuant to Section 2720.135~~ of this Part~~. (Customarily, the~~such~~ investigation will be completed within 20 days.)

1) If the Adjudicator finds the claimant is eligible for benefits, the claimant will receive benefits. However, the employer may seek reversal of the Adjudicator's determination by appealing that determination (see Section

2720.200~~ of this Part~~). If the claimant is subsequently determined to be ineligible, benefits received may be recouped or recovered.

2) If the Adjudicator finds the claimant is not eligible for benefits, the claimant will not receive benefits. However, the claimant may seek reversal of the Adjudicator's determination by appealing that determination (see Section 2720.200~~ of this Part~~). If the claimant is subsequently determined to be eligible, all benefits due will be paid.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.150 Applying for~~For~~ Unemployment Insurance Benefits Under Extension Programs**

From time to time, various unemployment insurance programs that~~which~~ pay benefits beyond 26 weeks, such as Extended Benefits under Section 409 or 409.1 of the ~~Unemployment Insurance~~ Act, or Federal Supplemental Compensation, may be in effect. When such a program becomes effective, the Department~~Agency~~ will notify the claimant in writing of:

a) the requirements to receive benefits under that~~such a~~ program; and

b) where and when to file a~~his~~ claim for benefits under that program~~such programs~~.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.155 Non-Resident Application for~~For~~ Benefits**

a) A claimant who has worked in Illinois but lives outside Illinois may apply for benefits by filing a claim at the unemployment insurance office in the state or territory in which he or she resides. As soon as the individual becomes unemployed, he or she should report to the nearest unemployment insurance office and follow the procedures as directed by that office.

b) A claimant who has worked in Illinois but lives outside Illinois may, at his or her option, file his or her claim in Illinois.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.160 Reconsidered Findings or~~Or~~ Determination**

a) *An Adjudicator shall reconsider an original Finding or Determination at the written request of a party or upon receipt of new information relating to the original issues, if the request is received by the Department~~Agency~~ within the following time limits:*

1) *In the case of a Finding, within 13 weeks after the close of the claimant's benefit year;*

2) *In the case of a Determination, within 1 year after the last day of the week for which the Determination was made, except that, if the issue is whether or not the claimant misstated his* or her *earnings for the week* or whether or not the claimant has been paid wages by reason of a back pay award made by any governmental department~~agency~~ or pursuant to arbitration proceedings or by reason of a payment of wages wrongfully withheld by an employing unit, *within 3 years after the last day of the week* [820 ILCS 405/703];

3) A Finding or Determination shall not be reconsidered subsequent to the filing of an appeal under Section 2720.200, except when~~where~~ the issue is newly discovered as to whether or not the claimant misstated his or her earnings, or unless the matter is remanded to the Adjudicator by a Referee, the Board of Review or a court.

b) A reconsidered Finding or Determination shall relate only to the issues and period of time set forth in the original Finding or Determination.

c) The Adjudicator shall investigate the original records and facts and document a report of a reconsidered investigation that includes the new information and shall:

1) Affirm the original Finding or Determination if the new facts are not sufficient to modify or reverse the original Finding or Determination and, unless otherwise instructed by the party, process an appeal to the Referee on behalf of the requesting party, in accordance with Section 2720.200, in which case the appeal shall be considered an appeal to the original Finding or Determination; or

2) Modify or reverse the original Finding or Determination if the new facts require a different result, and issue a reconsidered Finding or

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

Determination to the parties vacating and replacing the original Finding or Determination and affording full appeal rights under Section 2720.200.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

SUBPART C: APPEALS TO REFEREE

**Section 2720.200 Filing of Appeal**

a) Any party may appeal an Adjudicator's determination or finding. An appeal should be filed in person at or by mail or fax to the local office where the claim was filed.

b) The appeal must be filed within 30 days after the Adjudicator's Determination~~determination~~ or Finding~~finding~~ was mailed or hand delivered to the parties (see Section 2720.10).

c) No special form is necessary to file an appeal to the Referee. The appeal must comply with the following requirements:

1) The appeal must be in writing, dated and signed by the person appealing or that person's representative; and

2) The appeal must be limited to one claimant and contain the name of the claimant and either the Social Security or Claimant Identification Number of the claimant.

d) An appeal of a labor dispute Determination~~determination~~ to a Director's Representative under Section 604 of the Act and Section 2720.275 may be filed by any party to a Determination~~determination~~ or an agent representing all members of the affected class of workers by listing either the Social Security or Claimant Identification Numbers of the employees on the appeal.

e) At the request of any appellant, an Adjudicator at the local office where the appeal should be filed pursuant to subsection (a) will assist the appellant in filing~~to file~~ the appeal. The Adjudicator providing assistance and the appellant will sign the appeal.

f) The Department~~Agency~~ will promptly schedule a hearing before a Referee and,

except as provided in Section 2720.201, mail notice of the hearing as provided in Section 2720.205~~to the parties~~. (Customarily, notice of hearing will be mailed within 15 days after the filing of the appeal.)

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.205 Notice of~~Of~~ Hearing**

a) Written notice of the time, date and place of the hearing shall be mailed to the parties at least 10 days before the date of the hearing.

b) The notice will identify the parties and the Findings or Determination being appealed and will inform the parties of the issues upon which the appeal is based.

c) In the event that a claimant appeals an Adjudicator's Determination regarding a separation issue (Sections 601, 602 and~~,~~ 603 of the Act), and when~~where~~ the employing unit from which the separation occurred is not a party, the~~such~~ employing unit will receive notice of hearing that~~which~~ it may attend as a nonparty and present such facts and evidence as it may possess.

d) No hearing, or part of a hearing, shall be conducted on an issue to which the parties have not been given notice pursuant to subsections (a) and (b)~~ of this Section,~~ unless the~~such~~ notice is waived by all parties either in writing or on the record.

e) Unless notice is waived under~~pursuant to~~ subsection (d), if, during or after the hearing, the Referee determines that the facts require a Decision under a Section~~Section(s)~~ of the Act different from the Section~~Section(s)~~ specified in the notice given under~~pursuant to~~ subsections (a) and (b), or that the notice does not accurately describe the question at issue, then the Referee shall immediately terminate the hearing, if applicable, issue no Decision on the merits for the Section~~Section(s)~~ or questions for which proper notice was not given, and shall either:

1) Remand the unresolved issues~~issue(s) case~~ back to the Claims Adjudicator for a Finding or Determination on the correct issues~~issue(s)~~ if facts or issues are introduced that~~which~~ were not previously presented to the Claims Adjudicator; or~~,~~

EXAMPLE~~Example~~: The Referee is examining the claimant with respect to the reason for separation from work. During the course of the hearing, the claimant indicates that he may not be able to work. Under the circumstances, the Referee shall remand the case to the Claims Adjudicator for a Determination under Section 500 of the Act.

2) Cause new notices containing the correct issues~~issue(s)~~ to be mailed to the parties when~~where~~ the facts remain the same as presented to the Claims Adjudicator but the incorrect issue was identified.

EXAMPLE~~Example~~: Based solely on the testimony of the claimant, the Claims Adjudicator determines that the claimant was discharged from his last job. After hearing testimony from the parties, the Referee decides that the separation was caused by the claimant's voluntary resignation. Here, if the parties refuse to waive notice, the Referee shall cause new notices containing the correct issue to be mailed to the parties.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.227 Depositions**

a) The Referee or the Director's Representative if the issue is Section 604 before whom an eligibility issue is pending shall order the taking of the deposition, specifying the subject matter to be covered, of a person other than the appellant, under oral examination or written questions for use as evidence at the hearing, provided:

1) It appears to the Referee that the deposition of the~~such~~ person is necessary for the preservation of relevant testimony because of the substantial possibility it would be unavailable at the time of the hearing (such as when a witness has a scheduled vacation, ~~or~~ out of town business trip or job interview set for the date of the hearing); and~~,~~

2) The~~Such~~ request is made on motion by a party who gives notice of the~~such~~ motion to all other parties to the issue.

b) The taking of depositions shall be in accordance with the provisions for taking

depositions in civil cases (IL Sup. Ct. Rules~~Ill. Rev. Stat. 1985, ch. 110A, pars.~~ 203 through~~-~~ 217), and the order for the taking of a deposition may provide that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place.

c) Any other parties to the issue shall have the right to confront and cross-examine any witness whose deposition is taken. The other parties may waive these rights ~~such right~~ in writing, filed with the Referee.

d) Depositions shall be taken in the county of residence or employment of the witness, as specified in Rule 203 of the Illinois Supreme Court ~~(Ill. Rev. Stat. 1985, ch. 110A, par. 203)~~, unless the witness waives these rights~~such right~~ in writing.

e) No deposition shall be allowed in any proceeding under Section~~Sections~~ 800 or 801 of the Act, except as provided herein.

f) Failure to obey an order for deposition shall result in the same sanctions as provided in Section 2720.225 for failure to comply with a subpoena.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.245 Conduct of~~Of~~ Hearing**

a) The Referee will control the hearing, ~~which~~ will be confined to the factual and/or legal issues on appeal, and will ensure that the parties have a full opportunity to present all evidence and testimony regarding those issues~~such issue(s)~~.

b) Following examination of each witness by the Referee, that witness may be questioned and cross-examined by any other party and further questioned by the Referee, if necessary, to ensure clarity and completeness of the issues and of the record. The Referee shall ensure that the parties have full opportunity to present all evidence and testimony regarding the factual and/or legal issues on appeal.

c) If any person becomes abusive or disruptive so that a full and fair hearing cannot be conducted, the Referee shall exclude the person from the hearing. The Referee will then continue the hearing without the participation of the excluded individual, and will render a decision based on the evidence in the record.

d) The Director shall prohibit any individual from representing a party in a proceeding under this Part if the Director finds that the~~such~~ individual is or has been guilty of violating the standards in Rule 8.4 of the Illinois Rules of Professional Conduct, Article 8 of the Rules of the Illinois Supreme Court or has intentionally disregarded the provisions of the Act or rules promulgated under the Act~~thereunder~~, or the written instructions of the Board of Review. The~~Such~~ prohibition shall be in writing and shall be applicable for a period not to exceed 120 days from the date the~~such~~ decision is mailed to the party. The~~Such~~ individual may appeal the Director's Decision under the Administrative Review Law [735 ILCS 5/Art. III].

e) Unless agreed to by all parties in writing or on the record, no bifurcated (split) hearings shall be held.

EXAMPLE~~Example~~: The appellant appears at the scheduled hearing, and his testimony is taken by the referee; the appellee fails to appear but later requests and is granted a reopened hearing. At~~; at~~ the reopened hearing, only the appellee appears. This situation shall not constitute a bifurcated hearing.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.250 Rules of~~Of~~ Evidence**

a) Technical rules of evidence do not apply to hearings before Referees. Unobjected to hearsay statements may be considered and given their natural probative value. However, the decision of the Referee will be based on the preponderance of the credible, legally competent evidence in the record. ~~The Referee need not rule on any objection to the introduction of evidence or testimony, but any such objection shall be duly noted and made part of the record.~~

b) Except for evidence or testimony that would be cumulative or irrelevant to the issue or issues on appeal, the Referee will not, on his or her own initiative, refuse to admit evidence or testimony.

EXAMPLE: During a hearing, the claimant testifies to something that is considered hearsay under the rules of evidence. If the employer does not object, the Referee should allow the claimant to continue his or her testimony

uninterrupted. The Referee should then question the employer about the claimant's testimony and then weigh the credibility of both sides.

c) The Referee may, but need not, rule on any objection to the introduction of evidence or testimony, and the Referee will ensure that all objections are duly noted and made part of the record. If the Referee sustains an objection to the introduction of evidence, the Referee will allow the proponent to make an offer of proof in the form of a brief explanation of what the evidence or testimony would show. The Referee may require that an offer of proof be presented in a condensed form to avoid needless repetition and undue length of the hearing record. Any evidence excluded by the Referee will, nevertheless, be placed in the record so that the question of its admissibility may be considered by the Board of Review or a reviewing court.

EXAMPLE 1: During a hearing, the claimant testifies to something that would be considered hearsay under the rules of evidence. The employer's attorney objects on the basis of hearsay. At this point, the Referee can either note the objection but allow the claimant to continue with testimony or rule on the admissibility of the claimant's testimony. If the Referee rules on the employer's objection, and finds the testimony inadmissible, the Referee should allow the claimant to explain what the testimony would show to preserve the claimant's right to appeal the issue.

EXAMPLE 2: During a hearing, the employer attempts to introduce a written statement from a witness who is not present. In the statement, the witness writes that that he observed the claimant violate a rule of the employer. The claimant's attorney objects to the introduction of the written statement as hearsay. The Referee decides to sustain the objection and exclude the written statement. At this point, the Referee should mark the written statement as an exhibit, indicate that the exhibit is not in evidence, and place it into the record.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.255 Failure of~~Of~~ Party to~~To~~ Appear at the~~At The~~ Scheduled Hearing**

a) Failure of the appellant to appear at the hearing at the time the hearing is scheduled before the Referee will result in a dismissal of the appeal. If the hearing is scheduled to be conducted by telephone or the appellant has been allowed or required to appear by telephone, failure of the appellant to inform the

Referee of the telephone number at which he or she can be reached at that time or to answer the telephone at that number will also result in dismissal of the appeal.

b) Failure of the appellee to appear at the hearing at the time the hearing is scheduled~~,~~ or, if a hearing is scheduled to be conducted by telephone or the appellee has been allowed or required to appear by telephone, failure of the appellee to inform the Referee of the telephone number where~~at which~~ he or she can be reached at that time, or to answer the telephone at that number, will cause the Referee to issue a decision based on the evidence introduced by the appellant at the hearing and the evidence in the record.

c) Failure of any witness to appear at the hearing at the time that the hearing is scheduled~~,~~ or, if the hearing is scheduled to be conducted by telephone or the witness has been allowed or required to appear by telephone, a party's failure to inform the Referee of the telephone number at which the Referee can, at the time of the hearing, reach the witness, or the witness' failure to answer the telephone at the number given to the Referee by the party seeking the witness' testimony, shall cause the Referee to conduct the hearing with those parties and witnesses who appeared in person or were available by telephone and to make his or her decision based on the available testimony and evidence in the record.

d) If any party or witness shall refuse to consent to the tape recording of the hearing by the Referee or refuse to take the oath or affirmation when requested by the Referee, the participation of that individual in the hearing shall be terminated~~,~~ and the hearing shall be conducted as if the individual failed to appear.

e) If a party fails to appear and an adverse decision is rendered, that party may, by letter or on the record, request rehearing of the appeal from the Referee or from his or her supervisor, provided that party has not filed an appeal to the Board of Review pursuant to Section 2720.300. In the event that such an appeal to the Board of Review has been filed, the rehearing request will be denied. The following procedure shall be used:

1) Requests to rehear the appeal must be filed no later than 10 days after the hearing or the date the party first knew or should have known of the scheduled hearing, whichever is later, but in no event beyond the time for filing a timely appeal to the Board of Review pursuant to Section 2720.300(a); e.g., the appellant does not attend a hearing because he or she claims not to have received notice of the hearing, he or she does, however,

receive a decision that his or her appeal has been dismissed for failing to appear at the hearing, his or her request for rehearing must be filed within 10 days after this decision because, as a result of the dismissal of his or her appeal, he or she should have known that he or she missed the scheduled hearing. The~~Such~~ requests must state the facts showing that failure to appear at the scheduled hearing was either due to not having received timely notice of the hearing or for an "exceptional reason" as set forth in Section 2720.240 and that either a request for continuance under that Section was improperly denied or the failure to make the request for a continuance was caused by reasons outside of the control of the party and by circumstances that could not have been foreseen and avoided. Upon a party's request, the party shall be treated as not having appeared at the hearing before the Referee and a rehearing shall be granted if, in making the request, the party shows that, at the time of the hearing, the party's Representative~~representative~~ was participating in another hearing before a Referee or Director's representative, the conflict was not patently evident prior to the scheduled start of the party's hearing, and no other reasonable accommodation could be made; except with respect to the facts required to be shown, the request must be consistent with all other provisions of this subsection (e).

2) Based on the statements in the request and the facts of the record:

A) If the request meets the requirements of subsection (e)(1), a hearing shall be scheduled with notice to all parties (see Section 2720.205); or

B) If the request fails to meet the requirements of subsection (e)(1), the request shall be denied~~,~~ and a written decision setting forth the reasons for the denial shall be issued. In these~~such~~ cases, if an adverse decision on the merits was issued, a timely appeal to the denial of a timely request for rehearing shall also constitute a timely appeal on the merits of the matter.

3) At the start of the hearing, any party may present its objections to the request. The Referee will consider all objections and responses and supporting evidence, if any, and will grant or deny the request for a rehearing at that time based on the preponderance of the evidence. If the Referee denies the request, he or she will terminate the proceedings. If the

Referee grants the request, he or she will proceed to conduct a hearing on the merits.

4) If there is an objection to the request, the Referee's ruling will be on the record, and will state the reasons for the ruling that~~which~~ grants or denies the request. All denials of requests for rehearing shall be in writing.

5) If the party disagrees with the denial of the request for rehearing, he or she must appeal the~~such~~ denial within the time and in the manner set forth in Section 2720.300.

6) A decision to grant a rehearing is not immediately subject to appeal but may be raised by the aggrieved party if an appeal is filed to the decision on the merits of the matter.

EXAMPLE~~Example~~: A decision is made to grant a rehearing to an appellant. After the rehearing, a decision is made in favor of the appellant. The appellee may appeal this decision to the Board of Review. In his appeal to the Board of Review, the appellee (now the appellant) may request that the Board of Review rule on the propriety of the granting of the rehearing before it goes to the merits of the matter.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.270 Referee's Decision**

The Referee's Decision will include findings of fact and conclusions of law, separately stated and based on the preponderance of the credible, legally competent evidence in the record. The Department~~Agency~~ will mail a written copy of the Department's~~Agency's~~ Decision to the parties (see Section 2720.1)~~)~~ and to nonparty employers pursuant to Section 2720.205(c). (Customarily, a decision will be mailed within 45 days after~~of~~ the date of filing of the appeal.)

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.277 Prehearing Conference in~~In~~ Labor Dispute Appeal**

a) In any case arising under the provisions of Section 604 of the Act, the Director or the Director's Representative shall hold a prehearing conference~~,~~ if it will expedite

the hearing.

b) All parties shall be given notice of the~~such~~ prehearing conference, and the following items shall be considered at the conference:

1) Simplification of the issues;

2) The possibility of obtaining admissions of fact and documents that~~which~~ will avoid unnecessary proof at the hearing;

3) The limitation on the number of witnesses or the scope of their testimony.

c) After the conference, the Director or the Director's Representative shall issue an agreed order or stipulation either in writing or on the record that~~, which~~ recites any action taken at the prehearing conference and identifies the~~which specifies as to~~ issues for hearing that were~~those~~ not disposed of at the conference. The~~Such~~ order or stipulations shall be made part of the record.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

SUBPART D: APPEALS TO THE BOARD OF REVIEW

**Section 2720.300 Filing of Appeal**

a) Any party may appeal a Referee's Decision~~decision~~. An appeal shall be filed in person, by fax or by mail. The appeal must be filed within 30 days after the Referee's Decision~~decision~~ has been mailed to the parties. The appeal should be filed at the address shown on the Referee's Decision~~decision~~.

b) No special form is necessary to file an appeal to the Board of Review. The appeal should~~ comply with the following requirements~~:

1) Be~~The appeal must be~~ in writing, dated and signed by the person appealing or that person's representative;

2) Contain~~The appeal must contain~~ the docket number of the Referee's Decision~~decision~~, the name of the claimant and either the Social Security or Claimant Identification Number of the claimant;

3) ~~The appeal must~~ set forth the parts of the decision with which the appealing party disagrees and the specific reasons for that disagreement.

c) Any person may request help to write an appeal from the staff of the local office where the claim was filed. Timely filing of an appeal at the local office will be deemed timely filing of an appeal.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.315 Submission of Written Argument or Request to Submit Additional Evidence**

a) A party may inspect or request a transcript of the hearing or a copy of the file as provided in this subsection. The appellant shall have 15 days after the appeal is filed to request a transcript of the hearing or a copy of the file. The appellee shall have 7 days after the mailing of the Notice of Appeal to request a transcript of the hearing or a copy of the file. In the event only a transcript is initially sought and obtained, a later request for a copy of the file must be made within 7 days after the date the transcript is mailed or made available for inspection. The Board of Review shall make the file available to the parties during the Department's regular business hours.

b) A party may file a written argument to the Board of Review as provided in this subsection. The Board of Review shall not consider any written argument, response, or reply unless the submitting party has certified that it served a copy of the written argument on the opposing party.~~Except as provided for in subsection (a)(1), the Board of Review will consider written argument submitted to the Board within 15 days after the appeal has been filed, or, if the written argument is submitted by the appellee, within 7 days after the date of mailing of the Notice of Appeal. The Board of Review shall make the entire file of the proceedings in question available to the parties to prepare such written argument as they wish to file.~~

1) ~~In the event that a transcript or copy of the file is sought by the appellant, the request for a transcript or a copy of the file must be made within 15 days after the appeal is filed, or, if the request is made by the appellee, within 7 days after the mailing of the Notice of Appeal. In the event only a transcript is initially sought and obtained, a later request for a copy of the file must be made within 7 days after the date the transcript is mailed~~

~~or made available for inspection.~~If a request for inspection of a transcript or a copy of the file has been timely made, the parties shall have ~~Any written argument shall be filed with the Board no later than~~ 10 days after the date that the transcript or file is mailed or made available for inspection, whichever is later, to file a written argument to the Board of Review. The submitting party shall certify that it served a copy of the written argument on the opposing party.

2) If a request for an inspection or a transcript of the hearing or a copy of the file has not been timely made, the appellant shall have 15 days after the appeal has been filed and the appellee shall have 7 days after the date of mailing of the Notice of Appeal to file a written argument with the Board of Review. The submitting party shall certify that it served a copy of the written argument on the opposing party.

3) If the opposing party wishes to file a response, it must file with the Board and serve on the submitting party any response within 7 days after the submitting party's written argument was~~arguments were~~ mailed to the opposing party.

4~~3~~) If the submitting party wishes to file a reply, it must file with the Board and serve on the opposing party any reply within 5 days after the opposing party's response was mailed to the submitting party.

c~~b~~) The Board of Review will consider requests to submit additional evidence ~~if the requests are~~ submitted by the appellant within 15 days after the date an appeal is filed or by the appellee within 7 days after the date of mailing of the Notice of Appeal. In the event a transcript or copy of the file is sought, the request to submit additional evidence shall be filed no later than 10 days after the date the transcript or copy of the file is mailed or made available for inspection, whichever is later. The requesting party shall certify that it served a copy of its request on the opposing party.

1) A request to submit additional evidence must include:

A) A summary of the evidence to be introduced; and

B) An explanation showing that the requesting party, for reasons not its fault and outside its control, was unable to introduce the

evidence at the hearing before the Referee.

2) If the party that filed a request to submit additional evidence, or its witness, failed to appear at a scheduled hearing, the Board shall not consider that party's request to submit additional evidence unless that party can~~must~~ show that: ~~either~~

A) it did not receive timely notice of the hearing;~~,~~

B) ~~that~~ its failure to appear at the hearing was due to circumstances beyond its control; or

C) that it requested a continuance before the conclusion of the hearing, that~~which~~ was denied.

3) If the~~The~~ opposing party desires to file a response, it must~~may~~ file with the Board and serve on the requesting party any written response within 7 days after the request to submit additional evidence was mailed to the opposing party.

4) If the~~The~~ requesting party desires to file a reply, it must~~may~~ file with the Board and serve on the opposing party any written reply within 5 days after the opposing party's response was mailed to the requesting party.

5) A ruling by the Board of Review to deny a request to submit additional evidence will be announced in its decision. If the Board of Review grants the request, the parties will be notified in the Board of Review's decision or by separate written correspondence, which shall specify the time, place and manner in which the evidence is to be submitted. The Board of Review shall include~~grant or deny the requests in writing with~~ a finding of facts and reasons for the grant or denial. ~~In the event a request to submit additional evidence is granted, the Order granting the request shall specify the time, place and manner in which the evidence is to be submitted.~~

d~~c~~) At the request of the party and for good cause shown, the Board will grant a reasonable extension of time within which to submit a written argument or request to submit additional evidence. No extension shall be for less than 7 days nor more than 30 days.

e~~d~~) All notices, written arguments, requests to submit additional evidence, responses and replies must contain the Board of Review Docket number assigned to the matter, as set forth in the Notice of Appeal (see Section 2720.25).

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2720.335 Decision of the~~Of The~~ Board of Review**

The decision of the Board of Review will set forth, in writing, the factual and legal basis for its decision. The Board of Review shall cause a written copy of its decision to be mailed to the parties under~~pursuant to~~ Section 2720.1~~ of this Part~~, and/or their representatives under~~pursuant to~~ Section 2720.5(c~~b~~)~~ of this Part~~, and to nonparty employers (see Section 2720.205(c)~~ of this Part~~) within the time limits specified in Section 803 of the Act.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Administrative Hearings and Appeals

2) Code Citation: 56 Ill. Adm. Code 2725

3)

| Section Numbers: | Proposed Actions: |
|---|---|
| 2725.10 | Amendment |
| 2725.20 | Amendment |
| 2725.25 | Amendment |
| 2725.220 | Amendment |
| 2725.270 | Amendment |
| 2725.275 | Amendment |

4) Statutory Authority: Implementing and authorized by Sections 701, 702, 703, 706, 1501, 1501.1, 1502, 1502.1, 1508, 1508.1, 1509, 1510, 1700, 1701, 2200, 2201, 2203, 2300, 2301, 2302, 2304 and 2305 of the Unemployment Insurance Act [820 ILCS 405/701, 702, 703, 706, 1501, 1501.1, 1502, 1502.1, 1508, 1508.1, 1509, 1510, 1700, 1701, 2200, 2201, 2203, 2300, 2301, 2302, 2304, and 2305].

5) A Complete Description of the Subjects and Issues Involved: Describes how time will be computed for electronic notices. Clarifies that parties are to appear for benefit hearings by phone unless a party has elected otherwise. Updates obsolete references.

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

7) Will this 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

| Sections Numbers: | Proposed Actions: | *Illinois Register* Citations: |
|---|---|---|
| 2725.30 | New Section | 42 Ill. Reg. 16978; September 28, 2018 |
| 2725.35 | New Section | 42 Ill. Reg. 16978; September 28, 2018 |
| 2725.40 | New Section | 42 Ill. Reg. 16978; September 28, 2018 |
| 2725.45 | New Section | 42 Ill. Reg. 16978; September 28, 2018 |
| 2725.50 | New Section | 42 Ill. Reg. 16978; September 28, 2018 |

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

| | | |
|---|---|---|
| 2725.55 | New Section | 42 Ill. Reg. 16978; September 28, 2018 |
| 2725.105 | Amendment | 42 Ill. Reg. 16978; September 28, 2018 |
| 2725.110 | Amendment | 42 Ill. Reg. 16978; September 28, 2018 |
| 2725.115 | Amendment | 42 Ill. Reg. 16978; September 28, 2018 |
| 2725.125 | New Section | 42 Ill. Reg. 16978; September 28, 2018 |
| 2725.200 | Amendment | 42 Ill. Reg. 16978; September 28, 2018 |
| 2725.250 | Amendment | 42 Ill. Reg. 16978; September 28, 2018 |

11) Statement of Statewide Policy Objective: These proposed rules neither create nor expand a State mandate.

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit written comments to:

Thomas D. Chan, Acting General Counsel
Illinois Department of Employment Security
33 South State Street – Room 933
Chicago IL 60603

312/793-2338
fax: 312/793-5645
e-mail: Thomas.D.Chan@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].

The proposed rulemaking may have an impact on small businesses, small municipalities and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80 and 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as a small business, small municipality or not-for-profit corporation as part of any written comments submitted to the Department.

13) Initial Regulatory Flexibility Analysis:

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

A) Types of small businesses, small municipalities and not-for-profit corporations affected: This rulemaking has no direct effect on small businesses, small municipalities and not-for-profit corporations.

B) Reporting, bookkeeping or other procedures required for compliance: No reporting or bookkeeping is required for compliance.

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 2 most recent agendas because: the revisions were not anticipated at the time.

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

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER IV: DEPARTMENT OF EMPLOYMENT SECURITY
SUBCHAPTER a: GENERAL PROVISIONS

PART 2725
ADMINISTRATIVE HEARINGS AND APPEALS

SUBPART A: GENERAL PROVISIONS

Section
2725.1 Definitions
2725.3 Burden Of Proof
2725.5 Designation Of Agents
2725.10 Computation of~~Of~~ Time
2725.11 Use of Private Messenger Services
2725.15 Disqualification Of Agency Employee
2725.20 Request for~~For~~ Clarification
2725.25 Form of~~Of~~ Papers Filed

SUBPART B: FILING OF APPLICATIONS AND CLAIMS FOR RELIEF

Section
2725.100 Application For Revision Of Statement Of Benefit Charges
2725.105 Application For Review Of Rate Determination
2725.110 Protest Of Determination And Assessment
2725.115 Claim For Adjustments (Credits) And Refunds
2725.120 Application For Cancellation Of Benefit Charges Due To Lack Of Notice

SUBPART C: APPEAL TO DIRECTOR'S REPRESENTATIVE

Section
2725.200 Filing Of Appeal
2725.205 Pre-Hearing Conference
2725.210 Notice Of Hearing
2725.215 Preparation for the Hearing
2725.220 Telephone Hearings
2725.225 Ex Parte (One Party Only) Communications
2725.230 Subpoenas
2725.232 Depositions

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

2725.235 Consolidation Or Severance Of Proceedings
2725.237 Adding Necessary Parties
2725.240 Withdrawal Of Petition For Hearing
2725.245 Continuances
2725.250 Conduct of Hearing
2725.255 Rules of Evidence
2725.260 Oral Argument-Memoranda-Post Hearing Documents
2725.265 The Record
2725.270 Recommended Decision
2725.275 Objections to~~To~~ Recommended Decision
2725.280 Decision Of Director

AUTHORITY: Implementing and authorized by Sections 701, 702, 703, 706, 1501, 1501.1, 1502, 1502.1, 1508, 1508.1, 1509, 1510, 1700, 1701, 2200, 2201, 2203, 2300, 2301, 2302, 2304 and 2305 of the Unemployment Insurance Act [820 ILCS 405/701, 702, 703, 706, 1501, 1501.1, 1502, 1502.1, 1508, 1508.1, 1509, 1510, 1700, 1701, 2200, 2201, 2203, 2300, 2301, 2302, 2304, and 2305].

SOURCE: Adopted at 11 Ill. Reg. 11065, effective July 1, 1987; amended at 12 Ill. Reg. 14653, effective September 6, 1988; amended at 12 Ill. Reg. 16060, effective September 23, 1988; emergency amendments at 13 Ill. Reg. 11872, effective July 1, 1989, for a maximum of 150 days; amended at 13 Ill. Reg. 17383, effective October 30, 1989; amended at 14 Ill. Reg. 5126, effective March 22, 1990; amended at 16 Ill. Reg. 113, effective December 23, 1991; amended at 16 Ill. Reg. 2122, effective January 27, 1992; emergency amendment at 16 Ill. Reg. 7502, effective April 22, 1992, for a maximum of 150 days; emergency expired on September 19, 1992; amended at 20 Ill. Reg. 6378, effective April 29, 1996; amended at 33 Ill. Reg. 9641, effective July 1, 2009; amended at 35 Ill. Reg. 6129, effective March 25, 2011; amended at 43 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

**Section 2725.10 Computation of~~Of~~ Time**

a) For purposes of any notice, decision, ruling or order that is mailed or delivered by personal service by the Department, the~~The~~ calendar day on which any notice, decision, ruling or order is mailed or delivered by personal service by the Department~~Agency~~ shall be excluded in computing time. For purposes of any notice, decision, ruling or order that is posted electronically as provided in Section 2725.40, the date treated as the date of mailing for purposes of electronic notices

shall be excluded in computing time.

b) The calendar day on which notice is due or action is required by a party shall be included in the computation of time.

c) If the last day a response is due to be filed is a day on which the Agency is closed, the due date is extended to the end of the next day on which the Agency is open.

d) The date on the document shall be rebuttable evidence that it was mailed or delivered on that date. A postmark placed on the envelope by the United States Postal Service shall be conclusive evidence of the date of mailing. An Agency notation showing the date of receipt shall be conclusive evidence of the date of personal service, or of an undated, unpostmarked document which is mailed. A return receipt signed and dated by an Agency employee shall be conclusive evidence of the date of receipt. For purposes of documents posted electronically as provided in Section 2725.40, notice shall be deemed to have been served as provided in Section 2725.40(e).

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2725.20 Request for~~For~~ Clarification**

Any employer may request clarification of information contained on a ~~"Statement of Benefit Wages" or a~~ "Statement of Benefit Charges" (Ben-118), a Statement of Amount Due (Ben-118R),"~~Notice of Employer's~~ Contribution Rate Determination "~~(ER-5)~~ or "Notice of Determination and Assessment and Demand for Payment" by contacting the Department of Employment Security, Division of Revenue, at the address or telephone number listed on such applicable form. However, such response by the Revenue Division shall be for informational and clarification purposes only and not binding on either the employer or the Agency.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2725.25 Form of~~Of~~ Papers Filed**

a) Each Application, Protest, Petition or Claim shall bear the name, address and account number of the employing unit~~,~~ and, when~~where~~ the employment or unemployment status of the individual or claimant is at issue, the name and Social Security account number or claimant ID number of the individual or claimant, along with the name, address and telephone number of the person filing the

document.

b) All subsequent papers shall bear the docket number, if applicable, of the matter, along with the name, address and telephone number of the individual filing the document.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

SUBPART C: APPEAL TO DIRECTOR'S REPRESENTATIVE

**Section 2725.220 Telephone Hearings**

a) The~~When, because of distances involved, or it is impractical for the parties, witnesses or the Director's Representative to appear in the same county for a hearing, the~~ Director's Representative has the authority to schedule a telephone hearing. Any party shall have a right not to participate in a telephone hearing, and any party electing not to participate in a telephone hearing shall be granted an in-person hearing. If a hearing is to be conducted by telephone, the notice shall so inform the parties and include instructions for providing the Agency with any necessary telephone numbers. The in-person presence of some parties or witnesses at the hearing shall not prevent the participation of other parties or witnesses by telephone.

b) A party to a telephone hearing must submit to the Director's Representative, at least 5 days before the date of the scheduled hearing, any documents that are intended to be introduced at the hearing. Copies of the documents must also be provided to any other party prior to the date of the scheduled hearing. All documents submitted to the Director's Representative will be identified on the record.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2725.270 Recommended Decision**

a) The Director's Representative shall issue a recommended decision without a hearing when~~where~~:

1) The Record fails to state a basis for relief under the facts stated or the law;

2) The Petition or revised Petition, Application for review of rate determination, Application for revision of ~~statement of benefit wages or~~ statement of benefit charges, or Claim for refund or adjustment was not filed in a timely manner as provided for in the Act and no issues relating to timeliness have been raised by the petitioner.

b) The Director's Representative, at the conclusion of the hearing, or upon the failure of an appealing party to appear at a scheduled hearing or failure of that~~such~~ party to provide any necessary telephone number or to answer at a designated telephone number at the time of the~~such~~ scheduled hearing as provided in Section 2725.220, shall submit his or her recommended decision to the Director. The~~Such~~ recommended decision shall include:

1) A statement of issues involved;

2) Findings of fact;

3) Conclusions of law;

4) A recommended decision.

c) A copy of the~~such~~ recommended decision shall be served upon all parties.

d) The~~Such~~ recommended decision shall become the decision of the Director unless objections are filed to the recommended decision in accordance with Section 2725.275.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2725.275 Objections to~~To~~ Recommended Decision**

a) Any party shall have the right to file objections to a recommended decision within 20 days after the service of the~~such~~ recommended decision. The~~Such~~ objections shall also be served upon the other parties, if any.

b) Objections to a recommended decision shall be sufficient only if they set forth specifically and in detail a basis for relief. Failure to file or set forth an objection in accordance with this Section~~these rules~~ shall be deemed a waiver of the~~such~~ objection.

c) If the employer failed to appear at the hearing before the Director's Representative or failed to provide any necessary telephone numbers at the time of the~~such~~ scheduled hearing as provided in Section 2725.220 and the~~such~~ employer wants a hearing, he or she must file his or her objections and the facts that~~which~~ show the ~~that his~~ failure to appear, provide the telephone number or answer the telephone was caused by reasons outside of his or her control, or by circumstances that could not be reasonably foreseen and avoided and that there is a likelihood that a hearing on the merits would result in the relief sought.

d) If an employer receives a recommended decision pursuant to Section 2725.270(a), the~~such~~ employer may also demand a hearing before the Director's Representative to orally present ~~such~~ objections. A hearing will be scheduled and shall be limited to the issues set forth in the recommended decision and the objections filed.

e) Upon written request or oral request on the record, within 10 days after service of the~~such~~ recommended decision, the employer shall be granted one 10 day extension of the time for filing objections. Notice of the~~such~~ request must be served upon the other parties, if any.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENT

1) Heading of the Part: Wages

2) Code Citation: 56 Ill. Adm. Code 2730

3) Section Number: 2730.130 — Proposed Action: Amendment

4) Statutory Authority: Implementing and authorized by Sections 234, 235, 245, 1700 and 1701 of the Unemployment Insurance Act [820 ILCS 405/234, 235, 245, 1700 and 1701].

5) A Complete Description of the Subjects and Issues Involved: Clarifies the rules for determining the employer with respect to sick pay administered by third parties.

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

7) Will this 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? No

11) Statement of Statewide Policy Objective: These proposed amendments neither create nor expand a State mandate.

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit written comments to:

Thomas D. Chan, Acting General Counsel
Illinois Department of Employment Security
33 South State Street – Room 933
Chicago IL 60603

312/793-2338
fax: 312/793-5645
e-mail: Thomas.D.Chan@illinois.gov

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENT

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].

The proposed rulemaking may have an impact on small businesses, small municipalities and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80 and 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as a small business, small municipality or not-for-profit corporation as part of any written comments submitted to the Department.

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: This rulemaking has no direct effect on small businesses, small municipalities and not-for-profit corporations.

B) Reporting, bookkeeping or other procedures required for compliance: No reporting or bookkeeping is required for compliance.

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 2 most recent agendas because: the revisions were not anticipated at the time.

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

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENT

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER IV: DEPARTMENT OF EMPLOYMENT SECURITY
SUBCHAPTER b: COVERAGE OF UNEMPLOYMENT INSURANCE ACT

PART 2730
WAGES

SUBPART B: OTHER REMUNERATION TREATED AS WAGES

Section
2730.100 Money Value of Board And Lodging, Etc.
2730.105 Reporting Gratuities
2730.130 ~~Exceptions to~~ Liability ~~of Certain Third Party Payors~~ for Contributions and Reporting of Sick Pay~~Certain Payments on Account of Sickness and Accident Disability~~
2730.150 Payments Under A Cafeteria Plan
2730.155 Payments Under A Plan Authorized By Section 401(k) of the Internal Revenue Code of 1986

AUTHORITY: Implementing and authorized by Sections 234, 235, 245, 1700 and 1701 of the Unemployment Insurance Act [820 ILCS 405/234, 235, 245, 1700 and 1701].

SOURCE: Illinois Department of Labor, Bureau of Employment Security, Rule 1 filed as amended June 27, 1952, effective July 7, 1952; Regulation 30 filed as amended September 12, 1977, effective September 22, 1977; rules repealed by operation of law October 1, 1984; new rules adopted at 9 Ill. Reg. 18924, effective November 25, 1985; amended at 12 Ill. Reg. 15072, effective September 8, 1988; amended at 15 Ill. Reg. 16964, effective November 12, 1991; amended at 18 Ill. Reg. 14958, effective September 27, 1994; emergency amendment at 36 Ill. Reg. 18928, effective December 17, 2012 through June 30, 2013; amended at 37 Ill. Reg. 7432, effective May 14, 2013; amended at 43 Ill. Reg. _____, effective _____.

SUBPART B: OTHER REMUNERATION TREATED AS WAGES

**Section 2730.130 ~~Exceptions to~~ Liability ~~of Certain Third Party Payors~~ for Contributions and Reporting of Sick Pay~~Certain Payments on Account of Sickness and Accident Disability~~**

a) Sick pay is any amount paid to an employee for any period during which the employee is temporarily absent from work because of injury, sickness, or

disability. Except as provided in subsection (b), sick pay paid with respect to employment by employers and third parties is wages under Sections 234 and 235 of the Act and subject to the payment of contributions. Determination of the individual or entity liable for reporting wages and paying contributions on sick pay depends on whether the sick pay is paid by the employer, by an agent of the employer, or by a third party that is not the employer's agent. Except as provided in subsection (d), the entity or individual who pays the sick pay is responsible for reporting those payments as wages and paying contributions to the Department.~~Section 235 of the Act [820 ILCS 405/235] provides, in pertinent part, that the term "wages" does not include:~~

> ~~*The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), made to, or on behalf of, an individual or any of his dependents under a plan or system established by an employer which makes provision generally for individuals performing services for him (or for such individuals generally and their dependents) or for a class or classes of such individuals (or for a class or classes of individuals and their dependents), on account of sickness or accidental disability, or medical or hospitalization expenses in connection with sickness or accident disability.*~~

b) The following payments, made to, or on behalf of, an individual or any of his or her dependents under a plan or system established by an employer that makes provision generally for individuals performing services for him or her (or for such individuals generally and their dependents) or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents), are not "wages" subject to the payment of contributions~~For purposes of this exclusion~~:

1) payments made under a workers' compensation law~~The plan or system must provide generally for individuals performing services for the employer, or for such individuals and their dependents, or for a class or classes of such individuals and their dependents (plan has a definite basis for determining who is eligible, such as length of service, occupation or salary classification)~~;

2) payments made on account of medical or hospitalization expenses in connection with sickness or accident disability~~A payment is made on account of sickness or accident disability if it constitutes remuneration or a~~

~~payment in lieu of remuneration for any period during which the individual is absent from work (unable to perform services) on account of sickness or personal injuries~~;

3) payments made on account of death~~A dependent of an individual is the individual's husband or wife, children and any other member of the individual's immediate family as defined in 18 USC 115(c)(2)~~;

4) payments made on account of sickness or accident disability made by an employer to or on behalf of an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for the employer.~~Payments made under a workers' compensation law are excluded from the term "wages";~~

~~5) If an individual receives a payment on account of sickness or accident disability which is not initially made under a workers' compensation law but that must later be repaid to the employer because the individual receives a workers' compensation award with respect to the same period of absence from work, the payment shall be considered "wages".~~

c) If an employee receives a payment on account of sickness or accident disability that is not made under a workers' compensation law or a statute in the nature of a workers' compensation Act, the payment is not excluded from "wages" even if the payment must be repaid if the employee later receives a workers' compensation award or an award under a statute in the nature of a workers' compensation Act with respect to the same period of absence from work.

d) ~~Payments made by third parties not excluded by this Part or the Act are to be included as "wages" and~~ Except when the payments do not constitute "wages" (see subsection (b)), and except as provided in subsection (e), a~~the~~ third party payor is ~~to be considered~~ the employer for purposes of reporting wages and paying contributions, unless all of the conditions~~requirements~~ in subsections (d)(1) through (4) ~~this subsection (c)~~ are met.

1) The last employer for whom the individual worked prior to becoming sick or disabled or for whom the individual was working at the time the individual became sick or disabled ~~shall be deemed to be the employer for whom the personal services are performed, provided that the employer~~ made contributions on behalf of the individual to the plan or system under

which the individual is paid.

2) There is~~The absence of~~ an agreement between the third party payor and the employer that the employer will be required to report the wages and pay the contributions~~ will render the third party as the employer, and, as such, the third party will be required to report the wages and pay the contributions as applicable~~.

3) ~~The Agency will consider the employer for whom the personal services are performed to be the employer for the purposes of reporting wages paid to workers, pursuant to 56 Ill. Adm. Code 2760.125, and the payment of contributions if all of the following requirements are met:A)The third party and the employer for whom the personal services are performed agree that the employer (not the third party) will be treated as the employer with respect to the wages; andB)~~The third party payor notifies the employer at least six working days prior to the end of the month following the preceding calendar quarter (or the preceding month in the case of an employer subject to 56 Ill. Adm. Code 2760.125(a)(1)) of the Social Security account numbers, employee names, and amount of sickness or accident disability payments made during the month or calendar quarter, as the case may be.

A~~i~~) For the purposes of determining timeliness of the notice, the provisions of 56 Ill. Adm. Code 2765.60 shall apply;

B~~ii~~) A notification that contains the required information and that has been made by a third party to an employer, as required by the Federal Insurance Contributions Act (26 USC 1501 et seq.) will be sufficient notification under this Part.

4) The employer reports the wages pursuant to Section 2760.125, and includes the wages in the calculation and payment of contributions.

e~~d~~) A third party making a payment on account of sickness or accident disability to an individual as agent for the employer or making such a payment directly to the employer shall not be treated as the employer with respect to the payments unless the agency agreement so provides. The determining factor as to whether a third party is an agent of the employer is whether the third party bears any insurance risk.

1) If the third party bears no insurance risk and is reimbursed on a cost plus fee basis, the third party is an agent of the employer even if the third party is responsible for making determinations of eligibility of the individual employees of the employer for payments on account of sickness and accident disability.

2) If the third party is paid an insurance premium and not reimbursed on a cost plus fee basis, the third party is not an agent of the employer, but the third party is treated as the employer, as provided in subsection (d~~e~~).

f) For purposes of subsection (b), a dependent of an individual is the individual's husband or wife, children and any other member of the individual's immediate family as defined in 18 USC 115(c)(2).

g) Except for any wages paid to an individual for services actually performed in employment of the third party payor, a third party payor that is liable for purposes of reporting wages and paying contributions for payments made on account of sickness and accident disability is not the last 30-day chargeable employer for purposes of Section 1502.1 of the Act.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Employment

2) Code Citation: 56 Ill. Adm. Code 2732

3)

| Section Numbers: | Proposed Actions: |
|---|---|
| 2732.125 | Amendment |
| 2732.205 | Amendment |
| 2732.210 | Amendment |
| 2732.225 | Amendment |
| 2732.227 | Amendment |
| 2732.230 | Amendment |

4) Statutory Authority: Implementing and authorized by Sections 205, 206, 206.1, 211.5, 212, 212.1, 215, 217, 218, 225, 1700 and 1701 of the Unemployment Insurance Act [820 ILCS 405/205, 206, 206.1, 211.5, 212, 212.1, 215, 217, 218, 225, 1700 and 1701].

5) A Complete Description of the Subjects and Issues Involved: Updates obsolete references.

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? Yes

| Section Number: | Proposed Action: | *Illinois Register* Citation: |
|---|---|---|
| 2732.306 | Amendment | 42 Ill. Reg. 17002; September 28, 2018 |

11) Statement of Statewide Policy Objective: These proposed amendments neither create nor expand a State mandate.

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit written comments to:

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

Thomas D. Chan, Acting General Counsel
Illinois Department of Employment Security
33 South State Street – Room 933
Chicago IL 60603

312/793-2338
fax: 312/793-5645
e-mail: Thomas.D.Chan@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].

The proposed rulemaking may have an impact on small businesses, small municipalities and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80 and 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as a small business, small municipality or not-for-profit corporation as part of any written comments submitted to the Department.

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: This rulemaking has no direct effect on small businesses, small municipalities and not-for-profit corporations.

B) Reporting, bookkeeping or other procedures required for compliance: No reporting or bookkeeping is required for compliance.

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 2 most recent agendas because: the revisions were not anticipated at the time.

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

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

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER IV: DEPARTMENT OF EMPLOYMENT SECURITY
SUBCHAPTER c: RIGHTS AND DUTIES OF EMPLOYERS

PART 2732
EMPLOYMENT

SUBPART A: COVERAGE

Section

2732.125 Requirement that~~That~~ "Four or~~Or~~ More" Employees of a~~Of A~~ Nonprofit Organization Perform Services Within This State

SUBPART B: SERVICES IN EMPLOYMENT

Section

2732.200 Section 212 of the Act – Services in Employment
2732.203 The Effect Of Regulation By A Governmental Entity On "Direction Or Control" Under Section 212 Of The Act
2732.205 Owner-Operators of~~Of~~ Motorized Vehicles
2732.210 Mandatory Jury Service
2732.215 Exemption From The Definition Of Employment For Participants In The Americorps Program
2732.220 Exemption From The Definition Of Employment For Direct Sellers Of Consumer Goods
2732.225 Exemption from the~~From The~~ Definition of~~Of~~ Employment for~~For~~ Freelance Editorial or~~Or~~ Photographic Work
2732.227 Exemption for the~~For The~~ Delivery or~~Or~~ Distribution of~~Of~~ Newspapers or~~Or~~ Shopping News to the~~To The~~ Ultimate Consumer
2732.230 Domestic Service
2732.235 Effect Of Section 218 Of The Act On The Employment Status Of Certain Relatives

SUBPART C: DETERMINING THE EMPLOYER

Section

2732.305 Employee Leasing Companies (Repealed)
2732.306 Employee Leasing Company – Obligation to Report the Identities of its Clients

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

AUTHORITY: Implementing and authorized by Sections 205, 206, 206.1, 211.5, 212, 212.1, 215, 217, 218, 225, 1700 and 1701 of the Unemployment Insurance Act [820 ILCS 405/205, 206, 206.1, 211.5, 212, 212.1, 215, 217, 218, 225, 1700 and 1701].

SOURCE: Adopted at 13 Ill. Reg. 8864, effective May 30, 1989; amended at 14 Ill. Reg. 673, effective January 2, 1990; amended at 15 Ill. Reg. 11423, effective July 30, 1991; amended at 16 Ill. Reg. 8173, effective May 18, 1992; amended at 16 Ill. Reg. 12159, effective July 20, 1992; amended at 17 Ill. Reg. 8809, effective June 2, 1993; amended at 17 Ill. Reg. 17947, effective October 4, 1993; amended at 18 Ill. Reg. 16355, effective October 24, 1994; amended at 21 Ill. Reg. 9456, effective July 2, 1997; emergency amendment at 24 Ill. Reg. 14788, effective September 22, 2000, for a maximum of 150 days; amended at 25 Ill. Reg. 2003, effective January 18, 2001; amended at 33 Ill. Reg. 9646, effective July 1, 2009; emergency amendment at 36 Ill. Reg. 18936, effective December 17, 2012 through June 30, 2013; amended at 37 Ill. Reg. 7440, effective May 14, 2013; amended at 43 Ill. Reg. _____, effective _____.

SUBPART A: COVERAGE

**Section 2732.125 Requirement That "Four Or More" Employees of a~~Of A~~ Nonprofit Organization Perform Services Within This State**

In applying Section 211.2 of the Act [820 ILCS 405]~~(Ill. Rev. Stat. 1989, ch. 48, par. 321.2)~~, only individuals performing services in this State shall be included in determining whether the nonprofit organization has had four or more individuals in employment.

> EXAMPLE~~Example~~: Organization X is a nonprofit organization, as defined in section~~Section~~ 501(c)(3) of the Internal Revenue Code of 1986, and is exempt from income tax under section~~Section~~ 501(a) of that Code. It maintains its national headquarters in Madison, Wisconsin, where it employs 10~~ten~~ persons. It also maintains a branch office in Chicago, where it employs one worker. The services of the one worker in Chicago shall not constitute employment in Illinois because this organization does not have 4 or more individuals in employment in Illinois.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

SUBPART B: SERVICES IN EMPLOYMENT

**Section 2732.205 Owner-Operators of~~Of~~ Motorized Vehicles**

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

a) Section 212.1 of the Act [820 ILCS 405~~/212.1~~] applies only to services performed on or after August 8, 1995.

b) The burden of proving that services are exempt, under Section 212.1, from the Act's definition of "employment" rests with the person or entity to which the individual is contracted to perform the services.

c) Section 212.1 applies only to services an individual performs as an operator of a truck, truck-tractor or tractor.

EXAMPLE~~Example~~: Smith performs services for Company A, which is licensed by the Illinois Commerce Commission as a motor carrier of personal property. These services consist entirely of loading and unloading trucks at Company A's loading dock. Section 212.1 of the Act does not exempt Smith's services for Company A from the Act's definition of "employment~~.~~".

d) For purposes of applying Section 212.1:

1) "Truck" has the meaning ascribed to it in Section 1-211 of the Illinois Vehicle Code [625 ILCS 5~~/1-211~~].

2) "Truck-tractor" has the meaning ascribed to it in Section 1-212 of the Illinois Vehicle Code ~~[625 ILCS 5/1-212]~~.

3) "Tractor" has the meaning ascribed to "road tractor" in Section 1-178 of the Illinois Vehicle Code ~~[625 ILCS 5/1-178]~~.

4) "Family member" means any parent, sibling, child, sibling of a parent, or any of the foregoing relations by marriage or civil union.

5) A person or entity owns, controls or operates another entity when:

A) by virtue of its ownership interest in that other entity, it has the power to direct the management of the other entity; ~~or~~

B) by virtue of its ownership interest in that other entity combined with the ownership interest of one or more others, it actually directs, by itself or in conjunction with others, the management of

the other entity; or

C) it has responsibility for overseeing the day-to-day operations of that other entity.

6) Ownership, control or operation may be through any one or more natural persons or proxies, powers of attorney, nominees, proprietorships, partnerships, associations, corporations, trusts, joint stock companies or other entities or devices or any combination of these~~thereof~~.

7) "Person or entity" means a sole proprietorship, partnership, association, corporation or any other legal entity.

8) A requirement imposed by a governmental regulatory or licensing agency with respect to services an individual performs as an operator of a truck, truck-tractor or tractor is not a requirement imposed on the individual by any person or entity to which the individual is contracted to perform the services.

e) Section 212.1(a)(1~~2~~) of the Act
Section 212.1(a)(1) is not satisfied unless:

1) The services are performed by an individual who is registered or licensed as a motor carrier of real or personal property by the Illinois Commerce Commission, US~~the Interstate Commerce Commission, the United States~~ Department of Transportation, or any successor agencies; or

2) Both:

A) The individual performing the services is doing so under an owner-operator lease contract; and

B) The person or entity with which the individual is contracted to perform the services is registered or licensed as a motor carrier of real or personal property by the Illinois Commerce Commission, US~~the Interstate Commerce Commission, the United States~~ Department of Transportation, or any successor agencies.

EXAMPLE~~Example~~: Jones, who owns her own pickup

truck, works for ABC Hardware Store. As part of the regular course of Jones' work for ABC, she uses her pickup truck to make deliveries to customers. Neither Jones nor ABC is licensed or registered as a motor carrier of property. Section 212.1 of the Act does not exempt the delivery services Jones performs for ABC from the Act's definition of "employment."

f) Section 212.1(a)(2) of the Act
Section 212.1(a)(2) is not satisfied unless both subsections (f)(1) and (2) of this Section are satisfied.

1) The individual performing the services must be able, with reasonable notice if required by the contract, to terminate the lease contract with the person or entity to which the individual is contracted to perform the services, prior to the termination date specified in the contract, without incurring any legal or equitable liability to that~~such~~ person or entity other than liability for damage to the property being carried or damage or injury caused as a result of the operation of the truck, truck-tractor or tractor.

A) EXAMPLE~~Example~~: The lease contract between Smith and Motor Carrier A extends from January 1, 1997~~,~~ through June 30, 1997~~,~~ and provides that Smith's terminating the contract prior to June 30, 1997, under any circumstances, will result in Smith's being liable for liquidated damages determined according to a formula specified in the contract. Section 212.1 of the Act does not exempt the services Smith performs pursuant to the contract from the Act's definition of "employment" because Smith does not have the right to terminate the contract as contemplated by Section 212.1(a)(2) of the Act.

B) EXAMPLE~~Example~~: The lease contract between Jones and Motor Carrier C extends from January 1, 1997~~,~~ through June 30, 1997, but provides that Jones may terminate the lease contract prior to June 30, 1997, without incurring any liability to C other than liability for damage to the property being carried or damage or injury caused as a result of the operation of Jones' truck, on the condition that Jones provides C with reasonable notice of termination. If Jones terminates the contract without providing C

with reasonable notice, Jones will be liable for liquidated damages determined in accordance with a formula specified in the contract. Under these facts, absent any other evidence that indicates C has failed to satisfy the requirements of subsections (e) through (k)~~ of this Section~~, the services Jones performs for C are exempt from the Act's definition of "employment".

2) Following the termination of the lease contract, the individual must be able to perform the same or similar services for others, on whatever basis and whenever he or she chooses, without incurring any legal or equitable liability to the person or entity to which the individual was contracted to perform the services under the terminated lease contract.

EXAMPLE~~Example~~: The lease between Davis and Motor Carrier B provides that, upon termination of the contract, Davis shall not, for a period of six months, perform services as an operator of a truck, truck-tractor or tractor for any other motor carrier located within a 90-mile radius of B's main office. The provision is enforceable by injunction. Section 212.1 of the Act does not exempt the services Davis performs pursuant to the contract from the Act's definition of "employment~~.~~".

g) Section 212.1(a)(3) of the Act
Section 212.1(a)(3) is not satisfied unless the person or entity to which the individual is contracted to perform the services imposes no requirements on the individual to perform the services, or be available to perform the services, at a specific time or times, according to a specific schedule or for a specified number of hours. The person or entity is not considered as having imposed such a requirement when~~where~~ the person or entity informs the individual performing the services of a pickup or delivery time specified by the shipper or receiver of the property to be transported.

1) EXAMPLE~~Example~~: Adams telephones Motor Carrier A at 8:00 A.M. each day Adams is available to provide truck driving services to see whether A has any work for Adams. After being informed that there is work, Adams must make himself available to perform the work by 9:00 A.M. If Adams fails to make himself available by 9:00 A.M., Motor Carrier A will enter a demerit on his personnel records. If Adams accumulates five demerits during a year, Motor Carrier A will terminate

its relationship with Adams. Section 212.1 of the Act does not exempt the services Adams performs for Motor Carrier A from the Act's definition of "employment~~.~~".

2) EXAMPLE~~Example~~: Motor Carrier B telephones Smith in each of five consecutive weeks to offer Smith work providing truck driving services for B. Each time, Smith indicates he is not interested. B does not contact Smith after that. By itself, B's decision not to attempt to do further business with Smith, an individual who has consistently refused B's offers of work, is not evidence that B has imposed any requirements on Smith to perform services, or be available to perform services, at a specific time or times, according to a specific schedule or for a specified number of hours.

3) EXAMPLE~~Example~~: ABC Produce Company has contracted with XYZ Trucking Company to deliver produce to various wholesalers every Tuesday, Thursday and Saturday; ABC has instructed XYZ the produce must be delivered to each wholesaler no later than 4 A.M. Jones is to perform the services for XYZ as the operator of a truck, transporting produce from ABC. XYZ informs Jones of the 4 A.M. deadline imposed by ABC. It is understood that Jones' failure to meet the deadline may jeopardize his ability to drive for XYZ again. The deadline was specified by the shipper. The fact that a carrier may be reluctant to transact future business with a driver who has failed to meet the shipper's deadline does not, by itself, indicate the carrier has failed to satisfy Section 212.1 of the Act. Under these facts, absent any other evidence that indicates XYZ has failed to satisfy the requirements of subsections (e) through (k) of this Section, the services Jones performs for XYZ are exempt from the Act's definition of "employment".

4) EXAMPLE~~Example~~: White operates a truck for the ABC Produce Company. ABC instructs White that produce picked up from ABC's terminal must be delivered to XYZ Wholesaler by 4 A.M. on the delivery date. It is understood that White's failure to meet the deadline may jeopardize his ability to drive for ABC again. The fact that ABC may be reluctant to transact future business with a driver who has failed to meet the delivery time ABC, as the shipper, has specified does not by itself indicate ABC has failed to satisfy Section 212.1 of the Act. Under these facts, absent any other evidence that indicates ABC has failed to satisfy the requirements of subsections (e) through (k) of this Section, the services

White performs for ABC are exempt from the Act's definition of "employment".

5) EXAMPLE~~Example~~: Under a contract between Reynolds and ABC Construction Company, Reynolds is to deliver asphalt to a specified ABC construction site at 8 A.M. on the designated day. Timely delivery of asphalt will require Reynolds to pick up the asphalt from the location specified by ABC no later than 7 A.M. It is understood that Reynolds' failure to pick up and deliver the asphalt on time may jeopardize his ability to drive for ABC again. The fact that ABC may be reluctant to transact future business with a driver who has failed to meet the pickup and delivery times ABC, as the receiver, has specified does not, by itself, indicate ABC has failed to satisfy Section 212.1 of the Act. Under these facts, absent any other evidence that indicates ABC has failed to satisfy the requirements of subsections (e) through (k) of this Section, the services Reynolds performs for ABC are exempt from the Act's definition of "employment".

h) Section 212.1(a)(4) of the Act
Section 212.1(a)(4) is not satisfied unless:

1) the individual performing the services leases or holds title to the truck, truck-tractor or tractor; and

EXAMPLE~~Example~~: Smith operates a truck for ABC Trucking Company. ABC holds title to the truck. Section 212.1 of the Act does not exempt the services Smith performs for ABC from the Act's definition of "employment~~.~~".

2) the individual or entity from which the truck, truck-tractor or tractor is leased or that~~which~~ holds a security or other interest in the truck, truck-tractor or tractor is not:

A) the person or entity to which the individual operating the truck, truck-tractor or tractor is contracted to perform the services; or

B) owned, controlled or operated by or in common with, to any extent, directly, or indirectly, the person or entity to which the individual operating the truck, truck-tractor or tractor is contracted

to perform the services or a family member of a shareholder, owner or partner of the person or entity with which the individual is contracted to perform the services.

i) EXAMPLE~~Example~~: Adams operates a truck for XYZ Trucking Company, a corporation in which Jones is the majority shareholder. While Adams holds title to the truck, ABC Trucking Company, of which Jones is the sole proprietor, holds a lien on Adams' truck. Section 212.1 of the Act does not exempt the services Adams performs for XYZ from the Act's definition of "employment~~,~~", since ABC is owned or controlled in common with XYZ.

ii) EXAMPLE~~Example~~: Madison operates a truck for XYZ Trucking, a corporation in which Jefferson is a five-percent shareholder. Madison holds title to the truck, but ABC Finance Company, which is managed by the brother of Jefferson's father-in-law, holds a lien on the truck. Section 212.1 of the Act does not exempt the services Madison performs for XYZ from the Act's definition of "employment~~,~~", since the individual who operates ABC is a family member of a shareholder of XYZ.

iii) EXAMPLE~~Example~~: ABC Trucking Company, a corporation, is being audited by the Department~~ of Employment Security~~ to determine, among other items, whether services that Jones provided for ABC were "employment" for purposes of the Act. ABC demonstrates that Jones held title to the truck he operated in service to ABC while he was performing the services for ABC. ABC also provides a written statement, signed by an owner or officer of ABC and attesting that the owner or officer has made reasonable inquiries into the matter and, to the best of the owner's or officer's knowledge, while Jones was performing the services for ABC, ABC did not have any interest in Jones' truck; no individual or entity that might have held an interest in Jones' truck was owned, controlled or operated by or in common with, to any extent, directly or indirectly, ABC;~~,~~ and no individual or entity that might

have held an interest in Jones' truck was owned, controlled or operated by or in common with, to any extent, directly or indirectly, a family member of a shareholder of ABC. The auditor is not aware of any evidence that contradicts the written statement. These facts indicate that Section 212.1(a)(4) of the Act is satisfied with respect to the services Jones performed for ABC.

i) Section 212.1(a)(5) of the Act

1) Section 212.1(a)(5) is not satisfied unless the individual operating the truck, truck-tractor or tractor pays all costs of licensing and operating the truck, truck-tractor or tractor. Section 212.1(a)(5) is not satisfied if the costs of licensing or operating the truck, truck-tractor or tractor are separately reimbursed by an individual or entity other than the individual operating the truck, truck-tractor or tractor. Costs not directly associated with the operation or licensing of the truck, including but not limited to telephone charges, expenses related to the loading or unloading of cargo and workers' compensation premiums with respect to the operator of a truck, truck-tractor or tractor do not constitute costs of licensing or operating the truck, truck-tractor or tractor.

A) EXAMPLE~~Example~~: Smith operates a truck for ABC Trucking Company. At the end of each week in which Smith has performed services for ABC, the company furnishes Smith a check, accompanied by a statement itemizing the licensing and operational expenses for which Smith is being reimbursed, including wear and tear on Smith's truck. Section 212.1 of the Act does not exempt the services Smith performs for ABC from the Act's definition of "employment~~.~~".

B) EXAMPLE~~Example~~: Adams operates a truck for XYZ Trucking Company, which furnishes Adams with a company debit card Adams may use to purchase fuel. XYZ covers all approved charges against the debit card and does not charge them back to Adams. Section 212.1 of the Act does not exempt the services Adams performs for XYZ from the Act's definition of "employment~~.~~".

C) EXAMPLE~~Example~~: Jones operates a truck for XYZ Trucking Company. At the end of each week in which Jones has performed services for XYZ, the company furnishes Jones with a check. Jones deposits a portion of the payment received from XYZ in a checking account she maintains to cover the costs of operating the truck. Under these facts, absent any other evidence that indicates that XYZ has failed to satisfy the requirements of subsections (e) through (k) of this Section, the services Jones performs for XYZ are exempt from the Act's definition of "employment".

D) EXAMPLE~~Example~~: Reynolds operates a truck for ABC Trucking Company. At the end of each week in which Reynolds has performed services for ABC, the company furnishes Reynolds with a check, based on a flat per mile fee. There is no indication that any portion of the fee is intended as a separate reimbursement to cover any costs directly associated with operating or licensing Reynolds' truck. Under these facts, absent any other evidence that indicates that ABC has failed to satisfy the requirements of subsections (e) through (k) of this Section, the services Reynolds performs for ABC are exempt from the Act's definition of "employment".

E) EXAMPLE~~Example~~: Smith operates a truck for ABC Construction Company. At the end of each week in which Smith has performed services for ABC, the company furnishes Smith with a check, based on an hourly fee for his services. There is no indication that any portion of the check is intended as a separate reimbursement to cover any costs directly associated with operating or licensing Smith's truck. Under these facts, absent any evidence that indicates ABC has failed to satisfy the requirements of subsections (e) through (k) of this Section, the services Smith performs for ABC are exempt from the Act's definition of "employment".

F) EXAMPLE~~Example~~: ABC Trucking Company pays for a customized paint job for the truck of any driver who drives over 1,000,000 miles for it without an accident, as long as the driver owns the truck. While technically, the cost of painting a truck may be considered an operating cost, the principal purpose of the

payments in this case is not to reimburse the driver for operating costs but to reward his or her safe driving record. Under these facts, absent any other evidence that indicates that ABC has failed to satisfy the requirements of subsections (e) through (k) of this Section, the services the driver performs for ABC are exempt from the Act's definition of "employment".

2) This subsection (i) does not apply if~~where~~ federal or State law or regulation requires that the costs of licensing or operating the truck, truck-tractor or tractor be paid by the person or entity to which the individual operating the truck, truck-tractor or tractor is contracted to perform the services.

j) Section 212.1(a)(6) of the Act

1) Section 212.1(a)(6) is not satisfied unless:

A) the individual performing the services offers or advertises his or her services to the public; and

B) the individual performing the services maintains his or her own business identity.

2) Compliance with subsection (j)(1) can be demonstrated by the individual displaying his or her name on the truck, truck-tractor or tractor, or otherwise.

EXAMPLE~~Example~~: Smith has his name and address painted on the doors of his truck. While operating his truck in the performance of services for XYZ Trucking, Smith also has affixed to his truck an identification device indicating he is hauling for XYZ. There is nothing on the truck to indicate Smith does not offer his services to the public. Under these facts, absent any other evidence that indicates XYZ has failed to satisfy the elements of subsections (e) through (k) of this Section, the services Smith performs for XYZ are exempt from the Act's definition of "employment".

k) Section 212.1(a) of the Act is not satisfied if, as a condition for retaining an individual's services as an operator of a truck, truck-tractor or tractor, the person

or entity to which the individual is contracted specifies the person or entity from which the individual is to purchase the truck, truck-tractor or tractor.

1) EXAMPLE~~Example~~: Smith operates a truck for ABC Trucking Company. The truck was purchased from XYZ Company, from which ABC requires anyone who wishes to drive for ABC to purchase his or her truck. Section 212.1 of the Act does not exempt the services Smith performs for ABC from the Act's definition of "employment~~.~~".

2) EXAMPLE~~Example~~: Jones operates a truck for XYZ Trucking Company. Jones purchased the truck from Smith. Previously, Adams, the owner of XYZ, had advised Jones that Smith was interested in selling the truck. Adams had also indicated that, based on what he knew about the truck, he would have bought it if he had been in the market for a truck. However, at no time did Adams indicate that Jones' ability to perform services for XYZ was dependent upon Jones' purchasing a truck from Smith. Under these facts, absent any other evidence that indicates that XYZ has failed to satisfy the requirements of subsections (e) through (k) of this Section, the services Jones performs for XYZ are exempt from the Act's definition of "employment".

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2732.210 Mandatory Jury Service**

Mandatory service on a jury shall not constitute employment under the ~~Unemployment Insurance~~ Act,~~(Ill. Rev. Stat. 1987, ch. 48, par. 300 et seq.)~~ nor shall payments made for those~~such~~ services constitute wages subject to the payment of contributions.

EXAMPLE~~Example~~: A county requires that all registered voters, except those exempted by law, be available to serve on juries for the county court system. The jurors are paid on a per diem basis for their services. These~~Such~~ services are not voluntary and are compelled by law. Therefore, pursuant to this Section, the~~such~~ services shall not constitute employment, nor shall the per diem payments constitute wages.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2732.225 Exemption from the~~From The~~ Definition of~~Of~~ Employment for~~For~~ Freelance Editorial or~~Or~~ Photographic Work**

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

a) For the purpose of applying Section 225(B) of the Act~~ (Ill. Rev. Stat. 1991, ch. 48, par. 335(B), as amended by P.A. 87-1178, effective September 22, 1992) [820 ILCS 405/225(B), as amended by P.A. 87-1178]~~, the following terms have the meanings set forth in this subsection (a)~~below~~.

1) "Freelance" means that an individual has a right to make his or her services available to the general public on an ongoing basis as distinguished from being required to perform services exclusively for one individual or entity.

EXAMPLE 1~~Example~~: Newspaper A needs a photographer to provide pictures of a presidential visit to the State Fair. The newspaper contracts with a Springfield photographer who regularly contracts with Newspaper A and other newspapers for specific assignments. This photographer is providing freelance services to this newspaper.

EXAMPLE 2~~Example~~: Newspaper A contacts a former tennis pro turned sports writer to cover the U.S. Open tennis tournament. The assignment is for a three week period. Newspaper A allows the sports writer to take on assignments from other sources provided they do not interfere with his coverage of the Open. This writer is providing freelance services to this newspaper.

2) "Editorial" means work pertaining to the literary or artistic activities or contents of a newspaper as distinguished from the newspaper's business and advertising activities.

EXAMPLE 1~~Example~~: Professor A is a world authority on economic theory C. Newspaper B hires professor A to write a column that~~which~~ explains why the President must adopt economic theory C as part of his reelection strategy. Professor A is performing editorial work for the newspaper.

EXAMPLE 2~~Example~~: Newspaper A wishes to print a story about a local fair. It hires a resident of the local area to write a column about the fair. The writer of this story is performing editorial work for the newspaper.

EXAMPLE 3~~Example~~: Newspaper A is considering raising its advertising rates. Therefore, it hires a consultant to examine all local media advertising rates and recommend a course of action. This consultant is not performing editorial services for the newspaper.

b) The application of Section 225(B) of the Act is limited to services performed for a newspaper. Freelance editorial or photographic services performed for a magazine do not fall within this exception.

~~c) Section 225(B) of the Act shall apply only to services performed on or after September 22,1992.~~

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2732.227 Exemption for the~~For The~~ Delivery or~~Or~~ Distribution of~~Of~~ Newspaper or~~Or~~ Shopping News to the~~To The~~ Ultimate Consumer**

a) For the purpose of applying Section 225(C) of the Act ~~(Ill. Rev. Stat. 1991, ch. 48, par. 335(C), as amended by P.A. 87-1178, effective September 22, 1992) [820 ILCS 405/225(C), as amended by P.A. 87-1178]~~:

1) The "substantially all the remuneration" requirement is satisfied if at least 75% ~~percent~~ of the total remuneration received by the individual for the calendar quarter from the employing unit claiming the exemption is directly related to sales, "per piece" fees, or other output rather than to the number of hours worked. A "base fee" or other payment provided as a reasonable reimbursement for mileage and other expenses will not be included in calculating whether the requirement is met.

EXAMPLE 1~~Example~~: An individual's compensation consists of $.05 for each newspaper that he delivers and a base fee of $50.00 per week. The individual's weekly mileage expense is approximately $25.00 and his other expenses total approximately $10.00. The base fee is a reasonable reimbursement for mileage and other expenses. Therefore, since the base fee is not considered~~,~~ regardless of the number of newspapers delivered, 100% ~~percent~~, therefore, "substantially all" of the individual's

remuneration is directly related to output.

EXAMPLE 2~~Example~~: An individual's compensation consists of $.05 for each newspaper that he delivers and a flat fee of $100.00 per week. The individual's weekly mileage expense is approximately $20.00 and his other expenses total approximately $7.00. The fee is not a reasonable reimbursement for mileage and other expenses. The difference between the fee and the actual expenses is included in determining whether the "substantially all the remuneration" requirement is met. The individual's output based remuneration would have to be at least 75% of the individual's total pay for the exemption to apply.

2) The "written contract" requirement is not met unless the contract specifically states that the individual will not be treated as an employee for federal~~Federal~~ tax purposes. It will not be sufficient for the contract to merely state that the individual will not be treated as an employee. Any services provided prior to the date of the execution of the required written contract shall not be exempt under Section 225(C) of the Act; whether these services constituted employment under the Act shall be determined under Section 212 of the Act.

3) Delivery or distribution to the "ultimate consumer" does not include the delivery or distribution for sale or resale, including but not limited to~~,~~ distribution to a newsrack or newsbox, salesperson, newstand or retail establishment. Delivery or distribution to the "ultimate consumer" does not include the distribution for further distribution regardless of subsequent sale or resale.

EXAMPLE 1~~Example~~: Delivery of a single newspaper to a restaurant owner who allows his customers to read the paper is delivery to the ultimate consumer.

EXAMPLE 2~~Example~~: Delivery of several copies of a newspaper to a restaurant which provides a complimentary morning newspaper for its customers is not delivery to the ultimate consumer.

b) ~~Section 225(C) of the Act shall apply only to services performed on or after September 22, 1992.~~Section 225(C) of the Act shall apply to a "delivery agent" that~~who~~ delivers the newspaper or shopping news to the ultimate consumer through one or more agents or carriers.

EXAMPLE~~Example~~: Newspaper A contracts with an individual to deliver its newspapers in a specified area. This individual hires several adult motor route carriers to actually deliver the newspaper. Section 225(C) of the Act applies to both the individual and the adult motor route carriers because they are delivering newspapers to the ultimate consumer.

c~~d~~) For Section 225(C) of the Act to apply, the majority (more than 50%) of the individual's deliveries of the newspaper or shopping news must be to the ultimate consumer. The majority of deliveries is determined by the number of establishments where deliveries are made, not by the number of newspapers or shopping news delivered to the establishment.

EXAMPLE 1~~Example~~: An individual has a large newspaper distribution route. On this route, 40% of his deliveries are to homes or apartments. The remaining 60% are delivered to stores, restaurants, newsstands and other retail establishments for retail sale. Section 225(C) of the Act does not apply to this individual.

EXAMPLE 2~~Example~~: An individual delivers newspapers to 20~~twenty~~ single family homes and to one drugstore. Each home receives one newspaper while 50~~fifty~~ newspapers are delivered to the drugstore for resale. Because the number of establishments, not the number of newspapers, determines the majority of deliveries, the individual makes the majority of his deliveries to the ultimate consumer.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2732.230 Domestic Service**

a) For purposes of applying Sections 211.5 and 215 of the Act ~~(Ill. Rev. Stat. 1991, ch. 48, pars. 321.5 and 325)~~ [820 ILCS 405/211.5 and 215], the following terms have the meanings set forth in this subsection (a)~~below~~:

1) A "private home" is the fixed place of abode of the individual or family

for whom the worker is performing services. A separate and distinct dwelling unit maintained by an individual as a residence, such as a hotel room, boat or trailer, can be a "private home". A room or suite in a nursing home can be a "private home", provided that the facts and circumstances of the particular case indicate that the~~such~~ room or suite is, in fact, the place where the individual retains his residence. A home utilized primarily for the purpose of supplying board or lodging to the public as a business enterprise is not a "private home".

A) EXAMPLE~~Example~~: An individual who travels to the home of the child's parents to provide babysitting services for a child is performing services in a private home, while an individual who provides babysitting services in her own home would not be performing services in a private home.

B) EXAMPLE~~Example~~: A worker who provides cooking services in a bed and breakfast establishment in which~~wherein~~ the owner resides is not performing services in a private home.

2) A "local college club" or "local chapter of a college fraternity or sorority" does not include an alumni club or chapter.

3) "Domestic service~~Service~~" means service of a household nature, including service performed by cooks, waiters, butlers, housekeepers, housemothers, governesses, maids, valets, babysitters, janitors, launderers, furnacemen, caretakers, handymen, gardeners, footmen, grooms, and chauffeurs of automobiles for family use. Service not of a household nature, such as by a private secretary, nurse, tutor, or librarian, is not "domestic" service.

EXAMPLE~~Example~~: An individual who performs only caretaking services, such as bathing the individual, combing an individual's hair, reading, arranging bedding and clothing, doing laundry and preparing and serving meals is performing "domestic" service, even though he may be characterized as a health care worker. Registered or licensed practical nurses, or individuals responsible for providing professional or semiprofessional services such as physical therapy or giving intravenous medication, are not performing "domestic" service.

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

b) In determining whether an employing unit has paid $1,000 or more in wages in a calendar quarter for "domestic" service in a private home, local college club or local chapter of a college fraternity or sorority, all wages paid for "domestic" service in those locations~~a private home, local college club or local chapter of a college fraternity or sorority~~ to all individuals who performed "domestic" service in those locations~~a private home, local college club or local chapter of a college fraternity or sorority~~ for the employing unit are included.

EXAMPLE~~Example~~: Company A provides housekeepers to perform services in private homes. Each individual housekeeper is paid $250~~.00~~ in each calendar quarter by Company A. If 4 or more housekeepers are employed by Company A in a calendar quarter, their services will constitute "employment" under the Act. In order for the services provided to Company A to be excluded from "employment" under Section 211.5 of the Act, the total wages for domestic service paid to all of the housekeepers provided by Company A must be less than $1,000 for the quarter.

c) Domestic service that~~which~~ is performed in other than a private home, local college club or local chapter of a college fraternity or sorority~~, as described in this Section,~~ is not subject to the provisions of Sections~~Section~~ 211.5 and 215 of the Act. However, it may be excluded from "employment" by the provisions of Section 206 of the Act~~ (Ill. Rev. Stat. 1991, ch. 48, par. 316) [820 ILCS 405/206]~~ if the service is not provided for an "employer" under Section 205 of the Act~~ (Ill. Rev. Stat. 1991, ch. 48, par. 315) [820 ILCS 405/205]~~, or it may be excluded from "employment" under Section 212 of the Act~~ (Ill. Rev. Stat. 1991, ch. 48, par. 322) [820 ILCS 405/212]~~.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Notices, Records, Reports

2) Code Citation: 56 Ill. Adm. Code 2760

3)

| Section Numbers: | Proposed Actions: |
|---|---|
| 2760.1 | Amendment |
| 2760.5 | Amendment |
| 2760.115 | Amendment |

4) Statutory Authority: Implementing and authorized by Sections 204, 234, 245, 300, 302, 700, 1400, 1400.2, 1401, 1402, 1404, 1405, 1507, 1700, 1701, 1706, 1800, 1801, 2201 and 2208 of the Unemployment Insurance Act [820 ILCS 405/204, 234, 245, 300, 302, 700, 1400, 1400.2, 1401, 1402, 1404, 1405, 1507, 1700, 1701, 1706, 1800, 1801, 2201 and 2208].

5) A Complete Description of the Subjects and Issues Involved: Updates outdated language regarding the Social Security Administration.

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

7) Will this 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: |
|---|---|---|
| 2760.105 | Amendment | 42 Ill. Reg. 17008; September 28, 2018 |
| 2760.120 | Amendment | 42 Ill. Reg. 17008; September 28, 2018 |
| 2760.125 | Amendment | 42 Ill. Reg. 17008; September 28, 2018 |
| 2760.135 | Amendment | 42 Ill. Reg. 17008; September 28, 2018 |
| 2760.140 | Amendment | 42 Ill. Reg. 17008; September 28, 2018 |
| 2760.145 | Amendment | 42 Ill. Reg. 17008; September 28, 2018 |
| 2760.150 | Amendment | 42 Ill. Reg. 17008; September 28, 2018 |

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

11) Statement of Statewide Policy Objective: These proposed amendments neither create nor expand a State mandate.

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit written comments to:

Thomas D. Chan, Acting General Counsel
Illinois Department of Employment Security
33 South State Street – Room 933
Chicago IL 60603

312/793-2338
fax: 312/793-5645
e-mail: Thomas.D.Chan@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].

The proposed rulemaking may have an impact on small businesses, small municipalities and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80 and 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as a small business, small municipality or not-for-profit corporation as part of any written comments submitted to the Department.

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: This rulemaking has no direct effect on small businesses, small municipalities and not-for-profit corporations.

B) Reporting, bookkeeping or other procedures required for compliance: No reporting or bookkeeping is required for compliance.

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 2 most recent agendas because the revisions were not anticipated at the time.

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

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER IV: DEPARTMENT OF EMPLOYMENT SECURITY
SUBCHAPTER c: RIGHTS AND DUTIES OF EMPLOYERS

PART 2760
NOTICES, RECORDS, REPORTS

SUBPART A: GENERAL OBLIGATIONS

Section

2760.1 Posting and~~And~~ Maintaining Notices
2760.5 Identification of~~Of~~ Workers Covered by the~~By The~~ Act
2760.10 Filing By Mail

SUBPART B: REPORTS AND RECORDS

Section

2760.100 Reports and the Report for Household Employers
2760.105 Reports Of Employing Units As To Their Status
2760.110 Employing Unit Terminating Business
2760.115 Records With Respect to~~To~~ Employment
2760.120 Employer's Contribution and Wage Report and Report for Household Employers
2760.125 Employer's Wage Report
2760.128 Wage Report Filing for Employers that Employ Household Workers and Elect to Report Their Wages on an Annual Basis
2760.130 Reporting "Excess" Wages
2760.135 Remittance of Contributions Due and Use of Transmittal Form
2760.140 Use of Electronic Data Processing Media for Quarterly Reporting
2760.141 Use of Electronic Data Processing Media for Monthly or Quarterly Reporting
2760.145 Correcting the Employer's Contribution and Wage Report or Report for Household Employers
2760.150 Consequences of an Error in the Preparation of the Employer's Contribution and Wage Report or Report for Household Employers and Procedures for the Waiver or Elimination of Certain Penalties

AUTHORITY: Implementing and authorized by Sections 204, 234, 245, 300, 302, 700, 1400, 1400.2, 1401, 1402, 1404, 1405, 1507, 1700, 1701, 1706, 1800, 1801, 2201 and 2208 of the Unemployment Insurance Act [820 ILCS 405/204, 234, 245, 300, 302, 700, 1400, 1400.2, 1401, 1402, 1404, 1405, 1507, 1700, 1701, 1706, 1800, 1801, 2201 and 2208].

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

SOURCE: Department of Labor, Bureau of Employment Security Regulations 4, 7 and 8, filed as amended May 3, 1977, effective May 13, 1977; Regulation 11 filed as amended May 4, 1977, effective May 14, 1977; Regulations 5 and 32 filed as amended June 23, 1977, effective July 3, 1977; Regulations 6 and 12 filed as amended September 12, 1977, effective September 12, 1977; rules repealed by operation of law on October 1, 1984; new rules adopted at 10 Ill. Reg. 6939, effective April 15, 1986; emergency amendment at 12 Ill. Reg. 222, effective January 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 13604, effective August 4, 1988; amended at 12 Ill. Reg. 16070, effective September 23, 1988; amended at 16 Ill. Reg. 3993, effective February 27, 1992; emergency amendment at 17 Ill. Reg. 13798, effective August 4, 1993, for a maximum of 150 days; amended at 18 Ill. Reg. 261, effective December 27, 1993; emergency amendment at 18 Ill. Reg. 2631, effective February 3, 1994, for a maximum of 150 days; emergency amendment modified at 18 Ill. Reg. 7492; emergency expired July 3, 1994; amended at 18 Ill. Reg. 14942, effective September 27, 1994; amended at 29 Ill. Reg. 1917, effective January 24, 2005; emergency amendment at 29 Ill. Reg. 6783, effective April 25, 2005, for a maximum of 150 days; emergency expired September 25, 2005; amended at 33 Ill. Reg. 9652, effective July 1, 2009; amended at 35 Ill. Reg. 6136, effective March 25, 2011; emergency amendment at 36 Ill. Reg. 18947, effective December 17, 2012 through June 30, 2013; amended at 37 Ill. Reg. 7451, effective May 14, 2013; emergency amendment at 38 Ill. Reg. 22249, effective November 17, 2014, for a maximum of 150 days; emergency expired April 15, 2015; amended at 39 Ill. Reg. 10755, effective July 27, 2015; amended at 43 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL OBLIGATIONS

**Section 2760.1 Posting and~~And~~ Maintaining Notices**

a) Every employer subject to the provisions of the Unemployment Insurance Act [820 ILCS 405]~~(Ill. Rev. Stat. 1983, ch. 48, par. 300 et seq.)~~, hereinafter referred to as "the Act", including every employing unit that~~which~~ has elected, with the approval of the Director, to become an employer subject to the Act~~,~~ shall post and maintain such printed notices as may be furnished by the Director for such purpose.

b) The~~Such~~ printed notice shall be posted in conspicuous places in all the establishments of the employer~~,~~ and shall be easily accessible for examination by the worker. The Director will, upon request, supply a sufficient number of duplicate notices to assure that the~~such~~ notices are accessible to all workers.

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2760.5 Identification of~~Of~~ Workers Covered by the~~By The~~ Act**

a) Each employer shall ascertain the federal~~Federal~~ Social Security account number~~Account Number~~ of each worker employed by him or her in employment subject to the Act.

b) The employer shall report the worker's Social Security account number~~Account Number~~ when making any report required by the Director with respect to the worker.

c) If an employer has in his or her employ a worker engaged in employment who does not have a Social Security account number~~Account Number~~, that~~such~~ employer shall request the worker to show him or her a receipt issued by an office of the Social Security Administration acknowledging that the worker has filed an application for an account number. The~~Such~~ receipt shall be retained by the worker. In making any report required by the Director with respect to such a worker, the employer shall report the date of issue of the receipt, its termination date, the address of the issuing office, and the name and address of the worker exactly as shown in the receipt.

d) If a worker fails to report to the employer his or her Social Security account number~~Account Number~~ or fails to show the employer the receipt issued by an office of the Social Security Administration acknowledging that he or she has filed an application for an account number, the employer shall inform the worker that regulations~~Regulations~~ of the Internal Revenue Service, United States Treasury Department, 26 CFR 31.6011(b)-2, under the Federal Insurance Contributions Act~~,~~ (26 USC~~U.S.C.~~ 3101-3126), provide that:

1) Each worker shall report to every employer for whom he or she is engaged in employment, his or her federal~~Federal~~ Social Security account number~~Account Number~~ and his name exactly as shown on the account number card issued ~~to him~~ by the Social Security Administration;

2) Each worker who has not secured an account number shall file an application for a federal~~Federal~~ Social Security account number~~Account Number~~ on Form SS-5 of the Treasury Department, Internal Revenue Service;

A) The application shall be filed on or before the seventh day after the date on which the worker first performs employment for wages, except that the application shall be filed on or before the date the worker leaves the employ of his or her employer if that~~such~~ date precedes the~~such~~ seventh day.

B) Copies of Form SS-5, "Application For A Social Security Account Number~~,~~", can be secured at any district~~field~~ office of the Social Security Administration or from any district director;~~nearest the worker's place of employment or at a local post office.~~

3) If, within 14 days after the date on which the worker first performs employment for wages for the employer, or on the day on which he or she leaves the employ of the employer, whichever is earlier, the worker does not have a federal~~Federal~~ Social Security account number~~Account Number~~, and has not shown the employer a receipt issued to the worker by an office of the Social Security Administration acknowledging that he or she has filed an application for an account number, the worker shall furnish the employer an application of Form SS-5, completely filled in and signed by the worker.

A) If a copy of Form SS-5 is not available, the worker shall furnish the employer a written statement, signed by the worker, including the date of the statement, the worker's full name, present address, date and place of birth, father's full name, mother's full name before marriage, worker's sex and race, and a statement as to whether the worker previously filed an application on Form SS-5 and, if so, the date and place of the~~such~~ filing.

B) Furnishing the employer with an executed Form SS-5, or statement in lieu thereof, does not relieve the worker of his or her obligation to make an application on Form SS-5, as required by subsection (d)(2).

e) The employer shall inform the worker, in instances in which the information is pertinent, that in accordance with 26 CFR 31.6011(b)-2, a regulation of the Internal Revenue Service, United States Treasury Department:

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

1) Any worker who has lost his or her federal~~Federal~~ Social Security account number~~Account Number~~ card may secure a duplicate card by applying online through the Social Security Administration's website or at any district~~the field~~ office of the Social Security Administration~~ nearest the worker's place of employment~~;

2) Any worker may have his or her account number changed at any time by applying to a field office of the Social Security Administration and showing good reason for a change;

3) Any worker whose name is changed by marriage or otherwise, or who has stated incorrect information on Form SS-5, should report that~~such~~ change or correction to a field office of the Social Security Administration;

4) Any worker with more than one federal~~Federal~~ Social Security account number~~Account Number~~ shall report all numbers to the field office of the Social Security Administration nearest the worker's place of employment and to a local employment office.

f) If the worker fails to comply with the requirements enumerated under subsection (d), the employer shall execute a Form SS-5, "Application For A Social Security Account Number~~;~~", or a statement, signed by the employer, setting forth as fully and as clearly as practicable the worker's full name, his or her present or last known address, date and place of birth, father's full name, mother's full name before marriage, the worker's sex and race, and a statement as to whether an application for an account number was previously filed by the worker and, if so, the date and place of the~~such~~ filing. This statement or executed Form SS-5, signed by the employer, shall be attached to any report required by the Director with respect to the worker.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

SUBPART B: REPORTS AND RECORDS

**Section 2760.115 Records With Respect to~~To~~ Employment**

a) Each employing unit shall preserve existing records with respect to employment, and shall establish, maintain and preserve those~~such~~ records, indicating the data ~~herein~~ set forth in subsection (c).

b) *Such records shall be preserved for five years after they have been made, provided that if a determination and assessment of contributions, interest and penalties is made, or an action for the collection of contributions, interest or penalties is brought, records pertaining to the period or periods covered by such determination and assessment or action shall be preserved until the determination and assessment or action has become final, or has been cancelled or withdrawn.* [820 ILCS 405/1801]~~(Ill. Rev. Stat. 1983, ch. 48, par. 631)~~

c) The records set forth in subsection (a) shall show:

1) For each pay period:

A) The beginning and ending dates for that~~such~~ period;

B) The total amount of wages for employment paid in the~~such~~ pay period.

2) For each worker:

A) His or her name and Social Security account number, and address;

B) The dates on which he or she performed any service in employment;

C) The place of his or her employment.

i) For the purpose of this record, the place of employment of a worker shall be recorded as the city or county in which he or she performs ~~his~~ work unless a worker performs his or her work in more than one city or county;

ii) In such event, the place of employment shall be recorded as the city or county in Illinois in which the worker has his or her base of operations; or, if he or she has no base of operations in Illinois, as the city or county in Illinois from which his or her services are directed or controlled; or if the place from which his or her services are directed or controlled is also outside Illinois, as the city or county

within Illinois in which he or she has his or her residence.

D) His or her wages for each pay period, and the date those~~such~~ wages were paid, showing separately:

i) Money wages;

ii) Reasonable cash value of remuneration paid by the employing unit in any medium other than cash as determined in accordance with the provisions of 56 Ill. Adm. Code 2730.100;

iii) Amount of gratuities (tips) received in the course of employment from persons other than the employing unit as determined in accordance with the provisions of 56 Ill. Adm. Code 2730.105;

iv) Special payments for employment. Records under this subsection (c)(2)(D)(iv)~~heading~~ include the amount of any special payments, such as bonuses, gifts, etc., paid during the pay period but that~~which~~ relate to employment in a prior period. Payments are regarded as special payments if: the amount thereof was not determinable; or, the person or persons to whom paid was not ascertainable at the end of the pay period or periods during which the services were performed. The date must be shown separately as to: money payments; other remunerations; the nature of the~~such~~ payments; and, if the~~such~~ special payments were made for services performed during some period, the period during which the~~such~~ services were performed.

E) His or her wage rate and scheduled or customary working hours according to the following classifications:

i) Salaried workers, including the salary rate and the pay period covered by the rate;

ii) Fixed daily wage workers, including the daily rate of pay, the actual number of days worked, and the full number of

scheduled or customary working days per week in the employment in which he or she is engaged;

iii) Fixed hourly workers, including his or her hourly rate, the actual number of hours worked, and the full number of scheduled or customary working hours, if any, per week in the employment in which he or she is engaged;

iv) Piece rate workers, including the actual number of hours worked during each week, and the full number of scheduled or customary working hours, if any, per week in the employment in which he or she is engaged.

F) The date on which he or she was hired, rehired, or went to work after temporary layoff, and the date he or she was separated from employment.

d) For purposes of compliance with Section 1800 of the Act ~~(Ill. Rev. Stat. 1983, ch. 48, par. 630)~~, magnetic tape shall be considered another process for accurately producing an original record on a durable medium. However, if an employing unit elects to maintain its payroll records on magnetic tape, it shall be the obligation of that~~such~~ employing unit to reproduce the~~such~~ records on a media, readable by the human eye, if requested to do so by the Director, for the purpose of an audit.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Payment of Unemployment Contributions, Interest and Penalties

2) Code Citation: 56 Ill. Adm. Code 2765

3)

| Section Numbers: | Proposed Actions: |
|---|---|
| 2765.18 | Amendment |
| 2765.63 | Amendment |
| 2765.68 | Amendment |
| 2765.210 | Amendment |
| 2765.220 | Amendment |
| 2765.225 | Amendment |
| 2765.228 | Amendment |
| 2765.230 | Amendment |
| 2765.329 | Amendment |
| 2765.333 | Amendment |

4) Statutory Authority: Implementing and authorized by Sections 212, 302, 500, 601, 602, 603, 612, 701, 1400, 1401, 1402, 1403, 1404, 1405, 1502.1, 1503, 1507, 1508, 1509, 1700, 1701 and 2600 of the Unemployment Insurance Act [820 ILCS 405/212, 302, 500, 601, 602, 603, 612, 701, 1400, 1401, 1402, 1403, 1404, 1405, 1502.1, 1503, 1507, 1508, 1509, 1700, 1701 and 2600].

5) A Complete Description of the Subjects and Issues Involved: Deletes obsolete references to the "wages on which" credit. Clarifies the circumstances under which an employer's first penalty may be waived. Updates obsolete references.

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

7) Will this 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

| Sections: | Proposed Actions: | *Illinois Register* Citations: |
|---|---|---|
| 2765.30 | Amendment | 42 Ill. Reg. 17028; September 28, 2018 |

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

| | | |
|---|---|---|
| 2765.45 | Amendment | 42 Ill. Reg. 17028; September 28, 2018 |
| 2765.64 | Amendment | 42 Ill. Reg. 17028; September 28, 2018 |
| 2765.71 | Amendment | 42 Ill. Reg. 17028; September 28, 2018 |
| 2765.73 | Amendment | 42 Ill. Reg. 17028; September 28, 2018 |
| 2765.74 | Amendment | 42 Ill. Reg. 17028; September 28, 2018 |
| 2765.75 | Amendment | 42 Ill. Reg. 17028; September 28, 2018 |
| 2765.85 | Amendment | 42 Ill. Reg. 17028; September 28, 2018 |
| 2765.200 | Amendment | 42 Ill. Reg. 17028; September 28, 2018 |

11) Statement of Statewide Policy Objective: These proposed amendments neither create nor expand a State mandate.

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit written comments to:

Thomas D. Chan, Acting General Counsel
Illinois Department of Employment Security
33 South State Street – Room 933
Chicago IL 60603

312/793-2338
fax: 312/793-5645
e-mail: Thomas.D.Chan@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].

The proposed rulemaking may have an impact on small businesses, small municipalities and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80 and 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as a small business, small municipality or not-for-profit corporation as part of any written comments submitted to the Department.

13) Initial Regulatory Flexibility Analysis:

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

A) Types of small businesses, small municipalities and not-for-profit corporations affected: This rulemaking has no direct effect on small businesses, small municipalities and not- for-profit corporations.

B) Reporting, bookkeeping or other procedures required for compliance: No reporting or bookkeeping is required for compliance.

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 2 most recent agendas because: the revisions were not anticipated at the time.

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

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER IV: DEPARTMENT OF EMPLOYMENT SECURITY
SUBCHAPTER c: RIGHTS AND DUTIES OF EMPLOYERS

PART 2765
PAYMENT OF UNEMPLOYMENT CONTRIBUTIONS, INTEREST AND PENALTIES

SUBPART A: GENERAL PROVISIONS

Section
2765.1 Unemployment Contributions Not Deductible From Wages
2765.5 Definitions
2765.10 Payment Of Contributions
2765.11 Employers Who Employ Household Workers and Pay Contributions on an Annual Basis
2765.15 Liability For The Entire Year
2765.18 Liability of a~~Of A~~ Third Party Purchaser or~~Or~~ Transferee for the~~For The~~ Due And Unpaid Contributions, Interest and~~And~~ Penalties of the~~Of The~~ Seller or~~Or~~ Transferor's Seller or Transferor
2765.20 Contributions Of Employer~~Employers~~ By Election
2765.25 Payments In Lieu Of Contributions
2765.30 When Payments In Lieu Of Contributions Payable
2765.35 Payments When Reimbursable Employer Becomes Contributory
2765.40 Payments When Contributory Employer Becomes Reimbursable
2765.44 Fee For Not Sufficient Funds (NSF) Checks
2765.45 Application Of Payment
2765.50 Accrual Of Interest
2765.55 Imposition Of Penalty
2765.56 Imposition of Late Reporting Penalty for Employers Who Employ Household Workers and Elect to File Reports on an Annual Basis
2765.60 Payment Or Filing By Mail
2765.61 Waiver of Interest and Penalty for Employers Who Employ Household Workers and Who File Reports and Pay Contributions on an Annual Basis (Repealed)
2765.62 Temporary Waivers of Penalty
2765.63 When Payment Due and~~And~~ Consequences of~~Of~~ Upward Revision in~~In~~ Employer's Contribution Rate
2765.64 Consequences Where An Employee Leasing Company Has Erroneously Reported Wages And Paid Contributions Which Wages Should Have Been Reported And Contributions Paid By Its Client

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

2765.65 Waiver Of Interest Or Penalty
2765.66 Waiver Of Interest Accruing Because Of Certain Types Of Employees For Periods Prior To January 1, 1988
2765.67 Partial Waiver Of Interest Where An Employer Has Erroneously Reported Wages To The Wrong State
2765.68 Waiver of Penalty for Certain Employers for 1987 and Thereafter Wage Reports
2765.69 Partial Waiver Of Interest Where An Employer Has Erroneously Paid Its Federal Unemployment Tax Act (FUTA) Tax In Full But Has Failed To Pay Its Illinois Unemployment Insurance Contributions
2765.70 Waiver of Interest For Certain Nonprofit Organizations or Local Governmental Entities
2765.71 Waiver Of~~of~~ Interest Accruing Due To A Delay In The Issuance Of A Decision On A Protested Determination And Assessment
2765.73 Waiver Of Interest For Certain Nonprofit Hospitals
2765.74 Time For Paying Or Filing Delayed Payment Or Report
2765.75 Application for Waiver
2765.80 Approval Of Application For Waiver
2765.85 Insufficient Or Incomplete Application
2765.90 Disapproval Of Application Conclusive
2765.95 Appeal And Hearing

SUBPART B: EXPERIENCE RATING

Section
2765.200 Effect Of A Successor Employing Unit's Failure To Notify The Director Of Its Succession
2765.210 Prohibition on~~On~~ Withdrawal of~~Of~~ Joint Application for~~For~~ Partial Transfer of~~Of~~ Experience Rating Record
2765.220 Determination of~~Of~~ Benefit~~ Wage And Benefit~~ Ratio
2765.225 Requirement for~~For~~ Privity in~~In~~ Order to~~To~~ Have a~~A~~ Predecessor Successor Relationship
2765.228 No Requirement for~~For~~ Continuous Operation in~~In~~ Order for a~~For A~~ Predecessor Successor Relationship to~~To~~ Exist
2765.230 Effect of a~~Of A~~ Transfer of~~Of~~ Physical Assets on a~~On A~~ Finding That A Predecessor Successor Relationship Exists

SUBPART C: BENEFIT CHARGES

Section

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

| | |
|---|---|
| 2765.325 | Application Of "30 Day" Requirement For Determining The Chargeable Employer Pursuant To Section 1502.1 Of The Act |
| 2765.326 | Requirement For A Separation Or A Reduction In The Work Offered In Determining The Chargeable Employer Pursuant To Section 1502.1 Of The Act |
| 2765.328 | What Constitutes A Day For Purposes Of The "30 Day" Requirement In Section 1502.1 Of The Act |
| 2765.329 | Application of~~Of~~ "30 Day" Requirement for~~For~~ Determining the~~The~~ Chargeable Employer Pursuant to~~To~~ Section 1502.1 of the~~Of The~~ Act for~~For~~ Benefit Years Beginning on or~~On Or~~ After January 1, 1993 |
| 2765.330 | Chargeability Where The Individual Is Discharged As A Result Of His Incarceration |
| 2765.332 | Effect Of Ineligibility Under Section 602(B) On Chargeability Under Section 1502.1 Of The Act |
| 2765.333 | Effect of~~Of~~ Ineligibility Under Section 612 on~~On~~ Chargeability Under Section 1502.1 Of The Act |
| 2765.334 | Effect Of Ineligibility Under Section 614 On Chargeability Under Section 1502.1 Of The Act |
| 2765.335 | Procedural Requirements And Right Of Appeal |

AUTHORITY: Implementing and authorized by Sections 212, 302, 500, 601, 602, 603, 612, 701, 1400, 1401, 1402, 1403, 1404, 1405, 1502.1, 1503, 1507, 1508, 1509, 1700, 1701 and 2600 of the Unemployment Insurance Act [820 ILCS 405/212, 302, 500, 601, 602, 603, 612, 701, 1400, 1401, 1402, 1403, 1404, 1405, 1502.1, 1503, 1507, 1508, 1509, 1700, 1701 and 2600].

SOURCE: Adopted at 6 Ill. Reg. 3863, effective March 31, 1982; amended at 7 Ill. Reg. 13266, effective September 28, 1983; recodified at 8 Ill. Reg. 15027; amended at 11 Ill. Reg. 3972, effective February 23, 1987; amended at 11 Ill. Reg. 11743, effective June 26, 1987; amended at 11 Ill. Reg. 12882, effective July 22, 1987; emergency amendment at 12 Ill. Reg. 225, effective January 1, 1988, for a maximum of 150 days; emergency expired May 30, 1988; amended at 12 Ill. Reg. 11740, effective July 5, 1988; amended at 12 Ill. Reg. 17342, effective October 12, 1988; amended at 12 Ill. Reg. 20484, effective November 28, 1988; emergency amendment at 13 Ill. Reg. 11911, effective July 1, 1989, for a maximum of 150 days; amended at 13 Ill. Reg. 17410, effective October 30, 1989; amended at 14 Ill. Reg. 6218, effective April 16, 1990; amended at 14 Ill. Reg. 19886, effective November 29, 1990; amended at 15 Ill. Reg. 185, effective December 28, 1990; amended at 15 Ill. Reg. 11122, effective July 19, 1991; amended at 16 Ill. Reg. 2131, effective January 27, 1992; amended at 16 Ill. Reg. 12165, effective July 20, 1992; amended at 17 Ill. Reg. 308, effective December 28, 1992; amended at 17 Ill. Reg. 614, effective January 4, 1993; amended at 17 Ill. Reg. 10275, effective June 29, 1993; emergency amendment at 17 Ill. Reg. 13801, effective August 20, 1993, for a maximum of 150 days;

emergency expired January 1, 1994; amended at 18 Ill. Reg. 14952, effective September 27, 1994; emergency amendment at 19 Ill. Reg. 16113, effective November 13, 1995, for a maximum of 150 days; amended at 20 Ill. Reg. 4307, effective February 29, 1996; amended at 25 Ill. Reg. 2011, effective January 18, 2001; emergency amendment at 29 Ill. Reg. 6788, effective April 25, 2005, for a maximum of 150 days; amended at 29 Ill. Reg. 13988, effective September 1, 2005; amended at 33 Ill. Reg. 9658, effective July 1, 2009; emergency amendment at 36 Ill. Reg. 18968, effective December 17, 2012 through June 30, 2013; emergency amendment at 37 Ill. Reg. 2506, effective February 11, 2013 through June 30, 2013; amended at 37 Ill. Reg. 7471, effective May 14, 2013; emergency amendment at 38 Ill. Reg. 22262, effective November 17, 2014, for a maximum of 150 days; emergency expired April 15, 2015; amended at 39 Ill. Reg. 10768, effective July 27, 2015; amended at 43 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

**Section 2765.18 Liability of a~~Of A~~ Third Party Purchaser or~~Or~~ Transferee for the~~For The~~ Due and~~And~~ Unpaid Contributions, Interest and~~And~~ Penalties of the~~Of The~~ Seller or~~Or~~ Transferor's Seller or Transferor**

Under~~Pursuant to~~ Section 2600 of the Act~~ (Ill. Rev. Stat. 1989, ch. 48, par. 750)~~, whenever a purchaser or transferee acquires substantially all or a class of the assets (as enumerated in that Section of the Act), it shall be required to follow a procedure set forth in the Act to ensure~~insure~~ that any contributions, interest and penalties that~~which~~ are due and unpaid are paid. If these~~such~~ contributions, penalties and interest are not so paid, the purchaser or transferee becomes personally liable for these contributions, the interest and the penalties. Since these amounts are then the personal liabilities of the purchaser or transferee, if the purchaser or transferee then sells or transfers substantially all or a class of the assets (as enumerated in that Section of the Act), the subsequent purchaser or transferee shall also become personally liable for these same amounts if it does not follow the procedure set forth in the Act to insure that any contributions, interest and penalties which are due and unpaid are paid.

> Example: Company B purchases all of the assets of Company A which owes contributions, interest and penalties to the Director. Company B does not follow the statutory procedure to ensure~~insure~~ that the~~such~~ amounts have been paid. Therefore, Company B is personally liable for these amounts. Company B then sells all of its assets to Company C. Company C does not follow the statutory procedure to ensure~~insure~~ that the amounts now owed by Company B have been paid. Company C is now also personally liable for these amounts. Companies A, B and C are jointly and severally liable for the amount originally owed by Company A, and the Director may attempt

collection from Company A, Company B or Company C.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2765.63 When Payment Due and~~And~~ Consequences of~~Of~~ Upward Revision in~~In~~ Employer's Contribution Rate**

a) Whenever an employer receives notice of a revised contribution rate that~~which~~ is higher than the rate given by the immediately preceding regular or revised rate notice, the employer shall have 30 days from the date of mailing of this revised rate notice to pay the additional amount of contributions due for that calendar year. This 30 day period shall be available to an employer whether or not the employer exercises its right to appeal this revised rate under Section 1509 of the Act.

b) If an employer pays an additional amount after~~of~~ contributions due as a result of an upward revision of its contribution rate within 30 days after~~of~~ the date of mailing of the~~such~~ revised rate notice, the employer shall be deemed to have paid this additional amount of contributions on the dates~~date(s)~~ that its original contributions for that calendar year were paid in full. The payment of additional contributions within 30 days after~~of~~ the date of mailing of a higher revised contribution rate notice by an employer under this Section has two~~three~~ consequences:

1) No interest shall accrue on the employer's account from the date~~(s)~~ of the original payments~~payment(s)~~ in full to the date the additional amount of contributions for that calendar year are received; and

~~2) The employer shall receive full "wages on which" credit under Section 1503 of the Act as of the date(s) the original payment(s) in full were made, to the extent that such "wages on which" credit is used in computing the employer's contribution rate;~~

2~~3~~) The employer's additional payment will be credited for FUTA purposes as of the dates~~date(s)~~ the original payments~~payment(s)~~ in full were made.

c) If an employer fails to pay the full amount of additional contributions due as a result of an upward revision to its contribution rate within 30 days after~~of~~ the date of mailing of the~~such~~ revised rate notice, the additional contributions due as a

result of this higher rate shall accrue and become payable on the date the original contributions for that calendar year accrued and became payable in accordance with Section 1400 of the Act. Two results follow from an employer's failure to pay the additional contributions due under a revised higher contribution rate notice within 30 days after~~of~~ the date of mailing as provided under this Section.

1) Interest shall accrue on the unpaid balance of the employer's account from the date that the original contributions accrued and became payable.

2) The employer's FUTA credit will be adjusted downward as of the date the original contributions accrued and became payable.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2765.68 Waiver of Penalty for Certain Employers for 1987 and Thereafter Wage Reports**

a) Notwithstanding any other provisions of this Part to the contrary, the Director shall waive the reporting penalty provided in Section 1402 of the Act for 1987 and for any reports of wages paid in calendar year 1987 and any calendar year thereafter, if the employer, within 30 working days after the date of mailing of the notice from the Agency that its report is delinquent, shows that the delinquent report is the employer's first late report during the last 20 calendar quarters, including quarters during which the employer was not required to file reports under the Act and:

1) in the case a contributory employer, the~~The~~ total amount of contributions due for the calendar quarter of the report is less than $500 (the amount due is disregarded for reimbursable employers); and

EXAMPLE: Employer A is required to file two reports for a quarter under~~pursuant to~~ 56 Ill. Adm. Code 2760.120. The total amount of contributions attributable to the first report is $400. The total amount of contributions attributable to the second report is $200. Employer A will not be entitled to waiver of penalty under this Section with respect to either report because the total amount of contributions due for the quarter is more than $500.

2) This delinquent report is the employer's first ~~such~~ late report during the

last 20 calendar quarters, including quarters during which the employer was not required to file reports under the Act.

b) The employer's application for this waiver shall be made in the form provided in Section 2765.75, except that it need not be sworn and instead of stating the "good cause applicable~~,~~", the employer shall state that it met the requirements of subsections (a)(1) and (2). In support of its statement that it met the requirements of subsection (a)(1), the employer shall attach a copy of its Contribution and Wage Report for the applicable calendar quarter.

c) If the employer is required to file two reports under~~pursuant to~~ 56 Ill. Adm. Code 2760.120 and both reports are filed untimely, for the purposes of subsection (a)(2), both reports will be deemed to be a single delinquent report.

d) For purposes of subsection (a), a month for which the late filing penalty has been waived under~~pursuant to~~ Section 2765.62 shall not be considered a month for which the employer filed a late report.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

SUBPART B: EXPERIENCE RATING

**Section 2765.210 Prohibition on~~On~~ Withdrawal of~~Of~~ Joint Application for~~For~~ Partial Transfer of~~Of~~ Experience Rating Record**

A joint application for partial transfer of the predecessor's experience record, pursuant to Section 1507B of the Act~~ (Ill. Rev. Stat. 1989, ch. 48, par. 577B)~~, cannot be withdrawn after it has been submitted to the Director.

a) EXAMPLE~~Example~~: After filing a joint application for partial transfer of the predecessor's experience rating record, one of the applicants determines that the partial transfer will result in an increase in its contribution rate. Notwithstanding the increase in its contribution rate, the applicant cannot request to withdraw its joint application for the partial transfer of the predecessor's experience rating record.

b) EXAMPLE~~Example~~: After the filing of a joint application for partial transfer of the predecessor's experience rating record, the Agency determines that the provisions of Section 1507B of the Act are met but that an affiliation (as

described in the last paragraph of Section 1507B of the Act) exists, an applicant cannot request to withdraw its joint application for the partial transfer of the predecessor's experience rating record.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2765.220 Determination ofOf Benefit Wage And Benefit Ratio**

In determining the benefit wage or benefit ratio referred to in Section 1503 and 1503.1 of the Act for any calendar year, the resulting percentage shall be increased or reduced, as the case may be, to the nearer multiple of one-ten thousandth of one percent. If thesuch number is equally near to 2 multiples of one-ten thousandth of one percent, it shall be increased to the higher multiple of one-ten thousandth of one percent.

EXAMPLEExample: An employer has incurred liability for the payment of contributions within each of the three calendar years immediately preceding calendar year 1991. Its benefit charges for the 12 consecutive month period ending on June 30, 1990 are $1,659.00. The benefit conversion factor for this period is 139%percent. The product of its benefit charges times the benefit conversion factor for this period is $2,306.01. Its taxable wages for this period are $340,590.00. Its benefit ratio determined by dividing $2,306.01 by $340,590.00 equals .67706% when calculated to one-hundred thousandths of one percent. Under the rounding rule set forth in this section, its benefit ratio is increased to .6771%.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2765.225 Requirement forFor Privity inIn Order toTo Have aA Predecessor Successor Relationship**

In order for a predecessor successor relationship to exist under Section 1507 of the Act (Ill. Rev. Stat. 1991, ch. 48, par. 577), there must be privity between the predecessor employing unit and the successor employing unit.

a) EXAMPLEExample: AAA Oil Company, thatwhich owns all the equipment and inventory at a gas station, leases the station to Company B thatwhich becomes a liable employer under the Act. When Company B's lease expires, AAA Oil Company refuses to renew the lease and, instead, leases the station to Company C. Company C is not a successor to Company B because there is no privity between Company B and Company C.

b) EXAMPLE: Mr. Johnson operates a restaurant. Bank A has a chattel mortgage on the fixtures of the restaurant and Bank B has a mortgage on the building that houses the restaurant. Both Bank A and Bank B foreclose on their mortgages and Mr. Johnson goes out of business. The banks sell their interests in the restaurant fixtures and building to Mr. Moore who opens another restaurant at this same location. Mr. Moore is not a successor to Mr. Johnson because there is no privity between Mr. Moore and Mr. Johnson.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2765.228 No Requirement for~~For~~ Continuous Operation in~~In~~ Order for a~~For A~~ Predecessor Successor Relationship to~~To~~ Exist**

The employing enterprise that~~which~~ forms the basis for a predecessor successor relationship under Section 1507 of the Act ~~(Ill. Rev. Stat. 1991, ch. 48, par. 577)~~ is not required to be operated without interruption during the time that predecessor employing unit is succeeding to the employing enterprises in order for the relationship to exist. However, any interruption in operations must be reasonable in light of the particular industry and, under no circumstances, may exceed one year.

a) EXAMPLE~~Example~~: In April, 1991, Mr. Stella purchases a cafe owned by Ms. Pauli. Mr. Stella decides that the cafe must be remodeled prior to his operating the business. Such remodeling takes three months. This three month gap in the operation of the cafe does not preclude Mr. Stella from being the successor to Ms. Pauli if the three month remodeling period is not unreasonable in the restaurant industry.

b) EXAMPLE~~Example~~: In February, 1991, S Company purchases the concession business at a county fairgrounds~~fair grounds~~ from P Company. This business normally operates between May and September. The gap between the date of purchase and the time that the business begins to operate in May will not preclude S Company from being found to be a successor to the employing enterprise of P Company.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2765.230 Effect of a~~Of A~~ Transfer of~~Of~~ Physical Assets on a~~On A~~ Finding That a~~A~~ Predecessor Successor Relationship Exists**

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

In order for a predecessor successor relationship under Section 1507 of the Act~~ (Ill. Rev. Stat. 1991, ch. 48, par. 577)~~ to exist, it is not necessary that there be a transfer of physical assets from one employing enterprise to another. However, when only physical assets are transferred, without the transfer of good will, the assumption of obligation or the continuation of the enterprises, no predecessor successor relationship exists.

a) EXAMPLE: Abe and Bill operate a partnership, known as A & B House Painters, that~~which~~ is an employer under the Act. When the partnership dissolves, Abe retains title to the physical assets which he then sells. Bill, now a sole proprietor, continues to operate the employing enterprise by continuing to service the customers of the partnership. Even though he received none of its physical assets, Bill is a successor to the partnership.

b) EXAMPLE~~Example~~: Alice and Bert operate a partnership, known as A & B House Painters, which is an employer under the Act. When the partnership dissolves, Alice retains title to the physical assets which she then sells to Clyde who also operates a house painting business. Clyde does not obtain any of the good will of A & B nor does he service any of its customers. Clyde is not a successor to A & B.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

SUBPART C: BENEFIT CHARGES

**Section 2765.329 Application of~~Of~~ "30 Day" Requirement for~~For~~ Determining the~~The~~ Chargeable Employer Pursuant to~~To~~ Section 1502.1 of the~~Of The~~ Act for~~For~~ Benefit Years Beginning on or~~On Or~~ After January 1, 1993**

a) Effective with benefit years beginning on or after January 1, 1993, except as provided in the other subsections ~~of this Section~~ and in Sections 2765.326, 2765.330, 2765.332, 2765.333 and 2765.334, the last employer, prior to the beginning of each week claimed by the individual, for whom the individual provided services during at least 30 days beginning with the first day of the individual's base period (~~which is~~ defined in~~at~~ Section 237 of the Act) but prior to the beginning of the week claimed shall be liable for the benefit charges or payments in lieu of contributions, as the case may be, that~~which~~ result from any benefits paid to that individual for that week of unemployment. Unless stated to the contrary, each of the examples in this Section assumes a benefit year

beginning date on or after January 1, 1993.

1) EXAMPLE~~Example~~: Prior to the beginning of the week beginning on January 24, 1993, the individual provides services only to Company A, a liable, contributing employer, for over ten years. Company A is this individual's chargeable employer with respect to this individual for the week ending January 30, 1993 because Company A is the individual's last employer of at least 30 days prior to the beginning of the week beginning on January 24, 1993. If, after claiming benefits for a few weeks, this individual provides services to Company B, a liable, contributing employer, for six months, is laid off by Company B and files an additional claim, Company B will be the chargeable employer of this individual with respect to any benefit charges that~~which~~ might accrue with respect to weeks which are paid to the individual after the effective date of the additional claim.

2) EXAMPLE~~Example~~: Immediately prior to filing his claim for unemployment benefits for the week beginning on January 24, 1993, the individual provides services to Company A, a liable, contributing employer, for 20 days. Prior to this period, he provides services to Company B, a liable, contributing employer, for 30 days. Prior to working for Company B and throughout his base period, the individual has provided at least 10 days of service to Company A. Company A is the chargeable employer and is liable for any benefit charges that~~which~~ might accrue as a result of any benefits paid to this individual for the week ending January 30, 1993. Company A is the individual's last employer prior to the beginning of the week beginning on January 24, 1993 because he provided services to Company A during at least 30 days during the period from the beginning of his base period to the beginning of the week beginning on January 24, 1993. Pursuant to Section 1502.1 of the Act, it is not necessary for the 30 days of services by the individual to be consecutive.

3) EXAMPLE~~Example~~: The individual is employed on an as-needed basis (some weeks the individual might work four days, other weeks he might not work at all) for Company A, a liable, contributing employer. While so employed by Company A, the individual is also employed on a full time basis for Company B, a liable, contributing employer. The individual is laid off by Company B and is offered two days of work by Company A.

After working for these two days, no other work is currently available with Company A, and the individual files a claim for benefits for the week ending January 23, 1993. If the individual has provided services to Company A for at least 30 days since the beginning of his base period, Company A will be liable for any benefit charges which might accrue as a result of any benefits that~~which~~ might be paid to this individual for this week. This is because, despite the individual's full time employment with Company B, the individual's last employer for whom he provided services of at least 30 days during the applicable period was Company A, and it was his separation from Company A that caused the individual to become "unemployed~~.~~".

4) EXAMPLE~~Example~~: Assume the same facts as in subsection (a)(3), except that, instead of being an as-needed employee, the individual continues to provide less than full time services to Company A and earns less than his weekly benefit amount. In that case, Section 2765.326 shall apply, and Company B will be the chargeable employer because it caused this individual to become unemployed as defined in Section 239 of the Act.

5) EXAMPLE~~Example~~: The individual is a substitute teacher. Whenever he or she is available to teach, he calls in for assignments with his school district, a local governmental entity that~~which~~ has elected to make payments in lieu of contributions. During the first semester of the school year, he teaches only 32 days. He, however, did not work for the school district during his base period. If he now files a claim for benefits, his school district will be liable for 50% of any payments in lieu of contributions that~~which~~ would result if he would be paid benefits. This is because, despite his services being performed over a five month period, the school district is the last employer prior to the first day of the week with respect to which he is claiming benefits and he has performed the required 30 days of services during the applicable period. The employer is only liable for 50% of the amount of the benefits paid because the individual performed no services for this employer during his base period (see Section 1405(B) of the Act).

6) EXAMPLE~~Example~~: The individual performed services for 25 days during his base period for City A, a local governmental entity that~~which~~ has elected to make payments in lieu of contributions. He then performs

services for Company B, a liable, contributing employer, for approximately 10~~ten~~ months. After being laid off by Company B, he is again employed by City A that~~which~~ then lays him off after he has performed services five days. City A will be liable for payments in lieu of contributions equal to 100% of the benefits paid to this individual. This is because City A is the individual's last employer prior to the first day of the week with respect to which the individual claimed benefits, and this individual performed services for at least 30 days beginning with the start of his base period and prior to the beginning of the week with respect to ~~which~~ the individual claimed benefits. City A is liable for 100% of the benefits paid because, in addition to being the chargeable employer as provided in this subsection, the individual also provided services for this employer during his base period. If this employer had met the requirements to be the chargeable employer but this individual had not provided services to this employer during his base period, then this employer would have been liable for only 50% of the payments in lieu of contributions made to this individual as in subsection (a)(5). Should this individual return to work for Company B and again become eligible for benefits, Company B would be the chargeable employer with respect to any weeks that~~which~~ occur after this subsequent separation.

7) EXAMPLE~~Example~~: The individual is employed by several different employers from the beginning of his base period until the beginning of the first week ~~with respect to which~~ he claims benefits. However, he does not perform services for at least 30 days for any single employer during this period. Therefore, there is no chargeable employer for that week or for any subsequent weeks, and no employer will be liable for either the benefit charges or payments in lieu of contributions as a result of payments made to this individual until ~~such time as~~ the claimant has performed services for an employer for at least 30 days.

8) EXAMPLE~~Example~~: An individual is employed during his entire base period for Company A, a liable, contributing employer. After being laid off by Company A, he performs services for at least 30 days for the State of Illinois, which makes payments in lieu of contributions under~~pursuant to~~ Section 1403 of the Act. If this individual files a claim for benefits, the State ~~of Illinois~~ will be liable for an amount equal to 50% of the benefits paid to this individual since the State ~~of Illinois~~ is the chargeable employer but not a base period employer.

9) EXAMPLE~~Example~~: An individual files a claim with a benefit year that~~which~~ begins on December 1, 1992. Company A is determined to be the chargeable employer with respect to this claim. The individual returns to work on January 5, 1993, and performs services for 30 days for Company B before being laid off and filing an additional claim. Despite having worked for Company B for 30 days, Company A remains the chargeable employer in this case because the benefit year began prior to January 1, 1993.

10) EXAMPLE: An individual is laid off of work by Company A and files a new claim, effective January 24, 1993. Company A is found to be the chargeable employer. Thereafter, the individual obtains a part time job with Company B and works four days each week. However, she never earns over her weekly benefit amount in any week. Even after working for Company B for more than 30 days, Company A remains the chargeable employer. This is because Company B has not separated this individual nor caused her to become unemployed as a result of a reduction of the work offered, as required by Section 1502.1.

11) EXAMPLE: An individual is employed by Easy Living Realty as a secretary for 45 days during his base period. He leaves Easy Living Realty and obtains work as a secretary for Victorian Realty for 10 days. He is then promoted to~~ being a~~ real estate salesman, paid solely by commission. After working as salesman for several months, he is laid off from this job. He then files a claim for benefits. Easy Living Realty is the chargeable employer in this case. The time that this individual spent as a real estate salesman for Victorian Realty is not included in determining whether he was employed for 30 days for that employer because those~~such~~ services do not constitute employment under the Act.

12) EXAMPLE: An individual is employed by Company A for 29 days before being laid off from his job. He then files an unemployment insurance claim with a benefit year beginning date of January 24, 1993. On February 15, 1993, this individual returns to work for Company A and works only one day. For any weeks beginning after February 15, Company A meets the requirements to be the chargeable employer.

b) If, with respect to a week, the last organization or person for whom the individual

provided at least 30 days of service is not an employer, as defined by Section 205 of the Act, then no employer shall be the chargeable employer for that week, and any benefit charges or payments in lieu of contributions which accrue as a result of benefits paid to the individual for that week shall not become the benefit charges or the amounts due of any employer. Whether the last organization or person for whom the individual provided at least 30 days of service is an employer, as defined by Section 205 of the Act, is determined as of the last day of the week for which the claim is made and is unaffected by a later determination of liability based on events which occur after that week. However, if it is later determined that the organization or person has become an employer under the Act, the organization or person can be the chargeable employer for any weeks occurring after the date on which the organization or person became liable.

1) EXAMPLE~~Example~~: An individual is employed during his entire base period for Company A, a liable, contributing employer. He then leaves Illinois and performs services in California for at least 30 days for an organization that~~which~~ is not liable under the Act. If this individual is laid off from his California job and files a claim against Illinois based on his Illinois base period wages, no employer shall be liable for any benefit charges for any benefit payments made to this individual with respect to weeks when ~~for which~~ the California organization was the last entity to employ the individual. This is because the California organization is not an employer under the Act and, therefore, cannot be the chargeable employer under this Section. However, if this individual would return to work for Company A and then again become eligible for benefits, Company A would be the chargeable employer with respect to any weeks which occur after this later separation from Company A.

2) EXAMPLE~~Example~~: An individual is employed during his entire base period for Company A, a liable, contributing employer. After being laid off by Company A, he performs services for at least 30 days for the U.S. Postal Service, which is not an employer under the Act and for which reimbursement for any benefits paid is determined under~~pursuant to~~ federal regulations~~Federal Regulations~~. He is then laid off by the U.S. Postal Service. If this individual files a claim for benefits, no employer shall be liable for any benefit charges for any benefit payments made to this individual. This is because the U.S. Postal Service is not an employer under the Act and, therefore, cannot be the chargeable employer under this Section. However, if this individual would return to work for Company A

and then again become eligible for benefits, Company A would be the chargeable employer with respect to any weeks that~~which~~ occur after this later separation from Company A.

3) EXAMPLE~~Example~~: An individual files a claim for benefits, effective March 28, 1993, after having last been employed by Company A that~~which~~ began business as of January 1, 1993. As of March 28, 1993, Company A is not an employer under the Act because it has not yet had one or more employees in each of twenty or more weeks nor has it paid at least $1,500 in wages in a calendar quarter. However, as of September 4, 1993, it has one or more employees in each of 20~~twenty~~ or more weeks, and, therefore, its liability is made retroactive to January 1, 1993. In this case, Company A will be the chargeable employer only with respect to any weeks that~~which~~ begin after September 3, 1993, because, while the effective date of its liability is January 1, 1993, it did not meet the criteria for liability under the Act until September 4, 1993.

4) EXAMPLE~~Example~~: An individual files a claim for benefits for the week ending January 23, 1993, after having last been employed by Company A that~~which~~ claims ~~that~~ it is not liable under the Act because it has no employees. On September 10, 1993, there is a determination and assessment, covering all of 1992 and the first two quarters of 1993, which becomes final and which holds that Company A is liable for unpaid contributions on the wages of workers whom Company A had not considered employees. This determination is not based on events that~~which~~ occurred prior to the week beginning January 17, 1993. Therefore, Company A can be held to be the chargeable employer of this individual for the week ending January 23, 1993.

c) Notwithstanding any other provision of this Subpart, with respect to a week of benefits claimed, no employer shall be the chargeable employer of an individual who was either discharged for misconduct connected with the work or voluntarily left the~~such~~ employer without good cause or refused to accept an offer of or to apply for suitable work from that employer without good cause. Unless a subsequent employer paid the individual an amount equal to his or her weekly benefit amount in each of four weeks after the beginning of the week in question, any payments that~~which~~ might result in benefit charges for that week will be pooled and not charged to any employer. However, if the circumstances of the voluntary quit are those described in Section 601(B)(1) or ~~Section 601(B)~~(2) of

the Act, then, any payments that~~which~~ might result in benefit charges will become pooled costs and not be charged to any employer.

1) EXAMPLE~~Example~~: The individual quits Company A where he performed services for at least 30 days to accept employment with Company B where he works for two weeks and earns in excess of his weekly benefit amount. He is then laid off and files a claim for benefits for the week ending January 23, 1993. Company A is the individual's last employer prior to the beginning of the week ending on January 23, 1993, and the individual provided services to Company A during at least 30 days during the period from the beginning of the individual's base period to the beginning of the week beginning on January 17, 1993. Under~~Pursuant to~~ Section 601(B)(2) of the Act, this individual is not ineligible for benefits. However, no employer will be charged for the benefits paid to the individual for the week ending January 23, 1993. This is because the individual quit his job with Company A without good cause but under the circumstances described in Section 601(B)(2) of the Act.

2) EXAMPLE~~Example~~: The individual is held to be ineligible for benefits by the claims adjudicator, Referee, Board of Review or court as a result of his discharge for misconduct by Company A, a liable, contributing employer. Thereafter, he returns to work and performs services for Company B, a liable, contributing employer, for three days per week for three weeks and is then laid off. However, he does earn an amount in excess of his weekly benefit amount in each of these weeks. He then performs services for Company C for one week and earns in excess of his weekly benefit amount before being laid off for lack of work and claims benefits for the week ending March 6, 1993. The individual is eligible for benefits because he met the requalification requirements of Section 602 of the Act. No employer will be the chargeable employer of this individual for the week ending March 6, 1993 because he was discharged for misconduct connected with his work and because, after his discharge, there was no single employer that~~which~~ paid him an amount equal to or in excess of his weekly benefit amount in each of four weeks. However, if this individual later returns to work for Company B and performs services for an additional 21 days before being laid off, Company B could be the chargeable employer with respect to any weeks that~~which~~ occur subsequent to this separation.

3) EXAMPLE~~Example~~: The individual is discharged from Company A, files a claim for benefits for the week ending January 23, 1993 and is determined to be ineligible under Section 602 of the Act. He then returns to work for Company A and earns in excess of his weekly benefit amount in each of four weeks. He is then laid off by Company A. Thereafter, he performs services for Company B for less than 30 days before being laid off. Company A will be this individual's chargeable employer with respect to any weeks subsequent to this second separation from it because it was the individual's single employer following his discharge for misconduct, is an employer under the Act and paid the individual an amount necessary to requalify for benefits. If this individual had performed services for Company B for 30 days, then it would be this individual's chargeable employer.

4) EXAMPLE~~Example~~: Assume the same facts as in subsection (c)(3) except that, after performing services 30 days for Company B, the individual was discharged for misconduct connected with his work. In this case, no employer will be the chargeable employer with respect to this subsequent separation because Company B cannot be the chargeable employer of an individual if it discharged him for misconduct connected with his work.

5) EXAMPLE~~Example~~: Assume the same facts as in subsection (c)(3) except that Company B, that~~which~~ employed the individual for 30 days, is not an employer under the Act. In this case, no employer will be charged as a result of any benefits paid to this individual after his second separation (unless a later chargeable employer is found for subsequent weeks). This is because, even though the individual requalified for benefits by earning an amount equal to or in excess of his weekly benefit amount in each of four weeks from Company A, he was subsequently employed for 30 days by Company B, an organization that~~which~~ is not subject to the Act.

6) EXAMPLE~~Example~~: An individual is employed by Company A for several months and performs services for Company A for at least 30 days before being laid off for lack of work. The individual does not file a claim for benefits immediately but goes on vacation. When he returns from vacation, Company A offers the individual a suitable job that~~which~~ he refuses without good cause. However, during that same week, he is hired

by Company B where he then performs services for less than 30 days but earns in excess of his weekly benefit amount in each of four weeks. When he is laid off by Company B, the individual files a claim for benefits for the week ending January 23, 1993. He is not subject to disqualification for his refusal of work from Company A because he has had sufficient earnings from Company B to purge any possible disqualification. Company A will not be charged for benefit charges that~~which~~ result from payments to this individual because the individual refused the Company's offer of suitable work without good cause. Company B is not the employer that~~which~~ paid the claimant earnings that~~which~~ allowed him to requalify because the individual was never disqualified. Company B did not employ this individual for at least 30 days. Therefore, in this case, no employer will be the chargeable employer for the week ending January 23, 1993 and thereafter until such time as there is an employer that~~which~~ meets the requirements of the Act to be chargeable.

d) If no employer meets the requirements of this Subpart to be the chargeable employer for the second of two consecutive benefit years, then no employer will be the chargeable employer for that second benefit year (effective with benefit years beginning on or after September 22, 1992).

EXAMPLE~~Example~~: The individual files a claim after being employed at several temporary jobs. Company A employed this individual for 30 days during the first quarter of his base period. No subsequent employer employed this individual for 30 days. Company A is the chargeable employer. This individual then files a second benefit year claim. His employment with Company A occurred prior to the base period of the second benefit year claim, and no subsequent employer employed him for at least 30 days. Therefore, no employer will be chargeable for this claim. However, if the second benefit year began after January 1, 1993, while no employer might initially be liable for any benefit charges, should this individual become employed and then later unemployed, a subsequent employer could be liable for any charges that~~which~~ might accrue after that period of unemployment.

e) Notice that a claim for benefits has been filed will be sent by the Agency to every employing unit for whom the individual provided services, subsequent to the services provided to the chargeable employer.

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2765.333 Effect of~~Of~~ Ineligibility Under Section 612 on~~On~~ Chargeability Under Section 1502.1 of the Act**

Whenever the individual's last employer is an educational institution or is an educational service agency, then the~~such~~ educational institution or educational service agency shall not be liable for benefit charges on the basis of benefits paid to that individual during the period between two consecutive academic years or terms if the~~such~~ individual has a reasonable assurance that he or she will perform service in any capacity for any educational institution or educational service agency in the second of the~~such~~ academic years or terms. In these~~such~~ instances, it is not necessary that the individual be ineligible under Section 612 of the Act if Section 612 would have applied if the individual had had wages from an educational institution or educational service agency during his or her base period. This Section shall also apply to payments in lieu of contributions.

a) EXAMPLE~~Example~~: An individual is employed as a teacher for a public school. However, during his base period, he earned sufficient wages from a non-educational employer to qualify for benefits. If this individual is held to be ineligible during a period between academic terms on the basis of his wages from the public school, he could still qualify for benefits based on his wages from the non-educational employer. Even if the public school would otherwise be the individual's last employer pursuant to this Subpart, the public school will not be liable for any benefit charges that~~which~~ might accrue as a result of payments to that individual during his period of ineligibility~~ineligiblity~~ under Section 612 of the Act.

b) EXAMPLE~~Example~~: The individual is employed by a private employer during his entire base period. Thereafter, he obtains work as a teacher for a public school. When he is off of work during the summer, the individual applies for unemployment insurance benefits. If this individual has a reasonable assurance in the second academic year or term, then the public school is the last employer during this period, but it will not be liable for any benefit charges or payments in lieu of contributions that~~which~~ might accrue as the result of payments made to this individual. In this~~such~~ case, any benefit charges will be pooled.

c) EXAMPLE~~Example~~: The individual is employed by a private employer during his entire base period. Thereafter he obtains work as a teacher for a public school. He is discharged by the school for non-disqualifying reasons and files a new

claim with a benefit year beginning January 10, 1993. He is then paid benefits for the period from January 10, 1993 through January 30, 1993, at that~~which~~ time he is rehired by this same public school. If the school meets the other requirements for chargeability, it will be liable for any benefit charges or payments in lieu of contributions that~~which~~ accrue for this period. However, if this same individual is then off of work during the summer and has a reasonable assurance of similar employment in the second academic year or term, while the public school would otherwise be the chargeable employer during this period, it will not be liable for any benefit charges or payments in lieu of contributions that~~which~~ might accrue as the result of payments made to this individual during the period. In this~~such~~ case, any benefit charges will be pooled. However, this pooling occurs only for the period of ineligibility or potential ineligibility under Section 612 of the Act.

d) EXAMPLE~~Example~~: Assume the same facts as in subsection (c)~~ above~~, except that the individual is later laid off for lack of work by the school district for the week ending October 16, 1993. The school district will be the chargeable employer for this week.

e) EXAMPLE~~Example~~: The individual is employed by Company A for 2 years until his layoff in May 1993. He is then employed for 20 days by a public school district as a teacher. He is laid off for the summer vacation but has a reasonable assurance of reemployment by the school district when the new academic year or term begins. The individual is not ineligible for benefits under Section 612 of the Act because he was not employed by the school district during his base period. Because Company A is the last employer for whom this individual performed services for at least 30 days, it is the chargeable employer for any weeks paid to this individual during the summer period. Section 1502.1A(3)(a)(ii)(5) of the Act does not apply to this situation because Company A is not the employer that laid the individual off between academic years or terms.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Determination of Unemployment Contributions

2) Code Citation: 56 Ill. Adm. Code 2770

3)

| Section Numbers: | Proposed Actions: |
|---|---|
| 2770.111 | Repealed |
| 2770.501 | Repealed |

4) Statutory Authority: Implementing and authorized by Sections 1500, 1501, 1503, 1506.1, 1506.2, 1506.3, 1508.1, 1700 and 1701 of the Unemployment Insurance Act [820 ILCS 405/1500, 1501, 1503, 1506.1, 1506.2, 1506.3, 1508.1, 1700 and 1701].

5) A Complete Description of the Subjects and Issues Involved: Repeals obsolete references.

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

7) Will this 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? No

11) Statement of Statewide Policy Objective: These proposed amendments neither create nor expand a State mandate.

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit written comments to:

Thomas D. Chan, Acting General Counsel
Illinois Department of Employment Security
33 South State Street – Room 933
Chicago IL 60603

312/793-2338
fax: 312/793-5645

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

e-mail: Thomas.D.Chan@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].

The proposed rulemaking may have an impact on small businesses, small municipalities and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80 and 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as a small business, small municipality or not-for-profit corporation as part of any written comments submitted to the Department.

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: This rulemaking has no direct effect on small businesses, small municipalities and not-for-profit corporations.

B) Reporting, bookkeeping or other procedures required for compliance: No reporting or bookkeeping is required for compliance.

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 2 most recent agendas because: the revisions were not anticipated at the time.

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

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER IV: DEPARTMENT OF EMPLOYMENT SECURITY
SUBCHAPTER c: RIGHTS AND DUTIES OF EMPLOYERS

PART 2770
DETERMINATION OF UNEMPLOYMENT CONTRIBUTIONS

SUBPART A: INDUSTRIAL CLASSIFICATIONS

Section
2770.100 Pre 2003 Industrial Classification (Repealed)
2770.101 Post 2002 Industrial Classification
2770.105 Pre 2003 Contribution Rate For Non-Experience-Rated Employers (Repealed)
2770.106 Post-2002 Contribution Rate for Non-Experience-Rated Employers
2770.110 Average Contribution Rates By Standard Industrial Classification (SIC) Codes (Repealed)
2770.111 Average Contribution Rates By North American Industry Classification System (NAICS) Assignment (Repealed)

SUBPART B: ALTERNATIVE BENEFIT WAGE RATIO

Section
2770.150 Eligibility To Elect The Alternative Benefit Wage Ratio (Repealed)
2770.155 Approval Of Election Of The Alternative Benefit Wage Ratio (Repealed)
2770.160 Adjustment Of The Benefit Wage Charges And The Determination Of The Alternative Benefit Wage Ratio (Repealed)
2770.165 Revocation Of Election Of Alternative Benefit Wage Ratio (Repealed)
2770.170 Appeals (Repealed)

SUBPART C: TRANSFER OF BENEFIT WAGES FROM BASE PERIOD TO SUBSEQUENT EMPLOYER

Section
2770.400 Definitions (Repealed)
2770.405 Application Of Base Period Wages (Repealed)
2770.410 Restriction On Benefit Wage Transfers (Repealed)
2770.415 Benefit Wage Transfer Procedural Requirements (Repealed)
2770.420 Petition For Hearing (Repealed)

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

SUBPART D: BENEFIT WAGE CANCELLATIONS

Section
2770.501 Effective Date Of Benefit Wage Cancellations Pursuant To Section 1508.1 Of The Act (Repealed)

2770.TABLE A General SIC Classifications (Repealed)

AUTHORITY: Implementing and authorized by Sections 1500, 1501, 1503, 1506.1, 1506.2, 1506.3, 1508.1, 1700 and 1701 of the Unemployment Insurance Act [820 ILCS 405/1500, 1501, 1503, 1506.1, 1506.2, 1506.3, 1508.1, 1700 and 1701].

SOURCE: Emergency rules adopted as 56 Ill. Adm. Code 600: Subpart C at 8 Ill. Reg. 550, effective January 1, 1984, for a maximum of 150 days; adopted at 8 Ill. Reg. 8208, effective May 30, 1984; recodified from 56 Ill. Adm. Code 600: Subpart C at 8 Ill. Reg. 15030; emergency amendments at 8 Ill. Reg. 15088, effective August 8, 1984, for a maximum of 150 days; emergency amendments at 8 Ill. Reg. 22139, effective October 26, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 24117, effective November 30, 1984; amended at 9 Ill. Reg. 4507, effective March 25, 1985; amended at 10 Ill. Reg. 6935, effective April 14, 1986; amended at 10 Ill. Reg. 21683, effective December 15, 1986; amended at 11 Ill. Reg. 9878, effective May 11, 1987; emergency amendments at 12 Ill. Reg. 210, effective January 1, 1988, for a maximum of 150 days; expired May 30, 1988; amended at 12 Ill. Reg. 11213, effective June 20, 1988; amended at 12 Ill. Reg. 12473, effective July 15, 1988; amended at 12 Ill. Reg. 18143, effective October 27, 1988; amended at 12 Ill. Reg. 20477, effective November 28, 1988; amended at 13 Ill. Reg. 11507, effective June 29, 1989; amended at 14 Ill. Reg. 2038, effective January 19, 1990; amended at 14 Ill. Reg. 18280, effective October 30, 1990; amended at 15 Ill. Reg. 172, effective December 28, 1990; amended at 15 Ill. Reg. 8553, effective May 24, 1991; amended at 16 Ill. Reg. 118, effective December 20, 1991; amended at 17 Ill. Reg. 295, effective December 28, 1992; amended at 18 Ill. Reg. 250, effective January 1, 1994; amended at 18 Ill. Reg. 17473, effective January 1, 1995; amended at 20 Ill. Reg. 350, effective January 1, 1996; amended at 21 Ill. Reg. 561, effective January 1, 1997; amended at 21 Ill. Reg. 15496, effective January 1, 1998; amended at 23 Ill. Reg. 155, effective January 1, 1999; amended at 23 Ill. Reg. 14299, effective January 1, 2000; amended at 24 Ill. Reg. 19125, effective January 1, 2001; amended at 26 Ill. Reg. 393, effective January 1, 2002; amended at 27 Ill. Reg. 2598, effective February 1, 2003; amended at 28 Ill. Reg. 1071, effective January 1, 2004; amended at 29 Ill. Reg. 788, effective January 1, 2005; amended at 30 Ill. Reg. 185, effective January 1, 2006; emergency amendment at 31 Ill. Reg. 221, effective January 1, 2007, for a maximum of 150 days; amended at 31 Ill. Reg. 6921, effective April 25, 2007; amended at 32 Ill. Reg. 155, effective January 1,

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

2008; amended at 32 Ill. Reg. 18966, effective December 1, 2008; amended at 43 Ill. Reg. _____, effective _____.

SUBPART A: INDUSTRIAL CLASSIFICATIONS

**Section 2770.111 Average Contribution Rates By North American Industry Classification System (NAICS) Assignment (Repealed)**

~~a) The average contribution rate for each Economic Sector in the North American Industry Classification System (NAICS), excluding the fund building rate as set forth in Section 1506.3 of the Act, for calendar year 2003, as determined by the application of Section 2770.106(a)(4) of this Part, shall be:~~

| ~~Digits~~ | ~~Economic Sector~~ | ~~Rate~~ |
|---|---|---|
| ~~11~~ | ~~Agriculture, Forestry, Fishing and Hunting~~ | ~~1.5%~~ |
| ~~21~~ | ~~Mining~~ | ~~3.1%~~ |
| ~~22~~ | ~~Utilities~~ | ~~1.2%~~ |
| ~~23~~ | ~~Construction~~ | ~~2.7%~~ |
| ~~31-33~~ | ~~Manufacturing~~ | ~~1.7%~~ |
| ~~42~~ | ~~Wholesale Trade~~ | ~~1.3%~~ |
| ~~44-45~~ | ~~Retail Trade~~ | ~~1.0%~~ |
| ~~48-49~~ | ~~Transportation and Warehousing~~ | ~~1.8%~~ |
| ~~51~~ | ~~Information~~ | ~~1.3%~~ |
| ~~52~~ | ~~Finance and Insurance~~ | ~~0.9%~~ |
| ~~53~~ | ~~Real Estate and Rental and Leasing~~ | ~~1.0%~~ |
| ~~54~~ | ~~Professional, Scientific and Technical Services~~ | ~~1.0%~~ |
| ~~55~~ | ~~Management of Companies and Enterprises~~ | ~~1.3%~~ |
| ~~56~~ | ~~Administrative and Support and Waste Management~~ | ~~2.0%~~ |
| ~~61~~ | ~~Educational Services~~ | ~~0.8%~~ |
| ~~62~~ | ~~Health Care and Social Assistance~~ | ~~0.7%~~ |
| ~~71~~ | ~~Arts, Entertainment and Recreation~~ | ~~1.5%~~ |
| ~~72~~ | ~~Accommodation and Food Services~~ | ~~0.8%~~ |
| ~~81~~ | ~~Other Services (except Public Administration)~~ | ~~0.9%~~ |
| ~~92~~ | ~~Public Administration~~ | ~~0.8%~~ |
| ~~99~~ | ~~Unclassified~~ | ~~1.1%~~ |

~~b) The average contribution rate for each Economic Sector in the North American Industry Classification System (NAICS), excluding the fund building rate as set~~

~~forth in Section 1506.3 of the Act, for calendar year 2004, as determined by the application of Section 2770.106(a)(4) of this Part, shall be:~~

| ~~Digits~~ | ~~Economic Sector~~ | ~~Rate~~ |
|---|---|---|
| ~~11~~ | ~~Agriculture, Forestry, Fishing and Hunting~~ | ~~1.7%~~ |
| ~~21~~ | ~~Mining~~ | ~~2.9%~~ |
| ~~22~~ | ~~Utilities~~ | ~~1.5%~~ |
| ~~23~~ | ~~Construction~~ | ~~3.0%~~ |
| ~~31-33~~ | ~~Manufacturing~~ | ~~2.4%~~ |
| ~~42~~ | ~~Wholesale Trade~~ | ~~1.7%~~ |
| ~~44-45~~ | ~~Retail Trade~~ | ~~1.2%~~ |
| ~~48-49~~ | ~~Transportation and Warehousing~~ | ~~2.2%~~ |
| ~~51~~ | ~~Information~~ | ~~1.9%~~ |
| ~~52~~ | ~~Finance and Insurance~~ | ~~1.2%~~ |
| ~~53~~ | ~~Real Estate and Rental and Leasing~~ | ~~1.2%~~ |
| ~~54~~ | ~~Professional, Scientific and Technical Services~~ | ~~1.4%~~ |
| ~~55~~ | ~~Management of Companies and Enterprises~~ | ~~1.7%~~ |
| ~~56~~ | ~~Administrative and Support and Waste Management~~ | ~~2.5%~~ |
| ~~61~~ | ~~Educational Services~~ | ~~1.0%~~ |
| ~~62~~ | ~~Health Care and Social Assistance~~ | ~~0.9%~~ |
| ~~71~~ | ~~Arts, Entertainment and Recreation~~ | ~~1.7%~~ |
| ~~72~~ | ~~Accommodation and Food Services~~ | ~~1.0%~~ |
| ~~81~~ | ~~Other Services (except Public Administration)~~ | ~~1.1%~~ |
| ~~92~~ | ~~Public Administration~~ | ~~0.9%~~ |
| ~~99~~ | ~~Unclassified~~ | ~~1.2%~~ |

~~c)~~ ~~The average contribution rate for each Economic Sector in the North American Industry Classification System (NAICS), excluding the fund building rate as set forth in Section 1506.3 of the Act, for calendar year 2005, as determined by the application of Section 2770.106(a)(4) of this Part, shall be:~~

| ~~Digits~~ | ~~Economic Sector~~ | ~~Rate~~ |
|---|---|---|
| ~~11~~ | ~~Agriculture, Forestry, Fishing and Hunting~~ | ~~2.1%~~ |
| ~~21~~ | ~~Mining~~ | ~~3.2%~~ |
| ~~22~~ | ~~Utilities~~ | ~~1.9%~~ |
| ~~23~~ | ~~Construction~~ | ~~3.8%~~ |
| ~~31-33~~ | ~~Manufacturing~~ | ~~3.2%~~ |

| | | |
|---|---|---|
| ~~42~~ | ~~Wholesale Trade~~ | ~~2.3%~~ |
| ~~44-45~~ | ~~Retail Trade~~ | ~~1.6%~~ |
| ~~48-49~~ | ~~Transportation and Warehousing~~ | ~~2.8%~~ |
| ~~51~~ | ~~Information~~ | ~~2.4%~~ |
| ~~52~~ | ~~Finance and Insurance~~ | ~~1.5%~~ |
| ~~53~~ | ~~Real Estate and Rental and Leasing~~ | ~~1.6%~~ |
| ~~54~~ | ~~Professional, Scientific and Technical Services~~ | ~~1.8%~~ |
| ~~55~~ | ~~Management of Companies and Enterprises~~ | ~~2.2%~~ |
| ~~56~~ | ~~Administrative and Support and Waste Management~~ | ~~3.2%~~ |
| ~~61~~ | ~~Educational Services~~ | ~~1.4%~~ |
| ~~62~~ | ~~Health Care and Social Assistance~~ | ~~1.2%~~ |
| ~~71~~ | ~~Arts, Entertainment and Recreation~~ | ~~2.1%~~ |
| ~~72~~ | ~~Accommodation and Food Services~~ | ~~1.3%~~ |
| ~~81~~ | ~~Other Services (except Public Administration)~~ | ~~1.4%~~ |
| ~~92~~ | ~~Public Administration~~ | ~~1.2%~~ |
| ~~99~~ | ~~Unclassified~~ | ~~1.7%~~ |

~~d) The average contribution rate for each Economic Sector in the North American Industry Classification System (NAICS), excluding the fund building rate as set forth in Section 1506.3 of the Act, for calendar year 2006, as determined by the application of Section 2770.106(a)(4) of this Part, shall be:~~

| ~~Digits~~ | ~~Economic Sector~~ | ~~Rate~~ |
|---|---|---|
| ~~11~~ | ~~Agriculture, Forestry, Fishing and Hunting~~ | ~~2.5%~~ |
| ~~21~~ | ~~Mining~~ | ~~3.8%~~ |
| ~~22~~ | ~~Utilities~~ | ~~2.3%~~ |
| ~~23~~ | ~~Construction~~ | ~~4.4%~~ |
| ~~31-33~~ | ~~Manufacturing~~ | ~~3.8%~~ |
| ~~42~~ | ~~Wholesale Trade~~ | ~~2.8%~~ |
| ~~44-45~~ | ~~Retail Trade~~ | ~~2.0%~~ |
| ~~48-49~~ | ~~Transportation and Warehousing~~ | ~~3.4%~~ |
| ~~51~~ | ~~Information~~ | ~~2.8%~~ |
| ~~52~~ | ~~Finance and Insurance~~ | ~~2.0%~~ |
| ~~53~~ | ~~Real Estate and Rental and Leasing~~ | ~~1.9%~~ |
| ~~54~~ | ~~Professional, Scientific and Technical Services~~ | ~~2.3%~~ |
| ~~55~~ | ~~Management of Companies and Enterprises~~ | ~~2.7%~~ |
| ~~56~~ | ~~Administrative and Support and Waste Management~~ | ~~3.8%~~ |
| ~~61~~ | ~~Educational Services~~ | ~~1.8%~~ |

| | | |
|---|---|---|
| ~~62~~ | ~~Health Care and Social Assistance~~ | ~~1.6%~~ |
| ~~71~~ | ~~Arts, Entertainment and Recreation~~ | ~~2.5%~~ |
| ~~72~~ | ~~Accommodation and Food Services~~ | ~~1.7%~~ |
| ~~81~~ | ~~Other Services (except Public Administration)~~ | ~~1.7%~~ |
| ~~92~~ | ~~Public Administration~~ | ~~1.5%~~ |
| ~~99~~ | ~~Unclassified~~ | ~~2.1%~~ |

~~e)~~ ~~The average contribution rate for each Economic Sector in the North American Industry Classification System (NAICS), excluding the fund building rate set forth in Section 1506.3 of the Act, for calendar year 2007, as determined by the application of Section 2770.106(a)(4) of this Part, shall be:~~

| ~~Digits~~ | ~~Economic Sector~~ | ~~Rate~~ |
|---|---|---|
| ~~11~~ | ~~Agriculture, Forestry, Fishing and Hunting~~ | ~~2.2%~~ |
| ~~21~~ | ~~Mining~~ | ~~3.4%~~ |
| ~~22~~ | ~~Utilities~~ | ~~2.2%~~ |
| ~~23~~ | ~~Construction~~ | ~~4.0%~~ |
| ~~31-33~~ | ~~Manufacturing~~ | ~~3.1%~~ |
| ~~42~~ | ~~Wholesale Trade~~ | ~~2.4%~~ |
| ~~44-45~~ | ~~Retail Trade~~ | ~~1.8%~~ |
| ~~48-49~~ | ~~Transportation and Warehousing~~ | ~~2.9%~~ |
| ~~51~~ | ~~Information~~ | ~~2.4%~~ |
| ~~52~~ | ~~Finance and Insurance~~ | ~~1.8%~~ |
| ~~53~~ | ~~Real Estate and Rental and Leasing~~ | ~~1.7%~~ |
| ~~54~~ | ~~Professional, Scientific and Technical Services~~ | ~~1.9%~~ |
| ~~55~~ | ~~Management of Companies and Enterprises~~ | ~~2.3%~~ |
| ~~56~~ | ~~Administrative and Support and Waste Management~~ | ~~3.4%~~ |
| ~~61~~ | ~~Educational Services~~ | ~~1.6%~~ |
| ~~62~~ | ~~Health Care and Social Assistance~~ | ~~1.5%~~ |
| ~~71~~ | ~~Arts, Entertainment and Recreation~~ | ~~2.2%~~ |
| ~~72~~ | ~~Accommodation and Food Services~~ | ~~1.5%~~ |
| ~~81~~ | ~~Other Services (except Public Administration)~~ | ~~1.6%~~ |
| ~~92~~ | ~~Public Administration~~ | ~~1.4%~~ |
| ~~99~~ | ~~Unclassified~~ | ~~1.8%~~ |

~~f)~~ ~~The average contribution rate for each Economic Sector in the North American Industry Classification System (NAICS), excluding the fund building rate set~~

~~forth in Section 1506.3 of the Act, for calendar year 2008, as determined by the application of Section 2770.106(a)(4) of this Part, shall be:~~

| ~~Digits~~ | ~~Economic Sector~~ | ~~Rate~~ |
|---|---|---|
| ~~11~~ | ~~Agriculture, Forestry, Fishing and Hunting~~ | ~~1.8%~~ |
| ~~21~~ | ~~Mining~~ | ~~3.0%~~ |
| ~~22~~ | ~~Utilities~~ | ~~1.7%~~ |
| ~~23~~ | ~~Construction~~ | ~~3.4%~~ |
| ~~31-33~~ | ~~Manufacturing~~ | ~~2.4%~~ |
| ~~42~~ | ~~Wholesale Trade~~ | ~~1.9%~~ |
| ~~44-45~~ | ~~Retail Trade~~ | ~~1.6%~~ |
| ~~48-49~~ | ~~Transportation and Warehousing~~ | ~~2.4%~~ |
| ~~51~~ | ~~Information~~ | ~~1.9%~~ |
| ~~52~~ | ~~Finance and Insurance~~ | ~~1.5%~~ |
| ~~53~~ | ~~Real Estate and Rental and Leasing~~ | ~~1.4%~~ |
| ~~54~~ | ~~Professional, Scientific and Technical Services~~ | ~~1.5%~~ |
| ~~55~~ | ~~Management of Companies and Enterprises~~ | ~~1.8%~~ |
| ~~56~~ | ~~Administrative and Support and Waste Management~~ | ~~2.9%~~ |
| ~~61~~ | ~~Educational Services~~ | ~~1.3%~~ |
| ~~62~~ | ~~Health Care and Social Assistance~~ | ~~1.2%~~ |
| ~~71~~ | ~~Arts, Entertainment and Recreation~~ | ~~1.9%~~ |
| ~~72~~ | ~~Accommodation and Food Services~~ | ~~1.2%~~ |
| ~~81~~ | ~~Other Services (except Public Administration)~~ | ~~1.3%~~ |
| ~~92~~ | ~~Public Administration~~ | ~~1.2%~~ |
| ~~99~~ | ~~Unclassified~~ | ~~1.6%~~ |

(Source: Repealed at 43 Ill. Reg. _____, effective _____)

SUBPART D: BENEFIT WAGE CANCELLATIONS

**Section 2770.501 Effective Date Of Benefit Wage Cancellations Pursuant To Section 1508.1 Of The Act (Repealed)**

~~The provisions of Section 1508.1 of the Act shall apply only to benefit wages which result from the payment of benefits with respect to a benefit year which begins on or after January 1, 1987.~~

(Source: Repealed at 43 Ill. Reg. _____, effective _____)

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Recovery of Benefits

2) Code Citation: 56 Ill. Adm. Code 2835

3)

| Section Numbers: | Proposed Actions: |
|---|---|
| 2835.45 | Amendment |
| 2835.50 | Amendment |

4) Statutory Authority: Implementing and authorized by Sections 900, 901, 1700, 1701 and 1706 of the Unemployment Insurance Act [820 ILCS 405/900, 901, 1700, 1701 and 1706].

5) A Complete Description of the Subjects and Issues Involved: Allows for recoupment requests to be submitted online or though Teleserve. Updates obsolete references.

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

7) Will this 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? No

11) Statement of Statewide Policy Objective: These proposed amendments neither create nor expand a State mandate.

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit written comments to:

Thomas D. Chan, Acting General Counsel
Illinois Department of Employment Security
33 South State Street – Room 933
Chicago IL 60603

312/793-2338
fax: 312/793-5645

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

e-mail: Thomas.D.Chan@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].

The proposed rulemaking may have an impact on small businesses, small municipalities and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80 and 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as a small business, small municipality or not-for-profit corporation as part of any written comments submitted to the Department.

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: This rulemaking has no direct effect on small businesses, small municipalities and not- for-profit corporations.

B) Reporting, bookkeeping or other procedures required for compliance: No reporting or bookkeeping is required for compliance.

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 2 most recent agendas because: the revisions were not anticipated at the time.

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

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER IV: DEPARTMENT OF EMPLOYMENT SECURITY
SUBCHAPTER e: RIGHTS AND DUTIES OF EMPLOYEES

PART 2835
RECOVERY OF BENEFITS

SUBPART A: GENERAL PROVISIONS

Section

2835.1 Recovery of Benefits by Recoupment
2835.5 Amounts Recoverable by Recoupment
2835.10 Time Limits Within Which to Recoup Benefits
2835.15 Extent of Recoupment
2835.20 Notice Of~~of~~ Recoupment Decision
2835.25 Reconsideration Or Appeal Of Recoupment Decision
2835.30 Waiver Of Recoupment
2835.33 Waiver of Recovery (TRA)
2835.35 Benefits Received With Fault
2835.40 Benefits Received Without Fault
2835.45 Recoupment Against Equity and Good Conscience
2835.50 Request For And Decision Regarding Waiver Of Recoupment
2835.55 Reconsideration Or Appeal Of Denial Of Request For Waiver
2835.60 Periods When Waiver Of Recoupment Allowed
2835.65 Waiver Certifications By Mail

SUBPART B: DETECTION OF OVERPAYMENTS

Section

2835.100 Cross-Matching

2835.TABLE A Recoupment Matrix

AUTHORITY: Implementing and authorized by Sections 900, 901, 1700, 1701 and 1706 of the Unemployment Insurance Act [820 ILCS 405/900, 901, 1700, 1701 and 1706].

SOURCE: 56 Ill. Adm. Code 800: Subpart F adopted at 7 Ill. Reg. 383, effective December 23, 1982; recodified to 56 Ill. Adm. Code 800: Subpart D at 8 Ill. Reg. 6037; recodified to 56 Ill. Adm. Code 2835 at 8 Ill. Reg. 15032; emergency amendment at 8 Ill. Reg. 19687, effective September 28, 1984, for a maximum of 150 days; amended at 9 Ill. Reg. 2493, effective

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

February 13, 1985; amended at 9 Ill. Reg. 16225, effective October 15, 1985; amended at 10 Ill. Reg. 12776, effective July 14, 1986; amended at 11 Ill. Reg. 7626, effective April 14, 1987; emergency amendment at 12 Ill. Reg. 231, effective January 1, 1988, for a maximum of 150 days; emergency expired May 30, 1988; amended at 12 Ill. Reg. 11746, effective July 5, 1988; amended at 32 Ill. Reg. 18978, effective December 1, 2008; emergency amendment at 34 Ill. Reg. 2330, effective January 19, 2010, for a maximum of 150 days; amended at 34 Ill. Reg. 8515, effective June 16, 2010; amended at 35 Ill. Reg. 6148, effective March 25, 2011; emergency amendment at 36 Ill. Reg. 5618, effective March 21, 2012, for a maximum of 150 days; amended at 36 Ill. Reg. 12310, effective July 19, 2012; amended at 43 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

**Section 2835.45 Recoupment Against Equity and Good Conscience**

a) Recoupment will be considered to be against equity and good conscience if the recoupment would cause the individual extreme financial hardship. For this purpose, extreme financial hardship shall mean the inability to meet vital financial obligations that~~which~~ cannot be deferred. These~~Such~~ obligations include:

1) Rent, if the individual has received an eviction notice or five day notice from the landlord;

2) Utility bills, if the individual has received a utility cutoff notice;

3) Unexpected medical bills not covered by insurance; and

4) Other debts incurred for essential living expenses, the payment of which cannot be deferred.

b) The decision whether the recoupment would cause an individual extreme financial hardship shall be based on an assessment of the individual's complete financial situation. Factors~~,~~ such as the extent of an individual's savings and~~,~~ his or her eligibility for welfare or other forms of public assistance~~,~~ shall be relevant in making this decision.

c) Notwithstanding subsections (a) and (b), whenever an individual is overpaid a sum as benefits and the payment of that~~such~~ sum was the result of the individual having claimed a dependent, under Section 401 of the Act, when a dependent

child of that same parent had already been claimed as a dependent by the other parent who was also entitled to claim the dependent and the individual had responded negatively to the question on this subject on his/her claim application~~the form BIS-0030, Unemployment Claim Application, or the Internet Claim Application,~~ because the other parent who claimed the dependent had returned to work, recoupment of the overpaid~~such~~ sum shall be deemed to be against equity and good conscience.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2835.50 Request For And Decision Regarding Waiver Of Recoupment**

a) The initial request for waiver of recoupment must be made in person by the claimant requesting the~~such~~ waiver, unless he or she is physically unable to appear at the local unemployment office closest to his or her place of residence. ~~1)~~The request must be made in person, online or through the Teleserve system prior to submitting the certification for benefits~~ form (BIS-0653)~~ for the week recoupment is scheduled to begin. ~~2)The certification form must be brought to the local unemployment office when making the request for waiver.~~

b) The local unemployment office shall decide promptly whether or not to approve the request for waiver of recoupment. The claimant whose request for waiver of recoupment has been disapproved shall be promptly informed, in writing, of the reasons for the denial of the waiver.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Claimant's Reason for Separation from Work

2) Code Citation: 56 Ill. Adm. Code 2840

3) Section Number: 2840.25 — Proposed Action: Amendment

4) Statutory Authority: Implementing and authorized by Sections 601, 602, 1700 and 1701 of the Unemployment Insurance Act [820 ILCS 405/601, 602, 1700 and 1701].

5) A Complete Description of the Subjects and Issues Involved: Updates obsolete references.

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

7) Will this 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? No

11) Statement of Statewide Policy Objective: These proposed amendments neither create nor expand a State mandate.

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit written comments to:

Thomas D. Chan, Acting General Counsel
Illinois Department of Employment Security
33 South State Street – Room 933
Chicago IL 60603

312/793-2338
fax: 312/793-5645
e-mail: Thomas.D.Chan@illinois.gov

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

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].

The proposed rulemaking may have an impact on small businesses, small municipalities and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80 and 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as a small business, small municipality or not-for-profit corporation as part of any written comments submitted to the Department.

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: This rulemaking has no direct effect on small businesses, small municipalities and not-for-profit corporations.

B) Reporting, bookkeeping or other procedures required for compliance: No reporting or bookkeeping is required for compliance.

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 2 most recent agendas because: the revisions were not anticipated at the time.

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

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER IV: DEPARTMENT OF EMPLOYMENT SECURITY
SUBCHAPTER f: ELIGIBILITY FOR BENEFITS

PART 2840
CLAIMANT'S REASON FOR SEPARATION FROM WORK

SUBPART A: MISCONDUCT

Section
2840.25 What Is Meant by~~By~~ "Harm"

SUBPART B: VOLUNTARY LEAVE

Section
2840.101 General Principles for Interpreting Section 601 of the Act [820 ILCS 405/601]
2840.125 Early Retirement Or Employment Buyout Packages

AUTHORITY: Implementing and authorized by Sections 601, 602, 1700 and 1701 of the Unemployment Insurance Act [820 ILCS 405/601, 602, 1700 and 1701].

SOURCE: Adopted at 17 Ill. Reg. 10270, effective June 29, 1993; amended at 17 Ill. Reg. 17929, effective October 4, 1993; emergency amendment at 34 Ill. Reg. 2335, effective January 19, 2010, for a maximum of 150 days; amended at 34 Ill. Reg. 8520, effective June 16, 2010; amended at 43 Ill. Reg. _____, effective _____.

SUBPART A: MISCONDUCT

**Section 2840.25 What Is Meant by "Harm"**

The phrase "...has harmed the employing unit or other employees" in the general definition of misconduct in Section 602A of the Act~~ (Ill. Rev. Stat. 1991, ch. 48, par. 432A)~~ [820 ILCS 405/602A] includes, but is not limited to:

a) physical or quantitatively measurable~~measureable~~ damage or injury;

b) other damage or injury to other employees' well-being or morale or to the employer's property, operations or goodwill;

1) EXAMPLE~~Example~~: An individual is dissatisfied because he does not receive a raise. He confronts his supervisor and threatens to injure him, if not immediately, at some time soon. The threat itself, even in the absence of a physical assault resulting in a tangible injury, constitutes harm.

2) EXAMPLE~~Example~~: Without authorization, an individual enters the company president's office, opens a desk drawer and removes and photocopies trade secrets. Even if the individual decides not to pass along this information to others, the removal and photocopying of trade secrets constitutes harm.

3) EXAMPLE~~Example~~: An employer has a point system for evaluating tardiness and absence. When the worker exceeds the allotted number of points in a particular period, he is subject to discharge. Absences and tardiness always cause harm to the employer, even if a worker is allowed to make up the time. This is because absences and tardiness cause disruption to the general operations of any business. However, even before reaching the question of harm, the worker's reason for~~ his last~~ tardiness or absence must be reviewed in order to determine if the worker's conduct was willful.

c) damage or injury that could be reasonably foreseen to occur but for the individual being prevented from either carrying out his or her act or continuing to work;

1) EXAMPLE~~Example~~: At the end of her shift, a grocery store checker is stopped at the exit by a security guard. The security guard removes from the checker's purse a can of fruit cocktail and a package of sandwich cookies belonging to the employer. Because the checker was caught, the employer was not deprived of its property. Still, this constitutes harm.

2) EXAMPLE~~Example~~: An individual applies for a job that~~which~~ requires that he have a valid driver's license. On his application, he fails to disclose that his driver's license has been suspended. One year later, the employer learns of the suspension. Although the individual has not yet been involved in any accidents on the employer's premises, it is reasonable to foresee that one may occur and that the employer's insurance company would deny liability because of the individual's omission. The individual's omission on his application constitutes harm.

3) EXAMPLE~~Example~~: Federal law provides that a commercial carrier may not permit its vehicles to be operated by an individual if there is, within the individual's system, the presence of unlawful, controlled substances beyond a particular level. The presence of such a substance during working hours within the system of a commercial driver employed by the carrier constitutes harm to the carrier. To continue to employ the individual as a driver would result in the carrier's violating federal law.

4) EXAMPLE~~Example~~: The individual is driving a forklift truck through the employer's warehouse at excessive speeds. It is reasonably foreseeable that this~~such~~ conduct could result in both injuries and property damage. Even if the conduct is stopped before ~~such~~ injuries or damage occur, there is still harm to the employer.

d) It should be noted that harm is only one element of the definition of misconduct and that all of the elements set forth in the Act must be analyzed before a finding of misconduct can be made.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Claimant's Availability for Work, Ability to Work and Active Search for Work

2) Code Citation: 56 Ill. Adm. Code 2865

3)

| Section Numbers: | Proposed Actions: |
|---|---|
| 2865.1 | Amendment |
| 2865.60 | Amendment |
| 2865.100 | Amendment |
| 2865.105 | Amendment |
| 2865.110 | Amendment |
| 2865.115 | Amendment |
| 2865.125 | Amendment |
| 2865.130 | Amendment |
| 2865.140 | Amendment |
| 2865.145 | Amendment |
| 2865.150 | Amendment |
| 2865.205 | Amendment |
| 2865.210 | Amendment |
| 2865.215 | Amendment |

4) Statutory Authority: Implementing and authorized by Sections 409, 500, 1700 and 1701 of the Unemployment Insurance Act [820 ILCS 405/409, 500, 1700 and 1701].

5) A Complete Description of the Subjects and Issues Involved: Updates outdated language to reflect the process for certifying for benefits by telephone or through the internet. Updates obsolete references.

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

7) Will this 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? No

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

11) Statement of Statewide Policy Objective: These proposed amendments neither create nor expand a State mandate.

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit written comments to:

Thomas D. Chan, Acting General Counsel
Illinois Department of Employment Security
33 South State Street – Room 933
Chicago IL 60603

312/793-2338
fax: 312/793-5645
e-mail: Thomas.D.Chan@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].

The proposed rulemaking may have an impact on small businesses, small municipalities and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80 and 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as a small business, small municipality or not-for-profit corporation as part of any written comments submitted to the Department.

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: This rulemaking has no direct effect on small businesses, small municipalities and not-for-profit corporations.

B) Reporting, bookkeeping or other procedures required for compliance: No reporting or bookkeeping is required for compliance.

C) Types of professional skills necessary for compliance: None

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

14) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because: the revisions were not anticipated at the time.

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

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER IV: DEPARTMENT OF EMPLOYMENT SECURITY
SUBCHAPTER f: ELIGIBILITY FOR BENEFITS

PART 2865
CLAIMANT'S AVAILABILITY FOR WORK, ABILITY TO WORK
AND ACTIVE SEARCH FOR WORK

SUBPART A: GENERAL PROVISIONS

Section
2865.1 Definitions
2865.50 Union Registration in Satisfaction of Active Search Provisions
2865.55 Requirements For Union Local Certification
2865.60 Procedures for Approval as a Certified Union

SUBPART B: REGULAR BENEFITS

Section
2865.100 Work Search Requirements for Regular Unemployment Insurance Benefits
2865.105 Able to~~To~~ Work
2865.110 Available for~~For~~ Work
2865.115 Actively Seeking Work
2865.120 Suitability Of Work – Labor Standards
2865.125 Availability for ~~For~~ Part-Time Work Only
2865.130 Director's Approval of~~Of~~ Training
2865.135 Availability For Work And Active Search For Work: Attendance At Training Courses
2865.140 Regular Attendance in~~In~~ Approved Training
2865.145 Ineligibility to~~To~~ Receive Benefits for~~For~~ Failure to~~To~~ Participate in~~In~~ Reemployment Services
2865.150 Profiling/Referral to~~To~~ Reemployment Services

SUBPART C: EXTENDED BENEFITS

Section
2865.205 Applicability of~~Of~~ Rules for~~For~~ Eligibility for~~For~~ Regular Benefits
2865.210 Systematic and~~And~~ Sustained Search for~~For~~ Work
2865.215 When an~~An~~ Individual's Prospects for~~For~~ Finding Work Shall Be Deemed To Be Good

AUTHORITY: Implementing and authorized by Sections 409, 500, 1700 and 1701 of the

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

Unemployment Insurance Act [820 ILCS 405].

SOURCE: Adopted at 10 Ill. Reg. 11887, effective July 1, 1986; amended at 14 Ill. Reg. 18466, effective November 5, 1990; amended at 17 Ill. Reg. 17917, effective October 4, 1993; amended at 18 Ill. Reg. 4160, effective March 3, 1994; emergency amendment at 18 Ill. Reg. 17764, effective November 28, 1994, for a maximum of 150 days; amended at 19 Ill. Reg. 6555, effective April 28, 1995; amended at 29 Ill. Reg. 1927, effective January 24, 2005; amended at 33 Ill. Reg. 9675, effective August 1, 2009; amended at 35 Ill. Reg. 6154, effective March 25, 2011; amended at 43 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

**Section 2865.1 Definitions**

All other terms used in this Part shall have the meanings ascribed in ~~meaning set forth in definitions,~~ Sections 200 through 247 of the Unemployment Insurance Act ~~(Ill. Rev. Stat. 1991, ch. 48, pars. 310 through 372)~~ [820 ILCS 405~~/200 through 247~~], unless the context requires otherwise. ~~Throughout this Part, the use of terms imparting the masculine gender shall also apply to the feminine gender.~~

"Act" means the Unemployment Insurance Act ~~(Ill. Rev. Stat. 1991, ch. 48, pars. 300 et seq.)~~ [820 ILCS 405].

~~"Agency" means the Department of Employment Security.~~

"Claimant" means a person who applies for benefits under the Act.

"Customary occupation" means the work in which the individual was last engaged or the occupation for which he or she is best qualified by training, experience and education.

"Department" means the Illinois Department of Employment Security.

"Employing unit" shall have the same meaning ascribed ~~as that set forth~~ in Section 204 of the Act ~~(Ill. Rev. Stat. 1991, ch. 48, par. 314) [820 ILCS 405/204]~~.

"Full-time work" is the number of hours a class of workers would customarily work if the employing unit had all of the work it could handle without working overtime. Except when~~where~~ the contrary is provided by a collective bargaining

agreement or company policy, full-time work is customarily 40 hours per week. For example, 37.5 hours per week is full-time work for Illinois State~~state~~ employees because it is so provided by State~~state~~ personnel policy.

"Local office" means the office of the Department~~Agency~~ servicing claimants who live in a specific geographical area.

"Regular employing unit" is either the employing unit for which an individual expects to continue working and to work full time if business warrants it, or any employing unit for which the individual worked full time for nine consecutive weeks during the preceding 52 weeks.

"Temporary help firm" means an employing unit that hires its own employees and assigns them to clients to support or supplement the client's workforce in work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2865.60 Procedures for Approval as a Certified Union**

a) Any union local may seek approval under Section 2865.55 by requesting from the local office of the Adjudication Section of Field Operations a Union Registration and Placement Questionnaire (Ben-629) that~~,which~~ requests the information necessary to insure compliance with the requirements on placement services in Section 2865.55. The form shall be completed and returned to:

Field Operations, Adjudication Section
Illinois Department of Employment Security
33 South State Street, 9th Floor Mezzanine~~Wabash~~
Chicago, Illinois 60603

b) If a union local is disapproved, written notice for the reasons for the disapproval shall be provided to the union local. All inquiries for supplementary information, explanations or assistance shall be directed to the Adjudication Section of Field Operations that~~,which~~ shall:

1) Explain the basis for disapproval; and

2) Advise the union local regarding any adjustments in record keeping and activities that may be necessary to meet the standards for approval under Section 2865.55(a).

c) If a union local is approved, it shall be advised in writing and added to the listing set forth in Section 2865.50(b).

d) Since disapproval of a union local under subsection (b) does not adversely affect its rights under the Act, there is no right of administrative review within the Department~~Agency~~ under the Act. However, if an individual claimant is denied benefits under Section 500 of the Act, the individual, in his or her appeal under Section 800 of the Act may raise the wrongful disapproval of his or her union local as an issue in an appeal.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

SUBPART B: REGULAR BENEFITS

**Section 2865.100 Work Search Requirements for~~For~~ Regular Unemployment Insurance Benefits**

a) Unless otherwise instructed, the claimant must establish that he or she is able to work, available for work and actively seeking work during each week for which he or she is claiming benefits.

1) The claimant must register with the Illinois Employment Service unless otherwise instructed by the local office for one of the following reasons:

A) The claimant's unemployment is due to a labor dispute at his or her last employing unit even if the claimant is not involved in the dispute;

B) The claimant's unemployment is due to a temporary lay-off not exceeding 10 weeks in duration;

C) The claimant is a member of a labor union whose placement service has been certified by the Department~~Agency~~ under this Part;

D) The claimant is still attached to a regular job but he or she is only partially employed due to a temporary reduction in hours;

E) The claimant is a seasonal worker who is between seasons and has a reasonable expectation of returning to the same job in the next succeeding season. For example, park, golf course and landscape workers would fall within this subsection (a)(1)(E) during a winter shutdown;

F) The claimant is an academic worker, such as a teacher or school administrator, or a non-academic employee, such as a food service worker or school bus driver, who is seeking work at an educational institution or for a company that contracts with an educational institution during a period between academic years or terms;

G) The claimant is a construction worker seeking construction work, whether or not he or she belongs to a union that operates a hiring hall defined in Section 2865.50;

H) The claimant is enrolled and participating in training, whether or not that training is approved under Section 500~~(~~C~~)(~~5~~)~~ of the Act;

I) The claimant is a resident of a state that borders Illinois and has filed a claim in this State; or

J) The Department~~Agency~~ determines that, based on local labor market information, registration with the Illinois Employment Service would not increase the likelihood of the claimant's return to work.

2) The claimant must show that he or she is conducting a thorough, active and reasonable search for appropriate work on his or her own by keeping records of what he or she is doing to find work, including:

A) The names and addresses of the employing units contacted and the names of the specific persons contacted, if possible;

B) The dates, methods and results of the contacts;

C) The types of work that the claimant has been seeking, including wages and hours requested or desired; and

D) Any other information regarding work search efforts.

b) The claimant shall provide the written records required by this Section to the Department~~Agency~~ whenever requested, under~~pursuant to~~ Section ~~2720.112(f) or~~ 2720.115, or, in the event of a Claims Adjudicator's interview, an appeal or a hearing in which work search is an issue. Even if the claimant has been denied benefits, he or she must either continue to certify~~file~~ by telephone (see Section 2720.112) or complete and file the Claim Certification through the internet~~(BIS-653)~~ every 2 weeks and meet the eligibility requirements of the Act for each week for which he or she expects payment upon reversal of that denial.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2865.105 Able to~~To~~ Work**

a) An individual is able to work when he or she is physically and mentally capable of performing work for which he or she is otherwise qualified.

b) The focus is upon the individual's condition, the employer's willingness to hire him or her is not relevant.

1) EXAMPLE~~Example~~: An individual is 60 years old, worked as a warehouseman for 40 years and is physically able to continue doing so. Employers' reluctance to hire him, because of his age, does not render him unable to work.

2) EXAMPLE~~Example~~: An individual tests positive for tuberculosis, a contagious disease, and, by law, is not permitted to continue working as a school teacher. He applies for jobs as a school teacher. It is the individual's condition, not school districts' unwillingness to hire him, that renders him unable to work.

3) EXAMPLE~~Example~~: The individual has been discharged from numerous jobs because of repeated absenteeism due to habitual alcohol and drug use. When he reports to his local office, he reeks of alcohol and slurs his words. This individual will be determined to be unable to perform any

type of work. It is his condition, not an employer's unwillingness to hire him, that renders him unable to work.

c) The focus is upon any work for which the individual is qualified, not limited to his or her usual or most recent job.

EXAMPLE~~Example~~: An individual, who is 7 months pregnant, quits her job as an assembler because the job is strenuous and requires her to be constantly on her feet. She applies for desk work as a telephone receptionist, a job for which she is qualified. She would be determined to be able to work.

d) The best evidence that an individual with a disability is able to work in a particular occupation is that he or she has actually performed the~~such~~ work.

EXAMPLE~~Example~~: An individual has cerebral palsy, which impairs his bodily functions and reduces his work output. However, he has training and experience as a computer operator and has shown that he is capable, within his physical limitations, of performing the~~such~~ work. He would be determined to be able to work.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2865.110 Available for~~For~~ Work**

a) An individual is available for work, ~~-~~ even if he or she imposes conditions upon the acceptance of work, ~~-~~ unless a condition so narrows opportunities that he or she has no reasonable prospect of securing work.

EXAMPLE~~Example~~: An individual who lives in a remote rural area limits his availability to jobs within walking distance of his home. If few jobs for which he is qualified are located within walking distance of his home, it could be found that he has no reasonable prospect of securing the~~such~~ work and therefore would not be available for work.

b) If domestic circumstances prevent an individual from working during the normal days and hours that exist in his or her occupation (or other work for which he or she is qualified), he or she is unavailable for work.

1) EXAMPLE~~Example~~: An individual, who was employed as a security guard, has children who require full-time care. The individual is able to obtain child care during evenings only, leaving him free to work nights only. Because there is a labor market for night-shift security guards, he would be determined to be available for work.

2) EXAMPLE~~Example~~: An individual and her husband obtain a divorce, and she is awarded custody of their children. She then quits her job as a hospital respiratory therapist because she is required to work rotating shifts and be on emergency call and because she wishes to spend all nights and weekends with her children. She states that she still applies for work as a respiratory therapist, but has had to eliminate from her list most hospitals because they will not guarantee day-shift work, the only time for which she will arrange child care. She would be determined to be unavailable for work.

3) EXAMPLE~~Example~~: When the individual is laid off from her job as a bank teller, she, in turn, lays off her babysitter, who is not needed so long as the individual is at home. She states that, if she is offered a job, she will rehire her babysitter. Despite the fact that she currently has no babysitter, this individual would be determined to be available to work.

c) If the individual demands a wage that is unreasonable and, thereby, prices himself or herself out of the labor market, he or she is unavailable for work. Whether a wage demand is unreasonable is determined by factors including, but not limited to: the individual's prior wages and qualifications, the prevailing wage, labor laws, union agreements, and the length of unemployment; generally, the individual must lower his or her wage demand the longer he or she is unemployed.

1) EXAMPLE~~Example~~: An individual worked for 25 years as a bookkeeper for a small but prosperous business that was eventually bought out. She last earned $600 per week. Upon re-entering the labor market, she discovers that her wage demand – inflated by her many years of service – is much greater than that most employers are willing to pay. In the early weeks of unemployment, she may seek work paying $600 per week, based upon her prior wages and her qualifications. In ensuing weeks, she must lower her wage expectations. As her unemployment approaches 26 weeks (or the time when an "extended benefits" period might begin), she must

further lower her wage expectations. If, as time goes by, she adapts her wage expectations to meet market conditions, she would be determined to be available for work.

2) EXAMPLE~~Example~~: The individual is a union electrician. After 20 weeks of unemployment, he still insists upon the wage he was last paid, that~~which~~ is union scale. He explains that the union has agreements affecting a substantial percentage of the jobs in his locality and, were he to accept a job paying below union scale, he would be disciplined by being denied future job opportunities. His insistence upon union scale is not unreasonable. However, if he is seeking work in another locality, where his union is not active, his wage demand with respect to that locality is unreasonable.

3) EXAMPLE~~Example~~: The individual worked as a fast food counter clerk, earning $0.50 above minimum wage. During the first weeks of unemployment, he sought work paying that same wage. For the next few weeks, he sought work paying minimum wage. Even though he has now been unemployed for 25 weeks, he has not reduced his wage expectation any further. This is not unreasonable: to require him to seek work paying less than minimum wage would violate minimum wage laws.

d) If there are no work opportunities that an individual can reach from his or her home, he or she is unavailable for work. If the individual unreasonably restricts the distance or time he or she will travel to work, he is unavailable for work. Reasonableness is determined by factors including, but not limited to: where work opportunities are located, the customs of workers similarly situated (as to location or occupation), the types and costs of transportation, physical capabilities, and the length of unemployment; generally, an individual is expected to extend the area in which he or she will seek work the longer he or she is unemployed. Generally, in metropolitan areas, 1½ hours, each way, is not an unreasonable travel time.

1) EXAMPLE~~Example~~: An individual owns no car, and there is no public transportation near his home. He used to obtain work through a temporary help service that transported him to clients' job sites. He no longer works as a temporary. He states that he will work for any employer, provided it will furnish transportation to the job. He would be determined to be unavailable for work since the majority of employers do not furnish

transportation for their employees.

2) EXAMPLE~~Example~~: The individual resides in a suburb 30 miles northwest of downtown Chicago. He was last employed as an attorney, working in a small practice in that suburb, where his travel time to work was 10 minutes. In the first weeks of unemployment, he unsuccessfully sought work in his community and neighboring suburbs. Although he has now been unemployed for 2 months, he still does not seek work in downtown Chicago, to which most attorneys commute, because rush hour travel time would be nearly 1½ hours each way. He would be determined to be unavailable for work, because he has not extended the area in which he will seek work, commuting to downtown Chicago is customary for workers in his occupation, and 1½ hours travel time is not unreasonable.

3) EXAMPLE~~Example~~: Although the individual is mentally retarded, she is capable of working in certain unskilled occupations. At her last job, she swept floors in a local drug store. Her father testifies that she must work within walking distance of home, because, if she rides public transportation, she becomes confused and lost. In this case, the individual's restriction upon distance to work is~~in~~ reasonable, provided that work opportunities continue to exist within walking distance of her home, in which case she will be determined to be available for work.

e) If an individual's personal habits are inconsistent with the type of work he or she is seeking, he or she is unavailable for work.

EXAMPLE~~Example~~: The individual, a punch press operator, was discharged because she would not cut her waist-length hair or wear a hair net or remove oversized rings she wore on her fingers; her hair and rings are considered safety hazards. She states that she is seeking work as a punch press operator, but that she will not work for any employer who requires her to cut her hair or wear a hair net or remove her rings. She would be determined to be unavailable for work.

f) An individual shall not be held unavailable for work on the basis of refusing to consider particular work that he or she honestly believes would violate sincere religious or moral convictions. However, an individual shall be held unavailable if his or her convictions eliminate virtually all of the labor market.

EXAMPLE~~Example~~: For many years, an individual was a hot dog vendor, working in sports stadiums on Saturdays and Sundays. The individual states that he will no longer work in the food service industry, nor will he work on Sunday. He explains that he has recently married and that his wife has introduced him to religion. Among the tenets of his religion are strict dietary laws, forbidding even handling of many commonplace foods; also, Sunday is prescribed as a day of rest. If it is determined that his religious convictions are sincere, he would not be held unavailable for work solely on the basis of refusing to consider food service or Sunday work, even though these may have been suitable previously. Still, he must demonstrate that he is available for other types of work at other times.

g) If the individual is self-employed, availability depends upon the nature and extent of that self-employment; whether the individual's investment of time or capital prevents him or her from accepting other work in the labor market.

EXAMPLE~~Example~~: The individual worked as a secretary in a real estate agency. When she was laid off, she grew depressed, until she watched a cable television show. The host explained how to buy property without making down payments and how to enhance cash-flow. It sounded so easy that she immediately rearranged the den in her house to serve as an office. In the morning, she would read newspapers and make telephone calls. She went to foreclosure sales and auctions. Most afternoons and evenings, she would inspect properties. She also applied for jobs in her usual occupation, secretary. This individual would be determined available for work, if the trier of fact finds that she had not yet made a substantial commitment to her own business. If, however, she had purchased properties, and was involved in the management of those properties to the extent that it would conflict with normal working hours, she would be determined to be unavailable for work.

h) Whether a seasonal worker is available for work during the off-season is determined by whether there is some prospect of obtaining work in his or her customary occupation. If there is no prospect of obtaining that~~such~~ work, the individual must seek other work for which he or she is qualified.

EXAMPLE~~Example~~: The individual is a golf course maintenance man. The courses at which he works are open from April through October. He

has never been employed during the off-season. On his work search record~~certification form~~, for weeks in January, he indicates that he is seeking work in the field of lawn care and maintenance, for which there are no prospects of work. He would be determined unavailable for work.

i) Whenever an individual appears to be imposing a condition upon his or her acceptance of work, it is essential to establish whether he or she is merely expressing a preference as opposed to actually imposing a condition.

EXAMPLE~~Example~~: The individual last earned $7.50~~$4.50~~ per hour, the prevailing wage in her occupation. During her interview with the claims adjudicator, she states that she will accept $9.00 per hour for similar work. During the interview, the adjudicator reviews her work search record and asks what the wages were for her contacts during the period under review. The work search contacts were for work paying closer to $7.50 than $9.00. ~~On a questionnaire, she writes that she will accept $6 per hour, for similar work. On a claim certification form - applicable to the same weeks as the questionnaire – she lists job contacts, for work paying closer to $4.50 than $6.~~ This might indicate that $9.00~~6~~ was a preference, not a condition. Therefore, she would be determined to be available for work.

j) The best evidence that an individual is "available for work" is that he or she readily secures work, despite the imposition of a condition.

EXAMPLE~~Example~~: The individual is laid off from her job in an occupation that ordinarily provides daytime work only. She files a claim for benefits, and, on an initial questionnaire, she writes that she will work nights only, because her child care arrangements have changed. That week, she makes employer contacts for night-shift work. As a result of that work search, she readily secures work beginning the next week. She would be determined to be available for work for the prior week.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2865.115 Actively Seeking Work**

a) An individual is actively seeking work when he or she makes an effort that is reasonably calculated to return him or her to the labor force. Reasonableness is determined by factors including, but not limited to: the individual's physical and

mental abilities, his or her training and experience, the employment opportunities in the area, the length of unemployment, and the nature and number of work search efforts in light of the customary means of obtaining work in the occupation.

b) An individual is not actively seeking work if he or she seeks work that is unrealistic in light of his or her physical or mental limitations.

EXAMPLE~~Example~~: The individual, seven months pregnant, quit her job as an assembler because it was strenuous and required her to be constantly on her feet. She applies for work at a factory, as an assembler, under conditions essentially the same as those of her last job. She would be determined to be not actively seeking work.

c) The individual is not actively seeking work if he or she seeks work that is unrealistic in light of his or her training or experience.

EXAMPLE~~Example~~: The individual has always wanted to be a real estate agent; this requires a license he does not possess. To the extent that he only seeks work as a real estate agent, he would be determined to be not actively seeking work.

d) Whether an individual is actively seeking work is determined in part by comparing his or her occupation with labor market conditions in the locality. In some cases, an application for work can have a continuing effect.

EXAMPLE~~Example~~: The individual is a waitress, just laid off by one of three restaurants in her community. During her first two weeks of unemployment, she applies for work at the other two restaurants and awaits the results of her efforts. She would be determined to be actively seeking work for that period.

e) As the period of unemployment lengthens, the individual should intensify his or her efforts to find work in his or her usual occupation, or, he or she should pursue work in another occupation for which he or she is qualified.

1) EXAMPLE~~Example~~: After being laid off from his job as a parking lot attendant, the individual sought similar work at other parking lots within his community, without success. As time passes, he must seek work

outside his community (within reasonable commuting distance).

2) EXAMPLE~~Example~~: Same facts as in example above but, prior to working as a parking lot attendant, the individual worked as a short-order cook. In addition to, or instead of, seeking work as a parking lot attendant, he should seek work as a short-order cook, or other work for which he is qualified; otherwise, he would be determined to be not actively seeking work.

f) Whether or not the individual is actively seeking work is determined by the quality of his or her efforts; although the quantity of job contacts should be considered, it is not necessarily determinative of an active search for work. The methods that the individual uses to contact employers should be examined in light of those customarily used to obtain work in the occupation.

1) EXAMPLE~~Example~~: The individual seeks work as a retail sales clerk. On a Monday morning, she visits a shopping mall, where she applies for work at seven stores and is rejected by each. For the rest of the week, she makes no effort to find work. This individual would be determined to be not actively seeking work, despite having made seven job contacts in one day.

2) EXAMPLE~~Example~~: The individual, a cash-flow specialist, last worked for a major corporation, and was directly accountable to the highest corporate officers. After being unemployed for one month, she contacts a friend who works for a company located in Woonsocket, Rhode Island. On Monday, the claimant travels to Woonsocket. On Tuesday, she begins the interviewing process, meeting the manager of human resources. On Wednesday morning, she is interviewed by a budget analyst. That evening, there is a dinner-interview with two vice presidents, who tell her they will speak with the president, then get back to her the next day or the day after. The claimant stays in Woonsocket until Friday, at which time she is told she will not be offered a job. The claimant would be determined to have been actively seeking work, despite this being her only job contact.

3) EXAMPLE~~Example~~: The individual states that he is currently seeking work as a day laborer or in food service. He contacts prospective employers by telephone, exclusively. Because, as a practical matter, many day laborer and food service positions are filled by persons making

applications in-person, this individual would be determined to be not actively seeking work.

g) The best evidence that an individual is "actively seeking work" is that he or she readily secures work, based upon his or her efforts.

EXAMPLE~~Example~~: The individual last worked as assistant manager of a shoe store. During his first week of unemployment, he prepares a resume and mails 100 copies to retail establishments. The next week, he mails another 100 resumes. As a result of his mailings, and no other efforts, he readily obtains work. This individual would be determined to have been actively seeking work during the weeks under review.

h) There is a rebuttable presumption that an individual is not actively seeking work if he or she was last employed by a "temporary help firm~~,~~", as defined in Section 2865.1, and the temporary help firm submits a notice of possible ineligibility (see Section 2720.130) alleging that, during the week for which he or she claimed benefits, the individual did not contact the temporary help firm for an assignment. The presumption is rebutted if the individual shows that he or she did contact the temporary help firm or that he or she had good cause for his or her failure to contact the temporary help firm for an assignment.

1) EXAMPLE~~Example~~: An individual completes an assignment on Friday and does not contact the temporary help firm during the next week, for which he claims benefits. The individual states that he did not contact the temporary help firm because he did not remember the firm's telephone number, even though the number was listed in the telephone book. This is not good cause. On the basis of his failure to contact the temporary help firm, he is not actively seeking work.

2) EXAMPLE~~Example~~: An individual completes an assignment on Monday, reports to his Local Office on Tuesday, and does not contact the temporary help firm the remainder of the week. The individual did not contact the temporary help firm because he had already accepted an assignment from the temporary help firm for the following Monday and had been told by the temporary help firm that there were no other assignments until then. This is good cause and he is not ineligible on the basis of not contacting the temporary help firm.

3) EXAMPLE~~Example~~: An individual completes an assignment on Friday and does not contact the temporary help firm during the next week, for which he claims benefits. The individual did not contact the temporary help firm because his wife was hospitalized and he was solely responsible for caring for his infant daughter at home. Although this is good cause, the claimant is ineligible because he is unavailable for work (see Section 2865.110(b)).

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2865.125 Availability for~~For~~ Part-Time Work Only**

The requirement that a claimant shall be able and available for full-time work shall not be applied to a claimant who can prove by a preponderance of the evidence that, for him or her, only part-time work, defined in Section 2720.1, is suitable because:

a) He or she restricts his or her availability to part-time work due to:

1) Circumstances which are beyond his or her own control, such as, the advice of his or her physician that full-time work would adversely affect his or her health; or~~,~~

2) The kind of work suitable to his or her skill, training or experience is available only on a part-time basis, and he or she is not reasonably qualified for available full-time work; and~~,~~

b) He or she is seeking work in an area where a labor market for the part-time work applicable to him or her and suitable to his or her skill, training or experience normally exists; and~~,~~

c) He or she has a reasonable possibility of securing that part-time work suitable to his or her skill, training or experience.

EXAMPLE~~Example~~: The claimant is the single parent of a school age child. While otherwise suitable, full-time work exists for a person with his skill, training or experience, the claimant believes that it is in the best interest of his child that he be with the child when the child is not in school. This claimant would not be eligible for benefits, for he unduly restricts his availability to part-time work based on a personal preference.

The alternative of child care arrangements would allow this claimant to work full-time.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2865.130 Director's Approval of Training**

~~Section 500(C)(5) of the Act provides that~~ *An~~an~~ individual shall not be deemed unavailable for work or to have failed actively to seek work with respect to any week, because he or she is enrolled in and is in regular attendance at a training course approved for him or her by the Director* (see Section 500C5 of the Act).

a) The following criteria must be satisfied in order for a training course to be approved for an individual by the Director:

1) The training course shall relate to an occupation or skill for which there are, or are expected to be in the immediate future, reasonable work opportunities in the locality. This means that:

A) The training course must be vocational or provide the individual with skills essential for the performance of work in a specific occupation;~~ and~~

EXAMPLE~~Example~~: The Director shall not approve classes designed solely to provide an individual with a high school equivalency diploma since this would not enhance opportunities in a specific occupation. However, the Director shall approve courses of study that include some purely academic courses if that course work is secondary to the vocational aspects.

B) The course must be designed to facilitate the individual's reemployment in a reasonably expeditious manner; however, the Director shall not approve courses of study of more than one year in duration~~ unless the course is approved under 56 Ill. Adm. Code 2620~~; ~~and~~

C) The course must focus on providing the individual with the competency necessary for securing entry level employment in the

selected occupation; and

EXAMPLE~~Example~~: The Director shall not approve training for the purpose of allowing an individual to improve his marketability~~,~~ (i.e., a bookkeeper who wishes to become an accountant). If there exists a reasonable job market for bookkeepers in the individual's locality, the Director will not approve training that enhances the claimant's already marketable skills.

D) The course must consist of at least 12 hours per week of instruction from a competent and reliable training agent. This minimum of 12 hours of instruction must include contact between the student and the instructor. The contact could result from classroom training, laboratory instruction or tutoring.

2) The training course must be offered by a competent and reliable agency, educational institution or employing unit.

3) Work opportunities for which the individual is qualified by training and experience are limited or do not exist in the individual's locality.

EXAMPLE~~Example~~: If the individual is a trained and certified nurse's aide, the Director shall not approve training to become a registered nurse if reasonable openings exist in the individual's locality for nurse's aides, even if the individual is dissatisfied with her present occupation.

4) The individual has the qualifications and aptitude to complete the course successfully.

5) The enrollee is not a recipient nor eligible for subsistence payments or similar assistance under any public or private retraining program.

b) Notwithstanding subsection (a), a training course is approved for an individual by the Director for the purposes of Section 500~~(~~C~~)~~ of the Act if:

1) both the training course and the individual's participation in the training course are approved under Title I of the federal Workforce Innovation and

OpportunityInvestment Act (29 USC 3101 et seq.2801-12945) by a One Stop Delivery System (see 20 CFR 662.100); and

2) the course is part of a program authorized pursuant to the Workforce Innovation and Opportunity Investment Act or other federal legislation establishing an employment and training program; and

3) the criteria on the basis of which a One Stop Delivery System approves the course under Title I of the Workforce Innovation and Opportunity Investment Act include criteria consistent with Section 500(C)(5)(a)(2) and (3) of the Act; and

4) the criteria on the basis of which a One Stop Delivery System approves an individual's participation under Title I of the Workforce Investment Act in the course include criteria consistent with Section 500(C)(5)(a)(1) and (2) of the Act; and

5) the course is not disapproved by reason of Section 500(C)(5)(a)(5) of the Act.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2865.140 Regular Attendance inIn Approved Training**

For the purposes of Section 2865.135, "in regular attendance" means that the individual has attended every scheduled session of the training course approved for him or her by the Director, and presents an attendance report from a responsible person connected with the training course. If the individual misses any scheduled class session on a particular day, the individual shall be deemed to have failed to meet the requirements of Section 500C of the Act with respect to that day.

EXAMPLEExample: An individual in Director approved training is scheduled to attend 2 training sessions daily from Monday through Friday until the course is completed. The individual misses one session on Wednesday because of illness. This individual shall be deemed to have failed to meet the requirements of being "in regular attendance" on Wednesday, and the individual's weekly benefit amount shall be reduced by one-fifth for that week.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

**Section 2865.145 Ineligibility to~~To~~ Receive Benefits for~~For~~ Failure to~~To~~ Participate in~~In~~ Reemployment Services**

a) Unless no longer obligated to participate under~~pursuant to~~ Section 2865.150(e), an individual who is referred by the Department under~~pursuant to~~ Section 2865.150 to reemployment services and is determined by the Claims Adjudicator~~claims adjudicator~~ to have failed without justifiable cause, as defined in subsection (c), to participate in those~~such~~ services shall be ineligible for benefits for the week in which he or she fails to participate in the scheduled services.

1) EXAMPLE~~Example~~: In the fourth week of his benefit year, an individual is issued his first payment of regular benefits. Notice of referral to reemployment services is sent to him during the fifth week of the benefit year, indicating he is scheduled for an orientation meeting to take place in the sixth week of the benefit year. He fails, without justifiable cause, to report to the orientation meeting. The individual will be ineligible for benefits for the sixth week of his benefit year.

b) Subsection (a) shall not apply if the individual has completed substantially similar reemployment services or he or she is participating in substantially similar services.

c) There is justifiable cause for an individual's failure to participate in reemployment services if the individual is acting as a reasonable person would act under the circumstances, taking into account the fact that the individual has been identified as likely to exhaust regular benefits and need job search assistance.

1) EXAMPLE~~Example~~: An individual who has been referred to reemployment services under~~pursuant to~~ Section 2865.150 fails to report for his scheduled orientation meeting with the reemployment service provider because the individual has a job interview scheduled for the same time. The individual has justifiable cause for failing to report for the meeting. A reasonable person in this situation could be expected to prefer the immediate job opportunity over reemployment services.

2) EXAMPLE~~Example~~: An individual who has been referred to reemployment services under~~pursuant to~~ Section 2865.150 fails to report

for his scheduled reemployment service orientation meeting because he forgot about the meeting. When he becomes aware he has forgotten the meeting, he requests that the meeting be rescheduled. He fails to report for the rescheduled meeting because he again forgot about the meeting. The repeated failure to include the meeting in his schedule does not reflect the behavior of a reasonable person under the circumstances. On the basis of these facts alone, there would not be justifiable cause for the individual's failure to participate in the rescheduled meeting.

3) EXAMPLE~~Example~~: An individual who has been referred to reemployment services under~~pursuant to~~ Section 2865.150 fails to report for his scheduled reemployment service orientation meeting. However, during~~During~~ the week for which the meeting was scheduled,~~ however,~~ the individual is enrolled in and in regular attendance at a training course approved for him by the Director under Section 500C of the Act. A reasonable person in this situation could be expected to prefer the training program over reemployment services.

4) EXAMPLE~~Example~~: An individual who has been referred to reemployment services under~~pursuant to~~ Section 2865.150 fails to report to his scheduled reemployment service orientation meeting because he is attending GED classes at the same time. The individual has justifiable cause for failing to report for the meeting. A reasonable person in this situation could be expected to attend the GED classes.

d) The individual's obligation to participate in reemployment services to which he or she is referred under~~pursuant to~~ Section 2865.150 is in addition to the individual's other obligations under the Act.

e) Issues arising under this Section concerning an individual's eligibility for regular benefits shall be adjudicated and notice of those~~such~~ issues shall be provided in the same manner and subject to the same procedures as all the other issues concerning eligibility for regular benefits, except issues arising under Section 604 of the Act.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2865.150 Profiling/Referral to~~To~~ Reemployment Services**

a) To determine the likelihood that the individual will exhaust regular benefits and will need job search assistance, the Department will profile each individual who files an initial claim for regular benefits. Each claimant profile will be based on information contained in the claimant's initial combined application for regular benefits and Employment~~Job~~ Service registration.

1) Except as otherwise provided in subsection (a)(2), as part of the profiling process, the Department will assign each individual an exhaustion probability score that~~, which~~ measures the likelihood that the individual will exhaust regular benefits and need job search assistance. The score will be calculated according to a statistical model developed by the Department based on criteria approved by the US~~United States~~ Department of Labor, including industry or occupation.

2) No exhaustion probability score will be assigned an individual if he or she:

A) has not been issued his or her first payment of regular benefits by the fourth week following the week in which he or she files his or her initial claim for regular benefits;~~, or~~

B) satisfies the union hiring hall procedures set forth in Section 2865.50;~~, or~~

C) has a definite date of recall to work;~~, or~~

D) is unemployed as the result of a labor dispute;~~,~~ or

E) has left work voluntarily.

b) Each claimant who is assigned an exhaustion probability score shall be entered by the Department into a selection pool for the substate area in which the individual resides or a subdivision of that area where the substate~~Substate~~ grantee for the area has established subdivisions. The substate~~Substate~~ grantee will each week select individuals in the selection pool for referral to available reemployment services in descending order of their exhaustion probability scores. When~~Where~~ two or more individuals in a selection pool have the same score and reemployment services are not available for all of them, the substate~~Substate~~ grantee will select for referral a number of them equal to the number of individuals for whom reemployment services are available, selecting the

individuals whose initial applications for regular benefits have the earlier filing dates. When~~Where~~ two or more individuals in a selection pool have the same score and filed their initial applications for regular benefits on the same date and reemployment services are not available for all of them, the substate~~Substate~~ grantee will randomly select for referral a number of them equal to the number of individuals for whom reemployment services are available. Whenever the availability of certain reemployment services is lawfully limited to individuals meeting specific characteristics, such as when~~where~~ the services are offered through a program established under section~~pursuant to Section~~ 141(d)(2) of the Job Training Partnership Act (29 USC 1501) or are offered as part of an effort to assist in the location or expansion of an employer within the State, selections for referral to the services will be made as though individuals in the selection pool who do not meet those characteristics were not in the selection pool.

c) The reemployment services to which an individual is referred under~~pursuant to~~ this Section will in all instances include an orientation meeting with an entity providing reemployment services within the substate area in which the individual resides. Following the orientation meeting, reemployment services may also include: assessments; counseling; job placement services and referrals to employers; job search work shops or job clubs; and referral to more intensive services, such as training. When~~Where~~ an individual is initially referred by the Department to a reemployment service orientation meeting and then scheduled for reemployment services by an entity providing those~~such~~ services on behalf of the substate~~Substate~~ grantee that initially selected the individual for referral, the individual is considered as having been referred to the reemployment services by the Department, except when~~where~~ the entity indicates participation in the reemployment services is optional.

d) The Department will send each individual selected for referral to reemployment services a referral notice that~~,which~~ will include a statement regarding the obligation to participate in reemployment services and the potential consequences of failing to participate in the services, as well as all information necessary for the individual to report to the orientation meeting.

e) The Department will remove from the selection pool any individual who, within four weeks after the week in which he or she is issued his or her first payment of regular benefits, is not sent a notice of referral to reemployment services. After being removed from the selection pool, an individual may still be referred to reemployment services, but he or she shall no longer be obligated to participate in

reemployment services.

f) For the purposes of this Section, "substate area" refers to an area established by the Governor under section~~pursuant to Section~~ 312 of the Job Training Partnership Act.~~;~~ "Substate grantee" refers to the entity designated as the substate grantee ~~such~~ for a substate area under~~pursuant to~~ that section~~Section~~.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

SUBPART C: EXTENDED BENEFITS

**Section 2865.205 Applicability of~~Of~~ Rules for~~For~~ Eligibility for~~For~~ Regular Benefits**

Except when~~where~~ inconsistent with Section 409 of the Act or with this Subpart, all of the provisions of the Act and the rules adopted under the Act~~thereunder~~ shall be applicable to eligibility for extended benefits.

a) EXAMPLE~~Example~~: A claim for extended benefits shall be filed in the same manner and in the same location as one would file for regular benefits.

b) EXAMPLE~~Example~~: If an individual, who meets all of the other requirements for receipt of extended benefits, is discharged from a job, he would be subject to the ineligibility provisions of Section 602 of the Act if it is determined that the discharge was for misconduct connected with his work.

c) EXAMPLE~~Example~~: An individual demands a wage that is unreasonable. He is unavailable for work under~~pursuant to~~ Section 2865.110(c)~~ of this Part~~ and would, therefore, be subject to the ineligibility provisions of Section 500C of the Act since neither is inconsistent with Section 409 of the Act. Therefore, this individual would be ineligible for extended benefits even if he meets the other requirements for receipt of extended~~such~~ benefits.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2865.210 Systematic and~~And~~ Sustained Search for~~For~~ Work**

a) An individual shall be deemed to have made a systematic and sustained search for work if he or she can present the tangible evidence, described in subsection (b), to the local unemployment office that he or she was engaged in such an effort to find

work during a week of unemployment.

b) The tangible evidence required by subsection (a) shall consist of, but not be limited to, all of the following:

1) A showing that the individual persistently reviewed the newspaper advertisements for work and made an effort to contact the employers placing the advertisements, on each working day during every week for which he or she is applying for extended benefits;

2) A showing that the individual actually made significant (at least five per week) personal contacts with prospective employers and applied for work on at least three working days during each week for which he or she is applying for extended benefits;

3) A showing that he or she had been frequently contacting his or her union hall for information regarding work prospects, if applicable; and

4) Registration with the State Employment~~Job~~ Service.

c) If the failure to make a showing of sustained and systematic job search on a particular day or days by the means indicated in subsection (b) is due to attending interviews, taking tests and/or physical examinations or commuting from one place to another to search for work or engaging in any other similar undertaking, he or she shall not be determined to have failed to meet the requirements of subsection (a) for that particular day or days.

d) This Section shall not apply to weeks beginning on or after March 7, 1993 and before January 1, 1995.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2865.215 When an~~An~~ Individual's Prospects for~~For~~ Finding Work Shall Be Deemed To Be Good**

a) An individual filing for extended benefits who has a definite date to return to work for a former employer or who has a bona fide offer of work to begin within four weeks shall be classified as having good prospects for returning to work in his or her customary occupation. This means that, should this individual refuse an

offer of work, that~~such~~ refusal shall be adjudicated pursuant to Section 603 of the Act~~,~~ and Section 409K~~(~~3~~)~~(c~~d~~)(iii) shall not apply to this individual.

b) Whether an individual's prospects of finding work in his or her customary occupation are good shall be determined at the time that he or she files his or her initial claim for extended benefits. However, the~~such~~ classification shall be included in any determination of refusal of work under Section 409K~~(~~3~~)~~(c~~d~~) of the Act, and at the time, shall be subject to review.

EXAMPLE~~Example~~: An individual files a claim for extended benefits and reports that he will return to his former employer on March 31. He does not return to work for his former employer on March 31 and then refuses an offer of work on April 14. This refusal of work shall be adjudicated in accordance with the provisions of Section 409K~~(~~3~~)~~(c~~d~~) because the individual's prospects of returning to his customary occupation were not good because he did not return to work for his former employer as scheduled.

c) If the claimant does not start work on the designated date, then his or her prospects of finding work in his or her customary occupation shall no longer be considered good.

d) The individual must provide the name, address and starting date of employment for any employer whom the individual claims as a basis for having his or her prospects of finding work in his or her customary occupation found to be good.

e) An individual can also show that his or her prospects of finding work in his or her customary occupation are good by showing that he or she was recently employed in his or her customary occupation, that he or she recently completed training in that occupation or that new opportunities for employment in his or her customary occupation recently became available.

f) This Section shall not apply to weeks beginning on or after March 7, 1993 and before January 1, 1995.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Alien Status

2) Code Citation: 56 Ill. Adm. Code 2905

3)

| Section Numbers: | Proposed Actions: |
|---|---|
| 2905.1 | Amendment |
| 2905.15 | Amendment |
| 2905.20 | Amendment |
| 2905.40 | Amendment |

4) Statutory Authority: Implementing and authorized by Sections 614, 1700 and 1701 of the Unemployment Insurance Act (Ill. Rev. Stat. 1987, ch. 48, pars. 444, 610 and 611).

5) A Complete Description of the Subjects and Issues Involved: Updates obsolete references.

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: These proposed amendments neither create nor expand a State mandate.

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit written comments to:

Thomas D. Chan, Acting General Counsel
Illinois Department of Employment Security
33 South State Street – Room 933
Chicago IL 60603

312/793-2338

fax: 312/793-5645
e-mail: Thomas.D.Chan@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].

The proposed rulemaking may have an impact on small businesses, small municipalities and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80 and 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as a small business, small municipality or not-for-profit corporation as part of any written comments submitted to the Department.

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: This rulemaking has no direct effect on small businesses, small municipalities and not-for-profit corporations.

B) Reporting, bookkeeping or other procedures required for compliance: No reporting or bookkeeping is required for compliance.

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 2 most recent agendas because: the revisions were not anticipated at the time.

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

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER IV: DEPARTMENT OF EMPLOYMENT SECURITY
SUBCHAPTER g: INELIGIBILITY FOR BENEFITS

PART 2905
ALIEN STATUS

SUBPART A: GENERAL PROVISIONS

Section
2905.1 Unemployment Benefits to~~To~~ Aliens
2905.5 Definitions
2905.10 When Is An Alien Lawfully Admitted For Permanent Residence
2905.15 Permanent Residence Under Color of~~Of~~ Law
2905.20 Evidence of Eligibility
2905.25 Ineligibility On The Basis Of Alienage (Repealed)
2905.30 Information Regarding Claimants' Status
2905.35 Evidence Of Ineligibility Because Of Alienage
2905.40 Legal Authorization to~~To~~ Work

AUTHORITY: Implementing and authorized by Sections 614, 1700 and 1701 of the Unemployment Insurance Act [820 ILCS 405].

SOURCE: Adopted as 56 Ill. Adm. Code 800.70, 800.71, 800.72, 800.73, 800.74, 800.670, 800.690 and 800.691 at 7 Ill. Reg. 383, effective December 23, 1982; recodified to 56 Ill. Adm. Code 1200: Subpart B at 8 Ill. Reg. 6039; recodified to 56 Ill. Adm. Code 2905: Subpart A at 8 Ill. Reg. 19426; amended at 13 Ill. Reg. 11502, effective June 29, 1989; amended at 43 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

**Section 2905.1 Unemployment Benefits to~~To~~ Aliens**

An alien can establish monetary eligibility (see Section 500 of the Unemployment Insurance Act (Act) [820 ILCS 405] and 56 Ill. Adm. Code 2720.1) to receive unemployment insurance benefits only to the extent and on the basis of wages that he or she earned during his or her base period while he or she was lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law, as provided in 56 Ill. Adm. Code 2905.10 or 2905.15, as the case may be.

EXAMPLE~~Example~~: An individual illegally enters the United States in 1981 and begins work at that time. He or she applies for and is granted permanent residence status as of May 1, 1988. Only those wages that this individual earns on or after May 1, 1988, may be used to establish his or her monetary eligibility for benefits.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2905.15 Permanent Residence Under Color of~~Of~~ Law**

a) An alien is considered permanently residing in the United States under color of law if his or her presence in this country is presumptively legal because:

1) He or she has entered the United States prior to June 30, 1906; or

2) He or she is presumed lawfully admitted under an erroneous name or due to other error in accordance with 8 CFR~~C.F.R.~~ 101.2 (January 1, 1988~~88~~), no later amendments or editions are included; or

3) He or she has been given "refugee" or "asylee" status by the United States Attorney General pursuant to section~~Section~~ 207 or ~~Section~~ 208, respectively, of the Immigration and Nationality Act (8 USC~~U.S.C.~~ 1157 and 1158); or~~,~~

4) He or she has been given parole into the United States by the United States Attorney General pursuant to section~~Section~~ 212(d)(5) of the Immigration and Nationality Act (8 USC~~U.S.C.~~ 1182).

b) The mere fact that a particular individual, group or class of individuals is temporarily not subject to deportation does not mean that the individual or members of that group or class are permanently residing in the United States under color of law. In these~~such~~ circumstances, in order to establish that he or she is permanently residing in the United States under color of law, the individual or group or class member must show that the Immigration and Naturalization Service (INS) has provided written notification that he or she may remain in the United States for an indefinite period of time.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

**Section 2905.20 Evidence of~~Of~~ Eligibility**

A claimant who indicates in his or her claim for benefits that~~the~~ he or she is an alien must produce evidence that he or she is not ineligible~~ under the provisions of 56 Ill. Adm. Code 2905.25~~. The presentation of a valid U.S. INS Form I-151, commonly known as the "green card", or other similar documents issued by~~ the~~ INS~~Immigration and Naturalization Service~~, will be sufficient for a finding that the alien is eligible under Section 614 of the ~~Unemployment Insurance~~ Act and 56 Ill. Adm. Code 2905.5. Without the presentation of these documents, the burden of coming forth with evidence of eligibility is upon the alien. Documents tending to show eligibility for benefits under this Section may be submitted for verification or clarification to INS~~the Immigration and Naturalization Service~~ or any other appropriate office; however, benefits shall not be withheld pending such verification unless the claimant admits that he or she is not legally in the United States or unless the documents appear to be altered.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2905.40 Legal Authorization to~~To~~ Work**

In order to be eligible to receive benefits, an individual must be available to work (see Section 500C of the Act~~,Ill. Rev. Stat. 1987, ch. 48, par. 420C~~). In order to meet this availability requirement, an alien must be legally authorized to work in the United States. An alien without current authorization to work from ~~the Immigration and Naturalization Service (~~INS~~)~~ or who is not in a status that~~which~~ automatically permits the alien to work, is not legally available for work and not eligible for benefits, even if the alien meets the monetary eligibility requirements of Section 500E of the Act~~ (Ill. Rev. Stat. 1987, ch. 48, par. 420E)~~.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Academic Personnel

2) Code Citation: 56 Ill. Adm. Code 2915

3)

| Section Numbers: | Proposed Actions: |
|---|---|
| 2915.1 | Amendment |
| 2915.30 | Amendment |
| 2915.35 | Amendment |
| 2915.40 | Amendment |
| 2915.43 | Amendment |
| 2915.45 | Amendment |
| 2915.47 | Amendment |

4) Statutory Authority: Implementing and authorized by Sections 211.1, 211.2, 612, 1700 and 1701 of the Unemployment Insurance Act (Ill. Rev. Stat. 1991, ch. 48, par. 321.1, 321.2, 442, 611, and 612) [820 ILCS 405/211.1, 211.2, 612, 1700, and 1701].

5) A Complete Description of the Subjects and Issues Involved: Updates obsolete references.

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: These proposed amendments neither create nor expand a State mandate.

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit written comments to:

Thomas D. Chan, Acting General Counsel
Illinois Department of Employment Security

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

33 South State Street – Room 933
Chicago IL 60603

312/793-2338
fax: 312/793-5645
e-mail: Thomas.D.Chan@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].

The proposed rulemaking may have an impact on small businesses, small municipalities and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80 and 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as a small business, small municipality or not-for-profit corporation as part of any written comments submitted to the Department.

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: This rulemaking has no direct effect on small businesses, small municipalities and not-for-profit corporations.

B) Reporting, bookkeeping or other procedures required for compliance: No reporting or bookkeeping is required for compliance.

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 2 most recent agendas because: the revisions were not anticipated at the time.

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

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER IV: DEPARTMENT OF EMPLOYMENT SECURITY
SUBCHAPTER g: INELIGIBILITY FOR BENEFITS

PART 2915
ACADEMIC PERSONNEL

SUBPART A: GENERAL PROVISIONS


| Section | |
|---|---|
| 2915.1 | Definitions |
| 2915.5 | Ineligibility Between Academic Years Or Terms, Vacation Period Or Holiday Recess |
| 2915.10 | Ineligibility Of Academic Personnel |
| 2915.15 | Period Between Academic Years Or Terms, Vacation Period Or Holiday Recess |
| 2915.20 | Presumption Of Reasonable Assurance Of Continued Employment |
| 2915.25 | Rebuttal Of The Presumption Of Reasonable Assurance Of Continued Employment |
| 2915.30 | Date Benefit Ineligibility Ceases to~~To~~ Apply |
| 2915.35 | Benefits to~~To~~ Insured Workers in~~In~~ Educational Institutions |
| 2915.40 | Ineligibility of Employees Working in~~In~~ One Capacity for an~~For An~~ Academic Employer Who Cross Over Within Years or~~Or~~ Terms to~~To~~ Work in~~In~~ Another Capacity for the~~For The~~ Same Type of~~Of~~ Academic Employer |
| 2915.43 | Eligibility of~~Of~~ Employees Working for an~~For An~~ Academic Employer Who Cross Over Within an~~An~~ Academic Year or~~Or~~ Term to~~To~~ Work for a~~For A~~ Non-Academic Employer or for~~Or For~~ Another Type of~~Of~~ Academic Employer |
| 2915.45 | Eligibility of~~Of~~ Employees Working for~~For~~ One Type of~~Of~~ Academic Employer Who Cross Over Between Years or~~Or~~ Terms to~~To~~ Work for~~For~~ Another Type of~~Of~~ Academic Employer |
| 2915.47 | Eligibility of~~Of~~ Employees Working in~~In~~ One Capacity Who Cross Over Between Years or~~Or~~ Terms to~~To~~ Work in~~In~~ Another Capacity |


AUTHORITY: Implementing and authorized by Sections 211.1, 211.2, 612, 1700 and 1701 of the Unemployment Insurance Act [820 ILCS 405].

SOURCE: Adopted at 10 Ill. Reg. 5109, effective March 13, 1986; amended at 11 Ill. Reg. 19101, effective November 4, 1987; amended at 18 Ill. Reg. 4154, effective March 3, 1994; amended at 43 Ill. Reg. _____, effective _____.

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

SUBPART A: GENERAL PROVISIONS

**Section 2915.1 Definitions**

All other terms in this Part shall have the meaning set forth in definitions, Section 200 through 247 of the Unemployment Insurance Act [820 ILCS 405]~~(Ill. Rev. Stat. 1983, ch. 48, pars. 300 through 372)~~, hereinafter referred to as "the Act~~.~~". ~~Throughout this Part, the use of terms imparting the masculine gender shall also apply to the feminine gender.~~

"Act" means the Unemployment Insurance Act, ~~as amended,~~ [820 ILCS 405]~~Ill. Rev. Stat. 1983, ch. 48, pars. 300 et seq~~.

"Educational institution~~Institution~~" under Section 211.1 or 211.2 of the Act ~~(Ill. Rev. Stat. 1983, ch. 48, pars. 321.1 and 321.2)~~ has for its primary function the presentation of formal instruction and normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly conducted~~carried on~~.

"Educational service agency~~Service Agency~~" has the meaning given to it in Section 612 of the ~~Unemployment Insurance~~ Act ~~(Ill. Rev. Stat. 1983, ch. 48, par. 442)~~.

"Instructional service" is performed for an educational institution or educational service agency either on a full-time or part-time basis and consists of teaching in formal classroom or seminar situations, tutoring, or lecturing for the purpose of imparting knowledge, or counseling, advising, or otherwise determining curriculum, courses, and academic pursuits for students.

"Principal administrative capacity" is a service performed by individuals who are officers of the educational institution or educational service agency, and perform the duties of president, members of the board of directors, business managers, deans and associate deans, university public relations directors, comptrollers, development officers, chief librarians, registrars, superintendents or principals or others not given such official titles but actually serving in a similar principal administrative capacity. The duties performed by the individual rather than the title held determine whether or not the individual may be considered to be in a principal administrative capacity.

"Reasonable assurance" is an inference or expectation based upon a sequence of previous conduct, practice, or course of dealing, within an industry or field of service that~~, which~~ is fairly to be regarded as establishing a common basis of understanding that the individual working in one year, term, or season, or prior to a vacation period or holiday recess may be expected, under normal conditions, to have continued employment in the next year, term, or season, after an "off-term" or "off-season" interruption, or at the conclusion of the vacation period or holiday recess.

"Research service" for an educational institution, educational service agency or educational unit consists of careful and systematic study and investigation in a field of science or knowledge, undertaken to establish facts or principles. The work performed is in a predominantly intellectual field or artistic endeavor that~~which~~ is varied in character and requires the constant exercise of discretion and judgment in performance. The work further requires advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study. It does not include individuals who provide supportive services for research, such as typists and clerks.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2915.30 Date Benefit Ineligibility Ceases to~~To~~ Apply**

a) If the individual overcomes the presumption of reasonable assurance of continued employment provided in Section 2915.20, the ineligibility to receive benefits set forth in Section 2915.10 shall cease to apply to that~~such~~ individual, effective with the week for which the individual filed a claim for benefits, if it has been found by the Department~~Agency~~, in any proceeding, that, as of that week, the~~such~~ individual had no reasonable assurance of continued employment.

b) If the additional assurance given by the educational institution or educational service agency described in Section 2915.25 fails to result in continued employment, the presumption becomes no longer effective from the date specified by the educational institution or educational service agency in its subsequent notice of dismissal to the individual or from the date the individual was scheduled to report back to work but the educational institution or educational service agency fails to take him or her back to service, whichever occurs first. Except as provided in subsection (c), the ineligibility to receive benefits provided in Section 612 of the Act ~~(Ill. Rev. Stat. 1983, ch. 48, par. 442)~~ and Section 2915.10 of this

Part shall cease to apply to that~~such~~ individual on the date the presumption is determined to have become no longer effective.

c) Notwithstanding subsections (a) and (b), if ~~such~~ reasonable assurance fails to materialize and the individual was previously employed in a position other than that of one in an instructional, administrative or research capacity, the individual, who has filed his or her claim in accordance with ~~the provisions of~~ 56 Ill. Adm. Code 2720.110 through 2720.125, shall be entitled to a retroactive payment of benefits if he or she is otherwise eligible for benefits.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2915.35 Benefits to~~To~~ Insured Workers in~~In~~ Educational Institutions**

Benefits based on wages for services performed by an individual in the employ of an educational institution or educational service agency operated by a governmental entity or nonprofit organization provided in Sections~~Section~~ 211.1 and 211.2 of the Act ~~(Ill. Rev. Stat. 1983, ch. 48, pars. 321.1 and 321.2)~~, respectively, shall be payable in the same amount, on the same terms, and subject to the same conditions, as any other benefits payable under the Act, except that the~~such~~ individual may be ineligible for benefits for the intervening period between academic years or terms as provided in Section 2915.5 ~~of this Part~~.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2915.40 Ineligibility of~~Of~~ Employees Working in~~In~~ One Capacity for an~~For An~~ Academic Employer Who Cross Over Within Years or~~Or~~ Terms to~~To~~ Work in~~In~~ Another Capacity for the~~For The~~ Same Type of Academic Employer**

a) For the purposes of this Part~~Subpart~~, an individual can perform services for an academic employer in either or both of two capacities: professional or non-professional. "Professional" means services performed in an instructional, research, or principal administrative capacity ~~as these terms are defined by Section 2915.1~~. "Non-professional" means all other services.

b) For the purposes of this Part~~Subpart~~, there are two types of academic employers. The first type is an educational institution, ~~as defined by Section 2915.1~~ as well as an institution of higher education and an institution of higher learning. The second type is an educational service agency ~~as defined in Section 2915.1~~.

c) If an individual performs services for one type of academic employer in one capacity during the period before a vacation period or holiday recess within an academic year or term, and there is a reasonable assurance that the individual will perform services in a different capacity for the same type of academic employer for the period immediately subsequent to the~~such~~ vacation period or holiday recess, the individual shall be ineligible for benefits under Section 612 of the Act ~~(Ill. Rev. Stat. 1991, ch. 48, par. 442) [820 ILCS 405/612]~~ during the~~such~~ vacation period or holiday recess.

EXAMPLE~~Example~~: If a teacher employed by an educational institution receives assurance that at the end of the Christmas holidays his employment with that educational institution will continue in January but in the capacity of a security guard rather than as a teacher, the individual has crossed over from one capacity to another and shall be ineligible for benefits under Section 612 of the Act during that period.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2915.43 Eligibility of Employees Working for an~~For An~~ Academic Employer Who Cross Over Within an~~An~~ Academic Year or~~Or~~ Term to~~To~~ Work for a~~For A~~ Non-Academic Employer or for~~Or For~~ Another Type of~~Of~~ Academic Employer**

If an individual crosses over from an academic employer~~, as defined by~~ (see Section 2915.40(b))~~, to~~ a non-academic employer, or from one type of academic employer to another, following a vacation period or holiday recess within an academic year or term, the ineligibility imposed by Section 612 of the Act ~~(Ill. Rev. Stat. 1991, ch. 48, par. 442) [820 ILCS 405/612]~~ does not apply. This is true no matter in what capacity the individual performs services after the vacation period or holiday recess within an academic year or term for the subsequent employer.

EXAMPLE~~Example~~: If a teacher employed by an educational institution receives assurance that at the end of the Christmas holidays his services as a teacher will continue in January in the employ of an educational service agency, the ineligibility imposed by Section 612 of the Act does not apply because the services performed immediately subsequent to the vacation period are not performed for the same type of academic employer.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2915.45 Eligibility of~~Of~~ Employees Working for~~For~~ One Type of~~Of~~ Academic**

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

**Employer Who Cross Over Between Years or~~Or~~ Terms to~~To~~ Work for~~For~~ Another Type of~~Of~~ Academic Employer**

Whenever an individual performs services in the employ of one type of academic employer ~~as defined by Section 2915.40(b)~~ during an academic year or term and there is reasonable assurance that the individual will perform services in the employ of another type of academic employer for a subsequent academic year or term, the individual shall not be ineligible under Section 612 of the Act ~~(Ill. Rev. Stat. 1991, ch. 48, par. 442) [820 ILCS 405/612]~~ during the period between the two academic years or terms.

EXAMPLE~~Example~~: If a teacher employed by an educational institution receives assurance that at the end of the academic year his employment will continue for the next year for an educational service agency, the individual shall not be ineligible during that period under Section 612 of the Act.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2915.47 Eligibility of~~Of~~ Employees Working in~~In~~ One Capacity Who Cross Over Between Years or~~Or~~ Terms to~~To~~ Work in~~In~~ Another Capacity**

Whenever an individual performs services in one capacity during an academic year or term and there is reasonable assurance that the individual will perform the services in a different capacity for a subsequent academic year or term, the individual shall not be ineligible under Section 612 of the Act ~~(Ill. Rev. Stat. 1991, ch. 48, par. 442) [820 ILCS 405/612]~~ during the period between the two academic years or terms.

EXAMPLE~~Example~~: If a typist receives assurance that at the end of the academic year his employment will continue for the next year but in the capacity of a teacher, the individual shall not be ineligible during that period under Section 612 of the Act.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Disqualifying Income and Reduced Benefits

2) Code Citation: 56 Ill. Adm. Code 2920

3)

| Section Numbers: | Proposed Actions: |
|---|---|
| 2920.1 | Amendment |
| 2920.10 | Amendment |
| 2920.18 | Amendment |
| 2920.30 | Amendment |
| 2920.50 | Amendment |
| 2920.65 | Amendment |
| 2920.68 | Amendment |
| 2920.70 | Amendment |
| 2920.80 | Amendment |

4) Statutory Authority: Implementing and authorized by Sections 234, 235, 239, 245, 401, 402, 500.1, 600, 605, 606, 610, 611, 1300, 1700 and 1701 of the Unemployment Insurance Act [820 ILCS 405/234, 235, 239, 245, 401, 402, 500.1, 600, 605, 606, 610, 611, 1300, 1700 and 1701].

5) A Complete Description of the Subjects and Issues Involved: Updates obsolete references. Makes it clear that social security retirement pensions and disability payments are no longer treated as disqualifying income.

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: These proposed amendments neither create nor expand a State mandate.

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit written comments to:

Thomas D. Chan, Acting General Counsel
Illinois Department of Employment Security
33 South State Street – Room 933
Chicago IL 60603

312/793-2338
fax: 312/793-5645
e-mail: Thomas.D.Chan@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].

The proposed rulemaking may have an impact on small businesses, small municipalities and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80 and 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as a small business, small municipality or not-for-profit corporation as part of any written comments submitted to the Department.

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: This rulemaking has no direct effect on small businesses, small municipalities and not-for-profit corporations.

B) Reporting, bookkeeping or other procedures required for compliance: No reporting or bookkeeping is required for compliance.

C) Types of professional skills necessary for compliance: None

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

14) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because: the revisions were not anticipated at the time.

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

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER IV: DEPARTMENT OF EMPLOYMENT SECURITY
SUBCHAPTER g: INELIGIBILITY FOR BENEFITS

PART 2920
DISQUALIFYING INCOME AND REDUCED BENEFITS


| Section | |
|---|---|
| 2920.1 | Definitions |
| 2920.5 | Ineligibility To Receive Benefits Due To Performing Full-Time Work Or Due To The Receipt Of Various Income Whose Sum Is Equal To Or Greater Than The Individual's Weekly Benefit Amount |
| 2920.10 | Reduction in~~In~~ Benefits Due to~~To~~ Receipt of~~Of~~ Vacation Pay, Holiday Pay, Retirement Pay, and~~And~~ Workers' Compensation Whose Sum is~~Is~~ Less Than the~~The~~ Individual's Weekly Benefit Amount |
| 2920.15 | Reduction In Benefits Due To Receipt Of Wages For Less Than Full-Time Work |
| 2920.18 | Voluntary Withholding for Federal and/or State of Illinois Income Tax |
| 2920.20 | Reduced Benefits: Payment Of Dependents' Allowance Or Spouse's Allowance |
| 2920.25 | Payments Made During Shutdown For Inventory Or Vacation Purposes |
| 2920.30 | Payments Made in~~In~~ Connection with~~With~~ Separation or~~Or~~ Layoff as~~As~~, or in the~~Or In The~~ Nature of~~Of~~ Vacation Pay, Vacation Pay Allowance or as~~Or As~~ Pay in~~In~~ Lieu of~~Of~~ Vacation |
| 2920.35 | Holiday Pay |
| 2920.40 | Payments In Lieu Of Notice Of Separation Or Layoff |
| 2920.45 | Severance Pay |
| 2920.48 | Residual Payments |
| 2920.50 | Back Pay Awards |
| 2920.55 | Receipt Of Or Filing For Unemployment Insurance Benefits Under The Laws Of Another State, Canada, Or The United States |
| 2920.60 | Supplemental Unemployment Benefits (SUB Pay) |
| 2920.65 | Retirement Pay |
| 2920.66 | Payments To An Election Judge |
| 2920.68 | Payments by a~~By A~~ Labor Union |
| 2920.69 | Jury Service |
| 2920.70 | Retirement Pay Considered Disqualifying Income |
| 2920.75 | Allocation Of Retirement Pay |
| 2920.80 | Miscellaneous Forms of~~Of~~ Retirement Pay |
| 2920.85 | Conformity With Federal Unemployment Tax Act |

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

AUTHORITY: Implementing and authorized by Sections 234, 235, 239, 245, 401, 402, 500.1, 600, 605, 606, 610, 611, 1300, 1700 and 1701 of the Unemployment Insurance Act [820 ILCS 405].

SOURCE: Adopted at 11 Ill. Reg. 1853, effective January 7, 1987; amended at 12 Ill. Reg. 16066, effective September 23, 1988; amended at 13 Ill. Reg. 1773, effective January 27, 1989; amended at 13 Ill. Reg. 5936, effective April 18, 1989; emergency amendments at 13 Ill. Reg. 11899, effective July 1, 1989, for a maximum of 150 days; emergency amendments to 56 Ill. Adm. Code 2920.5 and 2920.75, expired November 28, 1989; amended at 13 Ill. Reg. 17402, effective October 30, 1989; amended at 15 Ill. Reg. 180, effective December 28, 1990; amended at 15 Ill. Reg. 11416, effective July 30, 1991; amended at 18 Ill. Reg. 4166, effective March 3, 1994; amended at 21 Ill. Reg. 567, effective January 1, 1997; emergency amendment at 25 Ill. Reg. 10226, effective August 7, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 15415, effective November 15, 2001; amended at 29 Ill. Reg. 1935, effective January 24, 2005; amended at 30 Ill. Reg. 2357, effective January 31, 2006; emergency amendment at 35 Ill. Reg. 2801, effective January 30, 2011, for a maximum of 150 days; amended at 35 Ill. Reg. 8467, effective May 20, 2011; amended at 43 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

**Section 2920.1 Definitions**

"Act" means the Unemployment Insurance Act [820 ILCS 405]~~, as amended (Ill. Rev. Stat. 1989, ch. 48, pars. 300 et seq.)~~.

"Employer" shall have the ~~same~~ meaning ascribed~~as provided~~ in Section 205 of the Act.

"Employing unit" shall have the same meaning as provided in Section 204 of the Act.

"Full-time work" refers to the number of hours or days a class of workers would work if the employing unit had all the business it could handle without overtime. Except when~~where~~ the contrary is provided by a collective bargaining agreement or company policy, full time work is customarily 40 hours per week.

"Layoff" occurs when work is no longer available for the individual for a definite or indefinite period of time, but there is no intention to permanently sever the employer-employee relationship.

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

"Normal workday" is a day during which work is ordinarily performed at the worker's customary place of employment.

"Pay in lieu of vacation" refers to amounts paid to an employee in addition to regular wages whenever the employee works instead of taking the period of vacation to which the individual is entitled.

"Residual payments" are amounts paid to a performer for the continued use of radio and television commercials in which he or she performed.

"Separation" refers to the situation that exists when an employee has ~~either~~:

Voluntarily terminated employment; ~~or,~~

Been permanently discharged from employment by the employer; or~~,~~

Been indefinitely suspended from employment by the employer on grounds other than lack of work at the place of employment.

"Services performed by an individual in self-employment" means those services that~~which~~ would be excluded from covered employment under Section 212 of the Act.

"Shutdown for inventory purposes" occurs whenever the employer suspends all or a unit of its operations for an announced period in order to count or to inspect the property in the employer's possession.

"Shutdown for vacation purposes" occurs whenever the employer suspends all, or a unit of, its operations for an announced period in order to grant its employees a period of rest and recreation, conduct maintenance or re-tooling operations, or for any reason except lack of business.

"Standby pay" refers to amounts paid or payable to an employee either for an employee's readiness to perform services for an employer or amounts paid or payable to an employee for the purpose of maintaining the employer-employee relationship during any work cessation not related to a labor dispute in which the individual is directly involved.

"Vacation pay" refers to amounts paid or payable to an employee for the purpose of granting him or her a period of rest and recreation. The term "vacation pay" includes what is commonly referred to as "personal holiday" pay, "earned bonus hours",~~-~~ and other amounts payable for the purpose of rest and recreation regardless of how they are characterized.

"Vacation pay allowance" refers to amounts paid or payable to an employee as vacation pay without regard to the period of vacation leave to which the employee is entitled. For example, an employee may be entitled to two weeks of vacation leave but be paid an allowance that~~which~~ is greater or less than the wages for two weeks of normal work. Thus, if any employee was entitled to receive a vacation pay allowance equal to 5% of his or her annual salary of $20,000, the employee's vacation pay allowance would be $1,000.

"Wages for less than full time work" refers to every form of remuneration for personal services, including salaries, commissions, bonuses, gratuities received from third parties that~~which~~ are reported as wages under Section 234 of the Act, and the reasonable money value of all remuneration in any medium other than cash received by an individual for less than full time work.

"Weekly benefit amount" means the amount defined by Section 401 of the Act.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2920.10 Reduction in~~In~~ Benefits Due to~~To~~ Receipt of~~Of~~ Vacation Pay, Holiday Pay, Retirement Pay, and~~And~~ Workers' Compensation Whose Sum is~~Is~~ Less Than the~~The~~ Individual's Weekly Benefit Amount**

Provided that an individual is not ineligible for benefits under Section 2920.5, whenever an individual receives or is entitled to receive any vacation pay treated as wages under Section 2920.25 or 2920.30, holiday pay treated as wages under Section 2920.35 or receives any disqualifying retirement pay under Section 2920.70 or workers' compensation during a week or weeks, and the aggregate~~aggregrate~~ amount of those~~such~~ payments is less than the individual's weekly benefit amount, the individual shall be eligible to receive with respect to that~~such~~ week or those weeks, benefits in an amount equal to the weekly benefit amount reduced by the sum of these payments. The reduction in benefits given by this Section does not apply when~~in the situation where~~ the individual receives wages for less than full-time work as defined by Section 2920.5(a)(4). In those~~such~~ cases, the individual's eligibility and amount of reduced benefits, if any, shall be calculated in accordance with the formula in~~given by~~ Section 2920.15.

a) EXAMPLE~~Example 1~~: An individual received $60 in disqualifying retirement pay per week. He also receives $60 in vacation pay with respect to that week. If the weekly benefit amount was $130, he would be eligible to receive $10 in reduced benefits with respect to that week.

b) EXAMPLE~~Example 2~~: Assume the situation described in EXAMPLE in subsection (a)~~Example 1~~ with the exception that the individual's disqualifying retirement pay with respect to that week is $70 instead of $60. Because the sum of the individual's retirement pay and his vacation pay equals his weekly benefit amount, the individual is ineligible to receive reduced benefits under this Section because he is ineligible to receive any benefits under Section 2920.5(d).

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2920.18 Voluntary Withholding for Federal and/or State of Illinois Income Tax**

a) Whenever an individual voluntarily elects, under ~~pursuant to~~ Section 1300 of the Act ~~[820 ILCS 405/1300]~~, to have monies withheld from his or her unemployment insurance benefits to cover possible federal and/or State of Illinois income tax liability, the amount of benefits subject to ~~such~~ income tax withholding is the sum of the individual's weekly benefit amount (WBA), following any of the mandatory deductions from unemployment benefits set forth in this subsection (a)~~subsections (a)(1), (2), and (3)~~, plus any spouse or dependent~~dependents'~~ allowance payable under the Act. The following are the mandatory deductions:

1) Disqualifying~~disqualifying~~ income, including vacation pay, holiday pay, retirement pay, and workers' compensation, under Section 2920.10;

2) Wages~~wages~~ for less than full time work payable to him or her with respect to that week that are in excess of 50% of his or her weekly benefit amount;

3) One-fifth~~one-fifth~~ of the individual's WBA for each day that the individual was unable or unavailable for work as required by Section 402 of the Act.

b) Whenever an individual has voluntarily elected, ~~pursuant to~~under Section 1300 of the Act, to have monies withheld for federal and/or State ~~of Illinois~~ income tax

from his or her unemployment benefits for a period covered by a benefit payment, the Department shall, when withholding for federal income tax, withhold 10% of the amount of benefits that are subject to withholding under subsection (a), rounded (if not already a multiple of one dollar) to the nearest dollar and, when withholding for State~~ of Illinois~~ income tax, withhold a percentage of the amount of benefits that are subject to withholding under subsection (a) equal to the tax rate for individuals pursuant to the Illinois Income Tax Act [35 ILCS 5], rounded (if not already a multiple of one dollar) to the nearest dollar. If the product is equally near 2 multiples of one dollar, it shall be rounded to the higher multiple of one dollar. If the individual's benefits for a week, less amounts subject to recoupment under Section 2835.15 and less any involuntary deductions for child support pursuant to Section 2815.105, are less than the amount that would otherwise be withheld pursuant to this subsection, the entire amount of the benefits remaining shall be withheld. If the individual elects to have both federal and State~~ of Illinois~~ income taxes withheld and the amount remaining is insufficient to cover both taxes, the entire amount of State~~ of Illinois~~ tax shall be withheld before any federal tax is withheld.

1) EXAMPLE~~Example~~: The individual elects both federal and State~~ of Illinois~~ income tax withholding. The individual's WBA for each of the weeks ending February 5, 2011, and February 12, 2011, is $251. The individual receives a dependents' allowance of $81 for each week. The Department will deduct for federal income tax withholding 10% of $332 for each week that~~which~~ equals $33.20, which, rounded to the nearest dollar, is $33. Additionally, the Department will deduct for State~~ of Illinois~~ income tax withholding 5% (the tax rate for individuals pursuant to the Illinois Income Tax Act for the 2 weeks in question) of $332, which equals $16.60 for each week, which~~,~~ rounded to the nearest dollar, is $17. Accordingly, the individual will receive $564 in benefits for the 2 week period after having $66 deducted for federal income tax withholding and $34 deducted for State~~ of Illinois~~ income tax withholding.

2) EXAMPLE~~Example~~: The individual elects both federal and State~~ of Illinois~~ income tax withholding. The individual's WBA for each of the weeks ending February 5, 2011 and February 12, 2011 is $129. The individual receives a dependents' allowance of $42 for each week.

For the first week of the payment period, the individual has $90 in disqualifying vacation pay, but in the second week the individual does not

have any disqualifying vacation pay.

The amount of benefits subject to federal and State ~~of Illinois~~ income tax withholding for the first week is $129 less $90 in vacation pay, which equals $39 plus his or her dependents' allowance of $42, which totals $81. Because the individual did not receive any disqualifying vacation pay for the second week of the period, the amount of benefits subject to federal and State ~~of Illinois~~ income tax withholding attributable to the second week is $129 plus his or her dependents' allowance of $42, which totals $171.

The Department will deduct for federal income tax withholding 10% of $81 for the first week, which equals $8.10, which, rounded to the nearest dollar, is $8. The Department will deduct for State ~~of Illinois~~ income tax withholding 5% (the tax rate for individuals pursuant to the Illinois Income Tax Act for the 2 weeks in question) of $81, which equals $4.05, which, rounded to the nearest dollar, is $4.

The individual will receive $69 for the first week after having $8 deducted for federal income tax withholding and $4 deducted for State ~~of Illinois~~ income tax withholding. The Department will deduct for federal income tax withholding 10% of $171 for the second week, which equals $17.10, which, rounded to the nearest dollar, is $17.

The Department will deduct for State ~~of Illinois~~ income tax withholding 5% of $171, which equals $8.55, which, rounded to the nearest dollar, is $9. The individual will receive $145 for the second week after having $17 deducted for federal income tax withholding and $9 deducted for State ~~of Illinois~~ income tax withholding. The individual's payment for the two week period will be $214.

3) EXAMPLE~~Example~~: The individual's WBA for each of the weeks ending February 5, 2011 and February 12, 2011 is $129. The amount of benefits subject to federal and State ~~of Illinois~~ income tax withholding for each week of the two week period is $129.~~.~~

10% of $129 equals $12.90, which, rounded to the nearest dollar, is $13. 5% of $129 equals $6.45, which, rounded to the nearest dollar, is $6.

In this example, assume that the individual has elected both federal and State ~~of Illinois~~ income tax withholding, that the individual is also subject to recoupment for both weeks in an amount up to 25% of his or her WBA, which amount is $32.25 for both weeks, and that the individual is subject to a withholding order of $100 for child support for the first week.

For the first week, the Department will first recoup the entire amount of $32.25 due for that first week. $129 minus $32.25 equals $96.75. Because the individual does not have sufficient benefits to cover the full amount of child support due for that first week, the Department will deduct $96.75, the amount of benefits available for that week. The individual's payment for the two week period will not include any benefits with respect to that first week.

For the second week of the payment period, the individual is not subject to a withholding order for child support. Accordingly, the individual is eligible to receive $96.75 for the second week, the difference between the benefits payable to him or her for that week ($129) and the amount recouped ($32.25). Because the individual has elected both federal and State ~~of Illinois~~ income tax withholding for the period covered by the payment, the Department will deduct $13 for federal income tax withholding and $6 for State ~~of Illinois~~ income tax withholding from the individual's benefits and pay the individual the remaining $77.75.

4) EXAMPLE~~Example~~: Assume the same situation described in subsection (b)(3), except that the individual's withholding for court ordered child support is $90 for each week. The amount of benefits subject to federal and State ~~of Illinois~~ income tax withholding for the two week period remains the same.

The individual has sufficient benefits for the Department to recoup the maximum amount and to deduct for child support in full for both weeks. If the individual had not elected to withhold federal and State ~~of Illinois~~ income tax, the individual would have received $13.50, the sum of $6.75 and $6.75 for each week. Because the individual has elected federal and State ~~of Illinois~~ income tax withholding for this period and because the benefits for the period after recoupment and child support are less than 10% plus 5% of the amount subject to withholding, the Department will deduct the entire $13.50 for income tax withholding ($12 for State ~~of~~

~~Illinois~~ income tax withholding ($6 in each week) and the remaining $1.50 for federal income tax withholding ($.75 in each week)) and not pay the individual any benefits for this period.

c) An individual's election and his or her revocation of his or her election to have monies withheld from his or her benefits for possible federal and/or State ~~of Illinois~~ income tax liability shall be prospective only. Any decision made by the Department as to whether an individual has, under the Act, elected withholding or revoked a withholding election shall constitute a final administrative decision, subject to review under the Administrative Review Law [735 ILCS 5/Art. III].

EXAMPLE: Upon filing an additional claim during his or her benefit year, an individual elects to have federal and State ~~of Illinois~~ income tax withheld from his or her unemployment benefits paid in 2006. His or her first benefit check covers the two-week period beginning January 8, 2006 and ending January 21, 2006. His or her WBA is $250, and the amount subject to withholding for the period is $65 (10% and 3% of $500). For each week, he or she is subject to recoupment of 25% of his or her WBA and a withholding order of $100 for child support. Consequently, his or her benefit check for the two-week period is for $110. When he or she receives his or her benefit check, he or she asks to revoke the elections, explaining he or she thought the income tax withholding would be based on a percentage of his or her WBA after recoupment and child support. While the Department, if he or she desires, will revoke his or her elections to withhold with respect to a period that has not yet ended, it will not retroactively revoke his or her elections with respect to January 8 through January 21. Elections and revocations can only operate prospectively.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2920.30 Payments Made in~~In~~ Connection with~~With~~ Separation or~~Or~~ Layoff as~~As~~, or in the ~~Or In The~~ Nature of~~Of~~ Vacation Pay, Vacation Pay Allowance or as~~Or As~~ Pay in~~In~~ Lieu of~~Of~~ Vacation**

a) In situations other than those described in Section 2920.25, amounts that an employer pays, becomes obligated to pay, or holds itself ready to pay the individual as, or in the nature of vacation pay, or vacation pay allowance, or as pay in lieu of vacation shall be treated as wages provided that all of the following conditions are satisfied:

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

1) The~~Such~~ amounts are paid or payable "in connection with" the separation or layoff of the individual. Amounts are paid or payable "in connection with" the separation or layoff of the individual for the purposes of this Section whenever there is a relationship between such payments and the separation or layoff. Evidence of a relationship is provided by the employer's pay plan or by the labor-management agreement.

A) EXAMPLE~~Example 1~~: The individual is entitled to receive two weeks of vacation pay on the anniversary date of employment that~~which~~ occurs on June 1. The employer is required to make payment for that date. The individual along with other employees is laid off for an indefinite period beginning June 1. The individual files for benefits for the week beginning on June 1 and the employer files a timely protest contending under Section 610(B) of the Act that its liability to pay the individual's two weeks of vacation pay renders the individual ineligible to receive benefits with respect to that two week period. The individual is not ineligible to receive benefits under this subsection because the employer's liability to make those~~such~~ vacation payments is not "in connection with" the layoff. No relationship exists between the employer's liability to make vacation payments and the individual's layoff. The connection that does exist is purely fortuitous.

B) EXAMPLE~~Example 2~~: Under the terms of the labor-management agreement, the individual is entitled to receive two weeks of vacation pay on June 1. The labor-management agreement also provides that in the event of any layoff or separation, that~~ which~~ occurs prior to June 1, the employer's liability for accrued vacation pay shall be accelerated to the period immediately subsequent to the effective date of the individual's layoff or separation. The individual, along with other employees, is laid off for an indefinite period beginning May 15th. If the protest is timely, the individual is ineligible to receive benefits under this subsection with respect to the two week period beginning May 15, because the employer's liability to make vacation allowance payments is "in connection with" the individual's layoff. The labor-management agreement regarding the acceleration of vacation payments is conditioned upon the individual's layoff or separation. The

occurrence~~occurance~~ of the layoff on May 15 fulfills this condition. Accordingly, a connection exists between the employer's liability to make accelerated vacation payments and the layoff of the individual, a connection that~~which~~ is not merely fortuitous, unlike the situation described in the EXAMPLE in subsection (a)(1)(A)~~example 1~~.

2) Within 10 calendar days after ~~of~~ the date the notice of the filing of an individual's claim for benefits is mailed or within 10 calendar days after~~of~~ the date ~~such~~ vacation pay is paid or payable, the employer notifies the Director by returning the ~~submitting either a "~~Notice of Claim form (ADJ030F) ~~Possible Ineligibility" (BIS-0022)~~ or submitting a letter in lieu thereof which:

A) Designates the period for which the payments shall be allocated; and,

B) Specifies the amount of vacation pay allocated to the designated period.

EXAMPLE~~Example~~: The individual is laid off on June 1. Under the employer's pay plan, the individual receives his vacation pay two weeks after his last day of work. The notice of the filing of the individual's claim for benefits is mailed on June 4. The individual's vacation pay is received June 15. The employer files an ADJ030F~~a BIS-22~~ on June 20. Although the ADJ030F~~BIS-22~~ was not filed within 10~~ten~~ calendar days after~~of~~ the mailing of the notice of the individual's claim for benefits, it is still timely under this subsection (a)(2) because it was filed within 10~~ten~~ calendar days after~~of~~ the date the individual's vacation pay was paid.

3) There must be a reasonable relationship between the period of vacation designated by the employer and the amount of vacation pay allocated to that period. The relationship shall be considered reasonable if:

A) The period designated by the employer immediately follows the last day worked by the individual; ~~or,~~

B) The period designated by the employer immediately follows the date of the individual's claim for benefits;~~ or,~~

C) It is usual and customary as a matter of company policy for the vacation payments to accrue during the period designated, even when the~~such~~ period does not immediately follow the last day worked; or~~,~~

D) The allocation of vacation payments to the period designated is pursuant to a collective bargaining agreement with the employer.~~; or,~~

b) Amounts that an employer pays, becomes obligated to pay, or holds itself ready to pay the individual as, or in the nature of vacation pay, or vacation pay allowance, or as pay in lieu of vacation which constitute wages under subsection (a) shall be treated as wages in sums equal to the individual's wages for a normal workday. The~~Such~~ amounts treated as wages under this Section shall be attributed to, or deemed to be payable to the individual with respect to, the first and each subsequent workday in that~~such~~ period, except paid holidays, until the amount so paid or owing is exhausted. An employer's allocation of those~~such~~ amounts in a manner different from that set forth in this subsection shall be ineffective. If an individual is entitled to receive and does receive pay for a holiday for any work day in that~~the~~ period designated by the employer under subsection (a)(2), the~~such~~ period shall be extended by the~~such~~ paid holiday.

c) If the employer fails to comply with the conditions set forth in subsection (a), amounts paid or payable to an employee during a period of vacation shall not be treated as wages with respect to any week after the~~such~~ separation or layoff unless these payments shall satisfy the requirements for vacation pay during shutdown for inventory or vacation purposes treated as wages under Section 2920.25.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2920.50 Back Pay Awards**

a) An individual who receives a "back pay award" as a result of a decision by the National Labor Relations Board, a court of law, any other governmental agency, in accordance with the employer's grievance procedure, if any, or in voluntary settlement of any "back pay" dispute is considered to have received wages for

services under the Act and hence is ineligible for benefits during any week of the period covered by the "back pay award" in which the amount of the back pay award equals or exceeds the individual's weekly benefit amount. If the amount of "back pay" attributable to any week covered by the "back pay award" is less than the individual's weekly benefit amount, the~~such~~ individual may be eligible for reduced benefits under~~as provided by~~ Section 2920.10.

b) Whenever an individual's "back pay award" is accompanied by any additional amounts awarded as a penalty, those~~such~~ amounts are not considered wages and do not affect an individual's eligibility for benefits under this Part.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2920.65 Retirement Pay**

a) For the purposes of this Part, retirement pay is defined as any pension, annuity, or other similar payment made to an individual:

1) That~~which~~ is either paid or could have been paid on a periodic basis on account of the individual's separation from an employing unit;

2) Under a plan maintained or contributed to by an organization or individual~~,~~ for when~~which organization or individual~~ the individual performed services during his or her base period or for which the organization or individual, including those that~~which~~ have elected to make payments in lieu of paying contributions, is chargeable, pursuant to Section 1502.1 of the Act, for any benefit payments made to the individual.

b) Nothing in this Section shall prohibit payments from a plan maintained and operated by a union from constituting retirement pay provided that those~~such~~ payments otherwise satisfy the requirements of subsection (a).

c) A lump sum payment to an individual on account of his or her separation from an employing unit shall constitute retirement pay, as defined by this Section, if this lump sum payment could have been paid on a periodic basis at the option of the individual; provided, however, that the individual's receipt of the~~such~~ a lump sum payment also satisfies the requirements of subsection (a)(2).

EXAMPLE~~Example~~: A lump sum payment made to an individual on account of his separation shall not constitute retirement pay under this Section when~~where~~ the individual did not have the option to receive those~~such~~ payments on a periodic basis. It should be noted, however, that under Section 2920.70(c), the~~such~~ lump sum payments shall be considered disqualifying income with respect to the week in which they are paid.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2920.68 Payments by a~~By A~~ Labor Union**

a) Payments made by a labor union to an individual for picketing at an employing unit's place of business or for conducting negotiations on behalf of the labor union are wages under Section 234 of the Act ~~(Ill. Rev. Stat. 1987, ch. 48, par. 344)~~ because the individual is performing a service for the labor union.

EXAMPLE~~Example~~: A labor union is engaged in a labor dispute with a certain employer. Because this particular union represents only a small portion of the employer's total work force and because of the vast size of the employer's facility, it is not possible for the union's own members to set up a meaningful picket line at this facility. For this reason, the union hires non-members to assist in picketing the facility. Their ~~Those non-members providing a service to the union and their~~ remuneration constitutes wages under Section 234 of the Act. However, the union does not pay its own members for picketing; instead, they receive what is called "strike pay~~.~~". However, this is money that~~which~~ is available to members to sustain them during the labor dispute and is not tied to the amount of time that they spend on the picket line. This money is not wages under Section 234 of the Act.

b) Strike benefits or welfare fund payments made to members of a labor union during a labor dispute in order to sustain the members during the period of the dispute are not wages as they are not payments for services performed for the labor union.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2920.70 Retirement Pay Considered Disqualifying Income**

a) The entire amount of payments made to an individual constituting retirement pay under Section 2920.65 shall be considered disqualifying income if:

1) These payments are from any individual or organization or its successor:~~,~~

A) for which ~~individual or organization or its successor~~ the individual performed services during his or her base period or that~~which~~ is chargeable under~~, pursuant to~~ Section 1502.1 of the Act, including those organizations that~~which~~ have elected to make payments in lieu of paying contributions, for any benefit payments made to the individual;~~,~~ and

B) that~~which~~ has paid all of the cost of the individual's retirement pay; or~~,~~

2) These payments are from a trust, annuity or insurance fund or under an annuity or insurance contract to or under which any individual or organization or its successor, for which:

A) individual or organization or its successor the individual performed services during his or her base period or that~~which~~ is chargeable, pursuant to Section 1502.1 of the Act, including those organizations that~~which~~ have elected to make payments in lieu of paying contributions; and~~,~~

B) ~~for~~ any benefit payments made to the individual, and pays or has paid all of the premiums or contributions.

b) One-half of payments made to an individual constituting retirement pay under Section 2920.65 shall be considered disqualifying income if the individual or organization or its successor has paid some, but not all, of the cost of the individual's retirement pay.

1) EXAMPLE~~Example 1~~: Payments from independent pension plans established and funded entirely by the individual, such as individual retirement accounts (IRA) or Keough plans, are not disqualifying within the meaning of this Section because the employer pays no part of the cost of the IRA or Keough plan.

2) EXAMPLE~~Example 2~~: The individual contributes to a retirement plan at a fixed rate of 25%. The employing unit contributes the remaining 75%. Since part of the total contributions to the plan is provided by the employer, 50% of each retirement payment is disqualifying income.

3) EXAMPLE~~Example 3~~: The individual and the employing unit make variable contributions to a retirement plan. However, upon maturity of the plan, the individual has contributed 40% of all of the contributions and the employing unit has contributed the remaining 60%. Since part of the total contributions to the retirement plan is provided by the employer, 50% of each retirement payment is disqualifying income.

4) EXAMPLE~~Example 4~~: The individual belongs to a retirement plan maintained and operated by the union. The employer contributes 60% of the cost of maintaining and operating the plan, the union contributes 5%, and the individual contributes the remaining 35%. Since part of the total contributions to the retirement payment is provided by the employer, 50% of each retirement payment is disqualifying income.

~~5) Example 5: The individual retires from Company A in 1981 when he reaches the age of 65. At this time, he does not continue to work, and he will be entitled to full social security benefits available to an individual of his age. However, he is later employed by Company B and collects no more social security benefits until he reaches the age of 70, when he is allowed to continue to work and also to collect his full social security. If the individual is laid off by Company B, one-half of his social security benefits will be disqualifying income if his wages from Company B are subject to social security contributions, even though the additional contributions do not increase his social security benefits.~~

c) Notwithstanding subsections (a) and (b), lump sum payments made on account of retirement that~~which~~ the individual had no option to receive on a periodic basis, or those lump sum payments that~~which~~ the individual had an option to receive on a periodic basis but of which the employer fails to notify the Director as required under Section 2920.75(d), shall be considered disqualifying income under this Section with respect to the week in which they are paid.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

**Section 2920.80 Miscellaneous Forms ofOf Retirement Pay**

a) On the basis of the definitions and principles concerning retirement pay set out in Sections 2920.55 and 2920.70, an individual's receipt of payments from the following sources shall be considered 100% disqualifying income:

1) All profit sharing plans funded entirely by the individual or organization for whom the individual performed services thatwhich constitute retirement pay under Section 2920.65;

2) All federalFederal military service pensions if the United States military service paid wages to the individual during his or her base period;

3) All pensions under the Railroad Retirement Act of 1974 (45 USCU.S.C. 231-231t) if an organization covered under that Act paid wages to the individual during his or her base period.

b) On the basis of the definitions and principles relating to retirement pay set out in Sections 2920.65 and 2920.70, an individual's receipt of payments from the following sources shall be considered 50% disqualifying income:

1) Social Security retirement pensions and disability payments based on the individual's employment, including those based on self-employment; 2)Federal civilian employment pensions if the individual was paid for federalFederal civilian services during his base period;

23) All State of Illinois or local government retirement or disability pensions if the individual performed services during his or her base period for the State of Illinois or the local governmental entity thatwhich funded the pension, or if the State of Illinois or the local governmental entity is chargeable under, pursuant to Section 1502.1 of the Act, including an entity thatwhich has elected to make payments, in lieu of paying contributions, for any benefit payments made to the individual.

c) On the basis of the definitions and principles concerning retirement pay set out in Sections 2920.65 and 2920.70, an individual's receipt of payments from the following sources shall not be considered disqualifying income:

1) An independent pension or retirement plan thatwhich was fully paid for by

the individual;

2) Social Security benefits payable to a surviving spouse or dependent, not attributable to the previous work of the surviving spouse or dependent;

3) Veterans Administration compensation payments that~~which~~ are not federal military service pensions;

4) Any federal (military service or civilian employment) disability payments if they are not part of a retirement plan;

5) Payments from ~~Individual Retirement Accounts (~~IRA~~)~~ and Keough Accounts;

6) A pension or retirement plan funded by an individual or organization, including one that~~which~~ has elected to make payments in lieu of contributions, that~~which~~ is neither chargeable, pursuant to Section 1502.1 of the Act, for any benefits paid to the individual nor for which the individual performed services during his or her base period.

7) Social Security retirement pensions and disability payments based on the individual's employment, including those based on self-employment.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: General Provisions

2) Code Citation: 56 Ill. Adm. Code 2960

3)

| Section Numbers: | Proposed Actions: |
|---|---|
| 2960.100 | Amendment |
| 2960.105 | Amendment |
| 2960.110 | Amendment |
| 2960.120 | Amendment |

4) Statutory Authority: Implementing and authorized by Sections 1700, 1701, 1705 and 1900 of the Unemployment Insurance Act [820 ILCS 405/1700, 1701, 1705 and 1900].

5) A Complete Description of the Subjects and Issues Involved: Updates obsolete references.

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: These proposed amendments neither create nor expand a State mandate.

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit written comments to:

Thomas D. Chan, Acting General Counsel
Illinois Department of Employment Security
33 South State Street – Room 933
Chicago IL 60603

312/793-2338

fax: 312/793-5645
e-mail: Thomas.D.Chan@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].

The proposed rulemaking may have an impact on small businesses, small municipalities and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80 and 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as a small business, small municipality or not-for-profit corporation as part of any written comments submitted to the Department.

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: This rulemaking has no direct effect on small businesses, small municipalities and not-for-profit corporations.

B) Reporting, bookkeeping or other procedures required for compliance: No reporting or bookkeeping is required for compliance.

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 2 most recent agendas because: the revisions were not anticipated at the time.

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

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER IV: DEPARTMENT OF EMPLOYMENT SECURITY
SUBCHAPTER h: EMPLOYMENT SERVICE

PART 2960
GENERAL PROVISIONS

Section

2960.100 Disclosure Of Information
2960.105 Disclosure of~~Of~~ Information for~~For~~ Use in~~In~~ Employment, Training and Educational Programs Administered by~~By~~ State and Local Governmental Social Welfare Agencies
2960.110 Disclosure of~~Of~~ Information for~~For~~ Use by~~By~~ Governmental Agencies Participating in~~In~~ Public Works and~~And~~ Related Programs
2960.115 Disclosure Of Identifying Information For Job Orders Posted On The Internet
2960.120 Disclosure of~~Of~~ Information to~~To~~ One-Stop Partners

AUTHORITY: Implementing and authorized by Sections 1700, 1701, 1705 and 1900 of the Unemployment Insurance Act [820 ILCS 405/1700, 1701, 1705 and 1900].

SOURCE: Illinois Department of Labor, Bureau of Employment Security, Regulation 31, filed as amended June 23, 1977, effective July 3, 1977; rule repealed by operation of law October 1, 1984; new rule adopted at 9 Ill. Reg. 15878, effective October 8, 1985; amended at 12 Ill. Reg. 13596, effective August 5, 1988; amended at 13 Ill. Reg. 5940, effective April 18, 1989; amended at 18 Ill. Reg. 14935, effective September 27, 1994; amended at 24 Ill. Reg. 15049, effective September 28, 2000; Subpart C (Veterans' Employment Act Program) transferred from the Department of Employment Security (56 Ill. Adm. Code 2960) to the Department of Commerce and Economic Opportunity (56 Ill. Adm. Code 2670), pursuant to PA 94-99, at 31 Ill. Reg. 12116; amended at 43 Ill. Reg. _____, effective _____.

**Section 2960.100 Disclosure Of Information**

a) General labor market information obtained pursuant to the administration of the Illinois Employment Service, including but not limited to information concerning employment opportunities, employment levels and trends, and labor supply and demand, may be published and released to applicants registered for work by the Employment Service, to employing establishments, and to the public,~~;~~ provided~~,~~ that the~~such~~ publication or release does not include information identifiable to specific applicants or employing establishments.

b) An applicant registered for work by the Employment Service, or an employing establishment, shall be supplied with information obtained pursuant to the administration of the Employment Service to the extent necessary for the proper and efficient performance of recruitment, placement, employment counseling and other functions of the Employment Service.

c) A claimant for benefits, training allowance, or other payments under a State or federal~~Federal~~ law relating to a system of unemployment insurance, vocational training or trade readjustment allowances, or his or her duly authorized representative, shall be supplied with information from the files and records of the Employment Service to the extent necessary for the proper presentation of his or her claim or the determination of his or her present or prospective rights to the~~such~~ payments.

d) Information obtained pursuant to the administration of the Employment Service shall be made available to:

1) The United States Secretary of Labor, or other appropriate federal~~Federal~~ agency administering the Social Security Act (42 USC Ch. 7), ~~the Area Redevelopment Act, the Job Training Partnership Act,~~ the Trade Expansion Act of 1962 (19 USC 1801 et seq.), ~~the Workforce Investment Act~~ the Workforce Innovation and Opportunity Act (29 USC 3151), any successor legislation to any of the foregoing or any other federal~~Federal~~ Act relating to the vocational training of unemployed or underemployed workers;

2) The Railroad Retirement Board;

3) The Internal Revenue Service of the United States Department of the Treasury; and

4) The Department of Revenue of the State of Illinois.

e) Information obtained pursuant to the administration of the Employment Service shall be furnished, if permitted under Section 1900 of the Unemployment Insurance Act (Act) [820 ILCS 405~~/1900~~], to any public officer or public agency of this or any other State or the federal~~Federal~~ government dealing with the administration of a law in relation to:

1) Relief or public assistance;

2) Unemployment Insurance;

3) A system of public employment offices;

4) Fair employment practices;

5) Wages and hours of employment;

6) A program of public works;

7) A pension or retirement system;

8) Vocational rehabilitation.

f) Information received pursuant to the administration of the Employment Service shall be furnished to:

1) An official or officer of a public school, college or university, or a placement official of a private college or university, but only to the extent necessary for the efficient employment counseling, vocational guidance and placement~~,~~ of an applicant registered for work by the Employment Service;

2) A private social or welfare agency, but only if the~~such~~ information has a direct bearing upon the vocational adjustment or employability of an applicant registered for work by the Employment Service, and only to the extent necessary for the proper and efficient discharge of the placement and counseling functions of the Employment Service.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2960.105 Disclosure of~~Of~~ Information for~~For~~ Use in~~In~~ Employment, Training and Educational Programs Administered by~~By~~ State and Local Governmental Social Welfare Agencies**

a) For the purpose of implementing and administering employment, training,

educational and social welfare programs, any agency of this State, as defined by Section 1-20 of the Illinois Administrative Procedure Act (IAPA) [5 ILCS 100]~~(Ill. Rev. Stat. 1991, ch. 127, par. 1001-20)~~ or any other state~~State~~, any local government of this State, as defined by Section 3(a) of the State Mandates Act [30 ILCS 805]~~(Ill. Rev. Stat. 1987, ch. 85 par. 2203(a))~~, or any agency of the federal~~Federal~~ government, as defined by sections~~Section~~ 551(1) and 552(f) of the federal Administrative Procedures Act (5 USC~~U.S.C~~ 551(1) and 552(f)) that~~which~~ trains, educates, grants funds for training or education, engages in research for educational or training purposes, places in employment, provides public assistance payments, provides social welfare services, or any other related service of the State shall be deemed to be a *public~~Public~~ agency of this or any other State or the federal government~~Federal Government~~ dealing with the administration of relief,~~. . .~~ public assistance,~~. . . .~~ a system of public employment offices~~. . .~~*, as provided in Section 1900 of the Act~~ (Ill. Rev. Stat. 1987, ch. 48, par. 640)~~.

b) Pursuant to Section 1900 of the Act, the IDES Director shall provide those~~such~~ agencies and local entities, information from the files of the Department as the Director deems proper~~ (Ill. Rev. Stat. 1987, ch. 48, par. 640)~~, based upon the written request (i.e., purpose under the law, format or forms of data and schedule for delivery of data) of the agency or entity, to provide outreach and recruitment, assist in intake, determine eligibility, monitor program outcome or evaluate the success of the various services delivered by their employment, training, educational or social welfare programs.

1) EXAMPLE~~Example 1~~: A State ~~economic development~~ agency administers the federal~~Federal~~ employment and training funds received by Illinois~~this State~~ under the federal Workforce Innovation and Opportunity~~Job Training Partnership~~ Act ~~(29 U.S.C. 1501 et seq.) (JTPA)~~. These funds are subgranted to local workforce development areas~~units or combinations of units of local government called Service Delivery Areas (SDA's)~~ that~~which~~ recruit, assess, train and place disadvantaged individuals in unsubsidized jobs. In order to assist in performing these functions, the Director, upon written request, will provide the State ~~economic development~~ agency with identifying information about individuals who qualify for the services that it and its subgrantees can provide. The State ~~economic development~~ agency can provide this information to its subgrantees~~ (SDA's)~~ subject to the execution of shared data agreements with the Department.

2) EXAMPLE~~Example 2~~: Public educational institutions and public training institutions might be in need of accurate data to help them determine the relative success of their educational and training programs. Upon written request, the IDES Director shall provide to these institutions ~~such~~ data that are~~is~~ available to determine increases or decreases in individual wages, duration of employment, if and when the individual filed for unemployment insurance, or other educational or training related factors.

3) EXAMPLE~~Example 3~~: A State economic development agency seeks to attract new manufacturers to this State. This agency requests current information on the number, size and type of major potential suppliers and subcontractors in a given geographical area. Upon written request, the IDESDirector will provide the~~such~~ data to the agency.

4) EXAMPLE~~Example 4~~: The Illinois Department of Human Services-Division of Rehabilitation Services (DORS) is attempting to contact specific groups of potential employers for their newly trained~~ handicapped~~ clients. Upon written request, the IDES Director can provide IDES~~this Department~~ with a mailing list of companies that~~which~~ are experiencing growth or whose records indicate other factors that~~which~~ might lead to the hiring of the DORS clients~~handicapped workers~~. A similar outreach effort could be made on behalf of welfare recipients, ex-offenders, youth or the aging.

c) General administrative data and labor market information, including but not limited to information concerning employment opportunities, levels and trends, labor supply and demand and related statistical data, shall be available to both private and public agencies and individuals. Except as provided in subsections (a) and (b), this~~such~~ information shall not allow for the identification of a specific employing unit or individual.

d) Unless statutorily excluded, the Director shall require payment of the costs incurred in providing the~~such~~ requested information if the Director incurs additional costs in processing the information that~~which~~ are greater than the cost of recovery and the Department does not receive some offsetting benefit (see example) from providing the data.

EXAMPLE~~Example~~: A local government, upon written request, asks the Director

to provide a mailing list of all unemployed individuals in its service area who might meet certain eligibility criteria for a training program it will sponsor. Since those~~such~~ mailing lists are not regularly prepared by the Director, the Director may negotiate with the entity regarding the reimbursement of costs for preparing the list, or the Director may provide the~~such~~ list without charge if, for example, the local entity would agree to provide similar data and/or services in return.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 2960.110 Disclosure of~~Of~~ Information for~~For~~ Use by~~By~~ Governmental Agencies Participating in~~In~~ Public Works and~~And~~ Related Programs**

a) For the purposes of a governmental public works program, any State agency, as defined by Section 1-20 of the IAPA~~Illinois Administrative Procedure Act (Ill. Rev. Stat. 1991, ch. 127, par. 1001-20)~~ and/or federal~~Federal~~ agency, as defined by sections~~Section~~ 551(1) and 552(f) of the federal Administrative Procedure Act ~~(5 U.S.C. 551(1) and 552(f))~~ or local government, as defined in Section 3(a) of the States Mandates Act ~~(Ill. Rev. Stat. 1987, ch. 85, par. 2203(a))~~ receiving public works funding shall be deemed to be a *public~~Public~~ agency of this or any other state~~. . .~~, dealing with~~. . .~~ a public works program~~. . .~~* as provided in Section 1900 of the Act ~~(Ill. Rev. Stat. 1987, ch. 48, par. 640)~~.

b) Pursuant to Section 1900 of the Act, the Director shall provide the~~such~~ agencies and local entities, upon their written request (i.e., purpose under the law, format or form of data and schedule for delivery of data), the~~such~~ information ~~as~~ the Director deems proper ~~(Ill. Rev. Stat. 1987 ch. 48 par. 640)~~ based upon the written request for planning, development, administration, participation, operation, monitoring and evaluation of a public works or related program.

1) EXAMPLE~~Example 1~~: The Illinois Department of Transportation is attempting to determine where the growth of industry will occur in a region of the State and the nature of that industry for the purpose of road repair/construction and related infrastructure improvements. This data will be incorporated into a community/county profile currently developed by a regional planning commission comprised of units of local government. The commission will use the profile to enhance the area's image with potentially new and expanding businesses as well as its efforts to obtain federal public works funding. Upon written request from either the commission or the Department of Transportation, the Director will

provide information to chart the growth and decline of specific types of employers in the region including their migration from the urban central city to the suburban areas and the recently developed exurban communities.

2) EXAMPLE~~Example 2~~: A county housing authority is preparing a grant application for federal funds to rehabilitate existing low income housing and expand available housing through new construction in scattered sites. Upon written request from the authority, the Director will provide wage data for specific construction and other occupations to be used in preparing the grant application and also data on the available labor pool, the severity of unemployment and a profile of the unemployed in the area.

3) EXAMPLE~~Example 3~~: A State~~state~~ university has been placed under contract by a State legislative commission to evaluate whether or not major state infrastructure improvement legislation should be reauthorized and its appropriation maintained or decreased. The university must be able to trace the impact of public works funding to increased numbers of jobs, business expansion and productivity and an overall trend toward higher paying and more skilled jobs. Upon written request, the Director shall supply whatever data the Department might have that~~which~~ would assist the university in completing its analysis.

c) General labor market information, including but not limited to information concerning employment opportunities, levels and trends, labor supply and demand as well as similar statistical data shall be available upon written request to both public and private participants involved in public works and related programs. Except as provided in subsections (a) and (b), information and data shall not allow for the identification of a specific employing establishment or individual.

d) Unless statutorily excluded, the Director shall require payment of costs incurred in providing the requested information if the Director incurs additional costs in processing the~~such~~ information that~~which~~ are greater than the cost of recovery and the Department does not receive some offsetting benefit (see the~~See~~ example in Section 2960.105(d)) from providing the data.~~ (See example following Section 2960.105(d)).~~

(Source: Amended at 43 Ill. Reg. _____, effective _____)

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

**Section 2960.120 Disclosure of~~Of~~ Information to~~To~~ One-Stop Partners**

The Department shall provide a one-stop partner under section~~Section~~ 121 of the federal Workforce Innovation and Opportunity Act~~Workforce Investment Act of 1998~~ with information obtained in the administration of the Employment Service, to the extent the partner is providing services through a one-stop delivery system in Illinois or participating in the operation of such a system in Illinois.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Office of Inspector General Investigations of Alleged Abuse or Neglect in State-Operated Facilities and Community Agencies

2) Code Citation: 59 Ill. Adm. Code 50

3)

| Section Numbers: | Proposed Actions: |
|---|---|
| 50.50 | Amendment |
| 50.60 | Amendment |
| 50.70 | Amendment |

4) Statutory Authority: Implementing and authorized by Section 1-17 of the Department of Human Services Act [20 ILCS 1305].

5) A Complete Description of the Subjects and Issues Involved: This rulemaking updates 59 Ill. Adm. Code 50.50, 50.60 and 50.70 to be consistent with changes to the Department of Human Services Act [20 ILCS 1305], enacted by PA 100-1098, PA 100-943 and PA 100-991. Specifically, this rulemaking specifies required on-going training for OIG investigators authorized to conduct investigations and specifies on-going training for OIG investigators authorized to conduct investigations at community agencies. Additionally, this rulemaking requires that the victim or guardian be provided with a redacted copy of investigative reports in substantiated cases; allows recommendations to be reconsidered; indicates reconsideration requests will be subject to a multi-layer review, at least one reviewer will not have participated in the investigation or approval of the original investigative process; and provides investigations shall be reopened if further investigation is necessary. This rulemaking also allows unredacted investigative reports, as well as raw data, to be shared with local law enforcement, state's attorney's offices and coroner's offices upon request.

6) Published studies or reports, along with the sources of underlying data, that were used when composing this rulemaking? None

7) Will this 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? No

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

11) Statement of Statewide Policy Objective: This rulemaking does not create or expand a State mandate.

12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning these amendments within 45 days after the date of this issue of the *Illinois Register*. All requests and comments should be submitted in writing 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

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: None

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

C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: July 2018

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

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

TITLE 59: MENTAL HEALTH
CHAPTER I: DEPARTMENT OF HUMAN SERVICES

PART 50
OFFICE OF INSPECTOR GENERAL
INVESTIGATIONS OF ALLEGED ABUSE OR NEGLECT IN
STATE-OPERATED FACILITIES AND COMMUNITY AGENCIES

Section
50.10 Definitions
50.20 Reporting an Allegation of Abuse, Neglect, or Financial Exploitation and Death Reports
50.30 Responsibilities of OIG for Intake Assessment
50.40 General Responsibilities
50.50 Conducting Investigations
50.60 Processing Investigative Reports, Reconsideration and Clarification Request Requirements, and the Contents of Case Files
50.70 Completed Investigations
50.80 Written Responses
50.90 Reporting by the Inspector General to the Illinois Department of Public Health Health Care Worker Registry
50.100 Removal of an Employee's Name and Finding from the Illinois Department of Public Health Health Care Worker Registry

AUTHORITY: Implementing and authorized by Section 1-17 of the Department of Human Services Act [20 ILCS 1305].

SOURCE: Adopted at 22 Ill. Reg. 19334, effective October 19, 1998; emergency amendment at 23 Ill. Reg. 4513, effective April 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 10812, effective August 23, 1999; emergency amendment at 26 Ill. Reg. 484, effective January 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 8352, effective May 24, 2002; amended at 32 Ill. Reg. 8132, effective May 16, 2008; emergency amendment at 33 Ill. Reg. 13489, effective September 10, 2009, for a maximum of 150 days; emergency expired February 6, 2010; amended at 34 Ill. Reg. 5239, effective March 25, 2010; emergency amendment at 38 Ill. Reg. 18242, effective August 13, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. 19152, effective September 10, 2014; amended at 38 Ill. Reg. 22642, effective November 20, 2014; emergency amendment at 39 Ill. Reg. 13271, effective September 18, 2015, for a maximum of 150 days; amended at 39 Ill. Reg. 15134, effective November 6, 2015; amended at 40 Ill. Reg. 1824, effective January 5, 2016; amended at 41 Ill. Reg. 6516, effective May 26,

2017; amended at 42 Ill. Reg. 15437, effective July 26, 2018; amended at 43 Ill. Reg. _____, effective _____.

**Section 50.50 Conducting Investigations**

a) Depending on the nature of the allegation, an investigation shall consist of, but not be limited to, the following procedures:

1) Ensure that the victim is not in imminent danger;

2) Protect the integrity of the investigation at all times;

3) Secure the scene of the incident;

4) Identify and separate witnesses;

5) Preserve and secure all evidence;

6) Obtain statements from persons involved, including victims, accused employees, and witnesses by face-to-face interviews, in writing, or by telephone; and

7) Obtain copies of pertinent documents relating to the investigation, i.e., progress notes, incident or injury reports, patient or resident records, photographs, etc.

b) Confidentiality
Any allegations or investigations of reports of abuse, neglect and financial exploitation shall remain confidential until a final report is completed (Section 1-17(m) of the Act). The identity of any person as a complainant shall remain confidential in accordance with the Freedom of Information Act [5 ILCS 140] or unless identification is authorized by the complainant. Information concerning diagnosis and treatment for alcohol or drug abuse shall be disclosed to OIG by community agencies only in accordance with federal regulations at 42 CFR 2. Information concerning tests for human immunodeficiency virus (HIV) and diagnosis and treatment for acquired immune deficiency syndrome (AIDS) shall be disclosed to OIG by community agencies only in accordance with the AIDS Confidentiality Act [410 ILCS 305]. All personal health related information contained in OIG investigative reports shall remain confidential in accordance

with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (P.L. 104-191) (45 CFR 160, 162 and 164).

c) All investigations shall be conducted in a manner that respects the dignity and human rights of all persons involved.

d) Every OIG Investigator authorized to conduct investigations shall receive ongoing training regarding OIG Investigations of Alleged Abuse or Neglect in State-Operated Facilities and Community Agencies (59 Ill. Adm. Code 50). Additionally, every OIG Investigator authorized to conduct investigations at community agencies shall receive ongoing training regarding Standards and Licensure Requirements for Community-Integrated Living Arrangements (59 Ill. Adm. Code 115); Administration of Medication in Community Settings (59 Ill. Adm. Code 116); and Minimum Standards for Certification of Developmental Training Programs (59 Ill. Adm. Code 119).

e~~d~~) Representation during Interviews
An employee may request representation at an interview with OIG if he or she has reasonable grounds to believe that the interview may be used to support disciplinary action against him or her. If the investigator denies the request, the employee's statement may not be used in any subsequent disciplinary proceeding against that employee. No representative of the agency or facility that employs the interviewee may be present at an investigatory interview. Union representation for AFSCME employees, Council 31 (State-operated facilities), shall be granted in accordance with the applicable union contract.

f~~e~~) No person shall interfere with or obstruct an OIG interview or investigation. This is a violation of Section 1-17(i)(2) of the Act.

g~~f~~) OIG shall be granted access, for the purpose of investigating abuse, neglect or financial exploitation, to any facility or program operated, funded, licensed or certified by the Department that is subject to the provisions of Section 1-17 of the Act.

1) When advance notice to an authorized representative or his or her designee is not provided, OIG shall, on arrival at the community agency or facility site, request that an on-duty and on-site employee notify the authorized representative or his or her designee of OIG's arrival.

2) Facilities and community agencies shall obtain and provide OIG with all written statements and any requested documents in a timely manner.

h~~g~~) If OIG determines that:

1) An individual's health or safety is in imminent danger, the Inspector General shall immediately notify the Secretary or his or her designee and the authorized representative of the community agency or facility or his or her designee.

2) There is reason to believe that a violation of an existing Department rule may have occurred, OIG shall notify the authorized representative of the community agency or his or her designee and the appropriate Department office or division.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 50.60 Processing Investigative Reports, Reconsideration and Clarification Request Requirements, and the Contents of Case Files**

a) Processing Investigative Reports

1) Upon receipt of an investigative report, the Inspector General will determine whether to accept the findings.

2) When the Inspector General determines that abuse, neglect or financial exploitation of an individual is substantiated against an employee, the Inspector General shall note in the investigative report any aggravating or mitigating circumstances as those terms are defined in this Part.

3) When the Inspector General substantiates neglect against an employee, the Inspector General shall make a determination in the investigative report if the neglect is egregious.

4) Finalizing Investigative Reports and Notifications to Community Agencies and Facilities

A) After determining the finding, for substantiated cases, unsubstantiated cases and unfounded cases with recommendations,

the Inspector General shall notify the community agency or facility by submitting to it a copy of the investigative report. The director of the facility or agency shall be responsible for maintaining the confidentiality of the investigative report consistent with State and federal law. For unfounded cases without recommendations, a letter of finding will be sent to the facility or agency.

B) The community agency or facility shall submit a written response when required as described in Section 50.80.

5) After determining the finding in all cases, in addition to the facility or agency, the Inspector General shall also notify the following parties:

A) the complainant;

B) the individual who was allegedly abused, neglected or financially exploited or his or her legal guardian (if applicable); and

C) the person alleged to have committed the offense.

6) The notice provided to the following parties shall identify the outcome of the investigation and include a statement of the right to request clarification or reconsideration of the finding:

A) the individual who was allegedly abused, neglected or financially exploited or his or her legal guardian (if applicable);

B) the person alleged to have committed the offense; and

C) the facility or agency.

7) In substantiated cases, the Inspector General shall provide the perpetrator and the victim or guardian with a redacted copy of the investigative report.

b) Reconsideration and clarification requirements: Requests that the Inspector General provide clarification of the findings or reconsideration of the findings or the recommendations must be submitted within 15 days after receipt of the report or notification of the findings.

1) All clarification and reconsideration requests must be in writing.

2) Community agency or facility clarification and reconsideration requests must be on letterhead signed by the authorized representative.

3) All clarification and reconsideration requests must clearly identify the nature of the request and reconsideration requests must clearly indicate~~include new information that could change~~ the specific findings and/or specific recommendations to be considered~~finding~~.

4) Reconsideration requests shall be subject to a multi-layer review and shall include at least one reviewer who did not participate in the investigation or approval of the original investigative report.

5~~4~~) If a reconsideration request is denied or after clarification has been provided, the community agency or facility shall submit a written response as set forth in Section 50.80.

6~~5~~) If the Inspector General determines further investigation is necessary based on the request for reconsideration or clarification of the findings, the investigation shall be reopened and an amended investigative report shall be issued.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 50.70 Completed Investigations**

a) The investigative report and the investigation shall be considered complete 30 calendar days after the notice required in Section 50.60(a)(5)(A) has been sent to the facility or agency, barring cases when a reconsideration request has been granted to any requestor.

b) Distribution of Completed Investigative Reports

1) *Within 10 days after the transmittal of a completed investigative report substantiating an allegation, finding an allegation is unsubstantiated, or if a recommendation is made, the Inspector General shall provide the investigative report on the case to the Secretary and to the director of the facility or agency where the abuse, neglect or financial exploitation*

*occurred. The director of the facility or agency shall be responsible for maintaining the confidentiality of the investigative report consistent with State and federal law.* (Section 1-17(m) of the Act)

2) The Inspector General shall provide a completed investigative report within 10 calendar days to Equip for Equality, Inc., and the Illinois Guardianship and Advocacy Commission.

3) The Inspector General shall provide a completed investigative report of all substantiated cases from Department facilities serving individuals with developmental disabilities within 10 calendar days to the Illinois Department of Public Health and the Department's Office of Developmental Disabilities.

4) The Inspector General shall provide a completed investigative report of all substantiated cases from Department facilities serving individuals with mental illness within 10 calendar days to the Department's Office of Mental Health.

5) If the Inspector General substantiates abuse, neglect or financial exploitation at a community agency serving individuals with developmental disabilities or recommends administrative action, the investigative report shall be provided to the Department's Office of Developmental Disabilities within 10 calendar days.

6) If the Inspector General substantiates abuse, neglect or financial exploitation at a community agency serving individuals with mental illness or recommends administrative action, the investigative report shall be provided to the Department's Office of Mental Health within 10 calendar days.

7) The Inspector General shall provide a completed investigative report of all cases of abuse, neglect or financial exploitation in community agencies within 10 calendar days after closure to the Department's Bureau of Accreditation, Licensure and Certification.

8) The Inspector General shall provide a completed investigative report in all cases substantiating abuse, neglect or financial exploitation against a Department employee within 10 calendar days to the Department's Bureau

of Labor Relations.

9) The Inspector General shall provide a completed investigative report substantiating abuse, neglect or financial exploitation if a legal issue is involved within 10 calendar days to the Department's General Counsel.

10) When an accused employee in a substantiated case is licensed by the Department of Financial and Professional Regulation, the Inspector General shall provide a copy of the investigative report to that agency.

c) The Office of the Inspector General shall inform the accused employee of the results of a reconsideration request or of any changes in the finding that resulted from a reconsideration request within 15 days.

d) If the finding substantiates physical abuse, sexual abuse, egregious neglect or financial exploitation, the Inspector General shall report the identity of the accused employee and finding to the Health Care Worker Registry. The Inspector General shall notify the accused employee of the right to appeal the action that will place his or her identity on the Health Care Worker Registry as described in Section 50.90.

e) Release of Investigative Reports

1) *All investigative reports prepared by the Office of the Inspector General shall be considered confidential and shall not be released except as provided by the law of this State or as required under applicable federal law*. (Section 1-17(m) of the Act)

2) Substantiated findings shall be released in accordance with the Act, the Mental Health and Developmental Disabilities Confidentiality Act [740 ILCS 110] and the Freedom of Information Act [5 ILCS 140].

3) *Unsubstantiated and unfounded investigative reports shall not be disclosed except as allowed pursuant to Section 6 of the Abused and Neglected Long Term Care Facility Residents Reporting Act* [210 ILCS 30] *or a valid court order.* (Section 1-17(m) of the Act)

4) The identity of any person as a complainant shall remain confidential in accordance with the Freedom of Information Act [5 ILCS 140], or unless

authorized by the complainant in writing. The identity of a required reporter shall only remain confidential under certain circumstances as determined by OIG on a case-by-case basis.

f) Release of Unredacted Investigative Reports and Raw Data
Unredacted investigative reports, as well as raw data, may be shared, upon written request, with local law enforcement, state's attorney's offices and coroner's offices.

g~~f~~) Recommendations for Sanctions

1) The Inspector General may recommend to the Secretary of the Department of Human Services that sanctions be imposed against facilities or community agencies to protect residents, including:

A) appointment of on-site monitors or receivers;

B) transfer or relocation of an individual or individuals;

C) closure of units; and

D) Termination of any one or more of the following:

i) Department licensing;

ii) Department funding; or

iii) Department certification.

2) The Inspector General may seek the assistance of the Attorney General of Illinois or the State's attorney for imposing sanctions listed in subsection (g~~f~~)(1).

(Source: Amended at 43 Ill. Reg. _____, effective _____)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: The Illinois Oil and Gas Act

2) Code Citation: 62 Ill. Adm. Code 240

3)

| Section Numbers: | Proposed Actions: |
|---|---|
| 240.125 | Amendment |
| 240.140 | Amendment |
| 240.150 | Amendment |
| 240.160 | Amendment |
| 240.180 | Amendment |
| 240.185 | Amendment |
| 240.186 | Repealed |
| 240.190 | Amendment |
| 240.420 | Amendment |
| 240.425 | New Section |
| 240.810 | Amendment |

4) Statutory Authority: Implementing and authorized by the Illinois Oil and Gas Act [225 ILCS 725].

5) A Complete Description of the Subjects and Issues Involved: This Part is being amended to ensure that the rule is consistent with the Illinois Oil and Gas Act, to increase protections to the people and environment of Illinois, to account for changes in industry practices and activities, and to streamline oil and gas enforcement procedures to increase efficiency and promote voluntary compliance and deter noncompliance within the regulated community. The Oil and Gas Advisory Board has approved these proposed amendments.

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

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

11) Statement of Statewide Policy Objective: This rulemaking does not affect units of local government.

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments on the proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice to:

Daniel Brennan, Legal Counsel
Department of Natural Resources
One Natural Resources Way
Springfield IL 62702-1271

217/782-0179

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 included on either of the two most recent agendas because the need was not anticipated.

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

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 240
THE ILLINOIS OIL AND GAS ACT

SUBPART A: GENERAL PROVISIONS

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

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

SUBPART B: PERMIT APPLICATION PROCEDURES FOR PRODUCTION WELLS

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

SUBPART C: PERMIT APPLICATION PROCEDURES FOR CLASS II UIC WELLS

Section
240.300 Applicability
240.305 Transfer of Management (Recodified)
240.310 Application for Permit to Drill, Deepen, or Convert or Amend to a Class II UIC Well
240.311 Application for Freshwater Aquifer Exemption
240.312 Freshwater Aquifer Exemptions
240.320 Contents of Application
240.330 Authority of Person Signing Application
240.340 Proposed Well Construction and Operating Parameters
240.350 Groundwater and Potable Water Supply Information
240.360 Area of Review
240.370 Public Notice
240.380 Issuance of Permit
240.385 Conversion of a Class II Well to a Water Well
240.390 Permit Amendments
240.395 Update of Class II UIC Well Permits Issued Prior to July 1, 1987

SUBPART D: SPACING OF WELLS

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

Section
240.400 Definitions
240.410 Drilling Units
240.420 Well Location Exceptions within Drilling Unit
240.425 Change of a Permitted Drilling Location
240.430 Drilling Unit Exceptions
240.440 More Than One Well on a Drilling Unit
240.450 Directional Drilling
240.455 Horizontal Drilling
240.460 Modified Drilling Unit
240.465 Special Drilling Unit
240.470 Establishment of Pool-Wide Drilling Units Based Upon Reservoir Characteristics

SUBPART E: WELL DRILLING,
COMPLETION AND WORKOVER REQUIREMENTS

Section
240.500 Definitions
240.510 Department Permit Posted
240.520 Drilling Fluid Handling and Storage
240.525 Saltwater or Oil Based Drilling Fluid Handling and Storage
240.530 Completion Fluid and Completion Fluid Waste Handling and Storage
240.540 Drilling and Completion Pit Restoration
240.550 Disposal of General Oilfield Wastes and Other Wastes

SUBPART F: WELL CONSTRUCTION, OPERATING AND REPORTING
REQUIREMENTS FOR PRODUCTION WELLS

Section
240.600 Applicability
240.605 Drilled Out Plugged Hole (DOPH) Notification
240.610 Construction Requirements for Production Wells
240.620 Remedial Cementing of Leaking Wells
240.630 Operating Requirements
240.640 Reporting Requirements
240.650 Confidentiality of Well Data
240.655 Mechanical Integrity Testing for Class II Injection Wells (Repealed)
240.660 Monitoring and Reporting Requirements for Enhanced Recovery Injection and

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

Disposal Wells (Repealed)
240.670 Avoidable Waste of Gas (Repealed)
240.680 Escape of Unburned Gas Prohibited (Repealed)

SUBPART G: WELL CONSTRUCTION, OPERATING AND REPORTING REQUIREMENTS FOR CLASS II UIC WELLS

Section
240.700 Applicability and Definitions
240.710 Surface and Production Casing Requirements for Newly Drilled Class II UIC Wells
240.720 Surface and Production Casing Requirements for Conversion to Class II UIC Wells
240.730 Surface and Production Casing Requirements for Existing Class II UIC Wells
240.740 Other Construction Requirements for Class II UIC Wells
240.750 Operating Requirements for Class II UIC Wells
240.760 Establishment of Internal Mechanical Integrity for Class II UIC Wells
240.770 Establishment of External Mechanical Integrity for Class II UIC Wells
240.780 Reporting Requirements for Class II UIC Wells
240.790 Confidentiality of Well Data
240.795 Commercial Saltwater Disposal Well
240.796 Operating and Reporting Requirements, Hydraulic Fracturing Operations, Seismicity

SUBPART H: LEASE OPERATING REQUIREMENTS

Section
240.800 Definitions
240.805 Lease and Well Identification
240.810 Tanks, Tank Batteries and Containment Dikes
240.815 Permanent Well Site Equipment Setback
240.820 Flowlines
240.830 Power Lines
240.840 Equipment Storage
240.850 Concrete Storage Structures
240.860 Pits
240.861 Existing Pit Exemption For Continued Production Use
240.862 Existing Pit Exemption For Alternative Use
240.870 Leaking Unpermitted Drill Hole

240.875 Leaking Previously Plugged Well
240.880 Initial Spill Notification
240.890 Crude Oil Spill Remediation Requirements
240.891 Crude Oil Spill Waste Disposal and Remediation
240.895 Produced Water Spill Remediation Requirements

SUBPART I: LIQUID OILFIELD WASTE HANDLING AND DISPOSAL

Section
240.900 Definitions
240.905 Application for Permit to Operate a Liquid Oilfield Waste Transportation System
240.906 Application for a Liquid Oilfield Waste Transportation Vehicle Permit
240.910 Inspection of Vehicles (Tanks)
240.920 Issuance of Liquid Oilfield Waste Transportation System and Vehicle Permits
240.925 Liquid Oilfield Waste Recordkeeping Requirements
240.926 Liquid Oilfield Waste Transportation System and Vehicle Operating Requirements
240.930 Produced Water
240.940 Crude Oil Bottom Sediments
240.945 Lease Road Oiling
240.950 Crude Oil Spill Waste Disposal (Repealed)
240.960 Oil Field Brine Hauling Permit Conditions (Repealed)
240.970 Inspection of Vehicles (Repealed)
240.980 Transfer of Permits (Repealed)
240.985 Revocation of Oil Field Brine Hauling Permit (Repealed)
240.990 Records and Reporting Requirements (Repealed)
240.995 Bonds − Blanket Surety Bond (Repealed)

SUBPART J: VACUUM

Section
240.1000 Definitions
240.1005 Applicability
240.1010 Application for Vacuum Permit
240.1020 Contents of Application
240.1030 Authority of Person Signing Application
240.1040 Notice and Hearing
240.1050 Issuance of Permit
240.1060 Permit Amendments

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

SUBPART K: PLUGGING OF WELLS

Section
240.1105 Plugging of Non-Productive Wells (Repealed)
240.1110 Definitions
240.1115 Plugging Responsibility
240.1120 Plugging of Uncased Wells
240.1130 Plugging and Temporary Abandonment of Inactive Production Wells
240.1131 Extension of Future Use Status for Production Wells (Repealed)
240.1132 Plugging and Temporary Abandonment of Inactive Class II UIC Wells
240.1140 General Plugging Procedures and Requirements
240.1150 Specific Plugging Procedures
240.1151 Procedures for Plugging Coal Seams
240.1160 Plugging Fluid Handling and Storage
240.1170 Plugging Fluid Waste Disposal and Well Site Restoration
240.1180 Lease Restoration
240.1181 Lease Restoration Requirements (Repealed)
240.1190 Filing Plugging Report

SUBPART L: REQUIREMENTS FOR OTHER TYPES OF WELLS

Section
240.1200 Applicability
240.1205 Application for Permit to Drill a Test Well or Drill Hole
240.1210 Contents of Application for Permit to Drill or Convert to an Observation, Gas Storage Well or Service Well (Repealed)
240.1220 Contents of Application for Coal Test Hole, Mineral Test Hole, Structure Test Hole, or Coal or Mineral Groundwater Monitoring Well
240.1230 Authority of Person Signing Application
240.1240 Issuance of Permit
240.1250 When Wells Shall Be Plugged and Department Notification
240.1260 Plugging and Restoration Requirements
240.1270 Confidentiality
240.1280 Converting to Water Well

SUBPART M: PROTECTION OF WORKABLE COAL BEDS

Section

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

240.1300 Introduction
240.1305 Permit Requirements in Mine Areas
240.1310 Workable Coal Beds Defined
240.1320 Mining Board may Determine Presence of Coal Seams
240.1330 Well Locations Prohibited
240.1340 Notice to Mining Board
240.1350 Casing and Protective Work
240.1360 Operational Requirements Over Active Mine
240.1370 Inspection of Vehicles (Recodified)
240.1380 Transfer of Permits (Recodified)
240.1385 Revocation of Oil Field Brine Hauling Permit (Recodified)
240.1390 Records and Reporting Requirements (Recodified)
240.1395 Bonds − Blanket Surety Bond (Recodified)

SUBPART N: ISSUANCE OR TRANSFER OF PERMIT TO OPERATE

Section
240.1400 Definitions
240.1405 Transfer of Management (Repealed)
240.1410 Applicability
240.1420 Notification of Transfer
240.1425 Authority of Person Signing Notification of Transfer
240.1430 Responsibilities of Current Permittee
240.1440 Responsibilities of New Permittee
240.1450 Authority of Person Signing Notification of Acceptance
240.1460 Conditions for and Effect of Issuance or Transfer of Permit to Operate
240.1465 Condition for and Effect of Transfer of PRF Wells
240.1470 Revocation of Permit to Operate
240.1480 Involuntary Transfer
240.1485 Administrative Record Correction
240.1490 Transfer Hearings

SUBPART O: BONDS

Section
240.1500 When Required, Amount and When Released
240.1510 Definitions
240.1520 Bond Requirements
240.1530 Forfeiture of Bonds

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

SUBPART P: WELL PLUGGING AND RESTORATION PROGRAM

Section
240.1600 Definitions
240.1610 Plugging Leaking or Abandoned Wells
240.1620 Plugging Orphaned Wells
240.1625 Plugging Abandoned Wells Through Landowner Grant
240.1630 Emergency Well Plugging, Emergency Repair Work, Emergency Projects
240.1635 Emergency Well Plugging and Emergency Project Reimbursement
240.1640 Repayment of Funds
240.1650 Authorization for a Permittee to Operate Its Wells Placed into the Plugging and Restoration Fund Program for Abandonment
240.1660 Authorization for a Permittee to Operate Its Wells Placed into the Plugging and Restoration Fund Program for Non-Payment of Annual Well Fees

SUBPART Q: ANNUAL WELL FEES

Section
240.1700 Fee Liability
240.1705 Amount of Assessment
240.1710 Annual Permittee Reporting
240.1720 When Annual Well Fees are Due
240.1730 Opportunity to Contest Billing
240.1740 Delinquent Permittees

SUBPART R: REQUIREMENTS IN UNDERGROUND GAS STORAGE FIELDS AND FOR GAS STORAGE AND OBSERVATION WELLS

Section
240.1800 Applicability
240.1805 Definitions
240.1810 Submission of Underground Gas Storage Field Map
240.1820 Permit Requests in a Underground Gas Storage Field
240.1830 Application for Permit to Drill or Convert Wells
240.1835 Content of Application for Permit to Drill or Convert to an Observation or Gas Storage Well
240.1840 Authority of Person Signing Application
240.1850 Issuance of Permit

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

240.1852 Gas Storage and Observation Well, Construction, Operating and Reporting Requirements
240.1855 Well Drilling Completion and Workover Requirements
240.1860 Storage Field Operating Requirements
240.1865 Liquid Oilfield Waste Disposal
240.1870 Plugging of Gas Storage and Observation Wells

SUBPART S: REQUIREMENTS FOR SERVICE WELLS

Section
240.1900 Applicability
240.1905 Application for Permit to Drill or Convert to Other Types of Wells or Drill Holes
240.1910 Contents of Application for Permit to Drill or Convert to a Service Well
240.1920 Authority of Person Signing Application
240.1930 Issuance of Permit
240.1940 When Wells Shall Be Plugged and Department Notification
240.1950 Plugging and Restoration Requirements
240.1960 Converting to Water Well

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

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

8422, effective April 28, 1998; amended at 22 Ill. Reg. 8845, effective April 28, 1998; amended at 22 Ill. Reg. 22314, effective December 14, 1998; amended at 25 Ill. Reg. 9045, effective July 9, 2001; amended at 35 Ill. Reg. 13281, effective July 26, 2011; amended at 38 Ill. Reg. 18717, effective August 29, 2014; amended at 38 Ill. Reg. 22052, effective November 14, 2014; amended at 40 Ill. Reg. 7051, effective April 22, 2016; expedited correction at 40 Ill. Reg. 11042, effective April 22, 2016; emergency amendment at 40 Ill. Reg. 13265, effective September 1, 2016, for a maximum of 150 days; emergency expired January 28, 2017; amended at 41 Ill. Reg. 2957, effective February 21, 2017; amended at 42 Ill. Reg. 5811, effective March 14, 2018; amended at 43 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

**Section 240.125 Notice**

a) Except for notices of noncompliance issued under Section 240.140 and Director's decisions issued under Section 240.160, whenever~~Whenever~~ the Department is required by the Act or this Part to serve notice upon a permittee, the Department shall give written notice to that person, personally or by certified mail with return receipt requested, sent to the address submitted by permittee as set forth in Section 240.1710. *Permittees shall sign certified mail returned receipts for all mail received from the Department.* (Section 9.1(b) of the Act)

b) Notice by Publication

1) *If notice sent by certified mail is returned unsigned or undelivered, and upon due inquiry, the permittee cannot be found for personal delivery, the Department shall provide written notice of a hearing or other proceeding by a single publication of the notice in a newspaper published in the county where the well or wells at issue are located*. (Section 9.1(c) of the Act)

2) *If there is no newspaper published in that county, then the publication shall be in a newspaper published in an adjoining county in this State having a circulation in the county where the well or wells are located.* (Section 9.1(c) of the Act)

3) *The Department shall, within 10 days after the publication of the newspaper notice, send a copy of the notice,* by certified mail with return

receipt requested, to the address submitted by the permittee as set forth in Section 240.1710. (Section 9.1(c) of the Act)

4) *The certificate of an authorized representative of the Department that newspaper notice was published and that a copy of the newspaper notice has been sent to the permittee pursuant to subsection* (b)(3) *is evidence that the Department has properly provided notice to the permittee for the hearing or other proceeding.* (Section 9.1(c) of the Act)

5) *Any notice required to be provided to a permittee under the Act or this Part shall include the identification of the well or wells at issue, the date, time, place and nature of the hearing or other proceeding, and the name and contact information of the Department where additional information can be obtained.* (Section 9.1(d) of the Act)

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 240.140 Notice of Noncompliance~~Violations Not Requiring Formal Action~~**

a) When an inspector or other authorized employee or agent of the Department determines that any permittee has not fully complied with~~is in violation of~~ any requirement of the Act or this Part or any permit condition, and the inspector or other authorized employee or agent also finds that the noncompliance~~violation~~ was not caused by the permittee's deliberate action; that any action necessary to return the permittee to compliance~~abate the violation~~ is able to be completed within a specified date certain, as established by the Department representative, not to exceed 180~~120~~ days from the date of the determination that the permittee is not in compliance~~in violation~~; and that the noncompliance~~violation~~ has not caused, and cannot reasonably be expected to cause, significant environmental harm or damage to property, the noncompliant conditions~~violation~~ shall be documented by the Department~~noted~~ on a notice of noncompliance~~an inspection report, compliance schedule or other written notification~~ without the need for the issuance of a notice of violation pursuant to Section 240.150. The notice of noncompliance~~written inspection report, compliance schedule or other written notification~~ shall indicate the nature and circumstances of the noncompliance~~violation~~, ~~and the time within which and the means by which~~ the amount of time granted to permittee, and the abatement activities required to return the permittee to compliance~~violation is to be abated~~. A copy of the notice of noncompliance~~inspection report, compliance schedule or other written~~

~~notification~~ shall be delivered to the permittee or his or her representative at the time it is prepared, and the original shall be forwarded to the Director. If the permittee is unable to abate the noncompliance in the time indicated in the notice, permittee may provide a written request for an extension to the District Office that issued the notice. If the District Office denies the request, the permittee may submit the request to the Director. All extension requests must be received by the District Office or Director prior to the expiration of the initial deadline or any extensions. Upon reasonable cause, the time to abate may be extended by the Department but shall not exceed 180 days from the date the noncompliance was determined.

b) If the~~, following investigation, the Director determines that~~ abatement activities required under subsection (a) are~~was~~ not completed as specified in the notice of noncompliance~~inspection report, compliance schedule or other written notification~~, the inspector or other authorized employee or agent of the Department~~Director~~ shall issue a notice of violation in accordance with Section 240.150 and/or a cessation order in accordance with Section~~Sections~~ 240.185~~ and 240.186~~.

c) The provisions of this Section shall not apply to the following instances of noncompliance~~violations~~:

1) Drilling or operating, without a permit or completed permit transfer from the Department, a well required to be permitted under the Act;

2) Operating an annular or casing injection/disposal well or a well with pressure on the annulus;

3) Failure to maintain required performance bond or pay annual well fees for wells under permit;

4) Failure to renew Temporary Abandonment status on a well or secure approved Temporary Abandonment status following a denial of Temporary Abandonment status on a well;

5) Failure to establish mechanical integrity on a Class II well or repair a Class II well following failure of mechanical integrity;

6) Operating a well that has been placed in the Plugging and Restoration

Program;

7) Failure to provide emergency response for a crude oil or saltwater spill;

8) Improper discharge or disposal of produced fluids;

9) Operating a well in violation of spacing requirements or permit conditions; and

10) Failure to restore a well site after plugging.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 240.150 Notice of Violation**

a) *When an inspector or other authorized employee or agent of the Department determines that any permittee, or any person engaged in conduct or activities required to be permitted under the Act is in violation of any requirement of the Act or* this Part *or any permit condition, or has falsified or otherwise misstated any information on or relative to the permit application, a notice of violation shall be completed and delivered to the Director* (Section 8 of the Act). If the inspector or other authorized employee or agent of the Department observes conditions that require immediate attention, the inspector shall comply with the requirements of Section 240.185.~~, except as provided by Section 240.140. A person cannot be held liable under Section 240.160(d) in the absence of notice of the issuance of the underlying notice of violation.~~

b) The notice of violation shall contain:

1) A statement regarding the nature of the violation, including a citation to the specific Section of the Department's rules or Section of the Act alleged to have been violated;

2) *The action needed to abate the violation, including any appropriate remedial measures to prevent future violations, such as replacement, repair, testing, and reworking a well and any appurtenances and equipment;*

3) *The time within which the violation is to be abated*~~ (Section 8 of the Act)~~;

and

4) *Any factors known to the person completing the notice of violation in aggravation or mitigation of the violation and the existence of any factors indicating that the permit should be conditioned or modified.* (Section 8 of the Act).

c) Aggravating factors may include, but are not limited to, documented evidence that:~~The Director shall mail a copy of the notice of violation to the person or permittee charged with the violation.~~

1) violation resulted from permittee's or person's deliberate conduct;

2) permittee or person failed to make reasonable efforts to maintain equipment;

3) violation resulted in threatened or actual damage to soil and/or the land surface, vegetation or crops, surface water, groundwater, livestock or wildlife;

4) violation created a hazard to the safety of any person;

5) permittee or person failed to comply with notice of noncompliance related to violation;

6) permittee or person received warning of potential adverse conditions, resulting in violation, prior to violation occurring;

7) permittee or person failed to provide reasonable response to condition creating the violations.

d) Mitigating factors may include, but are not limited to, documented evidence that:~~The person or permittee charged with the violation may provide the Department, in writing, any information in mitigation of the violation within 14 days after the mailing of the notice of violation. The written information may include a proposed alternative to the Department's suggested action needed to abate the violation.~~

1) person or permittee provided proactive response to conditions creating the

violation;

2) violation did not result in threatened or actual damage to soil and/or the land surface, vegetation or crops, surface water, groundwater, livestock or wildlife;

3) violation was caused by circumstances outside of the control of the person or permittee;

4) person or permittee voluntarily reported the violation to the Department.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 240.160 Director's Decision**

a) Upon receipt of a notice of violation, the Director shall conduct an investigation and may affirm, vacate or modify the notice of violation. In determining whether to take action in addition to remedial action necessary to abate a violation, the Director shall consider:

1) *the person's or permittee's history of previous violations, including violations at other locations and under other permits.*

A) A violation for which no penalty has been assessed shall not be counted if the Director's Decision associated with the violation~~notice or order~~ is the subject of pending administrative review by the Department under Section 240.180 or if the time to request a review has not expired, and thereafter it shall be counted for only two years after the date of the Department's final administrative order~~decision~~ or a final judicial decision affirming the Department's order, if administrative review of the Department's final administrative order is sought~~decision~~.

B) A violation for which a penalty has been assessed shall not be counted if the Director's Decision associated with the violation is the subject of pending administrative review by the Department under Section 240.180 or if the time to request a review has not expired, and thereafter it shall be counted for only three years after the date of the Department's final administrative order or a final

judicial decision affirming the Department's order, if administrative review of the Department's final administrative order is sought.

C) No violation for which the notice of violation~~or order~~ has been vacated shall be counted;

2) *the seriousness of the violation, including any irreparable harm to the environment or damage to property*;

3) *the degree of culpability of the person or permittee*; *and*

4) *the existence of any additional conditions or factors in aggravation or mitigation* of the violation, *including information provided by the person or permittee.* (Section 8a of the Act).

b) *Modification of the notice of violation may include:*

1) *any different or additional remedial actions required to abate the violation*, not listed in the original notice of violation~~as set forth in Section 240.150(b)(2)~~, *and the time within which the violation must be abated;*

2) *the assessment of civil penalties not to exceed $5,000 for each and every falsification or material misrepresentation and $1,000 a day*, from the date the permittee knew or should have known of the existence of facts or conditions that resulted in the violations and for as long as the violation continues, *for each and every act of violation* not subject to the separate $5,000 penalty for falsification and material misrepresentation~~(Section 8a of the Act)~~*;*

3) *probationary or permanent modification or conditions on the permit, which may include special monitoring or reporting requirements; and*

4) *revocation of the permit.* (Section 8a of the Act)

c) The Director shall determine whether or not to assess civil penalties based on the factors set forth in subsection (a). Except for violations listed in subsection (d), the Director may not assess a civil penalty if the violation is abated within the time frame originally set by the Department or any extensions granted by the

Department. If a violation is not abated within that timeframe, or if the violation is listed in subsection (d) and~~If a penalty is assessed by~~ the Department assesses a penalty, the penalty~~ shall be computed as follows, but~~ shall not exceed *$5,000 for each and every falsification or material misrepresentation and* $1,000 per day, from the date the permittee knew or should have known of the existence of facts or conditions that resulted in the violations and for as long as the violation continues, for each and every act of violation not subject to the $5,000 penalty for falsification and material misrepresentation (Section 8a of the Act).~~:~~

d) The Department shall have the discretion to assess a civil penalty for the following violations, even if the violation is abated within the timeframe granted by the Department:

1) drilling, deepening, converting or operating, without a permit or completed permit transfer from the Department, a well required to be permitted under the Act;

2) failure to prohibit waste as defined in the Act;

3) operating an annular or casing injection/disposal well or a well with pressure on the annulus;

4) failure to maintain the required performance bond for wells under permit or operating wells without paying annual well fees;

5) failure to repay all expended funds from the Plugging and Restoration Fund prior to operating any other existing wells under permit;

6) failure to secure approved Temporary Abandonment status or plug a well following a denial of Temporary Abandonment status;

7) failure to establish mechanical integrity on a Class II UIC well or to plug or repair a Class II UIC well following failure of mechanical integrity;

8) failure to shut in a Class II UIC well that fails an internal mechanical integrity test or on which an internal mechanical integrity test has not been performed;

9) operating a Class II injection or disposal well in excess of the permitted

maximum injection pressure or rate;

10) failure to confine injection fluid to the permitted formation;

11) failure to abate a notice of noncompliance, issued under Section 240.140 within the time granted by the Department;

12) operating a well that has been placed in the Plugging and Restoration Program;

13) failure to notify the Department of a reportable crude oil or produced water spill;

14) failure to notify the Department of a natural gas release or natural gas incident at an underground natural gas storage field;

15) failure to provide emergency response for a crude oil or produced water spill;

16) failure to provide emergency response for a natural gas release or natural gas incident at an underground natural gas storage field;

17) failure to provide notice of a natural gas incident as required by Section 7.5 of the Act;

18) failure to remediate a crude oil or saltwater spill;

19) improper discharge or disposal of produced fluids or liquid oilfield wastes;

20) operating a liquid oilfield waste transportation system or vehicle without a permit;

21) knowingly using the services of an unpermitted liquid oilfield waste transporter;

22) failure to contain gas to a permitted storage formation;

23) operating a well in violation of spacing requirements or permit conditions;

24) failure to plug an uncased well;

25) failure to restore a well site after plugging;

26) failure to maintain a well, flowline or other equipment in a leak-free condition;

27) falsification or material misrepresentation in violation of Section 240.135; and

28) any willful or knowing violation.

~~1) Administrative violations, including, but not limited to, the failure to file the reporting, permitting and bond transfer forms required by the Department, shall be assessed on a permittee-specific basis. The Department may assess a penalty for an administrative violation as follows:~~

~~A) No previous violation of the same rule: $50.~~

~~B) One previous violation of the same rule: $100.~~

~~C) Two previous violations of the same rule: $150.~~

~~D) Three previous violations of the same rule: $200.~~

~~E) Four or more previous violations of the same rule: $500.~~

~~2) Operating violations, including, but not limited to, operating a well required to be permitted under the Act without first obtaining a proper permit from the Department, operating a well required to be permitted under the Act without first obtaining the Department's transfer of operating authority, operating a well in violation of Department spacing requirements, pressure on the annulus, failure to maintain the well and flow line in a leak-free condition, failure to configure the wellhead for the inspection of the annulus, failure to comply with specified permit conditions, failure to report a spill, failure to maintain containment dikes, failure to maintain required performance bond in force for the wells under permit, failure to pay annual well fees or failure to notify the Department~~

~~before setting surface casing, setting tubing and packer, or plugging a well, shall be assessed on a permittee-specific basis. The Department may assess a penalty for an operating violation by considering elements of subsections (c)(2)(A), (B) and (C) as follows:~~

~~A) History of Violations:~~

~~i) No previous violation of the same rule: $100.~~

~~ii) One previous violation of the same rule: $250.~~

~~iii) Two previous violations of the same rule: $500.~~

~~iv) Three previous violations of the same rule: $750.~~

~~v) Four previous violations of the same rule: $1,000.~~

~~vi) Five or more previous violations of the same rule: $2,500.~~

~~B) Seriousness:~~

~~i) If the violation had a low degree of probability to cause environmental damage to soil and/or land surface, vegetation or crops, surface water, groundwater, livestock or wildlife: add $100; or, if the violation had a high degree of probability to cause environmental damage to soil and/or land surface, vegetation or crops, surface water, groundwater, livestock or wildlife: add $250; or, if the violation caused environmental damage to soil and/or land surface, vegetation or crops, surface water, groundwater, livestock or wildlife: add $1,000.~~

~~ii) If the violation created a hazard to the safety of any person, such as the emission of hydrogen sulfide gas: add $2,000.~~

~~C) Permittee's Actions:~~

~~i) If the permittee was previously notified of the violation using a routine inspection report (Form OG-22) in~~

~~accordance with Section 240.140 or correspondence from the Department and failed to comply: add $500.~~

~~ii) If the violation occurred as a result of the permittee's lack of reasonable care: add $250; or, if the violation occurred as a result of the permittee's deliberate conduct, including lack of reasonable maintenance of equipment: add $500.~~

~~3) Specified violations, including operating an annular or casing injection/disposal well; operating wells by a permittee for whom wells have been placed into, or funds have been expended from, the PRF; failure to provide emergency response or remediate a crude oil or produced water spill; or the improper disposal or discharge of produced fluids shall result in a penalty. The Department may assess a penalty for specified violations by considering elements of subsections (c)(3)(A), (B) and (C) as follows:~~

~~A) History of Violations:~~
~~One or more previous violations of the same rule in accordance with subsection (a)(1)(A): $500 per violation.~~

~~B) Seriousness:~~

~~i) If the violation caused environmental damage to surface water, ground water or wildlife: add $1,000.~~

~~ii) If the violation created a hazard to the safety of any person, such as the emission of hydrogen sulfide gas: add $2,000.~~

~~C) Permittee's Action:~~
~~If the violation occurred as a result of the permittee's lack of reasonable care: add $500; or, if the violation occurred as a result of the permittee's deliberate conduct: add $1000.~~

~~4) Falsification and material misrepresentation violations, including but not limited to falsifying or misstating information on a permit application, spill report, annual verification report, annual Class II UIC well status report, or any other application, permit or required record, or other document required to be submitted to the Department by the Act or any rules or procedures adopted under the Act. The Department may assess a~~

~~penalty for a falsification or material misrepresentation violation by considering the following elements:~~

~~A) If the violation occurred as a result of a gross negligent misrepresentation of material fact in which the misrepresentation would impair the Department's ability to assess and evaluate the person's compliance with the Act and this Part: add $1,000.~~

~~B) If the violation occurred as a result of a purposeful falsification or material misrepresentation to the Department: add $2,500.~~

~~C) If the violation occurred as the result of a purposeful falsification or material misrepresentation to the Department and created a situation that resulted in a threat of or actual damage to the public's health, safety or welfare, or the threat of or actual damage to the environment: add $5,000.~~

e~~d~~) *Any person who willfully or knowingly authorized, ordered, or carried out any violation cited in the Director's decision shall be subject, after notice, to the same actions, including civil penalties, which may be imposed on the person or permittee under this Section.* (Section 8a of the Act)

f~~e~~) The Director shall serve the person or permittee with his or her decision at the conclusion of the investigation. The Director's decision shall provide that the person or permittee has the right to request a hearing in accordance with Section 240.180. The Director's decision affirming, vacating or modifying the notice of violation shall be *considered served when mailed by first class mail to the person or permittee at his or her last known address.* (Section 8a of the Act)~~served in accordance with Section 8a of the Act.~~

g~~f~~) A Director's decision not appealed in accordance with Section 240.180 within 30 days after service shall serve as the Department's final administrative order, pursuant to Section 8a and become a final administrative decision of the Department, pursuant to Section 10 of the Act. *The filing of a request for hearing* under Section 240.180 *shall not operate as a stay of the Director's decision.* (Section 8a of the Act)

h~~g~~) The permittee or person subject to the Director's decision may, within 30 days from the date of service of the Director's decision, submit to the Department, in

writing, any mitigating factors that permittee believes to be relevant to the violation cited in the Director's decision. Within 30 days from the date of service of the Director's decision, the permittee or person subject to the Director's decision may also request to enter into a settlement agreement with the Department.

i~~h~~) Upon further investigation, or after receiving additional information from the permittee or person as allowed for under subjection (h), the Director may enter into a settlement agreement, issue an amended Director's decision, or issue a replacement Director's decision.

1) The Department may enter into a~~A~~ settlement agreement with the permittee or person subject to the Director's decision in order~~shall be issued~~ to:

A) extend the amount of time provided to complete remedial actions necessary to abate the violations set forth in the Director's decision; or

B) reduce the civil penalty assessed in the Director's decision;~~ or~~

C) allow new permits or the transfer of existing permits to be issued during the term of the settlement agreement; or~~.~~

D) modify any probationary or permanent modifications or conditions on the permit ordered in the Director's decision.

2) An amended Director's decision shall be issued to:

A) modify~~extend~~ the amount of time provided to complete remedial action necessary to abate the violation set forth in the Director's decision; or

B) modify~~reduce~~ the civil penalty assessed in the Director's decision.

3) A replacement Director's decision shall be issued to correct an administrative error contained in the Director's decision~~ or the Notice of Violation~~.

4) The permittee shall have no right to hearing associated with the issuance of an amended or replacement Director's decision unless the period to appeal the original Director's decision has not expired or the amended or replacement Director's decision alleges new facts, violations, or additional or modified civil penalties, not contained in the original Director's decision.

j~~i~~) If the Director's decision includes the assessment of a civil penalty, and the person or permittee named in the Director's decision does not request a hearing in accordance with Section 240.180 to contest the amount of the penalty, the amount assessed shall be paid to the Department in full within 30 days after service of the Director's decision.

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

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 240.180 Enforcement Hearings ~~and Enforcement Cessation Orders~~**

a) *A person or permittee shall have 30 days from the date of service of the Director's decision to request a hearing.* (Section 8a of the Act) A person or permittee seeking to contest any Director's decision in which a civil penalty has been assessed shall submit the assessed amount to the Department, by cashier's~~cashiers~~ check or money order, together with a timely request for hearing. The assessed amount shall be deposited by the Department pending the outcome of the hearing. The assessed amount shall be refunded to the person or permittee at the conclusion of the hearing if the Department does not prevail. All requests for hearing shall be mailed or delivered to the Department's office located in Springfield, Illinois.

b) *Upon receipt of a request* for hearing submitted in accordance with subsection (a), *the Department shall provide an opportunity for a formal hearing upon not less than 5 days* written notice mailed to the permittee or person submitting the hearing request. (Section 8a of the Act) The hearing shall be conducted by a Hearing Officer designated by the Director and shall be conducted in accordance with the following procedures:

1) Pre-Hearing Conference

A) A pre-hearing conference shall be scheduled within 30 days after the request for hearing:

i) to define the factual and legal issues to be litigated at the administrative hearing;

ii) to determine the timing and scope of discovery available to the parties;

iii) to set a date for the parties to exchange all documents they intend to introduce into evidence during the hearing, a list of all witnesses the parties intend to have testify and a summary of the testimony of each witness;

iv) to schedule a date for the administrative hearing; and

v) to arrive at an equitable settlement of the hearing request, if possible.

B) Pre-hearing conferences under this Section may be conducted via telephone conference if that procedure is acceptable to all parties to the hearing. In the event that a telephone conference is not acceptable to all parties, the pre-hearing conference shall be conducted at the place designated by the Hearing Officer.

C) Either party may file motions for default judgment, motions for summary judgment, motions for protective orders and motions for orders compelling discovery. The Department's Hearing Officer shall render an order granting or denying motions filed within 15 days after service. Any order granting a motion for default judgment or a motion for summary judgment shall constitute the Department's final administrative decision as to the matter being contested.

2) If a settlement agreement is entered into at any stage of the hearing process, the person to whom the notice of violation or cessation order was issued will be deemed to have waived all right to further review of the violation or civil penalty in question, except as otherwise expressly

provided for in the settlement agreement. The settlement agreement shall contain a waiver clause to this effect. All settlement agreements shall be executed by the Hearing Officer and shall constitute the Department's final administrative decision as to matter being contested.

3) All hearings under this Section shall be conducted in accordance with Article 10 of the Illinois Administrative Procedure Act [5 ILCS 100/Art. 10]. ~~All hearings under this Section shall be conducted in the Department's offices located in Springfield, Illinois. However, the Department may conduct a hearing under this Section at a site located closer than Springfield to the production and/or injection/disposal well identified in the Director's decision being contested if facilities are available and convenient satisfactory to the Department.~~

4) All hearings conducted pursuant to this Section are open to the public and are held in compliance with the Americans With Disabilities Act of 1990 (42 USC 12101 et seq.). The hearings will be held at locations ordered by the Hearing Officer. The Hearing Officer will select hearing locations that comply with any geographic requirements imposed by applicable law and, to the extent feasible, promote the convenience of the parties and the conservation of the Department's resources. All hearings are subject to cancellation without notice. Interested persons may contact the Department or the Hearing Officer for information about the hearing. Parties, participants and members of the public must conduct themselves with decorum at the hearing.

5) Upon the motion of any party, the Hearing Officer may order that a hearing be held by telephone conference, video conference or other electronic means. In deciding whether a hearing should be held by telephone conference, video conference or other electronic means, factors that the Hearing Officer shall consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness.

6~~4~~) At the hearing the Department shall have the burden of proving the facts of the violation alleged in the notice of violation at issue. The amount of any civil penalty assessed shall be presumed to be proper; however, the operator may offer evidence to rebut this presumption. The standard of

proof shall be a preponderance of the evidence. The person or permittee shall have the right to challenge the Hearing Officer if the person or permittee believes the Hearing Officer is prejudiced against him or her or has a conflict of interest. If the Hearing Officer disqualifies himself or herself, the Director shall designate a new Hearing Officer. The Hearing Officer shall conduct the hearing, hear the evidence and at the conclusion of the hearing render recommended findings of fact, recommended conclusions of law and recommendations as to the disposition of the case.

7~~5~~) The Director shall review the administrative record in conjunction with the Hearing Officer's recommended findings of fact, recommended conclusions of law and recommendations as to the disposition of the case. *Within 30 days* after *the close of the hearing record or expiration* after *the time to request a hearing, the Department shall issue a final administrative order~~decision~~.* (section 8a of the Act)

c) *Failure of the person or permittee to timely request a hearing or, if a civil penalty has been assessed, to timely tender the assessed civil penalty, shall constitute a waiver of all legal rights to contest the Director's decision, including the amount of any civil penalty.~~.~~* (Section 8a of the Act)

d) *If, at the expiration of the period of time originally fixed in the Director's decision or at the expiration of any subsequent extension of time granted by the Department, the Department finds that the violation has not been abated, it may immediately order the cessation of operations or the portions thereof relevant to the violations* pursuant to 62 Ill. Adm. Code 240.185. (Section 8(a) of the Act)

~~e) Notice of the cessation order shall be served in accordance with Section 240.185(c). The notice shall contain a scheduled hearing date that shall be within 30 days after the issuance of the cessation order to determine whether the person or permittee has complied with any final administrative order upon which the cessation order is based. The hearing shall be conducted by a Hearing Officer, designate by the Director, and held in the Department office in Springfield, Illinois.~~

~~f) The cessation order shall provide that the person or permittee named in the order has the right to request a temporary relief hearing before the scheduled date of the cessation order hearing, in accordance with Section 240.190.~~

~~g)~~ ~~*A cessation order issued under this Section shall continue in effect until modified, vacated, or terminated by the Department.* (Section 8a of the Act) The filing of a request for temporary relief, under Section 240.190 shall not operate as a stay of the cessation order. The cessation order may be stayed by the grant of temporary relief, in accordance with Section 240.190.~~

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 240.185 Cessation of ~~Oil Production~~ Operations Orders**

a) *If, at the expiration of the period of time originally fixed in a Director's decision* issued pursuant to Section 240.180 *or in any subsequent extension of time granted by the Department, the Department finds that the violation has not been abated, it may immediately order the cessation of operations or the portions thereof relevant to the violation.* (Section 8a of the Act)~~The Department may issue orders requiring the cessation of operations, with or without issuing a notice of violation in accordance with Section 240.160.~~

b) *If the Department determines that any condition or practice exists, or that any person or permittee is in violation of any requirement of the Act or* this Part *or any permit condition, which condition, practice or violation creates an imminent danger to the health or safety of the public, or an imminent danger of significant environmental harm or significant damage to property, any authorized employee or agent of the Department may order the immediate cessation of operations.* (Section 19.1 of the Act)~~ The following constitute procedures or violations mandating the issuance of a cessation order under this subsection: operating a well required to be permitted under the Act without first obtaining the Department's transfer of operating authority; operating a well in violation of the Department's spacing requirements; operating wells without paying annual well fees; or operating wells without maintaining the required amount of performance bond in force; or operating wells by a permittee for whom funds have been expended and not reimbursed from the PRF.~~

c) Upon observation of any conditions listed in subsection (b), and prior to issuing a cessation of operations order, the authorized employee or agent of the Department shall make reasonable efforts to locate the responsible party, notify that party of the conditions, and allow them an opportunity to immediately abate the conditions. Reasonable efforts include contacting a permittee at the address required to be submitted in compliance with Section 240.1710. *If a responsible*

*party cannot be readily located in the judgment of the employee or agent issuing the order, the employee or agent may take any action he or she deems necessary to cause a cessation of operations and abatement of any condition.* (Section 19.1 of the Act). If the responsible party is located and does not take immediate action to abate the conditions, the employee or agent may take any action he or she deems necessary to cause a cessation of operations and abatement of any condition.

d) The Department may issue orders requiring the cessation of operations, with or without issuing a notice of violation in accordance with Section 240.150.

e) If a responsible party cannot be located, or if the responsible party is located and does not take immediate action to abate the conditions, a~~*The*~~ *cessation order shall be served by personal delivery to the person or permittee named in the order or by mailing it certified mail, return receipt requested, to the last known address of the person or permittee as soon as is practicably possible but in no event later than 5 days after its issuance.* (Section 19.1 of the Act)

f~~d~~) The cessation order shall contain a date for a hearing that shall be held within 30 days after the issuance of the cessation order. The hearing shall be conducted in accordance with the requirements of Section 204.180(b)~~by a Hearing Officer, designated by the Director, held in the Department's office in Springfield, Illinois, and conducted in accordance with Article 10 of the Illinois Administrative Procedure Act [5 ILCS 100/Art. 10]~~.

g~~e~~) The cessation order shall also provide that the person or permittee named in the order has the right to request a temporary relief hearing, within 14 days from the date of issuance of the cessation order, in accordance with Section 240.190. The cessation order shall be considered served when personally delivered to the person or permittee named in the order or when the cessation order is mailed by certified mail, return receipt requested, to the person or permittee at his or her last known address.

~~f) At the cessation order hearing scheduled to determine whether the person or permittee has complied, the Department shall have the burden of proving the facts of the violation alleged in the cessation order. The standard of proof shall be a preponderance of the evidence. The Hearing Officer shall conduct the hearing, hear the evidence and, at the conclusion of the hearing, render findings of fact and conclusions of law and issue the final administrative decision of the Department,~~

~~pursuant to Section 10 of the Act.~~

h~~g~~) A cessation order issued under this Section shall continue in effect until modified, vacated, or terminated by the Department. The filing of a request for temporary relief under Section 240.190 shall not operate as a stay of the cessation order. The cessation order may be stayed by the grant of temporary relief in accordance with Section 240.190.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 240.186 Cessation of Conditions Creating an Imminent Danger to Public Health and Safety and the Environment (Repealed)**

~~a)~~ ~~The Department may issue cessation orders requiring the cessation of conditions causing, or the correction of any condition that creates, a threat to the health or safety of the public or an imminent danger of significant environmental harm or significant damage to property, with or without issuing a notice of violation in accordance with Section 240.160.~~

~~b)~~ ~~*If the Department determines that any condition or practice exists, or that any person or permittee is in violation of any requirement of the Act or* this Part *or any permit condition, which condition, practice or violation creates an imminent danger to the health or safety of the public, or an imminent danger of significant environmental harm or significant damage to property, any authorized employee or agent of the Department may order the immediate cessation of* the condition or practice. (Section 19.1 of the Act) The following constitute conditions or violations mandating the issuance of a cessation order under this subsection: drilling or operating, without a permit from the Department, a well required to be permitted under the Act; operating an annular or casing injection/disposal well; or failure to repair a leak or cease improper discharge of saltwater, oil or other liquid oilfield wastes from a well, tank or flowline or by a liquid oilfield waste hauler.~~

~~c)~~ ~~*If a responsible party cannot be readily located, in the judgment of the employee or agent issuing the* cessation *order*, or fails to respond, within the time frame specified in the cessation order, to correct the condition endangering the public health, safety or the environment, *the employee or agent may take any action he or she deems necessary to cause a cessation of operations and abatement of any condition* observed (Section 19.1 of the Act), including emergency activities specified in Section 240.1630.~~

~~d)~~ ~~*The cessation order shall be served by* personal delivery to the person or permittee named in the order or by *mailing it certified mail, return receipt requested, to the last known address of the person or permittee as soon as is practicably possible but in no event later than 5 days after its issuance.* (Section 19.1 of the Act). The notice shall contain a scheduled hearing date that shall be held within 30 days after the issuance of the cessation order. The hearing shall be conducted in accordance with Article 10 of the Illinois Administrative Procedure Act by a Hearing Officer designated by the Director and held in the Department's office in Springfield, Illinois.~~

~~e)~~ ~~At the hearing, the Department shall have the burden of proving the facts of the violation alleged in the cessation order. The standard of proof shall be a preponderance of the evidence. The Hearing Officer shall conduct the hearing, hear the evidence, and, at the conclusion of the hearing, render findings of fact and conclusions of law and issue the final administrative decision of the Department, pursuant to Section 10 of the Act.~~

~~f)~~ ~~*A cessation order issued under this* Section *shall continue in effect until modified, vacated, or terminated by the Department* (Section 8(a) of the Act). A cessation order issued under this Section is not subject to temporary relief under Section 240.190.~~

(Source: Repealed at 43 Ill. Reg. _____, effective _____)

**Section 240.190 Temporary Relief Hearings**

a) Pending the holding of a hearing in accordance with Sections~~Section~~ 240.185 and~~(d) or~~ 240.180~~(e)~~ relating to a cessation order issued under Section 240.185~~ or 240.180~~, the person or permittee affected by the Department's action may file a written request for temporary relief from the cessation order, together with a detailed statement giving reasons for granting such relief. The person or permittee shall serve the request for temporary relief within 14 days after service of the cessation order.

b) The Department shall commence a hearing within 5 working days after receipt of a timely request for temporary relief and may grant that relief, under such conditions as it may prescribe, if the person or permittee requesting temporary relief shows a substantial likelihood that the findings of the Department will be

favorable to him or her and the relief will not adversely affect the health or safety of the public or cause significant environmental harm or significant damage to property.

c) All hearings under this Section shall be conducted in accordance with Article 10 of the Illinois Administrative Procedure Act [5 ILCS 100]. All hearings under this Section shall be conducted in the Department's offices located in Springfield, Illinois. However, the Department may conduct a hearing under this Section at a site located closer than Springfield to the production and/or injection/disposal well identified in the Director's decision being contested if facilities are available and convenient, as determined by the Department.

d) All hearings conducted under this Section are open to the public and are held in compliance with the Americans With Disabilities Act of 1990. The hearings will be held at locations ordered by the Hearing Officer. The Hearing Officer will select hearing locations that comply with any geographic requirements imposed by applicable law and, to the extent feasible, promote the convenience of the parties and the conservation of the Department's resources. All hearings are subject to cancellation without notice. Any rescheduled hearing shall comply with this Subpart A. Interested persons may contact the Department or the Hearing Officer for information about the hearing. Parties, participants and members of the public must conduct themselves with decorum at the hearing.

e) Upon the motion of any party, the Hearing Officer may order that a hearing be held by telephone conference, video conference or other electronic means. In deciding whether a hearing should be held by telephone conference, video conference or other electronic means, factors that the Hearing Officer shall consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness.

f~~d~~) At the hearing, the permittee shall have the burden of proving that temporary relief from the cessation order will not adversely affect the health or safety of the public or cause environmental harm or significant damage to property. The Hearing Officer shall conduct the hearing, hear the evidence and, at the conclusion of the hearing, render findings of fact, conclusions of law and the disposition of the case.

g~~e~~) The Hearing Officer shall issue a final administrative decision granting or

denying temporary relief from the cessation order within 7 days after the close of the administrative record, pursuant to Section 10 of the Act. Temporary relief shall not extend for more than 90 days, after which the cessation order shall be reinstated pending the outcome of the cessation order and pending a resolution of the violations of the Act specified in the cessation order.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

SUBPART D: SPACING OF WELLS

**Section 240.420 Well Location Exceptions within Drilling Unit**

a) Whenever the ~~topographical~~ conditions ~~(e.g., hills, creeks, ponds, lakes) or cultural features (e.g., occupied dwellings, buildings, roadways, powerlines, pipelines)~~ of a drilling unit render it impractical to drill an oil or gas well at a location conforming to the requirements of Section 240.410, an oil or gas well may be drilled at a nonconforming location as follows:

~~1)~~ ~~The permittee is allowed, without prior approval from the Department, to move the location maximum of 30 feet from the permitted location, provided the amended location is not closer than 330 feet (or other applicable setback) to the nearest lease boundary line, and provided the amended location is surveyed and an amended application, showing the amended location and the reason the location was moved, is submitted to the Department within 10 days of moving the location.~~

1~~2~~) ~~If the proposed well location is more than 30 feet from a location conforming to the requirements of Section 240.410, an application must be submitted showing the proposed location and the reason the location is requested. Approval for such location must be received from the Department prior to the commencement of drilling.~~ If the proposed location is less than 330 feet (or other applicable setback) from the nearest lease boundary line, the application shall be accompanied by a written agreement or agreements between the applicant and any leaseholders or mineral rights owners (if no leaseholder exist) whose leases or mineral rights are adjacent to and less than 330 feet (or other applicable setback) from the proposed location. In lieu of the submission of a written agreement or agreements, the applicant shall give notice by certified mail, return receipt requested, to any leaseholders or mineral rights owners (if

no leaseholders exist) whose leases or mineral rights are adjacent to and less than 330 feet (or other applicable setback) from the proposed location. The notice shall include the proposed location of the well and the reason the location is requested, and shall inform the leaseholders or mineral rights owners that they may file written objections with the Department within 15 days after service of the notice. If a written objection is received, the matter shall be set for hearing, which shall be conducted in accordance with the provisions of Section 240.370(d) of this Part.

2~~3~~) In determining whether to approve a proposed nonconforming location, the Department will consider the feasibility and expense of drilling on location, any hazard or damage to persons or property or to the environment, and whether the proposed location would adversely affect the correlative rights of any of the owners of the reservoir or result in waste or the drilling of unnecessary wells.

b) If at the time of application, a lease immediately adjacent to a proposed drilling unit has producing wells located less than 330 feet from the common boundary line, then a well on the proposed drilling unit may be located at a distance closer than 330 feet but no closer than the distance to the common boundary line of the immediately offsetting well.

c) If a drilling unit is located over an active mine, the mined-out or inaccessible portion of an active mine, an abandoned mine, or the undeveloped limits of a mine, the proposed well can be located so that it will be drilled into an existing or proposed mine pillar subject to the conditions and limitations set forth in subsections (a) and (b) above.

~~d) If during drilling the well is lost (collapsed casing or hole, etc.), the permittee may terminate drilling and move the rig up to 30 feet from the permitted location and commence drilling operations, provided that:~~

~~1) the permittee notifies the District Office prior to the move and receives approval;~~

~~2) a new application and fee is submitted within 10 days in accordance with Section 240.220 of this Part; and~~

~~3) the new location is in compliance with all other requirements of this Part.~~

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 240.425 Change of a Permitted Drilling Location**

a) If, after a permit is issued but prior to the commencement of drilling, the permittee determines that the permitted location is impractical to drill:

1) The permittee is allowed, without prior approval from the Department, to move the location a maximum of 60 feet from the permitted location, provided the amended location meets the requirements of Section 240.410 or the location exceptions in Section 240.420. A surveyed, amended application, showing the amended location and the reason the location was moved, shall be submitted to the Department within 10 days after moving the location.

2) If the proposed well location is more than 60 feet from the permitted location, provided the amended location meets the requirements of Section 240.410 or the location exceptions in Section 240.410, a surveyed, amended application must be submitted showing the proposed location and the reason the location is requested. Approval for the location must be received from the Department prior to the commencement of drilling.

b) If, during drilling, the well is lost (collapsed casing or hole, etc.), the permittee may terminate drilling and move the rig up to 30 feet from the permitted location and commence drilling operations, provided that:

1) the permittee notifies the District Office prior to the move and receives approval;

2) a new application and fee is submitted within 10 days in accordance with Section 240.220; and

3) the new location is in compliance with all other requirements of this Part.

(Source: Added at 43 Ill. Reg. _____, effective _____)

SUBPART H: LEASE OPERATING REQUIREMENTS

**Section 240.810 Tanks, Tank Batteries and Containment Dikes**

a) Tank Battery Registration

1) All new tank batteries constructed after July 1, 2001 shall be registered with the Department, when the tank battery is constructed, by the permittee of the wells on the lease where the tank battery is located. Registration shall be on a form prescribed by the Department.

2) All tank batteries existing on July 1, 2001 are required to be registered with the Department by the permittee of the wells on the lease where the tank battery is located.

3) All tank batteries shall be transferred, at the time of associated well transfers, on forms prescribed by the Department.

4) No fee will be charged for tank registration and tank battery transfer.

5) The tank battery registration number shall be displayed on the tank battery.

b) Tank and Tank Battery Requirements

1) All tanks and tank batteries containing produced fluids or equipped to receive produced fluids shall be surrounded by containment dikes.

2) Tanks shall not be buried.

3) All tanks shall be maintained in a leak-free condition.

4) All open top tanks shall be covered with bird netting or other system designed to keep birds and flying mammals from landing in the tank.

5) New tank batteries constructed after July 1, 2001 shall not be located:

A) within 200 feet of an existing occupied dwelling, unless the current owner of the structure has provided a written waiver consenting to the construction closer than 200 feet, in which case the tank battery shall be completely fenced to prevent unauthorized access; or

B) within 200 feet of a stream, body of water, or marshy land, unless the permittee can demonstrate to the Department that construction standards or topography will prevent accidental discharge into these features.

c) Containment Dike Construction

1) A containment dike shall have a capacity of at least 1½ times the largest tank it contains and be bermed at least 18 inches above the highest ground surface surrounding the outside of the containment dike and at least 18 inches above the highest ground surface inside of the containment dike.

2) Containment dikes shall be constructed of native soil. In areas of sand, containment dikes shall be constructed of clay soil and the bottom of the dike area shall be lined with at least 6 inches of clay soil.

3) Alternative Construction of Containment Dikes
Containment dikes may be constructed of formed corrugated galvanized steel sheeting and a synthetic flexible liner at least 30 mils in thickness that is manufactured specifically for this purpose. The containment dike structure shall be constructed in accordance with the manufacturer's specifications and must meet the following requirements:

A) The bottom of the corrugated steel enclosure shall be set into the soil to a depth of at least 6 inches below the ground surface.

B) The corrugated steel enclosure shall be secured to galvanized steel braces placed around the outside perimeter at intervals that will prevent sagging or collapse of the structure.

C) Adjoining sections of the liner must be sealed together to prevent leaks.

D) The liner shall be secured to the top of the entire perimeter of the steel enclosure.

E) The containment dike structure shall be approved by a Department representative prior to being placed into service. If the construction is not approved by the Department, any deficiencies shall be remedied by the permittee and approved by the Department prior to the structure being placed into service.

F) The containment dike structure shall be maintained in a leak-free condition. If the Department has reason to believe the liner has a leak, the permittee shall immediately cease use of the enclosed tank battery until the liner has been repaired to a leak-free condition and has been inspected and approved for future use by the Department.

G) The containment dike structure shall meet all other requirements of subsections (c), (d) and (e).

4) The permittee may petition the Department to utilize an alternative construction method for containment dikes other than the one described in subsection (c)(3). The request must be made in writing and submitted to the Office's main Springfield location. Upon receipt of a written request for an alternative containment dike construction method, the Department shall review the request and shall respond to the permittee within 30 days. All final decisions on requests for alternative construction methods for containment dikes shall be considered final administrative decisions of the Department.

5~~4~~) Containment dikes shall not have any breach or other uncontrolled conduit that penetrates the dike and allows the discharge of produced water, liquid oilfield wastes or stormwater.

6~~5~~) Discharge of produced fluids, stormwater or other liquid oilfield wastes is prohibited, unless the permittee obtains an NPDES permit from the Illinois Environmental Protection Agency (IEPA).

d) Containment Dike Maintenance

1) The area within the dike shall remain free of liquid oilfield waste, general oilfield waste, equipment debris, stormwater runoff and excessive vegetation.

2) Any spill or discharge of produced fluids or other liquid oilfield wastes occurring within a containment dike shall be remediated in place in accordance with Section 240.891(a).

3) Any spill escaping from a containment dike shall be cleaned up in accordance with Sections 240.890 and 240.895.

e) Tank and Containment Dike Restoration

1) Remove all tanks and aboveground piping and flowlines coming into tank battery.

2) Level and grade soil containment dikes.

3) Remove from site all non-soil constructed containment dikes.

4) Remediate all oil contaminated soil at tank site in accordance with Section 240.891(a).

(Source: Amended at 43 Ill. Reg. _____, effective _____)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENT

1) Heading of the Part: General Definitions

2) Code Citation: 62 Ill. Adm. Code 1701

3) Section Number: 1701.APPENDIX A
Proposed Action: Amendment

4) Statutory Authority: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

5) A Complete Description of the Subjects and Issues Involved: Pursuant to PA 100-936, procedures for submission of information related to ownership and control of mining operations are being added, revised or deleted. Also, definitions related to government financed projects are being added.

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: Comments on the proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice to:

Amy Oakes, Legal Counsel
Department of Natural Resources
One Natural Resources Way
Springfield IL 62702-1271

217/558-6622

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENT

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: The rules amending Parts 1701 and 1703 to implement the requirements created by PA 100-936 would affect small municipalities that provide any amount of government financing for highway or other construction projects in which the extraction of coal is incidental to that project.

B) Reporting, bookkeeping or other procedures required for compliance: The proposed rules will require the person conducting the incidental coal extraction to make available for onsite inspection the following documentation described in Part 1703: a description of the construction project; the exact location of the construction, right-of-way or the boundaries of the area which will be directly affected by the construction; and the government Agency which is providing the financing and the kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing. Therefore, the municipality providing financing for the project will need to create and maintain the appropriate records. However, these are the types of records that would be generated in a municipality's ordinary course of business and should not require any additional administrative procedures.

C) Types of professional skills necessary for compliance: Record keeping and file maintenance

14) Regulatory Agenda on which this rulemaking was summarized: July 2018

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

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENT

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1701
GENERAL DEFINITIONS

Section
1701.5 Definitions

1701.APPENDIX A Definitions

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 4932; amended at 11 Ill. Reg. 8075, effective July 1, 1987; amended at 14 Ill. Reg. 11800, effective January 1, 1991; amended at 15 Ill. Reg. 17141, effective January 1, 1992; amended at 17 Ill. Reg. 10947, effective July 1, 1993; amended at 20 Ill. Reg. 1962, effective January 19, 1996; recodified from the Department of Mines and Minerals to the Department of Natural Resources at 21 Ill. Reg. 16192; amended at 22 Ill. Reg. 20169, effective November 5, 1998; amended at 24 Ill. Reg. 5909, effective March 21, 2000; amended at 27 Ill. Reg. 4595, effective February 26, 2003; amended at 43 Ill. Reg. _____, effective _____.

**Section 1701.APPENDIX A Definitions**

As used in 62 Ill. Adm. Code 1700 through 1850, the following terms have the specified meanings, except when another meaning is given:

"Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

"Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water or weather processes, form acids that may create acid drainage.

"Act" or "Federal Act" means the Surface Mining Control and Reclamation Act of

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENT

1977~~,~~ (P.L. 95-87; ~~(~~30 USC 1201 et seq.).

"Adjacent area" means the area located outside the permit area, or shadow area, where a resource or resources, determined according to the context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed mining operations.

"Administratively complete application" means an application for permit approval or approval for coal exploration where required, which the Department determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review.

"Affected area" means, with respect to surface mining activities, any land or water upon or in which those activities are conducted or located. With respect to underground mining activities, affected area means: any water or surface land upon which those activities are conducted or located.

"Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

"Applicant" means any person seeking a permit; permit revision; renewal; or transfer, assignment or sale from the Department to conduct surface coal mining and reclamation operations or, where required, seeking approval for coal exploration.

"Applicant Violator System" or "AVS" means the computer system maintained by OSM to identify ownership or control links involving permit applicants, permittees, and persons cited in violation notices.

"Application" means the documents and other information filed with the Department under these regulations for the issuance of permits; revisions; renewals; and transfer, assignment, or sale of permit rights for surface coal mining and reclamation operations or, when~~where~~ required, for coal exploration.

*"Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface*

*configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, and spoil piles and coal refuse piles eliminated.* Permanent water impoundments may be permitted where the Department has determined that they comply with 62 Ill. Adm. Code 1816.49 and 1816.56, 1816.133 or 1817.49, 1817.56 and 1817.133. (Section 1.03(a)(2) of the State~~Surface Coal Mining Land Conservation and Reclamation~~ Act ~~[225 ILCS 720/1.03(a)(2)]~~)

"Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for specific use.

"Article" means an Article of the State Act.

"Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the cliff or highwall and transporting the coal along an auger bit to the surface.

"Best technology currently available" means equipment, devices, systems, methods, or techniques that~~which~~ will:

> prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by 62 Ill. Adm. Code 1816.42; and
>
> minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques that~~which~~ are currently available anywhere as determined by the Department, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 62 Ill. Adm. Code 1816 and 1817.

"Boxcut" means the first open cut resulting in the placing of overburden on unmined land adjacent to the initial pit.

"Cemetery" means any area of land where human bodies are interred.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENT

"Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-84 found at pp. 247-252 in Vol 5.05 of the Annual Book of ASTM Standards published by the American Society for Testing and Materials, 1916 Race St., Philadelphia PA 19103.

"Coal exploration" means the field gathering of:

surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

the gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 62 Ill. Adm. Code 1700 through 1850.

"Coal mine waste" means coal processing waste and underground development waste.

"Coal mining operation" means the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the area upon which the~~such~~ activities occur.

"Coal processing or coal preparation" means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.

"Coal preparation plant" means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities including, but not limited to the following: loading facilities; storage and stockpile facilities; sheds, shops and other buildings; water treatment and water storage facilities; settling basins and impoundments; coal processing and other waste disposal areas.

"Coal processing waste" means earth materials that~~which~~ are separated and wasted from the product coal during cleaning, concentrating, or other processing or preparation of coal.

"Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

"Community or institutional building" means any structure, other than a public building or an occupied dwelling, that~~which~~ is used primarily for functions of community groups; used for an educational, cultural, historic, religious, scientific, correctional, mental-health or physical-health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

"Compaction" means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

"Complete and accurate application" means an application for permit approval or approval for coal exploration when~~where~~ required, that~~which~~ the Department determines contains all information ~~which~~ the State Act and 62 Ill. Adm. Code 1700 through ~~–~~1850 require.

"Consolidated material" means materials of sufficient hardness or stability to resist weathering so as to inhibit erosion or sloughing.

"Control" or "Controller", when used in 62 Ill. Adm. Code 1773, 1774 and 1778, refers to or means:

a permittee of a surface coal mining operation;

an operator of a surface coal mining operation; or

any person who has the ability to determine the manner in which a surface coal mining operation is conducted.

"Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

"Cumulative impact area" means the area, including the permit area, within which

impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

the proposed operation;

all existing operations;

any operation for which a permit application has been submitted to the Department.

"Darkened surface soil" means mineral horizons formed at or adjacent to the surface of the soil that~~which~~ are higher in organic matter content~~,~~ and visibly darker in color than the immediately underlying horizons.

"Department" means the Illinois Department of Natural Resources, Office of Mines and Minerals, or its successor.

"Direct financial interest" means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement in which~~where~~ the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property, and other financial relationships.

"Director" means the Director of the Department of Natural Resources.

"Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by 62 Ill. Adm. Code 1800 is released.

"Diversion" means a channel, embankment, or other man-made structure constructed to divert water from one area to another.

"Downslope" means the land surface between the projected outcrop of the lowest coalbed being mined along each highwall and a valley floor.

"Drinking, domestic or residential water supply" means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included except to the extent the water supply is for direct human consumption, human sanitation, or domestic use.

"Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

"Employee" means:

any person employed by the Department who performs any function or duty under the Act; and

advisory board or commission members and consultants who perform any function or duty under the Act, if they perform decision-making functions for the Department under the authority of State law or regulations. However, members of advisory boards or commissions established in accordance with State law or regulations to represent multiple interests are not considered to be employees. State officials may through State law or regulations expand this definition to meet their program needs.

"Ephemeral stream" means a stream that~~which~~ meets both of the following requirements:

It flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice; and

It has a channel bottom that is always above the local water table.

"Excess spoil" means spoil material disposed of in a location other than the mined-out area; provided, the spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with 62 Ill. Adm. Code 1816.102(d) and 1817.102(d) in nonsteep slope areas shall not be considered excess spoil.

"Existing structure" means a structure used in connection with surface coal mining and reclamation operations for which construction began prior to June 1, 1982.

"Extraction of coal as an incidental part" means the extraction of coal that is necessary to enable the construction to be accomplished. For purposes of this Part, only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of the Act and this Part.

"Federal Director" means the Director of the Federal Office of Surface Mining Reclamation and Enforcement.

~~"Federal violation notice" means a violation notice issued by OSM or by another agency or instrumentality of the United States.~~

"Final cut" means the last pit created in a surface-mined area.

"Fragile lands" means geographic areas containing important natural, ecologic, scientific or esthetic resources that could be damaged or destroyed by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, National Natural Landmark sites, areas where mining may cause flooding, environmental corridors containing a concentration of ecologic and esthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under Section 7.01 of the State Act [225 ILCS 720/7.01] and 62 Ill. Adm. Code 1761.11, if those areas have characteristics requiring additional areal protection or if the buffer zone itself contains fragile resources.

"Fugitive dust" means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation, it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which

material is either removed, stored, transported, or redistributed.

"Government financing agency" means a federal, State, county, municipal or other unit of local government, or a department, bureau, agency or office of the unit that, directly or through another unit of government, finances construction.

"Government-financed construction" means construction funded at 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds. Government financing at less than 50 percent may qualify if the construction is undertaken as an approved reclamation project under Title IV of the Act. Construction funded through government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments does not qualify as government-financed construction.

"Gravity discharge" means, with respect to underground mining activities, mine drainage that flows freely in an open channel downgradient. Mine drainage that occurs as a result of flooding a mine to the level of the discharge is not gravity discharge.

"Ground cover" means the area of ground covered by the combined aboveground parts of vegetation and by the litter that is produced naturally on site.

"Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

"Head-of-hollow fill" means a fill structure consisting of any material, other than organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than 20 degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten degrees. In head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

"High capability land" means land not meeting the definition of prime farmland or land exempted in accordance with 62 Ill. Adm. Code 1785.17 when~~where~~ the Department determines the following three facts are present together:

The land is capable of being reclaimed for row-crop agricultural purposes;

The land is suitable for row-crop agricultural purposes based on U.S. Department of Agriculture, Soil Conservation Service (SCS) soil survey classifications of the affected land prior to mining (all soil types in capability Classes I, II, III and those soil types in capability Class IV with slopes of five percent or less), as set forth in Land-Capability Classification, Agriculture Handbook No. 210, published by the SCS~~U.S. Department of Agriculture, Soil Conservation Service in~~ 1973; and

The optimum future use of the land is for row-crop agricultural purposes.

"Highwall" means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

"Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

"Higher or better uses" means post-mining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses.

"Historically used for cropland" means:

Lands that have been used for cropland for any five years or more out of the 10~~ten~~ years immediately preceding the acquisition, including purchase, lease, or option, of the lands for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations;

Lands that the Department determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration that the permit area is clearly cropland but falls outside the specific five-years-in-10~~ten~~ criterion, in which case the regulations for prime farmland shall be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or

Lands that would likely have been used as cropland for any five out of the last 10~~ten~~ years, immediately preceding ~~such~~ acquisition but for the same

fact of ownership or control of the land unrelated to the productivity of the land.

"Historic lands" means, for purposes of implementing 62 Ill. Adm. Code 1762 and 1764, important historic, cultural, and scientific areas that could be damaged or be destroyed by surface coal mining operations. Examples of historic lands include archaeological and paleontological sites, National Historic Landmark sites, sites listed on or eligible for listing on a State or National Register of Historic Places, sites having religious or cultural significance to native Americans or religious groups or sites for which historic designation is pending.

"Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

"Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

"Imminent danger to the health and safety of the public" *means the existence of any condition or practice, or any violation of a permit or other requirements of the State Act in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.* (Section 1.03(a)(7) of the State Act~~Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720/1.03(a)(7)]~~)

"Impounding structure" means a dam, embankment, or other structure used to impound water, slurry, or other liquid or semi-liquid material.

"Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment~~,~~ or waste.

"Indirect financial interest" means the same financial relationships as for direct ownership, but from which~~where~~ the employee reaps the benefits of the~~such~~ interests, including interests held by his or her spouse, minor child and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's duties and the coal mining operation in which the spouse, minor children, or other resident relatives hold a financial interest.

"In situ processes" means activities conducted in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

"Intermittent stream" means:

A stream or reach of a stream that drains a watershed of at least one square mile; or

A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

"Irreparable damage to the environment" means any damage to the environment in violation of the State Act or 62 Ill. Adm. Code, Chapter I that cannot be corrected by actions of the applicant.

"Knowing" or "Knowingly" means that a person who authorized, ordered or carried out an act or omission knew, or had reason to know, that the act or omission would result in either a violation or a failure to abate or correct a violation.

"Land capability" means the soils' premining capabilities based on the SCS~~United States Department of Agriculture, Soil Conservation Service~~ classification system as found in Agriculture Handbook No. 210, Land-Capability Classification, (1973) as interpreted from the soils map for sustained production of commonly cultivated crops or for the production of permanent vegetation.

"Land eligible for remining" means those lands that would otherwise be eligible

for expenditures under section~~Section~~ 402(g)(4) or section~~Section~~ 404 of the Surface Mining Control and Reclamation Act of 1977 (30 USC 1232(g)(4) and~~,~~ 1234).

"Land use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the Department in accordance with 62 Ill. Adm. Code 1780.23.

"Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Allowable support facilities include access roads, farm buildings, hedgerows, erosion control structures such as grassed waterways, terraces and sediment ponds, and other incidental facilities related to cropland management, except that no facility, other than erosion control structures, may be located on prime farmland.

"Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by the livestock or occasionally cut and cured for livestock feed. Allowable support facilities include access roads, farm buildings, erosion control structures such as grassed waterways, downdrains, terraces and sediment ponds, water impoundments used for stock watering, and other incidental facilities related to pasture management.

"Grazingland" means land used for grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production.

"Forestry" means land used or managed for the long-term production of wood, wood fiber, or wood-derived products. Allowable support facilities include water impoundments, access and fire control lanes, erosion control structures such as grassed waterways, downdrains, terraces and sediment ponds, and other incidental facilities related to sound multiple use management of the forest resource.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENT

"Residential" means land used for single- and multiple-family housing, mobile home parks, and other residential lodgings.

"Industrial/Commercial" means land used for:

Extraction or transformation of materials for fabrication of products, wholesaling of products, or for long-term storage of products. This includes all heavy and light manufacturing facilities.

Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

"Recreation" is land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses. Allowable support facilities include water impoundments, access roads, and other incidental facilities related to the recreational development of the area.

"Fish and wildlife habitat" is land dedicated wholly or partially to the production, protection, or management of fish or wildlife. Allowable support facilities include water impoundments, access lanes, erosion control structures such as grassed waterways, downdrains, terraces and sediment ponds, and other incidental facilities related to sound fish and wildlife management practices.

"Developed water resources" includes land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply. Where appropriate, developed water resources are considered a joint or seasonal use with cropland, pastureland, forestry, recreation and fish and wildlife habitat.

"Undeveloped land or no current use or land management" includes land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession. A post-mining designation of undeveloped land shall not be allowed for any land that~~which~~ is proposed

to be affected by the mining operation.

"Material damage", in the context of 62 Ill. Adm. Code 1784.20 and 62 Ill. Adm. Code 1817.121, means:

Any functional impairment of surface lands, features, structures or facilities;

Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

Any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition.

*"Mining operations or surface coal mining operations" means both surface mining operations and underground mining operations.* (Section 1.03(a)(11) of the State Act~~Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720/1.03(a)(11)]~~)

"Moist bulk density" means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (⅓ bar moisture tension). Weight is determined after drying the soil at 105° C.

"MSHA" means the Mine Safety and Health Administration of the United States Department of Labor.

"Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

"Natural hazard lands" means geographic areas in which natural conditions exist that~~which~~ pose or, as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology.

"Noxious plants" means any plant species listed as a "noxious weed" under regulations authorized by the Illinois Noxious Weed Law [505 ILCS 100]; any

plant species whose seed is listed as a "prohibited (primary) noxious weed" or "restricted" (secondary) noxious weed" or "weed seeds" under regulations authorized by the Illinois Seed Law [505 ILCS 110]; or any plant that~~which~~ the Department of Agriculture has declared a pest under the Illinois Pesticide Act [415 ILCS 60].

"Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

"Office" means the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

"Operator" means any person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth or from coal refuse piles by mining within 12 consecutive calendar months in any one location.

"Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

"Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

"Own", "Owner" or "Ownership", as used in 62 Ill. Adm. Code 1773, 1774 and 1778 (except when used in the context of ownership of real property), means being a sole proprietor or owner of record in excess of 50 percent of the voting securities or other instruments of ownership of an entity.

"Ownership or control link" means any relationship included in the definition of owned or controlled or owns or controls at 62 Ill. Adm. Code 1773.5(a) and (b) or in the violations review provisions of 62 Ill. Adm. Code 1773.15(b). It includes any relationship presumed to constitute ownership or control under the definition of "owned or controlled" or "owns or controls" unless such presumption has been successfully rebutted under the provisions of 62 Ill. Adm. Code 1773.24 and 1773.25.

"Perennial stream" means a stream that flows continuously during all of the calendar year or part of a stream that flows continuously during all of the calendar year. The stream or part of a stream flows continuously as a result of groundwater discharge or surface runoff. The term does not include intermittent

stream or ephemeral stream.

"Performance bond" means a surety bond, collateral bond, or a combination of security bond and collateral bondthereof, by which a permittee assures faithful performance of all the requirements of the Federal Act, the State Act, 62 Ill. Adm. Code, Chapter I, and the requirements of the permit and reclamation plan.

"Performing any function or duty under this Act" means those decisions or actions that, which, if an employee performed or did not perform, would affect the programs under the State Act.

"Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed thatwhich has been approved for retention by the Department and other appropriate State and federalFederal agencies.

"Permanent impoundment" means an impoundment thatwhich the Department approved and, if required, is approved by other State and federalFederal agencies for retention as part of the post-mining land use.

"Permit" means a permit to conduct surface coal mining and reclamation operations thatwhich the Department issues pursuant to the State program.

"Permit area" means the area of land and water within the boundaries of the permit thatwhich are designated on the permit application maps, as approved by the Department. This area shall include all areas:

thatwhich are or will be affected by the surface coal mining and reclamation operations during the term of the permit, including all disturbed areas;

where the operator proposes to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas; and

that are required to be bonded (see 62 Ill. Adm. Code 1800).

These areas shall be indicated on the approved map which the operator submitssubmitted with the operator's application. and which is required to be bonded under 62 Ill. Adm. Code 1800 and where the operator proposes to conduct surface coal mining and reclamation operations under the permit,

~~including all disturbed areas; provided, that areas~~ Areas adequately bonded under another valid permit may be excluded from a permit area. The permit area excludes the area defined in this Part as the shadow area.

"Permit term" *means the period during which the permittee may engage in mining and reclamation operations under the permit.* (Section 1.03(a)(18) of the State Act~~Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720/1.03(a)(18)]~~)

"Permittee" means a person holding or required by the State Act or 62 Ill. Adm. Code, Chapter 1~~these regulations~~ to hold a permit to conduct surface coal mining and reclamation operations issued by a department~~Department~~ pursuant to a State program.

"Person" means an individual, Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, general partnership, limited partnership, business trust association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization, or any agency, unit, or instrumentality of federal~~Federal~~, State or local government, including any publicly-owned utility or publicly-owned corporation of federal~~Federal~~, State or local government.

"Person having an interest which is or may be adversely affected" or "Person with a valid legal interest" shall include any person:

Who uses any resources of economic, recreational, esthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary or the Department; or

Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary or the Department.

"Placeland" means undisturbed land before any mining activity.

"Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in 62 Ill. Adm. Code, Chapter 1~~these regulations~~,

precipitation event also includes that quantity of water emanating from snow cover as snow-melt in a limited period of time.

"Previously mined area" means land that had been mined before August 3, 1977 that has not been reclaimed to the standards of 62 Ill. Adm. Code, Chapter I.

"Prime farmland" means those lands that~~which~~ are defined by the Secretary of Agriculture in 7 CFR 657, effective January 31, 1978 (no incorporation in this Part includes later additions or amendments) ~~(43 Fed. Reg. 4031 (1978))~~ and that~~which~~ have historically been used for cropland as ~~that phrase is~~ defined in this Section~~above~~.

"Principal shareholder" means any person who is the record or beneficial owner of 10~~ten~~ percent or more of any class of voting stock.

"Prohibited financial interest" means any direct or indirect financial interest in any coal mining operation.

"Property to be mined" means both the surface and mineral estates within the permit area and the mineral estate within the shadow area.

"Public building" means any structure that is owned or leased and principally used by a public government agency for public business or meetings.

"Public office" means a facility under the control of a governmental entity that~~which~~ is open to public access on a regular basis during reasonable business hours.

"Public park" means an area or portion of an area dedicated or designated by any federal~~Federal~~, State, or local agency primarily for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved or held open to the public because of that use.

"Publicly-owned park" means a public park that is owned by a federal~~Federal~~, State or local governmental entity.

"Public road" means a road:

that~~which~~ has been designated as a public road pursuant to the law of the

jurisdiction in which it is located;

that~~which~~ is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction;

for which there is substantial (more than incidental) public use; and

that~~which~~ meets road construction standards for other public roads of the same classification in the local jurisdiction.

"Qualified registered professional engineer" means a civil engineer, mining engineer, environmental engineer or general engineer meeting the requirements of Section 9 of the Professional Engineering Practice Act of 1989 [225 ILCS 325~~/9~~].

"Rangeland" means land on which the natural potential (climax) plant cover is principally native grasses, forbs, and shrubs valuable for forage. This land includes natural grasslands and savannahs, such as prairies, and juniper savannahs, such as brushlands. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

"Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation or other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment.

"Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

"Reclamation" means those actions that 62 Ill. Adm. Code, Chapter 1 requires~~which these regulations require~~ to restore mined land to a post-mining land use that~~which~~ the Department has approved. These actions do not include subsidence control measures conducted in the shadow area to restore damaged land to pre-mining capability.

"Recurrence interval" means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the 10~~ten~~-year, 24-hour precipitation event would be that 24-hour precipitation event expected to occur on the average once in 10~~ten~~ years.

"Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by Department-approved crop production methods. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

"Refuse pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semi-liquid material.

"Regional Director" means Regional Director of the~~ Federal~~ Office~~ of Surface Mining Reclamation and Enforcement~~ or Regional Director of the Office's~~Federal Office of Surface Mining Reclamation and Enforcement's~~ representative.

"Regulatory program" means Illinois' permanent regulatory program that~~which~~ the Office~~ of Surface Mining Reclamation and Enforcement~~ approved and set forth in 30 CFR 913.1-913.16, effective July 19, 2004 (no incorporation in this Part includes later additions or amendments)~~ (1994)~~.~~ 30 CFR 913.1-913.16 do not include any subsequent amendments or editions.~~

"Remining" means conducting surface coal mining and reclamation operations that~~which~~ affect previously mined areas.

"Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

"Replacement of water supply" means, with respect to protected water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provisions of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

Upon agreement by the permittee and the water supply owner, the obligation to pay operation and maintenance costs may be satisfied by a one-time payment in an amount that covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

"Responsible land management" means that combination of preparation, maintenance, fertilization and tilling of land capable of producing row crops that~~which~~ would be practiced by a person in the business of producing row crops on unmined land in the same region on the same, or similar, soil type as the mined land being managed, if the~~which~~ practices can reasonably be expected to continue after mining and reclamation are completed, as determined by the Department.

"Road" means a surface right-of-way for purposes of travel by land vehicles used in surface coal mining and reclamation operations or coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haulroads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles to and from transfer, processing or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

"Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces.

"Secretary" means the Secretary of the Interior or the Secretary's representative.

"Sedimentation pond" means an impoundment used to remove solids from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

"Shadow area" means any area beyond the limits of the permit area in which underground mine workings are located. This area includes all resources above

and below the coal that are protected by the State Act that may be adversely impacted by underground mining operations including impacts of subsidence.

"Significant forest cover" means an area where the plant community consists predominantly of trees and other woody vegetation.

"Significant, imminent environmental harm to land, air or water resources" means:

An environmental harm is an adverse impact on land, air~~,~~ or water resources when the~~which~~ resources include, but are not limited to, plant and animal life;

An environmental harm is imminent if a condition, practice~~,~~ or violation exists which:

Is causing the~~such~~ harm; or

May reasonably be expected to cause ~~such~~ harm at any time before the end of the reasonable abatement time that would be set under Section 8.06(c) of the State Act ~~[225 ILCS 720/8.06(c)]~~;

An environmental harm is significant if that harm is appreciable and not immediately reparable.

"Siltation structure" means a device, or devices, used to remove, collect or otherwise control runoff so that resulting outflow will meet applicable effluent standards.

"Slope" means average inclination of a surface measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

"Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four master soil horizons are:

A horizon. The uppermost mineral layer, often called the surface soil or

topsoil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

E horizon. The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from the underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

B horizon. The layer that typically is immediately beneath the A and E horizons and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

C horizon. The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

"Soil survey" means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets the~~such~~ soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in 62 Ill. Adm. Code 1785.17(c)(1).

"Spoil" means overburden that has been removed during surface coal mining operations.

"Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

"State Act" means the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

"State regulatory program" means the Illinois program ~~which~~ the Secretary approved on June 1, 1982 pursuant to 30 CFR 732.1 through 732.15, effective September 30, 1983 (no incorporation in this Part includes later additions or amendments).

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENT

"State violation notice" means a violation notice issued by a State~~state~~ regulatory authority or by another agency or instrumentality of State government.

"Steep slope" means any slope of more than 20 degrees or such lesser slope as the Department may designate after consideration of such regional characteristics as soil and climate.

"Substantially disturb" means, for purposes of coal exploration, to impact significantly upon land, air or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal.

"Substantial legal and financial commitments in a surface coal mining operation" means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities, and other capital-intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or of the right to mine it without an existing mine alone, as described in this~~the above~~ example, are not sufficient to constitute substantial legal and financial commitments.

"Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

"Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over the coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

"Surface coal mining and reclamation operations"~~,~~ or "mining and reclamation operations"~~,~~ means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term "surface coal mining operations".

"Surface coal mining operations" or "mining operations" means:

Activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of section~~Section~~ 516 of the Federal Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce, or the operations of which directly or indirectly affect interstate commerce. These~~Such~~ activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting; in situ distillation or retorting; leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. These~~Such~~ activities also include the loading of coal for interstate commerce at or near the mine-site, provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, when~~where~~ coal does not exceed 16⅔% of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to section~~Section~~ 512 of the Federal Act; and provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

The areas upon which the activities described in the first paragraph of this definition occur or where those activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to these~~any such~~ activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

*"Surface mining operations" means activities conducted on the surface of lands in connection with a surface coal mine or surface operations. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, coal recovery from coal waste disposal areas, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal at or near the mine site; and the areas on which such*

*activities occur or where such activities disturb the natural land surface. Such areas include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.* (Section 1.03(a)(24) of the State~~Surface Coal Mining Land Conservation and Reclamation~~ Act ~~[225 ILCS 720/1.03(a)(24)]~~)

"Suspended solids or nonfilterable residue, expressed as milligrams per liter", means any materials carried or held in suspension in water that~~which~~ are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR 136), effective May 18, 2012 (no incorporation in this Part includes later additions or amendments).

"Temporary diversion" means a diversion of a stream or overland flow that~~which~~ is used during coal exploration or surface coal mining and reclamation operations and that~~which~~ the Department has not approved to remain after reclamation.

"Temporary impoundment" means an impoundment ~~which is~~ used during coal exploration or surface coal mining and reclamation operations and that~~which~~ the Department has not approved to remain after reclamation.

"Ton" means 2000 pounds avoirdupois (.90718 metric ton).

"Topsoil" means the A and E soil horizon layers of the four master soil horizons.

"Toxic-forming materials" means earth materials or wastes that~~which~~, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to living organisms or uses of water.

"Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations that~~, which~~ contains a substance that, through chemical

action or physical effects, is likely to kill, ~~or~~ injure~~,~~ or impair living organisms commonly present in the area that might be exposed to it.

"Transfer, assignment or sale of permit rights" means a change of a permittee~~in ownership or other effective control over the right to conduct surface coal mining operations under a permit which the Department issued~~.

"Underground development waste" means waste rock mixtures resulting from development of areas for underground mining activities.

"Underground mining activities" means a combination of:

Surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

*"Underground mining operations" means:*

*the underground excavation of coal; and*

*surface operations incident to the underground extraction of coal, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas on which are sited support facilities including hoist and ventilation ducts, areas used for the storage and disposal of waste, and areas on which materials incident to underground mining operations are placed; and*

*underground operations incident to underground excavation of coal, such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, or blasting.* (Section 1.03(a)(26) of the State

ActSurface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720/1.03(a)(26)])

*"Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of the operator's permit or any requirement of the State Act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit of the State due to indifference, lack of diligence, or lack of reasonable care.* (Section 1.03(a)(27) of the State ActSurface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720/1.03(a)(27)])

"Valid existing rights". The definition of "valid existing rights" can be found in 62 Ill. Adm. Code 1761.5.

"Valley fill" means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than 20 degrees, or where the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10ten degrees.

"Violation", when used in the context of the permit application information or permit eligibility requirements of sections 507 and 510(c) of the Federal Act and Section 2.08 of the State Act and related regulations, means:

A failure to comply with an applicable provision of a federal or State law or regulation pertaining to air or water environmental protection, as evidenced by a written notification from a governmental entity to the responsible person; or

A noncompliance for which the Office has provided one or more of the following types of notice or a State regulatory authority has provided equivalent notice under corresponding provisions of a State regulatory program:

A notice of violation under 62 Ill. Adm. Code 1843.12;

A cessation order under 62 Ill. Adm. Code 1843.11;

A final order, bill or demand letter pertaining to a delinquent civil penalty assessed under 62 Ill. Adm. Code 1845 or 1846;

A bill or demand letter pertaining to delinquent reclamation fees owed under 30 CFR 870, effective November 14, 2008 (no incorporation in this Part includes later additions or amendments);

A notice of bond forfeiture under 62 Ill. Adm. Code 1800.50 when:

One or more violations upon which the forfeiture was based have not been abated or corrected;

The amount forfeited and collected is insufficient for full reclamation under Section 1800.50(e)(1), the regulatory authority orders reimbursement for additional reclamation costs, and the person has not complied with the reimbursement order; or

The site is covered by self-bonding approved under 62 Ill. Adm. Code 1800.11(e), that system requires reimbursement of any reclamation costs incurred by the system above those covered by any site-specific bond, and the person has not complied with the reimbursement requirement and paid any associated penalties.

"Violation notice" means any written notification, from a governmental entity, whether by letter, memorandum, judicial or administrative pleading, or other written communication, as specified in the definition of violation in this Appendix.~~of a violation of the Act; any federal regulation promulgated pursuant thereto; a State program; or any federal or state law or regulation pertaining to air or water environmental protection in connection with a surface coal mining operation. It includes, but is not limited to, a notice of violation; an imminent harm cessation order; a failure-to-abate cessation order; a final order, bill or demand letter pertaining to a delinquent civil penalty; a bill or demand letter pertaining to delinquent abandoned mine reclamation fees; and a notice of bond forfeiture, where one or more violations upon which the forfeiture was based have not been corrected.~~

"Water table" means the upper surface of a zone of saturation, where the body of

ground water is not confined by an overlying impermeable zone.

"Wetland" means land that has a predominance of hydric soils (soils that~~which~~ are usually wet and where there is little or no free oxygen) and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation (plants typically found in wet habitats) typically adapted for life in saturated soil conditions. Areas are restored or created as the result of mitigation or planned construction projects and that~~which~~ function as a wetland are included within this definition even when all three wetland parameters are not present.

"Willful" or "Willfully"~~ violation"~~ means that a person who authorized, ordered or carried out an~~a deliberate~~ act or omission that resulted in either a violation or the failure to abate or correct a violation, acted:~~which violates the State Act, these regulations, or any permit condition which the State Act requires.~~

Intentionally, voluntarily, or consciously; and

With intentional disregard or plain indifference to legal requirements.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED RULES

1) Heading of the Part: Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction

2) Code Citation: 62 Ill. Adm. Code 1703

3)

| Section Numbers: | Proposed Actions: |
|---|---|
| 1703.5 | New Section |
| 1703.10 | New Section |
| 1703.15 | New Section |
| 1703.20 | New Section |

4) Statutory Authority: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

5) A Complete Description of the Subjects and Issues Involved: Pursuant to PA 100-936, this Part creates language regulating the extraction of coal on land included in government financed projects.

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: Comments on the proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice to:

Amy Oakes, Legal Counsel
Department of Natural Resources
One Natural Resources Way

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED RULES

Springfield IL 62702-1271

217/558-6622

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: The rules amending Parts 1701 and 1703 to implement the requirements created by PA 100-936 would affect small municipalities that provide any amount of government financing for highway or other construction projects in which the extraction of coal is incidental to that project.

B) Reporting, bookkeeping or other procedures required for compliance: The proposed rules will require the person conducting the incidental coal extraction to make available for onsite inspection the following documentation described in Part 1703: a description of the construction project; the exact location of the construction, right-of-way or the boundaries of the area which will be directly affected by the construction; and the government agency which is providing the financing and the kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing. Therefore, the municipality providing financing for the project will need to create and maintain the appropriate records. However, these are the types of records that would be generated in a municipality's ordinary course of business and should not require any additional administrative procedures.

C) Types of professional skills necessary for compliance: Record keeping and file maintenance

14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the two most recent agenda’s because: The Department did not anticipate the need for this rulemaking at the time the agendas were published.

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

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED RULES

TITLE 62: MINING
CHAPTER 1: DEPARTMENT OF NATURAL RESOURCES

PART 1703
EXEMPTION FOR COAL EXTRACTION INCIDENT TO
GOVERNMENT-FINANCED HIGHWAY OR OTHER CONSTRUCTION

Section
1703.5 Scope
1703.10 Responsibility
1703.15 Applicability
1703.20 Information To Be Maintained on Site

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

SOURCE: Adopted at 43 Ill. Reg. _____, effective _____.

**Section 1703.5 Scope**

a) This Part establishes the procedures for determining those surface coal mining and reclamation operations that are exempt from the Act and this Part because the extraction of coal is an incidental part of federal, State or local government-financed highway or other construction.

b) This Part exempts the extraction of coal that is incidental to government-financed construction from the requirements of the Act and this Part, if that extraction meets specified criteria which ensure the construction is government-financed and that the extraction of coal is incidental to it.

**Section 1703.10 Responsibility**

a) The Department is responsible for enforcing the requirements of this Part.

b) Any person conducting coal extraction as an incidental part of government-financed construction is responsible for possessing, on the site of the extraction operation, the documentation required by 30 CFR 1703.12.

**Section 1703.15 Applicability**

a) Coal extraction that is an incidental part of government-financed construction is exempt from the Act and this Part.

b) Any person who conducts or intends to conduct coal extraction that does not satisfy subsection (a) shall not proceed until a permit has been obtained from the regulatory authority under a State regulatory program, federal regulatory program, or federal lands program.

**Section 1703.20 Information To Be Maintained on Site**

Any person extracting coal incident to government-financed highway or other construction who extracts more than 250 tons of coal or affects more than two acres shall maintain, on the site of the extraction operation and available for inspection, documents that show:

a) a description of the construction project;

b) the exact location of the construction, right-of-way or the boundaries of the area that will be directly affected by the construction; and

c) the government agency that is providing:

1) the financing; and

2) the kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Requirements for Permits and Permit Processing

2) Code Citation: 62 Ill. Adm. Code 1773

3)

| Section Numbers: | Proposed Actions: |
|---|---|
| 1773.15 | Amendment |
| 1773.25 | Amendment |

4) Statutory Authority: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

5) A Complete Description of the Subjects and Issues Involved: This Part is being amended to add, revise or delete permitting procedures related to ownership and control of mining operations to comport with the federal regulations found at 30 CFR 773.

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: Comments on the proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice to:

Amy Oakes, Legal Counsel
Department of Natural Resources
One Natural Resources Way
Springfield IL 62702-1271

217/558-6622

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: None

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

C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: July 2018

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

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1773
REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

Section
1773.1 Scope and Purpose
1773.5 Definitions
1773.11 Requirements to Obtain Permits
1773.12 Regulatory Coordination with Requirements under Other Laws
1773.13 Public Participation in Permit Processing
1773.14 Opportunity for Public Hearing
1773.15 Review of Permit Applications
1773.17 Permit Conditions
1773.19 Permit Issuance and Right of Renewal
1773.20 Improvidently Issued Permits: General Procedures
1773.21 Improvidently Issued Permits: Rescission Procedures
1773.22 Verification of Ownership or Control Application Information
1773.23 Review of Ownership or Control and Violation Information
1773.24 Procedures for Challenging Ownership or Control Links Shown in the Applicant Violator System
1773.25 Standards for Challenging Ownership or Control Links and the Status of Violations

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

SOURCE: Adopted at 11 Ill. Reg. 8395, effective July 1, 1987; amended at 14 Ill. Reg. 11886, effective January 1, 1991; amended at 15 Ill. Reg. 17274, effective January 1, 1992; amended at 15 Ill. Reg. 17998, effective January 1, 1992; amended at 17 Ill. Reg. 11063, effective July 1, 1993; amended at 20 Ill. Reg. 2090, effective January 19, 1996; amended at 22 Ill. Reg. 20265, effective November 5, 1998; amended at 26 Ill. Reg. 4271, effective March 6, 2002; amended at 27 Ill. Reg. 4656, effective February 26, 2003; amended at 29 Ill. Reg. 8355, effective May 27, 2005; amended at 43 Ill. Reg. _____, effective _____.

**Section 1773.15 Review of Permit Applications**

a) General~~.~~

1) The Department shall review the application for a permit, revision, or renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application, and either:

A) Issue a written decision, in accordance with Section 1773.19, either granting or denying the application. If a public hearing is held under Section 1773.14, the decision shall be made within 60 days after the close of the public hearing, unless a later time is necessary to provide an opportunity for a hearing under subsection (b)(3); or

B) Issue a written decision requiring modification of the application. If a public hearing is held under Section 1773.14, the decision to require modifications shall be made within 60 days after the close of the public hearing.

i) If the applicant does not submit the required modifications to the Department within one year after the date of receipt of notification of the need for modifications, the Department shall issue a written finding in accordance with Section 1773.19 denying the application. The Department may issue an extension to this time limit if the applicant can demonstrate just cause (e.g., extended periods of illness, extreme inclement weather, acts of civil unrest, or other emergency situations) for doing so.

ii) Upon receipt of the applicant's responses to the required modifications, the Department shall review the responses and issue a written decision, in accordance with Section 1773.19, either granting or denying the application.

2) The applicant for a permit or revision of a permit shall have the burden of establishing that his or her application is in compliance with all the requirements of the regulatory program.

b) Review of Violations~~violations.~~

1) Based on a review of all reasonably available information concerning violation notices and ownership or control links involving the applicant,

including information obtained pursuant to Sections 1773.22, 1773.23, 1778.13 and 1778.14, the Department shall not issue the permit if any surface coal mining and reclamation operation owned or controlled by ~~either~~ the applicant ~~or by any person who owns or controls the applicant~~ is currently in violation of the State Act, Federal Act, any State or federal regulation promulgated pursuant thereto, a State program, or any federal or State law or regulation pertaining to air or water environmental protection. In the absence of a failure-to-abate cessation order, the Department may presume that a notice of violation issued pursuant to 62 Ill. Adm. Code 1843.12 or under a federal~~Federal~~ or State program is being corrected to the satisfaction of the agency with jurisdiction over the violation when~~where~~ the abatement period for the~~such~~ notice of violation has not yet expired and when, as part of the violation information provided pursuant to 62 Ill. Adm. Code 1778.14, the applicant has provided certification that the~~such~~ violation is in the process of being so corrected. This~~Such~~ presumption shall not apply when~~where~~ evidence to the contrary is set forth in the permit application, or when~~where~~ the notice of violation is issued for nonpayment of abandoned mine land reclamation fees or civil penalties. If a current violation exists, the Department shall require the applicant~~ or person who owns or controls the applicant~~, before the issuance of the permit, to either:

A) Submit to the Department proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

B) Establish for the Department that the applicant, or any person owned or controlled by ~~either~~ the applicant~~ or any person who owns or controls the applicant~~, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the circuit or district court reviewing the violation, pursuant to 62 Ill. Adm. Code 1847.4(p) or~~,~~ 30 CFR 775.13 or in accordance with the procedures established by other state regulatory authorities, either denies a stay applied for in the appeal or affirms the violation, then the applicant shall submit the proof required under subsection (b)(1)(A) within 30 days after the court's decision.

2) Any permit that is issued on the basis of a presumption supported by

certification under 62 Ill. Adm. Code 1778.14 that a violation is in the process of being corrected, on the basis of proof submitted under subsection (b)(1)(A)~~ of this Section~~ that a violation is in the process of being corrected, or pending the outcome of an appeal described in subsection (b)(1)(B)~~ of this Section~~, shall be conditionally issued.

3) If the Department makes a finding that the applicant~~, anyone who owns or controls the applicant,~~ or the operator specified in the application~~,~~ controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Federal or State Act of such nature and duration, and with such resulting irreparable damage to the environment, as to indicate an intent not to comply with the Federal or State Act, the application shall be denied. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 62 Ill. Adm. Code 1847.3.

c) Written Findings~~findings~~ for Permit Application Approval~~permit application approval.~~
No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates, and the Department finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

1) The application is complete and accurate and the applicant has complied with all requirements of the Federal Act, State Act and the regulatory program.

2) The applicant has demonstrated that reclamation as required by the Federal Act, State Act and the regulatory program can be accomplished under the reclamation plan contained in the permit application.

3) The proposed permit area is:

A) Not within an area under study or administrative proceedings under a petition, filed pursuant to 62 Ill. Adm. Code 1764, to have an area designated as unsuitable for surface coal mining operations, unless the applicant demonstrates that, before January 4, 1977, he or she has made substantial legal and financial

commitments in relation to the operation covered by the permit application; or

B) Not within an area designated as unsuitable for mining pursuant to 62 Ill. Adm. Code 1762 and 1764 or within an area subject to the prohibitions of 62 Ill. Adm. Code 1761.11.

4) For mining operations for which~~where~~ the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the Department the documentation required under 62 Ill. Adm. Code 1778.15(c~~b~~).

5) The Department has made an assessment of the probable cumulative impacts of all anticipated coal mining on the hydrologic balance in the cumulative impact area, in accordance with 62 Ill. Adm. Code 1780 and 1784, and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

6) The applicant has demonstrated that any existing structure will comply with 62 Ill. Adm. Code 1700.11(d).

7) The applicant has paid all reclamation fees from previous and existing operations as required by 30 CFR 870.

8) The applicant has satisfied the applicable requirements of 62 Ill. Adm. Code 1785.

9) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural post-mining land use, in accordance with the requirements of 62 Ill. Adm. Code 1816.111(d) and 1817.111(d).

10) The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 USC 1531 et seq.).

11) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 62 Ill. Adm. Code 1816.106 or 1817.106, the site of the operation is a previously mined area as defined in

62 Ill. Adm. Code 1701.Appendix A.

12) The Department has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the Department has determined that no additional measures are necessary.

13) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 62 Ill. Adm. Code 1816.116(a)(2)(B) or 1817.116(a)(2)(B), the site of the operation is land eligible for remining as defined in 62 Ill. Adm. Code 1701.Appendix A.

d) Expiration of Findings~~findings.~~
Written findings issued by the Department approving a permit application shall expire within one year from the date of issuance if the permit has not been issued based upon the applicant's failure to submit permit fees in accordance with 62 Ill. Adm. Code 1777.17 or a performance bond in accordance with 62 Ill. Adm. Code 1800.11. When written findings expire, the Department will take no further action on the permit application. Should the applicant choose to resume permitting activity for the area in question, a new permit application must be submitted in accordance with the requirements of this Part.

e) Final Compliance Review~~compliance review.~~
After an application is approved, but before the permit is issued, the Department shall reconsider its decision to approve the application, based on the compliance review required by subsection (b)(1), in light of any new information submitted under 62 Ill. Adm. Code 1778.13(j~~i~~) and 1778.14(e).

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 1773.25 Standards for Challenging Ownership or Control Links and the Status Violations**

a) The provisions of this Section shall apply whenever a person has and exercises a right, under the provisions of Section~~Sections~~ 1773.20, 1773.21, 1773.23 or 1773.24, to challenge an ownership or control link to any person and/or the status of any violation covered by a notice.

b) Agencies Responsible~~responsible.~~

1) Except as provided in subsection (b)(3)~~ below~~:

A) The regulatory authority before which an application is pending shall have responsibility for making decisions with respect to ownership or control relationships of the application.

B) The regulatory authority that issued a permit shall have responsibility for making decisions with respect to the ownership or control relationships of the permit.

C) The regulatory authority for the State that issued a State violation notice shall have responsibility for making decisions with respect to the ownership or control relationship of the violation.

D) The regulatory agency that issued a violation notice, whether State or federal, shall have responsibility for making decisions concerning the status of the violation covered by the~~such~~ notice, i.e., whether the violation remains outstanding, has been corrected, is in the process of being corrected, or is the subject of a good faith appeal, within the meaning of Section 1773.15(b)(1).

2) OSM shall have responsibility for making decisions with respect to the ownership or control relationships of a federal violation notice.

3) With respect to information shown on AVS, the responsibilities referred to in subsection (b)~~9b~~(1)~~ above~~ shall be subject to the plenary authority of OSM to review any State regulatory authority decision regarding an ownership or control link.

4) With respect to ownership or control information that~~which~~ has not been entered into AVS by a State and with respect to information shown on AVS relating to the status of a violation, State regulatory authorities' determinations are subject to OSM's program authority oversight under 30 CFR 733, 842 and 843.

c) Evidentiary Standards~~standards.~~

1) In any formal or informal review of an ownership or control link or of the status of a violation covered by a violation notice, the responsible agency shall make a prima facie determination or showing that the~~such~~ link exists or~~,~~ existed during the relevant period, and/or that the violation covered by the~~such~~ notice remains outstanding. Once~~ such~~ a prima facie determination or showing has been made, the person challenging the~~such~~ link or the status of the violation shall have the burden of proving by a preponderance of the evidence, with respect to any relevant time period, that:

A) The facts relied upon by the responsible agency to establish ownership or control or a presumption of ownership or control under the definition of "owned or controlled" or "owns or controls" in Section 1773.5, do not or did not exist;

B) A person subject to a presumption of ownership or control under the definition of "owned or controlled" or "owns or controls" in Section 1773.5 does not or did not in fact have the authority directly or indirectly to determine the manner in which surface coal mining operations are or were conducted; or

C) The violation covered by the violation notice did not exist, has been corrected, is in the process of being corrected, or is the subject of a good faith appeal within the meaning of Section 1773.15(b)(1), provided that the existence of the violation at the time it was cited may not be challenged, under the provisions of Section 1773.24, by the following persons:

i) A~~By a~~ permittee, unless the~~such~~ challenge is made by the permittee within the context of Section 1773.20 and~~through~~ 1773.21;

ii) Any~~By any~~ person who had a prior opportunity to challenge the violation notice and failed to do so in a timely manner; or

iii) Any~~By any~~ person who is bound by a prior administrative or judicial determination concerning the existence of the violation.

2) In meeting the burden of proof set forth in subsection (c)(1)~~ above~~, the persons challenging the ownership or control link or the status of the violation shall present probative, reliable and substantial evidence and any supporting explanatory materials, which may, if before the responsible agency, include:

A) Affidavits setting forth:

i) specific facts concerning the scope of responsibility of the various owners or controllers of an applicant, permittee, or any person cited in a violation notice; the duties actually performed by the~~such~~ owners or controllers; the beginning and ending dates of the~~such~~ owners' or controllers' affiliation with the applicant, permittee, or person cited in a violation notice; and the nature and details of any transaction creating or severing an ownership or control link; or

ii) specific facts concerning the status of the violation.

B) Certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence or other relevant company records;

C) Certified copies of documents filed with or issued by any State, municipal or federal governmental agency;

D) An opinion of counsel, when supportive by:

i) Evidentiary materials;

ii) A statement by counsel that he or she is qualified to render the opinion; and

iii) A statement that counsel has personally and diligently investigated the facts of the matter or, when~~where~~ counsel has not so investigated the facts, a statement that the~~such~~ opinion is based upon information that~~which~~ has been supplied to counsel and that~~which~~ is assumed to be true;

E) If before any administrative or judicial tribunal reviewing the decision of the responsible agency, any evidence admissible under the rules of that~~such~~ tribunal.

d) Following any determination by a State regulatory authority or other State agency, or any decision by an administrative or judicial tribunal reviewing the~~such~~ determination, the State regulatory authority shall review the information in AVS to determine if it is consistent with the determination or decision. If it is not, the State regulatory authority shall promptly inform OSM and request that the AVS information be revised to reflect the determination or decision.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENT

1) Code Citation: Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights

2) Heading of the Part: 62 Ill. Adm. Code 1774

3) Section Number: 1774.13 — Proposed Action: Amendment

4) Statutory Authority: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

5) A Complete Description of the Subjects and Issues Involved: This Part is being amended to provide further clarification as to what reclamation plan land use changes require an application for significant revision.

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 rulemaking: Comments on the proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice to:

Amy Oakes, Legal Counsel
Department of Natural Resources
One Natural Resources Way
Springfield IL 62702-1271

217/558-6622

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENT

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: None

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

C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: July 2018

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

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENT

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1774
REVISION; RENEWAL; AND TRANSFER, ASSIGNMENT,
OR SALE OF PERMIT RIGHTS

Section
1774.1 Scope and Purpose
1774.11 Department Review of Permits
1774.13 Permit Revisions
1774.15 Permit Renewals
1774.17 Transfer, Assignment, or Sale of Permit Rights

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

SOURCE: Adopted at 11 Ill. Reg. 8469, effective July 1, 1987; amended at 14 Ill. Reg. 11900, effective January 1, 1991; amended at 15 Ill. Reg. 17284, effective January 1, 1992; amended at 17 Ill. Reg. 11083, effective July 1, 1993; amended at 20 Ill. Reg. 2118, effective January 19, 1996; amended at 22 Ill. Reg. 20280, effective November 5, 1998; amended at 43 Ill. Reg. _____, effective _____.

**Section 1774.13 Permit Revisions**

a) During the term of a permit, the permittee may submit an application to the Department for a revision of the permit. The~~Such~~ application may be made on the standard Department permit form; however, only those sections of the form that~~which~~ pertain to the revision in question must be completed.

b) Application Requirements and Procedures~~.~~

1) The Department will approve or disapprove applications for insignificant revisions within 90 days after receipt of the application. Applications~~;~~ ~~applications~~ for significant revision will be acted upon in accordance with 62 Ill. Adm. Code 1773.13 and 1773.15.

2) A significant revision to a permit shall be obtained for changes in the surface coal mining or reclamation operations described in the original

application and approved under the original permit, when the~~such~~ changes constitute a significant departure from the method of conduct of mining or reclamation operations contemplated by the original permit. For purpose of these requirements, significant departures from the methods or conduct of mining or reclamation operations include any change in the~~such~~ mining or reclamation operations, except the following, if not contemplated or provided for in the original permit:

A) For surface mines, changes of direction of mining or location of mining equipment within the permit area;

B) Substitution of mining equipment designed for the same purpose, the use of which is not detrimental to achievement of final reclamation or subsidence control;

C) For underground mines, any change in direction or location of mining within the permit area or shadow area, in response to unanticipated events;

D) Any other change in operations, methods~~,~~ or conduct of mining described in writing to the Department that~~which~~ the Department excuses in writing from requirement of revision on a case-by-case basis after determining that the described change will have no significant potential adverse impact on the achievement of final reclamation plans or subsidence control plans or upon the surrounding area;

E) Any alteration in the reclamation plan or reclamation operations which does not involve significant delay or significant change in land use described in writing to the Department and excused from this requirement of revision on a case-by-case basis. ~~A significant revision shall be required for land use changes involving greater than 5% of the original total permit acreage.~~ Alternative land use proposals shall comply with 62 Ill. Adm. Code 1816.133 or 1817.133, and shall be approved only after consultation with the landowner or the land management agency with jurisdiction over the lands. If applicable, alternative land use proposals shall comply with 62 Ill. Adm. Code 1785.17(e)(5). A significant revision shall be required for a land use change to any of the following, as

defined in 62 Ill. Adm. Code 1701.Appendix A: ~~The 5% limit shall be a cumulative total from permit issuance until final bond release, except as follows:~~

i) "Residential";~~The 5% limit shall restart upon the issuance of a significant revision that addresses all previous land use changes approved under this Part; and~~

ii) "Industrial/commercial";~~The total permit acreage used to determine the 5% limit shall include incidental boundary revisions (IBRs) if the IBRs have been addressed previously in a significant revision; or~~

iii) "Recreation"; or

iv) "Developed water resources" that meet the size criteria of 30 CFR 77.216(a);

F) Any temporary change in operations, subsidence control or reclamation plans necessitated by unanticipated and unusually adverse weather conditions, other acts of God, strikes, or other cause beyond the reasonable control of the permittee, after review and approval by the Department in writing, provided that all steps specified by the Department to maximize environmental protection are taken.

3) All significant permit revision applications shall meet the requirements of 62 Ill. Adm. Code 1773.13, 1773.19(a)(3)(A) and (C), and 1778.21.

c) No application for a permit revision shall be approved unless the application demonstrates and the Department finds that reclamation as required by the Act and the regulatory program can be accomplished, applicable requirements under 62 Ill. Adm. Code 1773.15(c) that~~which~~ are pertinent to the revision are met, and the application for a revision complies with all requirements of the Act and the regulatory program.

d) Extensions of the permit area, except for incidental boundary revisions, shall be made by application for a new permit, and shall not be approved under this Part. Extensions of the shadow area, except for incidental boundary revisions, shall be

made and approved pursuant to the requirements of this Part. Application for incidental boundary revisions shall be made pursuant to subsection (a)~~ above~~. Incidental boundary revisions are those that~~which~~:

1) Constitute a relatively small percentage of the initial permit acreage;

2) Are contiguous with the permit or shadow area acreage, except that isolated long-term support facilities associated with underground mining activities need not be contiguous provided those~~such~~ facilities do not include coal preparation or coal waste disposal areas. Non-contiguous incidental boundary revisions shall be subject to the performance standards of 62 Ill. Adm. Code 1817.182;

3) Are required for the orderly and continuous mining operation;

4) Would be reclaimed in conformity with the initial plan, except when~~where~~ provided under subsection (d)(2)~~ above~~;

5) For the purpose of this Section~~section~~, incidental boundary changes are described as follows:

| Original Permit Acres | Maximum Size of Boundary Changes – Acres |
|---|---|
| Up to 10 | 1 |
| Up to 25 | 2.5 |
| Up to 50 | 5 |
| Up to 75 | 7.5 |
| Up to 100 | 10 |
| Over 100 | 20 |

The maximum size for acreage additions to approved non-contiguous incidental boundary revision areas, as described in subsection (d)(2) ~~above~~, shall be based upon the original boundary revision acreage, not the original permit acreage;

6) Notice of an incidental boundary revision application shall be published in a local newspaper in the area of the proposed activities. The notice shall describe the general area of the proposed activities and shall state the name and business address of the permittee, the address of the Department

at which written comments on the application may be submitted, and the closing date of the comment period. In no case shall the public comment period be less than seven days. In order to process the incidental boundary revision application, proof of that~~such~~ publication must be submitted to the Department. The notice requirements of this subsection (d)(6) shall not apply to unplanned subsidence areas.

e) A determination as to what constitutes a significant departure shall be made by the Department in consultation with the permittee. Changes that~~which~~ do not alter the final reclamation or mining plan are considered minor and do not require permit revision. However, any request for the~~such~~ changes shall be included in a written request to the Department.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Permit Applications – Minimum Requirements for Legal, Financial, Compliance, and Related Information

2) Code Citation: 62 Ill. Adm. Code 1778

3)

| Section Numbers: | Proposed Actions: |
|---|---|
| 1778.9 | New Section |
| 1778.13 | Amendment |
| 1778.14 | Amendment |
| 1778.15 | Amendment |

4) Statutory Authority: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

5) A Complete Description of the Subjects and Issues Involved: This Part is being amended to add, revise or delete permitting procedures related to ownership and control of mining operations to comport with the federal regulations found at 30 CFR 778.

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: Comments on the proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice to:

Amy Oakes, Legal Counsel
Department of Natural Resources
One Natural Resources Way

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

Springfield IL 62702-1271

217/558-6622

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: None

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

C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: July 2018

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

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1778
PERMIT APPLICATIONS – MINIMUM REQUIREMENTS
FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION

Section
1778.4 Responsibility (Repealed)
1778.9 Certifying and Updating Existing Permit Application Information
1778.11 Applicability (Repealed)
1778.13 Identification of Interests
1778.14 Violation Information
1778.15 Right of Entry Information
1778.16 Relationship to Areas Designated Unsuitable for Mining
1778.17 Permit Term
1778.18 Insurance
1778.20 Identification of Location of Public Office for Filing of Application (Repealed)
1778.21 Proof of Publication
1778.22 Facilities or Structures Used in Common

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 9348; amended at 11 Ill. Reg. 8368, effective July 1, 1987; amended at 14 Ill. Reg. 11873, effective January 1, 1991; amended at 15 Ill. Reg. 17265, effective January 1, 1992; amended at 17 Ill. Reg. 11027, effective July 1, 1993; amended at 20 Ill. Reg. 2080, effective January 19, 1996; amended at 22 Ill. Reg. 20260, effective November 5, 1998; amended at 26 Ill. Reg. 4267, effective March 6, 2002; amended at 27 Ill. Reg. 4668, effective February 26, 2003; amended at 43 Ill. Reg. _____, effective _____.

**Section 1778.9 Certifying and Updating Existing Permit Application Information**

a) If the applicant has previously applied for a permit and the required information is already in the Applicant Violator System (AVS), then the applicant may update the information as shown in the following table.

| If: | Then: |
|---|---|
| All or part of the information already in AVS is accurate and complete: | May certify to DNR by swearing or affirming, under oath and in writing, that the relevant information in AVS is accurate, complete and up to date. |
| Part of the information in AVS is missing or incorrect: | Must submit to DNR the necessary information or corrections and swear or affirm, under oath and in writing, that the information submitted is accurate and complete. |
| The applicant can neither certify that the data in AVS is accurate and complete nor make needed corrections: | Must include in the applicant's permit application the information required under this Part. |

b) The applicant must swear or affirm, under oath and in writing, that all information provided by the applicant in the application is accurate and complete.

c) The Department may establish a central file to house the applicant's identity information, rather than place duplicate information in each of the applicant's permit application files. The Department will make the information available to the public upon request.

d) After the Department approves an application, but before issuing a permit, the applicant shall update, correct or indicate that no change has occurred in the information previously submitted under this subsection and Sections 1778.13 and 1778.14.

(Source: Added at 43 Ill. Reg. _____, effective _____)

**Section 1778.13 Identification of Interests**

~~An application to conduct surface coal mining and reclamation operations shall contain the following information, except that the submission of a social security number is voluntary:~~

a) The applicant shall provide in the permit application:

1) A statement ~~as to~~ whether it and the operator are corporations, partnerships, sole proprietorships or other business entities; and~~the applicant is a corporation, partnership, single proprietorship, association, or other business entity.~~

2) taxpayer identification numbers for it and the operator.

b) The applicant must provide the name, address and telephone number for:~~Names, addresses, and telephone numbers and, as applicable, social security and federal employer identification number of the applicant, the operator (if different from the applicant), the person who will pay the abandoned mine land reclamation fee, and the applicant's resident agent who will accept service of process.~~

1) the applicant;

2) the applicant's resident agent who will accept service of process;

3) any operator, if different from the applicant;

4) each business entity in the applicant's and operator's organizational structure, up to and including the ultimate parent entity of the applicant and operator. For every such business entity, the applicant must also provide the required information for every president, chief executive officer and director (or person in similar positions), and every person who owns, of record, 10 percent or more of the entity.

c) For the applicant and the operator, the applicant must provide the information required in subsection (d) for every:~~each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in 62 Ill. Adm. Code 1773.5, as applicable.~~

1) officer;~~The person's name, adddress, social security number and employer identification number.~~

2) partner~~The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure~~;

3) member~~The title of the person's position, date position was assumed, and when submitted under 62 Ill. Adm. Code 1773.17(h), date of departure from the position~~;

4) director~~Each additional name and identifying number, including employer identification number, Federal or State permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application~~; ~~and~~

5) person performing a function similar to a director; and~~The application number or other state or federal identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any State in the United States.~~

6) person who owns, of record, 10 percent or more of the applicant or operator.

d) The applicant must provide the following information for each person listed in subsection (c)~~For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in 62 Ill. Adm. Code 1773.5, the operation's~~:

1) the person's name, address and telephone number;~~Name, address, identifying numbers, including employer identification number, Federal or State permit number and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and~~

2) the person's position title and relationship to the applicant, including percentage of ownership and location in the organizational structure; and~~Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.~~

3) the date the person began functioning in that position.

e) The Department need not make a finding before entering into AVS the

information required to be disclosed under this Section; however, the mere listing in AVS of a person identified in subsection (b) or (c) does not create a presumption or constitute a determination that the person owns or controls a surface coal mining operation.~~The name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined.~~

f) The applicant must provide a list of all names under which it, the operator, the partners or principal shareholders, and the operator's partners or principal shareholders, operate or previously operated a surface coal mining operation in the United States within the five-year period preceding the date of submission of the application.~~The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area.~~

g) For the applicant and the operator, the applicant must provide a list of any pending permit applications for surface coal mining operations filed in the United States. The list must identify each application by its application number and jurisdiction, or by other identifying information when necessary.~~The Mine Safety and Health Administration (MSHA) numbers for all mine-associated structures that require MSHA approval, pursuant to 30 CFR 77(1986).~~

h) For any surface coal mining operations the applicant or the operator owned or controlled within the five-year period preceding the date of submission of the application, and for any surface coal mining operation the applicant or the operator own or control on that date, the applicant must provide:~~A statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application. If requested by the applicant, any information required by this section which is not on public file pursuant to State law shall be held in confidence by the Department, as provided under 62 Ill. Adm. Code 1773.13(d)(3)(B).~~

1) permittee's and operator's name and address;

2) permittee's and operator's taxpayer identification numbers;

3) federal or State permit number and corresponding Mine Safety and Health Administration (MSHA) number;

4) regulatory authority with jurisdiction over the permit; and

5) permittee's and operator's relationship to the operation, including percentage of ownership and location in the organizational structure.

i) The MSHA numbers for all mine-associated structures that require MSHA approval (see 30 CFR 77).

j~~i~~) After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under subsections (a) through (d). Information submitted as a change shall be evaluated in the same manner as the original application.

k~~j~~) The applicant shall submit the information required by this Section,~~Sections 1778.13 and~~ Section 1778.14 and Section 1778.15 in the format prescribed and issued by the Department and the federal Office of Surface Mining Reclamation and Enforcement.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 1778.14 Violation Information**

~~An application shall contain the following:~~

a) The applicant must state in the permit application whether it, the operator or~~A statement of whether the applicant,~~ any subsidiary, affiliate~~,~~ or entity that it or the operator owns or controls, or that is~~persons controlled by or~~ under common control with the applicant or the operator,~~the applicant~~ has:

1) had~~Had~~ a federal~~Federal~~ or State permit for surface coal mining~~ permit~~ suspended or revoked during the five-year period~~in the last five years~~ preceding the date of submission of the application; or

2) forfeited~~Forfeited~~ a performance bond, or similar security deposited in lieu of bond, in connection with surface coal mining and reclamation operations during the five-year period preceding the date of submission of the application.

b) For each~~If any such~~ suspension, revocation~~,~~ or forfeiture identified under subsection (a), the applicant must provide a brief explanation~~has occurred, a statement~~ of the facts involved, including the:

1) permit number~~Identification number and date of issuance of the permit and the date and amount of bond or similar security~~;

2) date of suspension, revocation or forfeiture and, when applicable, the amount of bond or similar security forfeited~~Identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action~~;

3) regulatory authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;

4~~3~~) the~~The~~ current status of the permit, bond~~,~~ or similar security involved; and

5~~4~~) the~~The~~ date, location,~~ and~~ type and current status of any administrative or judicial proceedings~~ initiated~~ concerning the suspension, revocation~~,~~ or forfeiture.~~; and~~

~~5) The current status of these proceedings.~~

c) A list of all violation notices the applicant or the operator received for any surface coal itmining and reclamation operation during the three-year period preceding the date of submission of the application. In addition, the applicant must submit a list of all unabated or uncorrected violation notices incurred in connection with any surface coal mining and reclamation operation that the applicant or the operator own or control on that date.~~by the applicant during the three-year period preceding the application date, and a list of all outstanding violation notices received prior to the date of the application by any surface coal mining operation that is deemed or presumed to be owned or controlled by the applicant under the definition of "owned or controlled" and "owns or controls" in 62 Ill. Adm. Code 1773.5. For each notice of violation issued pursuant to 62 Ill. Adm. Code 1843.12 or under a Federal or State program for which the abatement period has not expired, the applicant shall certify that such notice of violation is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation.~~ For each violation notice reported, the applicant shall~~the list shall~~ include the following information as applicable:

1) the permit number and associated MSHA number~~Any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency~~;

2) the issue date, identification number and current status of the violation~~A brief description of the violation alleged in the~~ notice;

3) the name of the person to whom the violation notice was issued~~The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in subsection (c) to obtain administrative or judicial review of the violations~~;

4) the name of the regulatory authority or agency that issued the violation notice;~~The current status of the proceedings and of the violation notice; and~~

5) a brief description of the violation alleged in the notice;~~The actions, if any, taken by any person identified in subsection (c) to abate the violation.~~

6) the date, location, type and current status of any administrative or judicial proceedings concerning the violation notice;

7) if the abatement period for a violation in a notice of violation issued under 62 Ill. Adm. Code 1843.12 has not expired, certification that the violation is being abated or corrected to the satisfaction of the agency with jurisdiction over the violation; and

8) for all violations not covered by subsection (c)(7), the actions taken to abate or correct the violation.

d) An application shall contain information~~Information~~ about the applicant's present financial condition that~~which~~ would provide assurance to the Department that no further forfeiture would be expected.

e) After an applicant is notified that his or her application is approved, but before the

permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under this Section. Information submitted as a change shall be evaluated in the same manner as the original application.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 1778.15 Right of Entry Information**

a) An application shall contain:

1) the name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined;

2) the name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area; and

3) a statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application. If requested by the applicant, any information required in this Section that is not on public file pursuant to State law shall be held in confidence by the Department, as provided in 62 Ill. Adm. Code 1773.13(d)(3)(B).

b) An application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface coal mining and reclamation operations in the permit area and shall state whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant. The Department will not be liable in any way if the claimed right to enter and begin surface mining activities has been, or is later, adjudicated invalid by a court of competent jurisdiction. Documents shall not be submitted to the Department in lieu of the description identified in this subsection; however, the Department may subsequently require the applicant to provide such information during the permitting process.

c~~b~~) For surface mining activities where the private mineral estate to be mined has been severed from the private surface estate, the application shall also provide for lands within the permit area:

1) a~~A~~ copy of the written consent of the surface owner to the extraction of coal by surface mining methods;

2) a~~A~~ copy of the conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or

3) if~~If~~ the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that under the applicable State law, the applicant has the legal authority to extract the coal by those methods.

d~~c~~) Nothing in this Section shall be construed to afford the Department the authority to adjudicate property title disputes.

e~~d~~) In satisfaction of the requirements of this Section the Department may accept, as part of a permit application, a statement, notarized and attested to the truth of the statement, signed by an attorney licensed to practice law in the State of Illinois, the applicant has the legal right to enter and commence the surface coal mining and reclamation operations proposed in the application. The statement shall identify the documents upon which it is based by type and date of execution, identify the specific lands to which each document pertains, and explain the legal rights claimed by the applicant. If subsection (c~~b~~) applies, the~~such~~ statement shall also include copies of the documents as required in subsections (c~~b~~)(1) through (3).

f~~e~~) An application in which the applicant claims to have valid existing rights to conduct surface coal mining operations in an area where mining is prohibited or limited under 62 Ill. Adm. Code 1761.11 shall contain the necessary information and meet the requirements of Section 1778.16 and the applicable portions of 62 Ill. Adm. Code 1761.14 through 1761.17.

g~~f~~) All applications for shadow area shall contain a notarized statement by a responsible official of the applicant attesting that all necessary mining rights, including the right to subside, if applicable, have been or will be obtained prior to mining.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

(Source: Amended at 43 Ill. Reg. _____, effective _____)

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENT

1) Heading of the Part: Definitions

2) Code Citation: 11 Ill. Adm. Code 210

3) Section Number: 210.10 Proposed Action: Amendment

4) Statutory Authority: 230 ILCS 5/9(b)

5) A Complete Description of the Subjects and Issues Involved: Pursuant to Executive Order 2016-13, Part 210 was identified for modifications during the Board's extensive review of its regulations. The proposed rule eliminates definitions that are defined in the Illinois Horse Racing Act, outdated, unnecessary, or duplicative. A number of housekeeping changes were also made in Part 210, which was originally adopted in 1994.

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: No local governmental units will be required to increase expenditures.

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Written comments should be submitted, within 45 days after this Notice, to:

Mickey Ezzo
Illinois Racing Board
100 West Randolph
Suite 5-700
Chicago IL 60601

312/814-5017

Mickey.ezzo@illinois.gov

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: None

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

C) Types of professional skills necessary for compliance: None

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

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

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENT

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

PART 210
DEFINITIONS

Section
210.10 Definitions

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

SOURCE: Adopted at 18 Ill. Reg. 2072, effective January 21, 1994; amended at 18 Ill. Reg. 17732, effective November 28, 1994; amended at 19 Ill. Reg. 13891, effective October 1, 1995; amended at 25 Ill. Reg. 15590, effective December 1, 2001; amended at 29 Ill. Reg. 8388, effective June 1, 2005; amended at 43 Ill. Reg. _____, effective _____.

**Section 210.10 Definitions**

"Act" – The Illinois Horse Racing Act of 1975.

~~"Added Money" – The money added by a racing association to the various fees paid by the owners of the horses nominated to, entered in and/or starting in a race.~~

~~"Added Money Early Closing Event" – A harness race closing in the same year in which it is to be contested in which all entrance and declaration fees received are added to the purse.~~

~~"Advanced Wagering" – Any wagering on a race or races to be conducted during a racing program before the next scheduled race.~~

"Age" – The age of a horse shall be recognized~~reckoned~~ from the first day of January of the year of foaling.

~~"Allowance" – Weights and other conditions of a race.~~

"Allowance Race" – A race, other than a claiming race, for which certain weights

and other conditions of eligibility are established.

"Also Eligible" – A horse that has been entered in a race but is not permitted to start unless the number of entrants is reduced by scratches.

"Appeal" – A request for the Board to investigate, consider or review any decisions or rulings of the officials of a meeting or the decision of the Board itself.

"Applicant" – A person who applies for an organization or occupation license in a specified category or categories.

~~"Approximate odds" – The probable ratio of the pay-out price to a $1 wager in the win pool in a pari-mutuel system.~~

~~"Arrears" – All monies owed by a licensee, including subscriptions, jockey fees, forfeitures, and any default incident to these rules.~~

~~"Association" – A person or business entity holding a license from the Board to conduct racing with pari-mutuel wagering.~~

~~"Association Grounds" – All areas used by a racing association in conducting a race meeting.~~

"Authorized Agent" – A person appointed by an owner or trainer in accordance with Board rules.~~,~~ The~~the~~ appointment to be made~~designated~~ in a document signed by the owner or trainer, approved by the Stewards~~stewards~~, executed annually and filed with the ~~Illinois Racing~~ Board.

"Battery" – Any battery, buzzer, electrical, or mechanical device or other appliance, except for the ordinary whip, that can be used to stimulate or depress a horse or affect its speed in a race or workout.

"Beneficial Interest" – Profit, benefit or advantage resulting from a contract or an ownership interest in an estate as distinct from legal title or ownership, i.e., an interest as a devisee, legatee or donee solely for his or her own use or benefit and not as holder of title for use and benefit of another.

"Betting interest" – Horse, entry or field.

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENT

"Bleeder" – A horse that is examined by a licensed~~an official~~ veterinarian following a race or workout and sheds blood from one or both nostrils or upon endoscopic examination shows observable amounts of free blood in the respiratory tract.

~~"Board" – Illinois Racing Board.~~

~~"Bookmaker" – A person who accepts wagers on races other than through a pari-mutuel machine.~~

~~"Breakage" – The odd cents by which the amount payable on each dollar wagered exceeds a multiple of 10¢.~~

"Breeder" – (Standardbred~~Harness~~) The owner of a horse's dam at the time of breeding. (Thoroughbred) The owner of the horse's dam at the time of foaling.

~~"Canceled Ticket" – A ticket that represents a wager that has been canceled and withdrawn from the pari-mutuel pools.~~

"Carryover" – The total amount of non-distributed pool money in a pool that is retained and added to a corresponding pool in accordance with this Part.

~~"Cashed Ticket" – Any pari-mutuel ticket that is refunded or that is presented for payment of a winning wager and is paid.~~

~~"Cashier Accounting" – The record of teller activity by transaction and time of transaction.~~

~~"Central Processing Unit" – The main computer that controls and stores both programs and data.~~

~~"Civil Penalty" – A penalty imposed on a licensee for a violation of Board rules or the Act.~~

~~"Claim" – The act of an eligible owner requesting the stewards to order the sale of a horse in a claiming race to him/her for a predetermined amount; to request a weight allowance; to file a claim in a claiming race; to acquire a horse by claiming.~~

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENT

~~"Claimant" – A person or racing interest meeting one of the three criteria for claiming eligibility.~~

~~"Claim Form" – The form upon which an eligible owner agrees to purchase a horse from a claiming race.~~

~~"Claiming Price" – The predetermined price at which a horse in a claiming race must be sold if it is claimed.~~

~~"Claiming Race" – A race in which any horse starting may be purchased for a predetermined amount in conformance with Board rules.~~

~~"Colt" – An uncastrated male horse under five years of age.~~

~~"Computer Log Library" – A record of all operator initiated actions of the transaction processor.~~

~~"Concessionaire" – An individual, firm, partnership, corporation, trustee or legal representative licensed to operate as a concessionaire to sell or provide food, beverages, programs, tip sheets or parking to the public at a race track in Illinois.~~

"Condition Book" – A booklet published by a thoroughbred racing association that sets out the conditions, purses and descriptions of future races.~~ (Synonym: Condition Sheet)~~

~~"Conditioned Race" – An overnight event in which entry eligibility is governed by previously specified qualifications.~~

"Condition Sheet" – A listing~~,~~ written by a standardbred racing association~~the Racing Secretary,~~ with the conditions a horse must meet in order to enter a particular race.

~~"Conditions" – Qualifications that determine a horse's eligibility to be entered in a particular race.~~

~~"Confirmed Test" – A second analytical procedure used to identify the presence of a specific drug or metabolite in a urine specimen.~~

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENT

"Console" – The totalizator status monitor that displays current race pool status information.

~~"Contest" – A competitive racing event on which pari-mutuel wagering is conducted.~~

~~"Contestant" – An individual participant in a contest.~~

"Controlled Substance" – Any substance listed in 21 USC 812.

"Coupled Entry" – Two or more horses~~contestants~~ in a race~~contest~~ that are treated as a single betting interest for pari-mutuel wagering purposes. (~~Also see~~ Synonymous with "Entry")

~~"Dam" – The female parent.~~

~~"Day" – A 24 hour period beginning at 12:01 a.m. and ending at 12:00 midnight.~~

"Dead Heat" – A race in which two or more horses cross the finish line in a tie.

"Declaration" – (Standardbred~~Harness~~) The process of entering a horse in a particular race. (Thoroughbred) The withdrawal of a horse entered for a race after the closing of entries. ~~(Synonym: scratch)~~

~~"Decoder" – A device and/or means to convert encrypted audio-visual signals and/or data into a form recognizable as the original content of the signals.~~

~~"Disqualification" – The act of barring a person from acting as an official or from starting or driving a horse in a race. In the case of a horse, the act of barring it from starting or altering its finishing position for betting and purse purposes.~~

~~"Disqualify" – To place a horse in a lower position, in the official order of finish in a race, than it actually finished due to an infraction of the rules.~~

~~"Downlink" – A receiving antenna coupled with an audio-visual signal receiver compatible with and capable of receiving simultaneous audio-visual signals and/or data emanating from an organization licensee or track outside Illinois, and includes the electronic transfer of received signals from the receiving antenna to TV monitors within the inter-track wagering facility.~~

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENT

~~"Early Closing Race" – A harness race in which entries close at least six weeks preceding the race.~~

~~"Eligible to Race" – Refers to a horse whose trainer has been granted stall space on association grounds or has been approved to stable elsewhere and to ship in to race at a specific race meeting.~~

~~"Encryption" – The scrambling or other manipulations of the audio-visual signals to mask the original video content of the signal and so cause those signals to be indecipherable and unrecognizable to any person receiving that signal without a decoder.~~

"Entry" – A horse made eligible to participate in a race or two or more horses entered in the same race when owned or trained by the same person or trained in the same stable or by the same management. For thoroughbred racing, entries of separate ownership shall be uncoupled.

~~"Equipment" – The items worn by or attached to a horse in a race.~~

"Exclusion" – The act of barring from all or part of the facilities of a licensee~~association grounds or the grounds~~ under the jurisdiction of the ~~Illinois Racing~~ Board. Unless specified in the ruling, an exclusion is unconditional and encompasses all facilities~~of the association grounds~~.

"Exhibition Race" – A race on which no wagering is permitted.

~~"Expired Ticket" – An outstanding ticket that was not presented for redemption within the required time period for which it was issued.~~

~~"Extended Pari-Mutuel Meeting" – A meeting at which no agricultural fair is in progress, of more than 10 days annually, with pari-mutuel wagering.~~

~~"Field" – All the horses that compete in a race; a number of horses grouped together as an entry for the purpose of pari-mutuel betting.~~

~~"Filly" – (Thoroughbred) A female horse under five years of age. (Harness) A female horse under four years of age.~~

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENT

"Financial Interest" – An interest that could result in directly or indirectly receiving a pecuniary gain or sustaining a pecuniary loss as a result of ownership or interest in a horse or business entity, or as a result of salary, gratuity or other compensation or remuneration from any person. The lessee and lessor of a horse have financial interests.

~~"Finish Line" – A real or imaginary line, perpendicular to the race course, that marks the end of a race. (Synonyms: finish wire, wire)~~

~~"Flat Race" – A race in which horses mounted by jockeys run over a course on which no obstacles are placed.~~

"Foreign Substance" – All substances except those that exist naturally in the untreated horse of normal physiological concentrations or substances, or metabolites thereof that are contained in equine feeds or feed supplements but do not contain any pharmacodynamic and/or chemotherapeutic agents or pharmaceutical aids.

~~"Forfeit" – Money due from a licensee because of error, fault, neglect of duty, breach of contract or a penalty imposed by the stewards or the Board.~~

~~"Foul" – An improper act committed by a jockey or a horse in the running of a race.~~

~~"Foul Claim" or "Claim of Foul" – An objection, alleging a foul, made to the stewards or their designee by a driver, jockey, owner or trainer of a horse involved in a race.~~

~~"Furosemide List" – A tabulation maintained by the Board of all horses approved to race with furosemide.~~

~~"Futurity" – (Harness) A stakes race in which the dam of the competing animal is nominated either when in foal or during the year of foaling. (Thoroughbred) A stakes race, for horses not older than three years of age, in which nominations are made before the horse becomes a three-year old.~~

~~"Gelding" – A castrated horse.~~

~~"Gender and Number" – Pronouns of one gender include the other and singular~~

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENT

~~words include the plural and vice versa, unless the context clearly indicates otherwise.~~

~~"Gimmick Race" – A race on which a form of multiple wagering is conducted, such as Daily Double, Quinella, Exacta, Perfecta, Trifecta, etc.~~

~~"Guaranteed Stakes" – A stakes race with a guarantee by the party offering it that the sum paid shall not be less than the amount named (see Stakes Race).~~

~~"Guest Association" – An association that offers licensed pari-mutuel wagering on contests conducted by another association (the host) in either the same or another state.~~

"Handicap" – (StandardbredHarness) A race in which starting positions are assigned on the basis of past performance so as to equalize the chance of all horses entered. (Thoroughbred) A race in which the weights carried by the entered horses are assigned by the Racing Secretary for the purpose of equalizing each horse's respective chance of winning.

"Handle" – The aggregate dollar amount of all pari-mutuel pools, excluding refundable wagers.

~~"Heat" – One of two or more installments of a race.~~

~~"Horse" – An all encompassing term for any equine of any age, including colt, filly, gelding, ridgeling, mare or stallion.~~

~~"Host Association" – The association conducting a licensed pari-mutuel meeting from which authorized contests or entire programs are simulcast.~~

~~"Hypodermic Injection" – Any injection into or under the skin or mucosa, including but not limited to intradermal injection, subcutaneous injection, submucosal injection, intramuscular injection, intravenous injection, intra-arterial injection, intra-articular injection, intrabursal injection, intraocular (intraconjunctival) injection.~~

~~"Ineligible Horse" – A horse not qualified to participate in a specific race under the rules or conditions of that race.~~

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENT

~~"Ineligible Person" – A person not qualified to participate in a specific racing activity under the rules of that activity.~~

"Illinois-Bred Colt" or "Illinois-Bred Filly" – A horse sired by a stallion owned by an Illinois resident and standing in the State of Illinois for the season in which the mare was bred.

"Illinois Foaled" – A horse dropped (born) in Illinois.

"Illinois Owned" – A horse owned by a resident of Illinois at the time the horse is declared in to start and at the time of the race.

~~"Illinois Racing Board" – Whenever the word "Board" is used, it means the Illinois Racing Board.~~

~~"Initial Screening" – A sensitive screening that determines the presence of drugs and their corresponding families.~~

~~"Interference" – Any act, which by design or otherwise, and regardless of actual contact, hampers or obstructs any competing horse or horses.~~

~~"Intertrack Wagering Facility" – The physical premises, structure and equipment utilized by an intertrack wagering location or intertrack wagering location licensee for the conduct of intertrack wagering or simulcast wagering.~~

"Inquiry" – An investigation or examination, conducted by the Board or Stewards, of~~into~~ a possible rule violation.

~~"Issued Ticket" – A wager for which the ticket issuing machine produces a hard copy.~~

~~"Jockey" – A rider of a thoroughbred race horse.~~

"Laboratory" – The Board's~~Illinois Racing Board~~ Laboratory or an independent testing laboratory contracted by the Board.

~~"Late Closing Race" – A race for a fixed amount to which entries close less than six weeks and more than three days before the race is to be contested.~~

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENT

~~"Lessee" – A licensed owner whose interest in a horse is by lease agreement.~~

~~"Licensee" – A person or legal entity that has been issued an occupation license to participate in racing under the jurisdiction of the Board. (Synonym: Occupation Licensee)~~

"Maiden" – (Standardbred~~Harness~~) A horse that has never won a heat or race, at the gait it is entered to start, for which a purse was offered. (Thoroughbred) A horse that has never earned a winner's purse in a flat race at a recognized meeting in any country.

~~"Maiden Race" – A contest restricted to nonwinners.~~

~~"Mare" – (Harness) A female horse four years of age or older. (Thoroughbred) A female horse five years of age or older.~~

~~"Match Race" – A race between two horses under conditions agreed to by their owners.~~

~~"Matinee Race" – A race with no entrance fee and where the prizes, if any, are other than money.~~

~~"Meeting" – The specified period and inclusive dates each year during which an association is authorized to conduct racing by approval of the Board.~~

~~"Minor" – Any person under the age of 18.~~

"Minus Pool" – A minus pool occurs when the amount of money to be distributed on winning wagers is in excess of the amount of money comprising the net pool.

~~"Month" – A calendar month.~~

~~"Mutuel Field" – Two or more horses in a contest that are treated as a single betting interest for pari-mutuel wagering purposes when the total number of betting interests exceeds the number that can be handled individually by the pari-mutuel system.~~

~~"Mutuel Manager" – The racing official designated by the organization licensee to supervise its pari-mutuel department.~~

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENT

"Net Pool" – The amount of gross wagers~~ticket sales~~ less refundable wagers, purses, pari-mutuel taxes, surcharges, and statutory commissions.

"Nominator" – The person or entity in whose name a horse is nominated for a race or series of races.

~~"Nominee" – A horse nominated to a stakes and/or handicap race.~~

"Nomination" – The naming of a horse to a stakes and/or handicap race. In a futurity, the naming of a foal in utero to a certain race or series of races, eligibility to which is conditioned on the payment of a fee at the time of naming and the payment of subsequent sustaining fees and/or starting fees.

"Objection" – A claim of foul lodged with the Stewards~~stewards~~ or their designee by a jockey of a horse in a race immediately after a race and before the race is made official, or a claim of foul lodged with the patrol judge in a starting car, by a driver of a horse in a race, immediately after the race and before the driver dismounts. (Synonymous with "Foul Claim" or "Claim of Foul")

~~"Odds Board" – A large sign-board structure, located in the infield of a race track, upon which the approximate odds are prominently displayed. (Synonym: Tote Board)~~

~~"Off Bell" – The bell, operated by the stewards, that signals the locking of ticket-issuing machines. The bell that rings as a race starts.~~

"Official Order of Finish" – The order of finish of the horses in a race~~contest~~ as declared official by the Stewards~~stewards~~.

~~"Official Starter" – The official responsible for dispatching horses to begin a race.~~

"Official Time" – The elapsed time from the moment the first horse crosses the starting point until the first horse crosses the finish line.

~~"Official Veterinarian" – A veterinarian employed by the Board or employed by an organization licensee and approved by the Board.~~

~~"Off Time" – The moment at which, on the signal of the official starter, the doors~~

~~of the starting gate are opened, officially dispatching the horses in each contest.~~

~~"Off-Track Stabling" – Any farm, any Illinois race track not licensed by the Board in the current calendar year, or any other location designated and approved for the purpose of stabling horses to be raced at a race track under the jurisdiction of the Board.~~

~~"Organization Licensee" – Any person or entity receiving an organization license from the Board to conduct a race meeting or meetings.~~

"Outstanding Ticket" – An uncashed winning or refundable pari-mutuel ticket that was not redeemed during the performance for which it was issued and that must be cashed within the statutory time limit.

"Overnight Event" – A race~~contest~~ for which entries close at a time set by the racing secretary. (Synonymous with~~Synonym:~~ Overnight Race or~~,~~ Overnight)

"Owner" – A person~~ or stable~~ that has property rights in a horse~~ or horses~~, by ownership, beneficial interest or lease of a horse~~ or horses~~.

"Paddock" – An enclosed area in which standardbred~~harness~~ horses scheduled to compete in a race~~contest~~ are confined and thoroughbred horses are saddled prior to racing.

~~"Pari-Mutuel Auditor" – An employee of the Board's Pari-Mutuel Audit Unit.~~

~~"Pari-Mutuel Audit Unit" – The State Director of Mutuels and the Pari-Mutuel Auditors.~~

~~"Pari-Mutuel System" – The manual, electro-mechanical, or computerized system and all software (including the totalizator, account betting system and off-site betting equipment) that is used to record wagers and transmit wagering data.~~

~~"Patron" – A member of the public present on the grounds of a pari-mutuel association during a meeting for the purpose of wagering or to observe racing.~~

"Payout~~Payoff~~" – The amount of money payable on winning wagers. (Synonymous with "Payoff")

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENT

~~"Person" – Any individual, partnership, corporation or other association or entity.~~

~~"Pharmaceutical Aids" – Polyethylene glycol, polyoxyethylene glycol, polyalkylene glycol, polyoxyalkylene glycol, polysorborates, sorbitans and their analogues and derivatives.~~

~~"Pool" – Total amount of money wagered on all horses in a race to finish in a specific position or positions.~~

"Post" – The place on a race course from which the horses start in a race.

"Post Position" – The pre-assigned positions from which the horses leave the starting gate.

"Post Time" – The scheduled starting time of a race~~contest~~.

"Prescription Drugs" – Any chemical substance that is prohibited from being dispensed by any federal or Illinois law without a valid prescription.

"Prima Facie Evidence" – Evidence that, until its effect is overcome by other evidence, will suffice as proof of the fact in issue.

"Profit" – The net pool after deduction of the amount wagered on the winners.

"Profit Split" – A division of profit among separate winning betting interests or winning betting combinations resulting in two or more payout~~payoff~~ prices.

"Program" – The published listing of all races~~contests~~ and horses~~contestants~~ for a specific day's racing. The races of a particular day, considered together.

"Protest" – An objection lodged with the Stewards~~stewards~~ of any infringement of the rules of racing.

"Purse" – The amount of money won by the owner of any horse~~competitor~~ in a race.

~~"Purse Race" – A race for money to which the owners of the competing horses do not contribute.~~

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENT

"Qualifying Race" – A race for the purpose of viewing horses for speed, racing manners and competitiveness in which no purse money is offered and on which no pari-mutuel wagering is conducted.

~~"Quarter Horse" – A horse registered with the American Quarter Horse Association of Amarillo, Texas.~~

"Race" – A contest between horses at a licensed meeting for purse, stakes, prize or reward. (Synonymous with "Contest")

~~"Race Course" – The actual racing surface.~~

~~"Race on the Flat" – (see Flat Race)~~

~~"Race Track Enclosure" – Association grounds, owned, leased or controlled by the racing association, whether or not enclosed by a fence and including, but not limited to, track parking lots.~~

~~"Race Track Operator" – Any person, association or corporation licensed by the Illinois Racing Board to conduct horse racing within Illinois for any stake, purse or reward.~~

~~"Race Meeting" – The period of time, whether for consecutive or nonconsecutive dates, for which an organization license has been issued.~~

~~"Racing Association" – Any person, partnership, corporation, or other entity licensed by the Board to conduct a race meeting. (Synonyms: Organization Licensee or Race Track Operator)~~

~~"Racing Interest" – Any individual owner, partnership of owners, or corporation that participates as an owning entity or nominator of a race horse.~~

~~"Racing Jurisdiction" – A governmental regulatory body that, by statute or ordinance, regulates pari-mutuel racing.~~

~~"Racing Soundness Exam" – The physical examination for racing soundness and health of each horse by an official veterinarian.~~

~~"Recognized Meeting" – Any race meeting with regularly scheduled races~~

~~licensed by and conducted under rules promulgated by a governmental regulatory body, including meetings in foreign countries.~~

~~"Record" – The fastest time made by a horse in a race that horse won or in a performance against time.~~

~~"Refunded Ticket" – A ticket that has been refunded for the value of a wager that is no longer valid (e.g., when a horse has been scratched or the wagering canceled).~~

"Restricted Area" – An area on the facilities~~grounds of a race track~~ where admission can be obtained only upon presentation of valid Board credentials. Restricted~~Such~~ areas shall include, but are not limited to, the stable areas, detention barn, jockey or driver room, paddock, race course, Stewards' stand, and pari-mutuel department.

"Result" – That part of the official order of finish used to determine the pari-mutuel payout~~payoff~~ pools for each individual race~~contest~~.

"Retention" – The total amount of money, excluding breakage, withheld from each pari-mutuel pool, as authorized by statute or rule. (Synonymous with "Takeout")

~~"Ruled Off" – Synonymous with suspended or excluded.~~

~~"Rules" – Regulations promulgated by the Board pursuant to the Horse Racing Act.~~

~~"Ruling" – A written decision, determination, and/or order of the stewards.~~

~~"Satellite Transponder" – A leased space segment of time of an earth-orbit communication satellite.~~

"Scoring" – Preliminary warm-ups by horses.

"Scratch" – The withdrawal of a horse from a race after the closing of entries.

"Scratch Time" – The time designated by the organization licensee~~racing association~~ as a deadline for an owner or trainer to file a request for a scratch.

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENT

~~"Simulcast" – The live audio and visual transmission of a contest to another location for pari-mutuel wagering purposes.~~

"Single Price Pool" – An equal distribution of profit to winning betting interests or winning betting combinations through a single payout~~payoff~~ price.

"Stable Name" – The assumed name registered with the Board~~or nom de course~~ under which a person or stable races horses.

~~"Stakes" – All the fees paid by subscribers to a stakes race, which may include the nomination, eligibility, supplemental, entry or starting fees or any fee that is required by the conditions of a race.~~

"Stakes Race" – A race that is closed to nominees more than 72 hours before it is run, with a purse that includes all stakes payments in addition to the money added by the organization licensee~~racing association~~.

"Starter" – ~~The racing official whose duty it is to get the horses away to a fair start in a race.~~ Any horse that ~~participates, i.e.,~~ starts~~,~~ in a race.

~~"Starter Race" – An overnight event, under allowance or handicap conditions, restricted to horses who have previously started for the designated claiming price or less, as stated in the conditions of the race.~~

~~"State Director of Mutuels" – The individual representing the Board in the supervision and verification of the pari-mutuel wagering pool totals for each racing day.~~

"State Veterinarian" – A veterinarian employed by the Board.

~~"Steeplechase Race" – A contest in which horses mounted by jockeys run over a course on which jumps or other obstacles are placed.~~

~~"Steward" – Duly appointed top official at a race track with the power to fine, suspend, and rule off persons licensed in racing.~~

~~"Stewards' Stand" – The room, generally located on the roof of a race track grandstand or clubhouse, from which the State stewards and association stewards~~

~~observe the running of races.~~

~~"Subscription" – The nomination or entry of a horse in a stakes race.~~

~~"Sulky" – A dual-shaft, dual wheel racing vehicle.~~

~~"Suspension" – A penalty in which the rights and privileges of a licensee are withdrawn for a specified period of time. An occupation licensee whose license is suspended is prohibited from engaging in any licensed occupation and is excluded from all grounds under the jurisdiction of the Board, unless otherwise specified in the ruling or order (example: suspended from riding or driving).~~

~~"Sweepstakes" – A race where the owners of horses entered or engaged for the race contribute to a purse to which money or any other prize may be added, and nominations to which close 72 hours or more before starting.~~

~~"Takeout" – The total amount of money, excluding breakage, withheld from each pari-mutuel pool, as authorized by statute or rule.~~

~~"Test Level" – The concentration of a foreign substance found in a test sample.~~

~~"Test Sample" – Any substance, including but not limited to, blood or urine taken from a horse or licensee for the purpose of testing for foreign or controlled substances.~~

~~"Threshold Level" – The concentration of a foreign substance found in a test sample.~~

~~"Ticket Issuing Machine" – A machine that prints hard copies of wagers.~~

~~"Totalizator" – An electronic device that automatically registers the wagers made on each horse or pool and prints or issues a ticket representing each wager or wagers.~~

"Totalizator System" – A computerized system that is used to record wagers, transmit wagering data, and calculate payouts.

"Totalizator System Licensee" – Any person, corporation, company, association or any other entity that sells, leases, or operates any portion of a totalizator

system~~equipment~~ and is licensed by the Board.

~~"Tote Room" – The room at a race track in which the totalizator system's computer is housed.~~

~~"Tout" – Someone who furnishes information concerning selection of a horse for wagering purposes, or predicts the outcome of a race for wagering purposes, in exchange for a consideration.~~

~~"Trial Race" – Part of a series of contests in which horses participate for the purpose of determining eligibility for a subsequent contest.~~

~~"Uplink" – An earth station broadcasting facility, whether mobile or fixed, that is used to transmit audio-visual signals and/or data on FCC-controlled frequencies, and includes any electronic transfer of audio-visual signals from within a racing enclosure to the location of the transmitter at the uplink.~~

~~"Utilities" – Programs that are provided by computer vendors to perform tasks such as duplication of program tapes, modification of master files, and access to passwords.~~

~~"Validation" – The act or process by which the Board's licensing office at a race meeting stamps or otherwise marks the licensee's identification card, thereby allowing the licensee access to restricted areas during a specific race meeting.~~

"Vendor" – A seller of feed, medication, stable supplies, or other merchandise in restricted areas.

"Veterinarian" – A veterinary practitioner licensed~~ as such~~ by the Illinois Department of Financial and Professional Regulation and the Board.

~~"Veterinarian's List" – A tabulation maintained by the State Veterinarian of horses that are not permitted to enter a race until their names are removed from the list.~~

~~"Walkover" – An event in which all horses but one in a race are withdrawn, leaving that horse to walk the prescribed course at the distance of the race. A walkover may be between two or more horses if they belong to a single interest.~~

~~"Week" – A calendar week.~~

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENT

"Weigh-In" – The presentation of a jockey to the Clerk of Scales for weighing after a race.

"Weigh-Out" – The presentation of a jockey to the Clerk of Scales for weighing prior to a race.

"Weight for Age" – A race in which a fixed scale is used to assign the weight to be carried by individual horses according to age, sex, distance of the race, and season of the year.

"Winner" – The horse whose nose reaches the finish line first or is placed first through disqualification. If there is a dead heat for first, those horses shall be considered winners.

~~"Wire" – See Finish line.~~

~~"Year" – A calendar year.~~

(Source: Amended at 43 Ill. Reg. _____, effective _____)

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Illinois Race Track Rules for Fire Safety

2) Code Citation: 11 Ill. Adm. Code 403

3)

| Section Numbers: | Proposed Actions: |
|---|---|
| 403.10 | Amendment |
| 403.20 | Repealed |
| 403.30 | Repealed |
| 403.40 | Repealed |
| 403.50 | Repealed |
| 403.60 | Repealed |
| 403.70 | Repealed |
| 403.80 | Repealed |

4) Statutory Authority: Implementing and authorized by Section 9(b) of the Illinois Horse Racing Act of 1975 [230 ILCS 5].

5) A Complete Description of the Subjects and Issues Involved: Pursuant to Executive Order 2016-13, the Board is amending and repealing Parts under the "Cutting the Red Tape Initiative." Part 403, adopted in 1976, was identified for amending during the Board's extensive review of its regulations. Section 10 will be amended to reference Part 150 of the Office of the State Fire Marshall. Sections 20 through 80 will be repealed. The rules in Part 150 titled "Race Track Rules for Fire Safety" are identical to the Board's rules for fire safety. The Board is referencing the State Fire Marshall's rules and eliminating the exact duplication of these rules.

6) Any published studies or reports, along with sources of underlying data, that were used when composing this rulemaking: 41 Ill. Adm. Code 150

7) Will this 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? No

11) Statement of Statewide Policy Objective: No local governmental units will be required to increase expenditures.

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENTS

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Written comments should be submitted, within 45 days after this Notice, to:

Mickey Ezzo
Illinois Racing Board
100 West Randolph
Suite 5-700
Chicago IL 60601

312/814-5017
Mickey.ezzo@illinois.gov

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: None

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

C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda which this rulemaking was summarized: This amendment was not included on either of the 2 most recent agendas because the Illinois Racing Board did not anticipate the filing of this rulemaking at the time for submittal of a regulatory agenda.

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

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENTS

TITLE 11: ALCOHOL, HORSE RACING, LOTTERY, AND VIDEO GAMING
SUBTITLE B: HORSE RACING
CHAPTER I: ILLINOIS RACING BOARD
SUBCHAPTER b: RULES APPLICABLE TO ORGANIZATION LICENSEES

PART 403
ILLINOIS RACE TRACK RULES FOR FIRE SAFETY

Section
403.10 Purpose
403.20 Scope (Repealed)
403.30 Enforcement (Repealed)
403.40 Definitions (Repealed)
403.50 General Construction Requirements (Repealed)
403.60 General Occupancy Requirements (Repealed)
403.70 Fire Protection Requirements (Repealed)
403.80 Operating Requirements (Repealed)

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

SOURCE: Illinois Race Track Rules for Fire Safety, no date; codified at 5 Ill. Reg. 10882; amended at 43 Ill. Reg. _____, effective _____).

**Section 403.10 Purpose**

The enforcement of the Race Track Rules for Fire Safety (41 Ill. Adm. Code 150) shall be under the jurisdiction of the Office of the State Fire Marshal. These rules have been established to enforce a reasonable level of fire safety at race tracks to reduce the potential for loss of human life, horses, and track operation.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

**Section 403.20 Scope (Repealed)**

~~These rules shall apply to all facilities which are part of a race track complex where the complex is utilized primarily for the purpose of conducting a horse racing meet where pari-mutuel wagering is authorized.~~

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENTS

(Source: Repealed at 43 Ill. Reg. _____, effective _____)

**Section 403.30 Enforcement (Repealed)**

~~a) The enforcement of these rules shall be under the jurisdiction of the Office of the State Fire Marshal of the Division of Fire Prevention, Illinois Department of Law Enforcement.~~

~~b) New buildings constructed after the adoption of these rules shall comply fully with all provisions of these rules.~~

~~c) Buildings already in existence at the time of the adoption of these rules shall be made to comply immediately with the rules under any one of the following circumstances:~~

~~1) If, in the opinion of the State Fire Marshal, lack of compliance presents an imminent danger to human life, horses, or continued operation of the race track.~~

~~2) If additions, alterations or repairs are made in any period of 12 months, costing in excess of 25% of the current replacement cost of the building.~~

~~3) If a building is increased in floor area by more than 10% or if the building is increased in the number of stories.~~

~~4) If the basic occupancy classification of a building is changed in such a manner as to increase the fire hazard.~~

~~d) Existing track facilities shall meet the following minimum fire safety requirements within the times indicated from the date of adoption of these rules:~~

~~1) Provide adequate exits, exit signs, and emergency lighting for grandstand structures within one year in compliance with Sections 5.11 through 5.13. (11 Ill. Adm. Code Sections 403.50(a)(1) through (3).~~

~~2) Provide a complete system of manual fire reporting stations within one year for all buildings as provided in Section 7.81. (11 Ill. Adm. Code Section 403.70(h)(1)).~~

~~3) Provide permanent type identification or signs above each fire extinguisher, fire hose station, and fire reporting station within ninety days.~~

~~4) Install automatic sprinklers within two years in grandstands as required in Sections 5.14 and 5.15. (11 Ill. Adm. Code Sections 403.50(a)(4) and (5))~~

~~5) Combustible barns shall either be replaced with noncombustible barns in accordance with these rules at a rate of not less than 20% per year of the total number of existing combustible barns or shall be equipped with automatic sprinklers at a rate of not less than 20% per year of the total number of existing combustible barns.~~

~~6) Combustible structures other than barns and grandstands shall be protected by automatic sprinklers if their size, type of construction, and occupancy are deemed hazardous.~~

~~7) Fire hydrants shall be provided as required in Section 7.21 (11 Ill. Adm. Code Section 403.70(b)(1)). Standpipes shall be installed in grandstands as provided in Section 7.41. (11 Ill. Adm. Code Section 403.70(d)(1)). Class B and C barns not protected by automatic sprinklers shall be provided with hose stations in accordance with Sections 7.51 through 7.53. (11 Ill. Adm. Code Sections 403.70(e)(1) through (3)) All installations shall be completed within two years.~~

~~8) Compliance with hay storage Sections 6.41 (11 Ill. Adm. Code Sections 403.60(d)(1) through (3)) through 6.43 shall be required within one year.~~

~~e) Within one year, unsprinklered dormitories shall be equipped with automatic fire alarm systems with automatic fire detectors in every apartment or room, (or the equivalent in terms of fire alarm and fire detection effectiveness if approved by the Fire Marshal) unless the apartments or rooms are separated by at least 3/4-hour fire resistant construction and each apartment or sleeping room has a direct exit to the outside.~~

~~f)~~

~~1) The Board and the State Fire Marshal shall be notified in writing, prior to construction of structures, additions, alterations or occupancy changes covered under Section 3.3. (11 Ill. Adm. Code Section 403.30(c))~~

~~Construction shall not start until approved by the Board and the State Fire Marshal.~~

~~2)~~ ~~These rules shall not nullify any local codes or regulations. If a conflict exists, the more stringent requirement shall be applicable. In areas not specified and not covered by these rules or by local codes, compliance with the provisions of one of the nationally recognized model building codes shall be acceptable.~~

~~g)~~ ~~It is the intent of the State Fire Marshal that if any section, paragraph, sentence or word of these rules be declared invalid for any reason, all other portions of the rules shall still apply.~~

~~h)~~ ~~The owner of the facility or his designated agent shall be responsible for compliance with these rules and other recognized good practices and applicable regulations in order to maintain fire safe conditions. The omission of such recognized good practices or applicable regulations from these rules shall not be considered reason for noncompliance.~~

~~i)~~ ~~The specific requirements of these rules may be modified by the State Fire Marshal to allow alternative arrangements that will secure as nearly equivalent safety from fire as practical; but in no case shall the modification afford less safety from fire than compliance with the corresponding provisions contained in these rules.~~

(Source: Repealed at 43 Ill. Reg. _____, effective _____)

**Section 403.40 Definitions (Repealed)**

~~"Automatic": As applied to fire protection shall mean a device or system activated by a fire and performing its intended function without the necessity of human intervention.~~

~~"Barn": A building used primarily for horses which may or may not have sleeping rooms.~~

~~"Building": A structure covered by a roof, separated from other structures by space or fire walls and designed for housing people, animals or equipment.~~

~~"Building Area": The maximum horizontal projected area of the building at or above grade.~~

~~"Building Construction": Types of building construction such as fire resistive, heavy timber, noncombustible, ordinary and wood frame, shall be as defined in NFPA Standard No. 220-1961, Standard Types of Building Construction.~~

~~"Combustible": A material which does not comply with the definition of noncombustible.~~

~~"Combustible Wall": A wall constructed of combustible structural elements.~~

~~"Dormitory": A building or a portion of a building containing sleeping rooms, rest rooms, laundries and other normal housekeeping facilities.~~

~~"Emergency Lighting": Lighting designed to come on automatically in the event of failure of the primary electric power supply.~~

~~"Exit": An opening in an exterior wall or an access to a protected way of travel to allow occupants to escape from a building with reasonable safety.~~

~~"Fire Detection System": A system designed to automatically detect a fire and alert those responsible for taking emergency action.~~

~~"Fire Door": A listed door, frame, hardware, and accessories designed to provide protection against passage of fire for a specified period of time.~~

~~"Fire Hose Station": A cabinet, rack, or reel where the fire hose is stored for use in manual fire fighting.~~

~~"Fire Alarm or Notification System": A system designed to alert building occupants to a fire.~~

~~"Fire Patrols": Patrols by track personnel assigned specifically to check building areas for fires or fire hazards. Supervised patrols utilize portable clocks or other means to assure that the patrolman covers all areas on a regular basis. Freelance patrols leave the route and areas covered to the discretion of the patrolman.~~

~~"Fire Reporting System": A communications system for public use designed to~~

~~notify those responsible for taking emergency action that a fire is in progress.~~

~~"Fire Wall": A self supporting noncombustible wall having at least two hour fire resistance.~~

~~"Flammable Liquid": A liquid having a flash point below 100ºF and other properties as defined in NFPA Standard No. 30-1973, Flammable and Combustible Liquids Code.~~

~~"Grandstand": The structure for seating spectators, including communicating areas used for betting, club rooms, restaurants, concession stands, rest rooms, and other related facilities.~~

~~"Hay Storage": Areas used for the storage of hay or straw.~~

~~"Heating System": A system which provides comfort heating for building occupants.~~

~~"Hood and Exhaust Ventilation System": A system for exhausting heat and fumes from ranges, grills, and other cooking equipment.~~

~~"Listed": Equipment or materials included in a list published by a nationally recognized testing laboratory inspection agency, or other organization concerned with product evaluation, that maintains periodic inspections of production of listed equipment or materials, and whose listing states either that the equipment or material meets nationally recognized standards or has been tested and found suitable for use in specified manner.~~

~~"Manual": As applied to fire protection shall mean a device or system which requires human operation to perform its intended function.~~

~~"Masonry Wall": A wall constructed of brick, adobe, concrete, hollow blocks, solid blocks, or stone.~~

~~"NFPA": National Fire Protection Association, 470 Atlantic Avenue, Boston, Massachusetts 02210~~

~~"Noncombustible": A material that will not ignite or flame when inserted for five minutes in a furnace heated to 1380ºF.~~

~~"Noncombustible Wall": A wall constructed of masonry, concrete, metal, metal lath and plaster, gypsum board, glass block, or similar noncombustible materials.~~

~~"Protected Combustible Construction": As defined in NFPA Standard No. 220-1961, for protected ordinary construction and protected wood frame construction.~~

~~"Protected Non-Combustible Construction": As defined in NFPA Standard No. 220-1961.~~

~~"Recognized Standards": Standards of performance testing utilized by a nationally recognized testing agency such as Underwriters Laboratories, Inc., or the Factory Mutuel System, or standards of good practice as promulgated by agencies such as the National Fire Protection Association.~~

~~"Roof Covering": The covering applied to a building roof for weather resistance, fire resistance, or appearance.~~

~~"Self Closing": As applied to a fire door, a door that is normally closed and is equipped with an approved listed device to automatically re-close the door after opening.~~

~~"Sleeping Room": Any room in which occupant(s) is permitted to have sleeping facilities.~~

(Source: Repealed at 43 Ill. Reg. _____, effective _____)

**Section 403.50 General Construction Requirements (Repealed)**

~~a)~~ ~~Grandstands~~

~~1)~~ ~~Grandstands shall comply with the requirements of NFPA Standard No. 102-1972, Tents, Grandstands and Air Supported Structures Used for Places of Assembly, and NFPA Standard No. 101-1973, Life Safety Code, except as modified in Sections 5.12 through 5.13. (11 Ill. Adm. Code Sections 403.50(a)(2) and (3))~~

~~2)~~ ~~Exits from enclosed grandstand spaces which empty into open grandstand spaces from which occupants can make their way to a safe location or~~

~~which are a safe area of refuge can be counted as part of the required exit capacity for the enclosed spaces.~~

~~3)~~ ~~The occupant load of enclosed grandstand spaces shall be based on the seating capacities of these spaces plus an allowance for standees' floor area, if any, based on one person for every 10 sq. ft. of net standing floor area. Required aisle space serving the fixed seats shall not be used when computing net standing floor area.~~

~~4)~~ ~~Automatic sprinklers shall be installed in accordance with Section 7.3 (11 Ill. Adm. Code Section 403.70(c)) throughout all enclosed grandstand areas of unprotected combustible construction. If the roof structure alone is combustible, sprinklers shall be required only in all concealed roof spaces.~~

~~5)~~ ~~Automatic sprinklers shall be installed in all grandstands in the following locations:~~

~~A)~~ ~~All spaces used for storage and maintenance having an area of over 100 sq. ft. and that are not enclosed with at least 1-hour fire resistive construction and fire doors. Automatic sprinklers may be supplied by the domestic water system up to a limit of 20 sprinklers per space provided that a density of at least .15 gallons per minute (GPM) per sq. ft. in the space can be provided. Such space shall also be enclosed with at least 1-hour fire resistive construction and an approved self-closing fire door when deemed necessary by the Fire Marshal.~~

~~B)~~ ~~Inside combustible concealed spaces of over 2500 sq. ft. fire area.~~

~~C)~~ ~~All spaces used for displays or exhibitions or storage of display or exhibition materials.~~

~~D)~~ ~~All kitchens with interior finish having a flame spread rating over 25.~~

~~E)~~ ~~All interior spaces with an occupancy load of 200 persons or over 4000 sq. ft. in area, which have interior wall and ceiling finish having a flame spread over 75, unless the interior wall finish is of~~

~~solid lumber at least 1 inch thick.~~

~~F)~~ ~~All interior spaces and rooms under 4000 sq. ft. having wall or ceiling finish with a flame spread rating of more than 100.~~

~~G)~~ ~~All interior exitways, including corridors, stairwells, and other paths to the exterior which have interior wall or ceiling finish with a flame spread of over 25.~~

~~6)~~ ~~Emergency fire escape provisions shall be provided from the stewards stand and press areas where required, and subject to the State Fire Marshal's approval.~~

~~b)~~ ~~Barns~~

~~1)~~ ~~Construction Classification Structures used as barns shall be classified as follows:~~

~~A)~~ ~~Class A – Walls and roof of noncombustible materials. Stall dividers of noncombustible material or two inch dimension hardwood lumber. Use of combustible kick boards shall not cause otherwise noncombustible stall dividers to be classed as combustible.~~

~~B)~~ ~~Class B – Walls masonry; roof of combustible materials.~~

~~C)~~ ~~Class C – Walls and roof of combustible material.~~

~~2)~~ ~~Size Limitations:~~

~~A)~~ ~~Buildings used as barns constructed after the adoption of these rules shall not exceed in area the values in the following table:~~

~~Barn Size Limitations~~
~~Maximum Building Area in Square Feet~~

| ~~Construction Class~~ | ~~Non-Sprinklered~~ | ~~Sprinklered~~ |
|---|---|---|
| ~~A~~ | ~~Unlimited~~ | ~~Unlimited~~ |

| | | |
|---|---|---|
| ~~B~~ | ~~Not Permitted~~ | ~~18,000~~ |
| ~~C~~ | ~~Not Permitted~~ | ~~12,000~~ |

~~B)~~ ~~Class B and Class C construction without sprinkler protection shall not be permitted.~~

~~3)~~ ~~Height Limitations: The height of barns used primarily for horses shall not exceed one story. Where dormitory rooms are located above the barn structure the structure shall not exceed 2 stories in height.~~

~~4)~~ ~~Spacing Requirements:~~

~~A)~~ ~~Structures enumerated in Section 5.2 (11 Ill. Adm. Code Section 403.50(b)) constructed after the adoption of these rules shall be separated by the following minimum distances:~~

~~Spacing Between Barns in Feet~~

| ~~Types of Facing Walls~~ | ~~Masonry~~ | | |
|---|---|---|---|
| ~~Masonry~~ | ~~25~~ | ~~Noncombustible~~ | |
| ~~Noncombustible~~ | ~~25~~ | ~~35~~ | ~~Combustible~~ |
| ~~Combustible~~ | ~~35~~ | ~~50~~ | ~~75~~ |

~~B)~~ ~~A reduction in spacing of 50% shall be permitted for a masonry wall without openings and with a parapet extending at least 18" above any combustible roof construction within 10 ft. of the parapet and a reduction of spacing of 33⅓% shall be permitted for sprinklered combustible barns in accordance with Section 7.3 (11 Ill. Adm. Code Section 403.70(c))~~

~~5)~~ ~~Fire Walls: Barns divided by a fire wall having at least two-hour fire resistance shall be considered as separate buildings in applying the size limitations of Section 5.22 (11 Ill. Adm. Code Section 403.50(b)(2))~~

~~A)~~ ~~Fire walls when required shall extend through combustible roofs and walls. The height of the wall shall be at least 32" above the roof and the side shall extend at least 24" beyond combustible exterior walls.~~

~~B) All openings in fire walls separating barns shall be protected by self-closing 1½-hour B-label fire doors.~~

~~6) Exits: Barns shall be designed so that there is a doorway leading directly outside within 100 ft. travel distance of all portions of the building. It shall be possible to exit from any point in the building in at least two directions; dead ends longer than 30 ft. shall not be permitted. Travel distance may be increased to 150 ft. when the barn is of masonry or masonry veneer construction and is protected by an automatic sprinkler system.~~

~~A) Doorways provided to meet the requirements of Section 5.26 (11 Ill. Adm. Code Section 403.50(b)(6)) shall be at least 8 ft. high and 6 ft. in width.~~

~~B) All latches on exterior barn doors shall be operable from inside the building.~~

~~7) Smoke Relief Venting: Stall areas in unsprinklered barns shall be provided with exterior openings for smoke relief, located at a high level to permit natural removal of heat and combustion products. Vent openings shall be provided on the basis of 1 sq. ft. of venting area for each 60 sq. ft. of stall floor area.~~

~~e) Sleeping Facilities~~

~~1) Dormitories, tack rooms, and other facilities used for sleeping purposes shall be of at least ¾-hour fire resistant protected construction and shall comply with applicable provisions of NFPA Standard No. 101-1973, Life Safety Code.~~

~~2) Fire Separation: Individual sleeping rooms shall be separated from each other and from barns, stalls, laundry rooms, rest rooms, storage rooms, and similar occupancies by walls, floors, and ceilings having at least a ¾-hour fire resistive rating. Any wall openings shall be protected by a self-closing solid core wood or hollow metal door, 1¾" thick.~~

~~3) Fire Detection: An automatic fire alarm and detection system complying with Section 7.7 (11 Ill. Adm. Code Section 403.70(g)) shall be provided~~

~~in all sleeping rooms, heating rooms, kitchens, laundry and storage rooms. A fire detection system shall not be required in sleeping facilities protected by an automatic sprinkler system complying with Section 7.3, (11 Ill. Adm. Code Section 403.70(c)) or in sleeping rooms of at least ¾-hour fire resistant construction with a direct exit to the exterior.~~

~~d) Roof Coverings~~

~~All track buildings shall have roof coverings meeting Underwriters Laboratories, Inc. requirements for Class C roofing or better.~~

~~e) Insulation~~

~~Track buildings shall not use combustible insulating materials installed so that the surface of the insulation is exposed.~~

(Source: Repealed at 43 Ill. Reg. _____, effective _____)

**Section 403.60 General Occupancy Requirements (Repealed)**

~~a) Heating and Cooking Equipment~~

~~1) Heating and cooking equipment shall be listed by Underwriters Laboratories, Inc. or the American Gas Association. Installation of the equipment and related fuel storage and piping facilities shall be in accordance with recognized standards and good practices as found in the following standards: NFPA Standard No. 54-1974, National Fuel Gas Code; NFPA Standard No. 58-1974, Storage and Handling of Liquefied Petroleum Gases and NFPA Standard No. 70-1975, National Electrical Code.~~

~~2) Cylinders or tanks of compressed fuel gases shall not be permitted in grandstands or in buildings except as provided in NFPA pamphlet 58, 1974.~~

~~3) Sleeping rooms shall be heated by steam, hot water, warm air, electricity or approved individual gas-fired heating units.~~

~~4) Steam and hot water boilers and furnaces shall be located in a separate~~

~~building or enclosure with fire resistive floors, walls, ceilings and doors. Enclosures around high pressure boilers (operating at over 15 per square inch (psi) gauge pressure) shall have two-hour fire resistance with openings protected by 1½-hour fire doors; enclosures around low pressure boilers (operating below 15 per square inch (psi) gauge pressure for steam and 30 per square inch (psi) gauge pressure for hot water) and furnaces shall have ¾-hour fire resistance with openings protected by ¾-hour fire doors.~~

~~5) Ranges, deep fat fryers and grills shall have a hood and exhaust ventilation system to the outside as outlined in NFPA Standard No. 96-1973, Ventilation of Commercial Cooking Equipment.~~

~~6) Hood and Vent Systems: All hood and vent systems over cooking equipment shall be protected by a listed automatic fire extinguishing system installed according to NFPA Standard No. 96-1973, Ventilation of Commercial Cooking Equipment. Actuation of the system shall transmit an alarm to a constantly attended location.~~

~~b) Electrical System~~

~~1) New electrical systems shall be installed by qualified electricians in accordance with NFPA Standard No. 70-1975, the National Electric Code. Existing electrical systems installed in accordance with the requirements of the National Electric Code in effect at the time of installation will not be required to be replaced provided they are properly maintained, and provided that electrical systems shall be updated to conform to NFPA Standard No. 70-1975 as buildings are updated in accordance with Section 3.3 of these rules (11 Ill. Adm. Code Section 403.30(c))~~

~~2) Plug receptacles in electrical systems in barns are permitted provided that the receptacles are at least 4 ft. above floor level (centered between stalls) and of grounded type. In addition, electrical equipment (unless double insulated) shall be of the 3 wire (grounded) type.~~

~~3) Electrical systems in sleeping rooms shall be provided with at least one double plug receptacle having two standard outlets.~~

~~c) Flammable Liquids~~

~~1) Flammable liquids shall be stored and handled in accordance with recognized standards and good practices as found in NFPA Standard No. 30-1973, Flammable and Combustible Liquids Code.~~

~~2) No flammable liquids shall be stored in the grandstand structure. Beverage containers of one gallon or less shall be exempt.~~

~~3) Bulk supplies of flammable liquids over 55 gallons shall be stored in buried tanks.~~

~~4) Bulk supplies of flammable liquids in containers of 55 gallons or less shall be stored outside of and at least 50 feet from all buildings. Outside storage under this section shall be limited to 550 gallons in aggregate stored in any one location. Storage areas shall be enclosed by either a masonry wall or non-combustible fence not less than six (6) feet in height with entrance kept locked when not in use.~~

~~5) Listed safety cans shall be used for handling flammable liquids in less than drum quantities. (Paints, insecticides, and veterinary medicines in original containers of 5 gallons or less shall be exempt from this requirement.)~~

~~d) Hay Storage~~

~~1) Facilities for the storage of hay or straw may be located either within or detached from the barn structure. Hay Storage shall not be permitted in barn lofts.~~

~~2) Hay storage rooms located within the barn shall be:~~

~~A) Separated from the rest of the stalls and sleeping rooms by walls extending to roof deck having at least one-hour fire resistance rating with doorways protected by self-closing ¾-hour fire door.~~

~~B) Provided with smoke relief venting of at least 1 sq. ft. for each 25 sq. ft. of hay storage area unless the area is sprinklered.~~

~~3) Detached hay storage buildings having an area of less than 200 sq. ft., shall be located at least 10 ft. from Class A or B barns, and 20 ft. from~~

~~Class C barns, provided however, that detached hay storage buildings with exterior walls of masonry, masonry veneer, or one-hour fire resistive protected construction and having an area of less than 200 sq. ft. shall be located at least 10 ft. from buildings with combustible exterior walls. Hay storage buildings having an area greater than 200 sq. ft. shall comply with the spacing provisions of Section 5.24 (11 Ill. Adm. Code Section 403.50(b)(4))~~

(Source: Repealed at 43 Ill. Reg. _____, effective _____)

**Section 403.70 Fire Protection Requirements (Repealed)**

~~a)~~ ~~Water Supply~~
~~The track shall have a water system capable of providing an adequate and reliable water supply for fire fighting purposes. Grandstands, barns and dormitories and other facilities shall have a water supply capable of providing at least 1000 gallons per minute (gpm) at 20 per square inch (psi) residual pressure for a period of two hours.~~

~~b)~~ ~~Fire Hydrants~~

~~1)~~ ~~All portions of major track structures such as barns, dormitories, kitchens and maintenance buildings shall be within 400 ft. of a fire hydrant. Grandstands shall comply with Section 7.41. (11 Ill. Adm. Code Section 403.70(d)(1))~~

~~2)~~ ~~To allow access, new fire hydrants shall be located at least 25 ft. away from masonry and noncombustible walls and 50 ft. away from combustible walls.~~

~~3)~~ ~~Fire hydrants shall be located so that a fire department pumper can approach to within 10 ft. of the outlet.~~

~~4)~~ ~~Fire hydrants adjacent to doorways, parking lots or other areas where subject to vehicular damage shall be protected to prevent such damage.~~

~~5)~~ ~~Fire hydrants shall be approved by the local fire department. All hose connections shall have threads matching those of the public fire department serving the track.~~

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENTS

~~c) Automatic Sprinklers~~

~~1) Automatic sprinkler systems shall be installed in accordance with NFPA Standard No. 13-1975, Installation of Sprinkler Systems.~~

~~2) Automatic sprinklers protecting grandstands and dormitories shall be designed for Light Hazard Occupancies, except those areas containing combustible storage or that are used as exhibition halls shall be designed for Ordinary Hazard (Group 3) Occupancies. Sprinklers for barns shall be designed for Ordinary Hazard Occupancies (Group 2).~~

~~3) Automatic sprinklers shall have a waterflow alarm device, value supervision and air pressure supervision transmitting a signal to a constantly attended location. The signaling system shall be installed in accordance with the general requirements of Section 7.7 (11 Ill. Adm. Code Section 403.70(g)) covering fire detection systems.~~

~~d) Standpipes~~
~~Grandstand structures shall be provided with Class III standpipes. Standpipes shall be designed and installed in accordance with NFPA Standard No. 14-1975, Standpipe and Hose Systems. A 1½" rubber lined hose connected to the standpipe shall be provided in all non-sprinklered areas. Each standpipe shall be equipped with a valved 2½" hose connection to conform with the local fire department thread. All portions of the grandstand shall be within 125 ft. of a standpipe or within 400 ft. of a fire hydrant, except for open seating spaces of noncombustible constructions. All fire department standpipe connections shall be within 100 ft. of a fire hydrant.~~

~~e) Fire Hose~~

~~1) Class B and C barns not protected by automatic sprinklers shall be provided with hose stations containing not more than 150 ft. of 1" hard rubber hose secured in a wall-mounted reel and equipped with an adjustable nozzle. Such hose stations are acceptable provided they are in compliance with Section 7.52. (11 Ill. Adm. Code Section 403.70(e)(2)) Until such hose stations are installed, 50 gallon water drums shall be provided 50 ft. apart in barn aisles with two buckets per drum. Drums shall be kept filled with water.~~

~~2) Hose stations shall be located so that all portions of the structures are within reach of at least one hose stream.~~

~~3) Each fire hose station shall be marked with a sign(s) visible from each direction of approach saying "FIRE HOSE."~~

~~f) Fire Extinguishers~~

~~1) Enclosed grandstand areas, barns, and sleeping room buildings shall be provided with a basic complement of approved fire extinguishers having a minimum Underwriters Laboratories, Inc. rating of Class 2-A, within 75 ft. of travel distance from any point in the building. Non-freeze type units shall be used in areas subject to temperatures below 40°F. Exception: Hoses may be substituted in barns in lieu of the above requirements for fire extinguishers. Such hose substitutes shall contain not more than 100 ft. of ¾" hard rubber or synthetic hose on a wall-mounted reel and be equipped with an adjustable nozzle. These hose substitutes must comply with Sections 7.52 and Sections 7.53. (11 Ill. Adm. Code Sections 403.70(e)(2) and (3))~~

~~2) Kitchens, concession booths and maintenance areas shall have at least one multipurpose type extinguisher with a minimum Underwriters Laboratories, Inc. rating of 20-BC. Additional extinguishers shall be provided, if necessary, so that an extinguisher is within 50 ft. travel distance of any point in these areas.~~

~~3) Totalisator rooms, main electrical panels, and other locations containing significant amounts of electrical equipment shall have at least one liquefied gas type extinguisher having a minimum Underwriters Laboratories, Inc. rating of 10-BC. Additional extinguishers shall be provided, if necessary, so that an extinguisher is within 50 ft. travel distance of any point in these areas.~~

~~g) Fire Detection Systems~~

~~1) The performance, location, mounting and testing of automatic fire detectors shall comply with NFPA Standard No. 72E-1974, Automatic Fire Detectors. Fire detectors shall be of the combination rate-of-rise/fixed~~

~~temperature type, or equivalent in performance under the conditions of use.~~

~~2)~~ ~~The interconnection of detectors and control equipment shall comply with the applicable portions of NFPA Standards No. 71-1974, Central Station Signaling Systems; No. 72A-1974, Local Protective Signaling Systems; No. 72B-1974, Auxiliary Signaling Systems; No. 72C-1974, Remote Station Signaling Systems; No. 72D-1974, Proprietary Signaling Systems and No. 70-1975, National Electrical Code.~~

~~3)~~ ~~Fire alarm and detection systems shall have standby power supplies capable of operating the system, including audible warning devices, for a period of 2 hours in the event of primary electrical power outage.~~

~~4)~~ ~~Fire alarm control equipment such as relays, rectifiers, transformers, batteries and trouble alarm devices shall not be located inside sleeping rooms, or outside where exposed to weather conditions unless in a weather-proof cabinet. All such control equipment that is accessible to the public shall be in cabinets equipped with sturdy locks.~~

~~5)~~ ~~Fire detection systems shall transmit alarm and trouble signals to a constantly attended location. The system shall be designed so that the specific building from which the alarm or trouble signals originate can be identified.~~

~~h)~~ ~~Fire Reporting and Notification Systems~~

~~1)~~ ~~Fire Reporting System: The grandstands, barns, dormitories, track kitchens, maintenance buildings and other buildings normally occupied during track operations shall be provided with manual fire reporting stations.~~

~~A)~~ ~~Manual fire reporting stations shall be located so that the normal horizontal travel distance from any building area to a stations does not exceed 200 ft. in grandstands and 300 ft. in barn and other areas.~~

~~B)~~ ~~Manual fire reporting stations shall transmit an alarm signal to a central location manned by trained personnel.~~

~~C)~~ ~~Non-voice manual fire reporting stations shall be arranged in zones to provide signals that will identify to the central receiving locations the general area served without need of voice communication.~~

~~D)~~ ~~If voice or telephone type manual fire reporting stations are utilized, each station shall be provided with a sign indicating its location or zone so that the user can give this information readily to the central receiving location.~~

~~E)~~ ~~Every manual fire reporting station shall be marked with an overhead sign(s) visible from all directions of approach saying "FIRE ALARM." Stations located in outdoor areas that are poorly lit shall be provided with a 40-watt overhead red light.~~

~~2)~~ ~~Fire Notification System: An audible fire notification system shall be provided to alert building occupants to a fire emergency.~~

~~A)~~ ~~The track public address system may be considered an acceptable means of performing this function when fire reports are received directly by a person with a microphone connected to the public address system.~~

~~B)~~ ~~For buildings not covered by a public address system outlined in Section 7.821, (11 Ill. Adm. Code Section 403.70(h)(2)(A) or during periods that buildings are occupied and the public address system is not in operation, other audible means shall be provided to alert occupants. Such a system may either be manually actuated from a central location manned at all times the buildings are occupied, or automatically actuated by a fire detection system.~~

~~C)~~ ~~Fire notification systems shall be designed to awaken occupants of sleeping rooms.~~

(Source: Repealed at 43 Ill. Reg. _____, effective _____)

**Section 403.80 Operating Requirements (Repealed)**

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENTS

~~a) Track Fire and Security Personnel~~

~~1) When grandstands are open to the public, at least one trained fireman shall be assigned to freelance patrol duty in the grandstand at all times. Additional firemen may be required depending upon the size of the facility and the nature of the activities.~~

~~2) When grandstands are closed to the public, supervised fire patrols shall be conducted every three hours.~~

~~3) Barns and other major track buildings shall have supervised fire patrols every three hours when the facilities are unoccupied.~~

~~4) Fire patrols shall not be required in track facilities which are protected by properly functioning automatic sprinklers or automatic fire detection systems installed in accordance with Sections 7.3 and 7.7 (11 Ill. Adm. Code Sections 403.70(c) and (g))~~

~~b) Employee Fire Training~~

~~1) Security and other track and concessionaire employees shall receive training in the operation of the fire reporting system, fire extinguishers, standpipe hoses and in elementary fire fighting techniques. Training shall be given by a qualified fire department instructor.~~

~~2) During the racing meets, occupants of each barn, kitchen and other major buildings shall receive instructions by a qualified fire department instructor on fire prevention rules, fire reporting methods, and proper use of fire extinguishers and small hand hose. Instruction shall be given at least twice during each licensed meet with one session during the first two weeks of the meet.~~

~~c) Housekeeping~~

~~1) Good housekeeping standards shall be maintained in all track facilities.~~

~~2) During the racing meets, trash shall be removed from the premises daily or more often if necessary. Trash containers shall be constructed of noncombustible materials.~~

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENTS

~~3) At the close of the racing meet, trash shall be removed from all buildings and yard areas, and good housekeeping maintained until the track reopens.~~

~~d) Maintenance Practices~~

~~1) Track management shall establish the following maintenance practices; every licensee shall keep such records and make such reports as the State Fire Marshal shall prescribe. All such records shall be open to inspection by the State Fire Marshal.~~

~~A) All heating and cooking equipment shall be inspected by qualified service personnel at least annually, preferably immediately before the start of the racing season to determine that it is in safe working order.~~

~~B) When in use, hood and vent systems over cooking equipment shall be inspected daily and cleaned as necessary to prevent the build-up of combustible grease and residue.~~

~~C) The electrical system shall be inspected by a qualified electrician at least annually, preferably immediately before the start of the racing season to determine that the system is in reliable condition.~~

~~D) All emergency lighting units shall be tested weekly during the racing meets. If an emergency generator is provided, it shall be started each week.~~

~~E) An up-to-date map of the fire protection water system shall be maintained, showing the location and size of pipes, valves, hydrants and other portions of the system. A copy of this map shall be provided to the local fire department.~~

~~F) Track water supply systems shall be flow tested annually to determine the adequacy and reliability of the basic water supply. Tests shall be witnessed by the fire department. Water control valves shall be inspected weekly during the racing meets and monthly during the balance of the year to assure that they are open. Fire pumps shall be started each week and subjected to a complete~~

~~operational test on an annual basis.~~

~~G)~~ ~~Fire hydrants shall be inspected and serviced in the spring and fall. Servicing shall include flushing the hydrant, lubricating the hose outlet threads with a dry lubricant such as graphite, and providing any other service necessary to maintain the hydrant in good operating condition. Weeds shall be removed from around hydrants and painting shall be provided to assure good visibility. The fall inspection shall include checking for proper drainage to prevent freezing.~~

~~H)~~ ~~Sprinkler control valves shall be inspected, drain tests conducted and water flow alarms tested on a weekly basis during the racing meets and monthly during the balance of the year. Dry pipe sprinkler valves shall be tripped annually during nonfreezing weather.~~

~~I)~~ ~~Rubber lined fire hoses shall be inspected annually.~~

~~i)~~ ~~Fire extinguishers shall be inspected and serviced annually as required by NFPA Standard No. 10-1974, Portable Fire Extinguishers.~~

~~ii)~~ ~~Fire detection and notification systems shall be tested at least every two weeks during the racing meets and monthly during the balance of the year. The entire system shall be inspected and serviced by a qualified contractor at least annually. A record of tests and inspections shall be kept available for inspection by the State Fire Marshal.~~

~~iii)~~ ~~Automatic fire extinguishing systems for hood and vent installations shall be inspected and serviced on an annual basis by a qualified contractor.~~

~~e)~~ ~~Off Season Periods~~

~~1)~~ ~~All automatic fire detection, sprinkler and other protective systems shall be maintained operational throughout the year.~~

~~2) Fire extinguishers shall be maintained in all occupied buildings throughout the year.~~

~~3) Fire hose stations subject to freezing may be shut off and drained during periods that the buildings which they service are unoccupied.~~

~~f) Fire Protection Rules~~

~~1) The following track fire protection rules shall be prominently posted at each exit in all barn and dormitory areas and strictly enforced by security and other track personnel.~~

~~2) Fire protection rules shall include the following:~~

~~A) Smoking shall be prohibited in barns, hay storage buildings and in bed.~~

~~B) Electrical extension cords shall be heavy duty 3 wire cord. Multiple plugs are prohibited.~~

~~C) Portable heating appliances shall be prohibited in barns and sleeping rooms.~~

~~D) Cooking shall be prohibited in barns and sleeping rooms.~~

~~E) Sleeping shall be prohibited in stalls or hay storage areas.~~

~~F) Good housekeeping shall be maintained in all areas.~~

~~G) Flammable liquids, except as provided in Sections 6.32 and 6.35, (11 Ill. Adm. Code Sections 403.60(c)(2) and (5)) shall be prohibited in the grandstand structure, barns, and sleeping rooms.~~

~~H) Aisles shall be maintained clear of obstruction at all times and access to fire equipment shall not be blocked.~~

~~I) A halter shall be worn by each horse in accordance with Illinois Racing Board rules.~~

~~J)~~ ~~Vehicles shall not be parked within 15 ft. of fire hydrants, fire hose stations, fire reporting stations, or building doors.~~

~~K)~~ ~~Vehicles shall not be parked in fire lanes provided to give fire department vehicles access to buildings.~~

~~L)~~ ~~Appropriate signs as prescribed by the State Fire Marshal shall be posted in keeping with rules a, h, j, and k. (11 Ill. Adm. Code Sections 403.80(f)(2)(A), (H), (J), and (K))~~

(Source: Repealed at 43 Ill. Reg. _____, effective _____)

ILLINOIS RACING BOARD

NOTICE OF PROPOSED REPEALER

1) Heading of the Part: Race Track Surfaces

2) Code Citation: 11 Ill. Adm. Code 411

3)

| Section Numbers: | Proposed Actions: |
|---|---|
| 411.10 | Repealed |
| 411.20 | Repealed |
| 411.30 | Repealed |
| 411.40 | Repealed |

4) Statutory Authority: Implementing and authorized by Section 9(b) of the Illinois Horse Racing Act of 1975 [230 ILCS 5].

5) A Complete Description of the Subjects and Issues Involved: Pursuant to Executive Order 2016-13, the Board is repealing outdated Parts under the "Cutting the Red Tape Initiative." Part 411, adopted in 1981, was identified for repeal as unnecessary during the Board's extensive review of its regulations. The Board has the necessary authority under the Illinois Horse Racing Act of 1975.

6) Any published studies or reports, along with sources of underlying data, that were used when composing this rulemaking: None

7) Will this 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? No

11) Statement of Statewide Policy Objective: No local governmental units will be required to increase expenditures.

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Written comments should be submitted, within 45 days after this Notice, to:

Mickey Ezzo
Illinois Racing Board
100 West Randolph

ILLINOIS RACING BOARD

NOTICE OF PROPOSED REPEALER

Suite 5-700
Chicago IL 60601

312/814-5017
Mickey.ezzo@illinois.gov

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: None

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

C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda which this rulemaking was summarized: This amendment was not included on either of the 2 most recent agendas because the Illinois Racing Board did not anticipate the filing of this rulemaking at the time for submittal of a regulatory agenda.

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

ILLINOIS RACING BOARD

NOTICE OF PROPOSED REPEALER

TITLE 11: ALCOHOL, HORSE RACING, LOTTERY, AND VIDEO GAMING
SUBTITLE B: HORSE RACING
CHAPTER I: ILLINOIS RACING BOARD
SUBCHAPTER b: RULES APPLICABLE TO ORGANIZATION LICENSEES

PART 411
RACE-TRACK SURFACES (REPEALED)

Section
411.10 Reports
411.20 Standards
411.30 Daily Records
411.40 Surface Conversion and Protection

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

SOURCE: Adopted at 5 Ill. Reg. 3832, April 10, 1981, effective April 8, 1981; codified at 5 Ill. Reg. 10896; repealed at 43 Ill. Reg. _____, effective _____.

**Section 411.10 Reports**

The organization licensee, conducting the first meeting of each type of racing at each race track, shall provide the Board with scientific reports on the construction, elevations and surface composition of the track's training and racing surfaces. The reports shall be filed with the Board within seven days after the opening of the meet and shall be mandatory.

a) during the first year after the adoption of this rule and

b) whenever there is substantial renovation of a training or racing surface.

**Section 411.20 Standards**

The Board shall develop standards and criteria for adequate and proper equipment to maintain training and racing surfaces, and for sufficient trained personnel to properly operate such equipment. In developing these standards, the Board shall consider all relevant factors including, but not limited to, the size of the race track, the time of year in which the racing is conducted, and the type of racing conducted. The Board shall also consult with and solicit the opinions of representatives of horsemen, jockeys and other interested parties.

ILLINOIS RACING BOARD

NOTICE OF PROPOSED REPEALER

**Section 411.30 Daily Records**

Each thoroughbred organization licensee shall maintain daily records on the condition of each training and racing surface which shall be kept in a location on the race track which is convenient to the public, horsemen and the Board. Such records shall be open for inspection during training and racing hours.

**Section 411.40 Surface Conversion and Protection**

At each race track where both thoroughbred and harness racing dates have been allocated for any one year, the owner of the race track or his lessee shall, at the conclusion of one type of meet, promptly convert the racing surface for use in the other type of racing, except where a racing surface is being used for training of the first type in which case a reasonable delay of conversion will be permitted. Whenever the thoroughbred cushion is removed any portion which is to be reused shall be covered or otherwise protected from the adverse effects of weather.

ILLINOIS RACING BOARD

NOTICE OF PROPOSED REPEALER

1) Heading of the Part: Prohibited Conduct

2) Code Citation: 11 Ill. Adm. Code 423

3)

| Section Numbers: | Proposed Actions: |
|---|---|
| 423.10 | Repealed |
| 423.20 | Repealed |
| 423.30 | Repealed |

4) Statutory Authority: Implementing and authorized by Section 9(b) of the Illinois Horse Racing Act of 1975 [230 ILCS 5].

5) A Complete Description of the Subjects and Issues Involved: Pursuant to Executive Order 2016-13, the Board is repealing outdated Parts under the "Cutting the Red Tape Initiative." Part 423, originally adopted in 1981, was identified for repeal as unnecessary during the Board's extensive review of its regulations. The Board has the necessary authority under the Illinois Horse Racing Act of 1975.

6) Any published studies or reports, along with sources of underlying data, that were used when composing this rulemaking: None

7) Will this 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? No

11) Statement of Statewide Policy Objective: No local governmental units will be required to increase expenditures.

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Written comments should be submitted, within 45 days after this Notice, to:

Mickey Ezzo
Illinois Racing Board
100 West Randolph
Suite 5-700

ILLINOIS RACING BOARD

NOTICE OF PROPOSED REPEALER

Chicago IL 60601

312/814-5017
Mickey.ezzo@illinois.gov

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: None

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

C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda which this rulemaking was summarized: This amendment was not included on either of the 2 most recent agendas because the Illinois Racing Board did not anticipate the filing of this rulemaking at the time for submittal of a regulatory agenda.

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

ILLINOIS RACING BOARD

NOTICE OF PROPOSED REPEALER

TITLE 11: ALCOHOL, HORSE RACING, LOTTERY, AND VIDEO GAMING
SUBTITLE B: HORSE RACING
CHAPTER I: ILLINOIS RACING BOARD
SUBCHAPTER b: RULES APPLICABLE TO ORGANIZATION LICENSEES

PART 423
PROHIBITED CONDUCT (REPEALED)

Section
423.10 Dishonored Check
423.20 Sale of Products
423.30 Political Contributions

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

SOURCE: 5 Ill. Reg. 8833, effective August 25, 1981; codified at 5 Ill. Reg. 10636; emergency amendment at 5 Ill. Reg. 11593, effective October 20, 1981, for a maximum of 150 days; emergency expired March 17, 1982; amended at 6 Ill. Reg. 10714, effective August 20, 1982; amended at 7 Ill. Reg. 10782, effective August 24, 1983; amended at 7 Ill. Reg. 16098, effective November 22, 1983; amended at 8 Ill. Reg. 21593, effective October 23, 1984; amended at 9 Ill. Reg. 16204, effective October 9, 1985; emergency amendment at 9 Ill. Reg. 18151, effective November 12, 1985, for a maximum of 150 days; emergency expired April 11, 1986; amended at 10 Ill. Reg. 16649, effective September 22, 1986; amended at 11 Ill. Reg. 9540, effective May 5, 1987; amended at 12 Ill. Reg. 11730, effective June 30, 1988; amended at 13 Ill. Reg. 10598, effective June 19, 1989; amended at 14 Ill. Reg. 10798, effective June 20, 1990; amended at 15 Ill. Reg. 11598, effective August 2, 1991; amended at 16 Ill. Reg. 11078, effective June 30, 1992; amended at 17 Ill. Reg. 10795, effective July 1, 1993; amended at 18 Ill. Reg. 10090, effective June 21, 1994; amended at 19 Ill. Reg. 11787, effective August 3, 1995; amended at 20 Ill. Reg. 10874, effective August 5, 1996; amended at 21 Ill. Reg. 9077, effective June 26, 1997; amended at 22 Ill. Reg. 14836, effective August 3, 1998; amended at 23 Ill. Reg. 9066, effective July 28, 1999; amended at 24 Ill. Reg. 8938, effective June 19, 2000; amended at 25 Ill. Reg. 9895, effective July 17, 2001; amended at 26 Ill. Reg. 14680, effective September 20, 2002; amended at 28 Ill. Reg. 11873, effective July 27, 2004; amended at 29 Ill. Reg. 8409, effective June 1, 2005; amended at 38 Ill. Reg. 21232, effective November 1, 2014; repealed at 43 Ill. Reg. _____, effective _____.

**Section 423.10 Dishonored Check**

ILLINOIS RACING BOARD

NOTICE OF PROPOSED REPEALER

A licensee who pays a license fee, fine or other claim to the Board with a check, cashier's check or money order that is returned unpaid or dishonored shall be suspended until the amount of the check, cashier's check or money order is paid in full.

**Section 423.20 Sale of Products**

a) No Board member, employee or appointee of the Board or racing official approved by the Board (see 11 Ill. Adm. Code 422) shall directly or indirectly, upon the grounds of any organization licensee, offer to sell, solicit sales for, or distribute any product in which such person has a beneficial interest, or who may receive compensation from the promotion, sale or distribution of such product. For the purpose of this Section, a horse shall not be considered a product.

b) The prohibitions in subsection (a) of this Section shall not apply to ownership interests in concessionaires (defined in 11 Ill. Adm. Code 402.10) by racing officials so long as such ownership interests are disclosed to the Board in the application for a concessionaire's license.

**Section 423.30 Political Contributions**

*No organization licensee or concessionaire or officer, director or holder or controller of 5% or more legal or beneficial interest in any organization licensee or concession shall make any sort of gift or contribution of any kind or pay or give any money or other thing of value to any person who is a public official, or a candidate or nominee for public office.* [230 ILCS 5/24] Violation of this Section shall be grounds for revocation or suspension of license, revocation or denial of racing dates, or any other appropriate remedy.

ILLINOIS RACING BOARD

NOTICE OF PROPOSED REPEALER

1) Heading of the Part: Horsemen's Bookkeeping System Licensees

2) Code Citation: 11 Ill. Adm. Code 450

3)

| Section Numbers: | Proposed Actions: |
|---|---|
| 450.10 | Repealed |
| 450.20 | Repealed |
| 450.30 | Repealed |
| 450.40 | Repealed |
| 450.50 | Repealed |
| 450.60 | Repealed |
| 450.70 | Repealed |
| 450.80 | Repealed |

4) Statutory Authority: Implementing and authorized by Section 9(b) of the Illinois Horse Racing Act of 1975 [230 ILCS 5].

5) A Complete Description of the Subjects and Issues Involved: Pursuant to Executive Order 2016-13, the Board is repealing outdated Parts under the "Cutting the Red Tape Initiative." Part 450, adopted in 2009, was identified for repeal as unnecessary during the Board's extensive review of its regulations. The racetracks no longer use third party bookkeepers.

6) Any published studies or reports, along with sources of underlying data, that were used when composing this rulemaking: None

7) Will this 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? No

11) Statement of Statewide Policy Objective: No local governmental units will be required to increase expenditures.

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Written comments should be submitted, within 45 days after this Notice, to:

ILLINOIS RACING BOARD

NOTICE OF PROPOSED REPEALER

Mickey Ezzo
Illinois Racing Board
100 West Randolph
Suite 5-700
Chicago IL 60601

312/814-5017
Mickey.ezzo@illinois.gov

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: None

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

C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent agendas because the Illinois Racing Board did not anticipate the filing of this rulemaking at the time for submittal of a regulatory agenda.

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

ILLINOIS RACING BOARD

NOTICE OF PROPOSED REPEALER

TITLE 11: ALCOHOL, HORSE RACING, LOTTERY, AND VIDEO GAMING
SUBTITLE B: HORSE RACING
CHAPTER I: ILLINOIS RACING BOARD
SUBCHAPTER b: RULES APPLICABLE TO ORGANIZATION LICENSEES

PART 450
HORSEMEN'S BOOKKEEPING SYSTEM LICENSEES (REPEALED)

Section

450.10 Criteria for Eligibility
450.20 License Application
450.30 Time of Filing an Application
450.40 Application from Corporation
450.50 Grounds for Denial of an Application
450.60 Change of Officers or Directors
450.70 Audit
450.80 License Deemed Personal

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

SOURCE: Adopted at 33 Ill. Reg. 11884, effective August 1, 2009; repealed at 43 Ill. Reg. _____, effective _____.

**Section 450.10 Criteria for Eligibility**

An applicant for an occupation license as an operator of a horseman's bookkeeping system shall:

a) have a contract to provide a horseman's bookkeeping system with an organization licensee;

b) either:

1) have operated a horseman's bookkeeping system at a pari-mutuel race meeting in Illinois for at least 3 years prior to the effective date of this Part; or

2) provide the Board evidence that the applicant has the experience and expertise to operate a horseman's bookkeeping system at the race meeting at which the applicant proposes to participate in Illinois racing;

c) provide the Board with a current Table of Organization, Ownership and Control in sufficient detail to identify the individuals that manage, own or control the interests and assets of the applicant; and

d) establish, maintain, update and provide to the Board an Internal Control System that is subject to audit, with the cost of the audit borne by the occupation licensee.

**Section 450.20 License Application**

a) An application for a license to operate as a horseman's bookkeeping system licensee shall be made on forms furnished by the Board.

b) One original and one copy of the application shall be filed at the Board's central office at 100 W. Randolph St., #7-701, Chicago IL 60601.

c) The applicant shall submit a one-year license fee of $25.

d) The applicant shall submit with the application all contracts with organization licensees and instruments evidencing any indebtedness between the applicant and any and all organization licensees.

e) If circumstances change or events occur after the filing of an application, the applicant shall submit an amendment to the Board. Examples of these changes include, but are not limited to, a change of corporate officers and the signing of additional contracts with organization licensees.

**Section 450.30 Time of Filing an Application**

a) Applications for an occupation license as a horseman's bookkeeping system licensee shall be filed 60 days prior to the opening of the first race meet during a calendar year at an Illinois race track at which the applicant seeks to participate in Illinois racing.

b) The Board may, in its discretion, upon good cause shown, receive applications at a time other than that specified in subsection (a). Good cause means a change in

ownership of horseman's bookkeeping system licensee; changes in the financial position of a horseman's bookkeeping system licensee, such as, but not limited to, the dissolution or bankruptcy of the licensee or the impossibility of a licensee furnishing services for an upcoming race meet.

**Section 450.40 Application from Corporation**

A corporation applicant for a license as a horseman's bookkeeping system licensee shall disclose the names and business addresses of its directors and officers and the owners of any legal or beneficial interest of 5% of more of the corporation. If the corporation is owned, in whole or in part, by another corporation, disclosure shall be made for the other corporation and for the owners of 25% or more of the equity of the other corporation.

**Section 450.50 Grounds for Denial of an Application**

The Board may deny an application for an occupation license as a horseman's bookkeeping system licensee based on 11 Ill. Adm. Code 502.60 through 502.110. An applicant whose application for a license is denied may request a hearing pursuant to 11 Ill. Adm. Code 204.

**Section 450.60 Change of Officers or Directors**

Within 15 days after election, appointment or resignation of an officer or director of a licensed horseman's bookkeeping system, the licensee shall notify the Board in writing of the identity of each new and resigned officer or director and shall file an amended application for each person.

**Section 450.70 Audit**

The Board's Executive Director may at any time inspect, review or audit the records and performance of the horseman's bookkeeping system licensee. The cost of the audit shall be borne by the licensee. The Executive Director shall establish the scope, procedures and reporting requirements of any audit.

**Section 450.80 License Deemed Personal**

Licenses to operate a horseman's bookkeeping system are deemed personal in nature and non-transferable, and will terminate upon a substantial change of ownership of the licensee unless the Board grants approval of the substantial change of ownership. The sale or transfer of 25% or more of the equity of a licensee shall be considered a substantial change of ownership and within 15 days after the change of ownership, the licensee must notify the Board of the

identity of each substantial owner. In acting upon a request for approval of a substantial change in ownership, the Board shall consider the same factors it considers in the initial grant of a horseman's bookkeeping system license.

DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

NOTICE OF ADOPTED REPEALER

1) Heading of the Part: Metropolitan Pier and Exposition Authority or Rosemont Incentive Fund Grant Program

2) Code Citation: 14 Ill. Adm. Code 511

3)

| Section Numbers: | Adopted Actions: |
|---|---|
| 511.10 | Repealed |
| 511.20 | Repealed |
| 511.30 | Repealed |
| 511.40 | Repealed |
| 511.50 | Repealed |
| 511.60 | Repealed |
| 511.70 | Repealed |
| 511.80 | Repealed |
| 511.90 | Repealed |
| 511.100 | Repealed |
| 511.110 | Repealed |
| 511.120 | Repealed |
| 511.130 | Repealed |

4) Statutory Authority: Implementing and authorized by Section 605-725 of the Civil Administrative Code of Illinois [20 ILCS 605-725] and the Metropolitan Pier and Exposition Authority Act [70 ILCS 210].

5) Effective Date of Repealer: December 4, 2018

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

7) Does this repealer contain incorporations by reference? No

8) A copy of the adopted repealer, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.

9) Notice of Proposal published in the *Illinois Register*: 42 Ill. Reg. 8653; June 1, 2018

10) Has JCAR issued a Statement of Objection to this rulemaking? No

11) Differences between Proposal and Final Version: None

DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

NOTICE OF ADOPTED REPEALER

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

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

14) Are there any rulemakings pending on this Part? No

15) Summary and Purpose of Rulemaking: This adopted repealer will remove obsolete rules from the Administrative Code as the authority for such rules has also been repealed. PA 97-617 (effective October 26, 2011) repealed 605 ILCS 605-725, which authorized the Illinois Department of Commerce and Economic Opportunity to issue the grants that are associated with this code section. As the Department no longer has authority to make these grants, the rules associated with this code section are obsolete.

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

Ms. Jolene Clarke
Rules Administrator
Illinois Department of Commerce and Economic Opportunity
500 East Monroe
Springfield IL 62701

217/557-1820

DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

NOTICE OF ADOPTED REPEALER

1) Heading of the Part: Illinois Network Opportunity Program

2) Code Citation: 14 Ill. Adm. Code 530

3)

| Section Numbers: | Adopted Actions: |
|---|---|
| 530.10 | Repealed |
| 530.20 | Repealed |

4) Statutory Authority: Implementing and authorized by the Illinois Network for Opportunity Act of 1983 (Ill. Rev. Stat. 1983, ch. 127, pars. 2203 and 2306) [20 ILCS 680].

5) Effective Date of Repealer: December 4, 2018

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

7) Does this repealer contain incorporations by reference? No

8) A copy of the adopted repealer, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.

9) Notice of Proposal published in the *Illinois Register*: 42 Ill. Reg. 8666; June 1, 2018

10) Has JCAR issued a Statement of Objection to this rulemaking? No

11) Differences between Proposal and Final Version: None.

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

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

14) Are there any rulemakings pending on this Part? No

15) Summary and Purpose of Rulemaking: This adopted repealer will remove obsolete rules from the Administrative Code as the authority for such rules has also been repealed. PA 88-85 repealed 20 ILCS 680, which authorized the Illinois Department of Commerce and Economic Opportunity to issue the grants that are associated with this code section. As

the Department no longer has authority to make these grants, the rules associated with this code section are obsolete.

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

Ms. Jolene Clarke
Rules Administrator
Illinois Department of Commerce and Economic Opportunity
500 East Monroe
Springfield IL 62701

217/557-1820

DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

NOTICE OF ADOPTED REPEALER

1) Heading of the Part: Employee Ownership Assistance Program

2) Code Citation: 14 Ill. Adm. Code 1230

3)

| Section Numbers: | Adopted Actions: |
|---|---|
| 1230.100 | Repealed |
| 1230.110 | Repealed |
| 1230.200 | Repealed |
| 1230.210 | Repealed |
| 1230.300 | Repealed |
| 1230.310 | Repealed |
| 1230.400 | Repealed |
| 1230.500 | Repealed |
| 1230.510 | Repealed |
| 1230.520 | Repealed |
| 1230.530 | Repealed |
| 1230.540 | Repealed |

4) Statutory Authority: Implementing the Employee Ownership Assistance Act (Ill. Rev. Stat.1991, ch. 48, par. 1301 et seq.) and authorized by Section (e) of the Illinois Development Finance Authority Act (III. Rev. Stat. 1991, ch. 48, par. 850.06(e)) and Section 4 of the Employee Ownership Assistance Act (III. Rev. Stat. 1991, ch. 48, par. 1304) [20 ILCS 635].

5) Effective Date of Repealer: December 4, 2018

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

7) Does this repealer contain incorporations by reference? No

8) A copy of the adopted repealer, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.

9) Notice of Proposal published in the *Illinois Register*: 42 Ill. Reg. 8670; June 1, 2018

10) Has JCAR issued a Statement of Objection to this rulemaking? No

11) Differences between Proposal and Final Version: None

DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

NOTICE OF ADOPTED REPEALER

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

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

14) Are there any rulemakings pending on this Part? No

15) Summary and Purpose of Rulemaking: This adopted repealer will remove obsolete rules from the Administrative Code as the authority for such rules has also been repealed. PA 89-364 repealed 20 ILCS 635, which authorized the Illinois Department of Commerce and Economic Opportunity to issue the loans that are associated with this code section. As the Department no longer has authority to make these loans, the rules associated with this code section are obsolete.

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

Ms. Jolene Clarke
Rules Administrator
Illinois Department of Commerce and Economic Opportunity
500 East Monroe
Springfield IL 62701

217/557-1820

DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

NOTICE OF ADOPTED REPEALER

1) Heading of the Part: Uniform Fiscal and Administrative Standards for the Job Training Partnership Act

2) Code Citation: 56 Ill. Adm. Code 2630

3)

| Section Numbers: | Adopted Actions: |
|---|---|
| 2630.2 | Repealed |
| 2630.5 | Repealed |
| 2630.80 | Repealed |
| 2630.82 | Repealed |
| 2630.83 | Repealed |
| 2630.85 | Repealed |
| 2630.100 | Repealed |
| 2630.105 | Repealed |
| 2630.110 | Repealed |
| 2630.111 | Repealed |
| 2630.112 | Repealed |
| 2630.113 | Repealed |
| 2630.114 | Repealed |
| 2630.120 | Repealed |
| 2630.121 | Repealed |
| 2630.122 | Repealed |
| 2630.123 | Repealed |

4) Statutory Authority: Implementing and authorized by 29 U.S.C. Sec. 1501 [820 ILCS 65].

5) Effective Date of Repealer: December 4, 2018

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

7) Does this repealer contain incorporations by reference? No

8) A copy of the adopted repealer, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.

9) Notice of Proposal published in the *Illinois Register*: 42 Ill. Reg. 10723; June 22, 2018.

10) Has JCAR issued a Statement of Objection to this rulemaking? No

DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

NOTICE OF ADOPTED REPEALER

11) Differences between Proposal and Final Version: None

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

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

14) Are there any rulemakings pending on this Part? No

15) Summary and Purpose of Rulemaking: This proposed repealer will remove obsolete rules from the Administrative Code as the authority for such rules has also been repealed. These rules went in to effect on April 24, 1985 in response to the Job Training Partnership Act of 1982 (Public Law 97-300, 29 USC 1501). The Job Training Partnership Act was repealed by the Workforce Investment Act of 1998, which was then repealed by the Workforce Innovation and Opportunity Act of 2014. The rules being repealed are not needed to implement and run programs under the Workforce Innovation and Opportunity Act of 2014.

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

Ms. Jolene Clarke
Rules Administrator
Illinois Department of Commerce and Economic Opportunity
500 East Monroe
Springfield IL 62701

217/557-1820

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

2) Code Citation: 35 Ill. Adm. Code 725

3)

| Section Numbers: | Adopted Actions: |
|---|---|
| 725.101 | Amendment |
| 725.104 | Amendment |
| 725.112 | Amendment |
| 725.113 | Amendment |
| 725.114 | Amendment |
| 725.116 | Amendment |
| 725.119 | Amendment |
| 725.171 | Amendment |
| 725.172 | Amendment |
| 725.173 | Amendment |
| 725.175 | Amendment |
| 725.176 | Amendment |
| 725.177 | Amendment |
| 725.190 | Amendment |
| 725.192 | Amendment |
| 725.193 | Amendment |
| 725.210 | Amendment |
| 725.212 | Amendment |
| 725.213 | Amendment |
| 725.217 | Amendment |
| 725.218 | Amendment |
| 725.219 | Amendment |
| 725.221 | Amendment |
| 725.240 | Amendment |
| 725.241 | Amendment |
| 725.242 | Amendment |
| 725.243 | Amendment |
| 725.244 | Amendment |
| 725.245 | Amendment |
| 725.247 | Amendment |
| 725.274 | Amendment |
| 725.290 | Amendment |
| 725.291 | Amendment |

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

| | |
|---|---|
| 725.292 | Amendment |
| 725.293 | Amendment |
| 725.295 | Amendment |
| 725.296 | Amendment |
| 725.297 | Amendment |
| 725.298 | Amendment |
| 725.301 | Repealed |
| 725.302 | Amendment |
| 725.321 | Amendment |
| 725.322 | Amendment |
| 725.324 | Amendment |
| 725.325 | Amendment |
| 725.326 | Amendment |
| 725.328 | Amendment |
| 725.350 | Amendment |
| 725.353 | Amendment |
| 725.354 | Amendment |
| 725.355 | Amendment |
| 725.358 | Amendment |
| 725.359 | Amendment |
| 725.376 | Amendment |
| 725.378 | Amendment |
| 725.380 | Amendment |
| 725.401 | Amendment |
| 725.402 | Amendment |
| 725.403 | Amendment |
| 725.404 | Amendment |
| 725.410 | Amendment |
| 725.412 | Amendment |
| 725.414 | Amendment |
| 725.416 | Amendment |
| 725.440 | Amendment |
| 725.470 | Amendment |
| 725.500 | Amendment |
| 725.530 | Amendment |
| 725.540 | Amendment |
| 725.541 | Amendment |
| 725.543 | Amendment |
| 725.930 | Amendment |

| | |
|---|---|
| 725.931 | Amendment |
| 725.932 | Amendment |
| 725.933 | Amendment |
| 725.934 | Amendment |
| 725.935 | Amendment |
| 725.950 | Amendment |
| 725.951 | Amendment |
| 725.953 | Amendment |
| 725.954 | Amendment |
| 725.955 | Amendment |
| 725.956 | Amendment |
| 725.957 | Amendment |
| 725.958 | Amendment |
| 725.960 | Amendment |
| 725.961 | Amendment |
| 725.962 | Amendment |
| 725.963 | Amendment |
| 725.964 | Amendment |
| 725.980 | Amendment |
| 725.981 | Amendment |
| 725.982 | Amendment |
| 725.983 | Amendment |
| 725.984 | Amendment |
| 725.986 | Amendment |
| 725.988 | Amendment |
| 725.989 | Amendment |
| 725.990 | Amendment |
| 725.1101 | Amendment |
| 725.1102 | Amendment |
| 725.1200 | Amendment |
| 725.1201 | Amendment |
| 725.1202 | Amendment |
| 725.Appendix F | Amendment |

4) Statutory Authority: 415 ILCS 5/7.2, 22.4, and 27

5) Effective Date of Rules: November 19, 2018

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

7) Does this rulemaking contain incorporations by reference? No

8) Statement of Availability: The adopted rulemaking, a copy of the Board's opinion and order adopted October 4, 2018 in consolidated docket R17-14/R17-15/R18-12/R18-31, and all materials incorporated by reference are on file at the Board's principal office and are available for public inspection and copying.

9) Notice of Proposal published in the *Illinois Register*: 42 Ill. Reg. 12003; June 29, 2018

10) Has JCAR issued a Statement of Objection to this rulemaking? No. Section 22.4 of the Environmental Protection Act [415 ILCS 5/22.4] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

11) Differences between Proposal and Final Version: A table in a document entitled "Identical-in-Substance Rulemaking Addendum (Final)" that the Board added to consolidated docket R17-14/R17-15/R18-12/R18-31 summarizes the differences between the amendments adopted in the October 4, 2018 opinion and order and those proposed by the Board on May 24, 2018.

The differences are limited to minor corrections suggested by JCAR staff or resulting from the Board's review of its proposal. The changes are not intended to have substantive effect and intend to clarify the rules without deviating from the substance of the federal amendments on which this proceeding is based.

12) Have all the changes agreed upon by the Board and JCAR been made as indicated in the agreements issued by JCAR? Section 22.4 of the Environmental Protection Act [415 ILCS 5/22.4] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by JCAR.

Since the Notices of Proposed Amendments appeared in the June 29, 2018 issue of the *Illinois Register*, the Board received suggestions for revisions from JCAR. The Board evaluated each suggestion and incorporated some into the adopted rules, as detailed in the Identical-in-Substance Rulemaking Addendum (Final) in consolidated docket R17-

14/R17-15/R18-12/R18-31, as described in item 11 above. See that Addendum for additional details on JCAR suggestions and the Board actions on each. One table in itemizes changes made in response to various suggestions. Another table indicates suggestions not incorporated into the text, with a brief explanation for each.

13) Will this rulemaking replace an emergency rule currently in effect? No

14) Are there any other rulemakings pending on this Part? Yes

| Section Numbers: | Proposed Actions: | *Illinois Register* Citations: |
|---|---|---|
| 725.171 | Amendment | 42 Ill. Reg. 15748; August 17, 2018 |
| 725.987 | Amendment | 42 Ill. Reg. 15748; August 17, 2018 |

15) Summary and Purpose of Rulemaking: The amendments to Part 725 are a segment larger Board rulemaking. The consolidated docket R17-14/R17-15/R18-11/R18-31 rulemaking also includes amendments to 35 Ill. Adm. Code 702 through 705, 720 through 724, 726 through 728, 730, 733, 738, 739, and 810 through 812. Due to the extreme volume of the consolidated docket, each Part is covered by a notice in five separate issues of the Illinois Register. Included in this issue are the fourth group for publication: 35 Ill. Adm. Code 725, 727 and 730.

When the Board filed the adopted amendments and submitted them for publication in the Illinois Register, the anticipated schedule for publication of all 20 parts of this rulemaking was as follows:

Group 1: Parts 702, 703, 704, 705, 720, 810, 811, and 812
Group 2: Parts 721 and 722
Group 3: Parts 723, 724, and 726
Group 4: Parts 725, 727, and 730
Group 5: Parts 728, 733, 738, and 739

Section 22.4(a) of the Environmental Protection Act (Act) [415 ILCS 5/22.4(a] (2016) requires the Board to adopt hazardous waste rules that are identical-in-substance to United States Environmental Protection Agency's (USEPA's) Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste rules. Section 22.4(a) requires the Board to use the identical-in-substance rulemaking procedure of Section 7.2(b) of the Act [415 ILCS 5/7.2(b)] (2014). The Illinois hazardous waste rules are in 35 Ill. Adm. Code 702, 703, 705, 720 through 728, 733, 738, and 739. The Board reserved docket R17-14 to incorporate USEPA amendments adopted during the period July 1, 2016 through

December 31, 2016 into the Illinois hazardous waste rules. Similarly, the Board reserved docket R18-12 for USEPA hazardous waste rules adopted during the period July 1, 2017 through December 31, 2017 and consolidated it with dockets R17-14, R17-15, and R18-12.

The consolidated docket R17-14/R17-15/R18-11/R18-31 rulemaking updates the Illinois hazardous waste, underground injection control (UIC), and Municipal Solid Waste Landfill (MSWLF) rules to incorporate amendments adopted by the United States Environmental Protection Agency (USEPA) during calendar years 2016 and 2017, embracing two update periods: July 1, 2016 through December 31, 2016 and July 1, 2017 through December 31, 2017.

The following USEPA actions form the basis for the consolidated docket R17-14/R17-15/R18-11/R18-31 rulemaking:

November 28, 2016 (81 Fed. Reg. 85696)—Hazardous Waste Export-Import Revisions: USEPA revised requirements for importing and exporting hazardous waste at 40 C.F.R. 260 through 267, 271, and 273. USEPA intended to provide greater protection of human health and the environment and greater consistency with current requirements for shipments between members of the Organization for Economic Cooperation and Development (OECD). USEPA also intended to implement electronic submission of import- and export-related documents into an Automated Export System.

November 28, 2016 (81 Fed. Reg. 85732)—Generator Improvements Rule (GIR): USEPA adopted the GIR, which extensively revised requirements for hazardous waste generators. USEPA revised all parts of the hazardous waste rules: 40 C.F.R. 260 through 268, 270, 271, 273, and 279. The GIR also included revisions to RCRA Subtitle D rules in 40 C.F.R. 257 and 258. The federal MSWLF rules are codified in 40 C.F.R. 258. USEPA intended that reorganizing the hazardous waste generator requirements would make them simpler. USEPA also intended to address gaps in the rules to make them more effective and protective of human health and the environment. USEPA also corrected inadvertent errors and removed obsolete provisions.

August 29, 2017 (82 Fed. Reg. 41015)—Automated Export System (AES) Filing Compliance Date: USEPA established the AES filing compliance date for hazardous waste exports. As of December 31, 2017, exporters of manifested hazardous waste, universal waste, spent lead-acid batteries for recycling or disposal, and cathode ray tubes (CRTs) for recycling must use the AES for export shipments. After the AES filing compliance date, the use of paper reporting was no longer permissible for these exports.

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

December 26, 2017 (82 Fed. Reg. 60894)—Barring Claims of Confidential Business Information (CBI) for Hazardous Waste Import, Export, and Transit Documents: USEPA further revised the rules for imports and exports of hazardous waste. No person can assert a confidential business information (CBI) claim for documents relating to import, export, and transit of hazardous waste or to export of excluded CRTs.

Specifically, the amendments to Part 725 incorporate USEPA's actions of November 28, 2016 adopting hazardous waste export-import revisions and the Generator Improvements Rule.

The consolidated docket R17-14/R17-15/R18-11/R18-31 rulemaking further makes numerous corrections and non-substantive stylistic revisions that the Board found are needed.

Tables appear in the Identical-in-Substance Rulemaking Addendum (Final) in consolidated docket R17-14/R17-15/R18-12/R18-31, as described in item 11 above, that list corrections and amendments. Persons interested in the details of those corrections and amendments should refer to the Addendum.

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

16) Information and questions regarding these adopted rules shall be directed to: Please reference consolidated docket R17-14/R17-15/R18-12/R18-31 and direct inquiries to the following person:

Michael J. McCambridge
Staff Attorney
Illinois Pollution Control Board
100 W. Randolph Suite 11-500
Chicago IL 60601

312/814-6924
michael.mccambridge@illinois.gov

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

Request copies of the Board's opinion and order of October 4, 2018 at 312/814-3620. You may also obtain a copy of the Board's opinion and order from the Internet at http://www.ipcb.state.il.us.

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

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

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

PART 725
INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

SUBPART A: GENERAL PROVISIONS

Section
725.101 Purpose, Scope, and Applicability
725.102 Electronic Reporting
725.104 Imminent Hazard Action

SUBPART B: GENERAL FACILITY STANDARDS

Section
725.110 Applicability
725.111 USEPA Identification Number
725.112 Required Notices
725.113 General Waste Analysis
725.114 Security
725.115 General Inspection Requirements
725.116 Personnel Training
725.117 General Requirements for Ignitable, Reactive, or Incompatible Wastes
725.118 Location Standards
725.119 Construction Quality Assurance Program

SUBPART C: PREPAREDNESS AND PREVENTION

Section
725.130 Applicability
725.131 Maintenance and Operation of Facility
725.132 Required Equipment
725.133 Testing and Maintenance of Equipment
725.134 Access to Communications or Alarm System
725.135 Required Aisle Space

725.137 Arrangements with Local Authorities

SUBPART D: CONTINGENCY PLAN AND EMERGENCY PROCEDURES

Section
725.150 Applicability
725.151 Purpose and Implementation of Contingency Plan
725.152 Content of Contingency Plan
725.153 Copies of Contingency Plan
725.154 Amendment of Contingency Plan
725.155 Emergency Coordinator
725.156 Emergency Procedures

SUBPART E: MANIFEST SYSTEM, RECORDKEEPING, AND REPORTING

Section
725.170 Applicability
725.171 Use of Manifest System
725.172 Manifest Discrepancies
725.173 Operating Record
725.174 Availability, Retention, and Disposition of Records
725.175 Annual Report
725.176 Unmanifested Waste Report
725.177 Additional Reports

SUBPART F: GROUNDWATER MONITORING

Section
725.190 Applicability
725.191 Groundwater Monitoring System
725.192 Sampling and Analysis
725.193 Preparation, Evaluation, and Response
725.194 Recordkeeping and Reporting

SUBPART G: CLOSURE AND POST-CLOSURE CARE

Section
725.210 Applicability
725.211 Closure Performance Standard

725.212 Closure Plan; Amendment of Plan
725.213 Closure; Time Allowed for Closure
725.214 Disposal or Decontamination of Equipment, Structures, and Soils
725.215 Certification of Closure
725.216 Survey Plat
725.217 Post-Closure Care and Use of Property
725.218 Post-Closure Care Plan; Amendment of Plan
725.219 Post-Closure Notices
725.220 Certification of Completion of Post-Closure Care
725.221 Alternative Post-Closure Care Requirements

SUBPART H: FINANCIAL REQUIREMENTS

Section
725.240 Applicability
725.241 Definitions of Terms as Used in this Subpart H
725.242 Cost Estimate for Closure
725.243 Financial Assurance for Closure
725.244 Cost Estimate for Post-Closure Care
725.245 Financial Assurance for Post-Closure Monitoring and Maintenance
725.246 Use of a Mechanism for Financial Assurance of Both Closure and Post-Closure Care
725.247 Liability Requirements
725.248 Incapacity of Owners or Operators, Guarantors, or Financial Institutions
725.251 Promulgation of Forms (Repealed)

SUBPART I: USE AND MANAGEMENT OF CONTAINERS

Section
725.270 Applicability
725.271 Condition of Containers
725.272 Compatibility of Waste with Containers
725.273 Management of Containers
725.274 Inspections
725.276 Special Requirements for Ignitable or Reactive Wastes
725.277 Special Requirements for Incompatible Wastes
725.278 Air Emission Standards

SUBPART J: TANK SYSTEMS

Section
725.290 Applicability
725.291 Assessment of Existing Tank System Integrity
725.292 Design and Installation of New Tank Systems or Components
725.293 Containment and Detection of Releases
725.294 General Operating Requirements
725.295 Inspections
725.296 Response to Leaks or Spills and Disposition of Tank Systems
725.297 Closure and Post-Closure Care
725.298 Special Requirements for Ignitable or Reactive Wastes
725.299 Special Requirements for Incompatible Wastes
725.300 Waste Analysis and Trial Tests
725.301 Generators of 100 to 1,000 Kilograms of Hazardous Waste Per Month (Repealed)
725.302 Air Emission Standards

SUBPART K: SURFACE IMPOUNDMENTS

Section
725.320 Applicability
725.321 Design and Operating Requirements
725.322 Action Leakage Rate
725.323 Containment System
725.324 Response Actions
725.325 Waste Analysis and Trial Tests
725.326 Monitoring and Inspections
725.328 Closure and Post-Closure Care
725.329 Special Requirements for Ignitable or Reactive Wastes
725.330 Special Requirements for Incompatible Wastes
725.331 Air Emission Standards

SUBPART L: WASTE PILES

Section
725.350 Applicability
725.351 Protection from Wind
725.352 Waste Analysis
725.353 Containment
725.354 Design and Operating Requirements

725.355 Action Leakage Rates
725.356 Special Requirements for Ignitable or Reactive Wastes
725.357 Special Requirements for Incompatible Wastes
725.358 Closure and Post-Closure Care
725.359 Response Actions
725.360 Monitoring and Inspections

SUBPART M: LAND TREATMENT

Section
725.370 Applicability
725.372 General Operating Requirements
725.373 Waste Analysis
725.376 Food Chain Crops
725.378 Unsaturated Zone (Zone of Aeration) Monitoring
725.379 Recordkeeping
725.380 Closure and Post-Closure Care
725.381 Special Requirements for Ignitable or Reactive Wastes
725.382 Special Requirements for Incompatible Wastes

SUBPART N: LANDFILLS

Section
725.400 Applicability
725.401 Design Requirements
725.402 Action Leakage Rate
725.403 Response Actions
725.404 Monitoring and Inspections
725.409 Surveying and Recordkeeping
725.410 Closure and Post-Closure Care
725.412 Special Requirements for Ignitable or Reactive Wastes
725.413 Special Requirements for Incompatible Wastes
725.414 Special Requirements for Liquid Wastes
725.415 Special Requirements for Containers
725.416 Disposal of Small Containers of Hazardous Waste in Overpacked Drums (Lab Packs)

SUBPART O: INCINERATORS

Section
725.440 Applicability
725.441 Waste Analysis
725.445 General Operating Requirements
725.447 Monitoring and Inspections
725.451 Closure
725.452 Interim Status Incinerators Burning Particular Hazardous Wastes

SUBPART P: THERMAL TREATMENT

Section
725.470 Other Thermal Treatment
725.473 General Operating Requirements
725.475 Waste Analysis
725.477 Monitoring and Inspections
725.481 Closure
725.482 Open Burning; Waste Explosives
725.483 Interim Status Thermal Treatment Devices Burning Particular Hazardous Wastes

SUBPART Q: CHEMICAL, PHYSICAL, AND BIOLOGICAL TREATMENT

Section
725.500 Applicability
725.501 General Operating Requirements
725.502 Waste Analysis and Trial Tests
725.503 Inspections
725.504 Closure
725.505 Special Requirements for Ignitable or Reactive Wastes
725.506 Special Requirements for Incompatible Wastes

SUBPART R: UNDERGROUND INJECTION

Section
725.530 Applicability

SUBPART W: DRIP PADS

Section
725.540 Applicability

725.541 Assessment of Existing Drip Pad Integrity
725.542 Design and Installation of New Drip Pads
725.543 Design and Operating Requirements
725.544 Inspections
725.545 Closure

SUBPART AA: AIR EMISSION STANDARDS FOR PROCESS VENTS

Section
725.930 Applicability
725.931 Definitions
725.932 Standards: Process Vents
725.933 Standards: Closed-Vent Systems and Control Devices
725.934 Test Methods and Procedures
725.935 Recordkeeping Requirements

SUBPART BB: AIR EMISSION STANDARDS FOR EQUIPMENT LEAKS

Section
725.950 Applicability
725.951 Definitions
725.952 Standards: Pumps in Light Liquid Service
725.953 Standards: Compressors
725.954 Standards: Pressure Relief Devices in Gas/Vapor Service
725.955 Standards: Sampling Connecting Systems
725.956 Standards: Open-Ended Valves or Lines
725.957 Standards: Valves in Gas/Vapor or Light Liquid Service
725.958 Standards: Pumps, Valves, Pressure Relief Devices, Flanges, and Other Connectors
725.959 Standards: Delay of Repair
725.960 Standards: Closed-Vent Systems and Control Devices
725.961 Percent Leakage Alternative for Valves
725.962 Skip Period Alternative for Valves
725.963 Test Methods and Procedures
725.964 Recordkeeping Requirements

SUBPART CC: AIR EMISSION STANDARDS FOR TANKS, SURFACE IMPOUNDMENTS, AND CONTAINERS

Section

725.980 Applicability
725.981 Definitions
725.982 Schedule for Implementation of Air Emission Standards
725.983 Standards: General
725.984 Waste Determination Procedures
725.985 Standards: Tanks
725.986 Standards: Surface Impoundments
725.987 Standards: Containers
725.988 Standards: Closed-Vent Systems and Control Devices
725.989 Inspection and Monitoring Requirements
725.990 Recordkeeping Requirements
725.991 Alternative Tank Emission Control Requirements (Repealed)

SUBPART DD: CONTAINMENT BUILDINGS

Section
725.1100 Applicability
725.1101 Design and Operating Standards
725.1102 Closure and Post-Closure Care

SUBPART EE: HAZARDOUS WASTE MUNITIONS AND EXPLOSIVES STORAGE

Section
725.1200 Applicability
725.1201 Design and Operating Standards
725.1202 Closure and Post-Closure Care

725.APPENDIX A Recordkeeping Instructions
725.APPENDIX B EPA Report Form and Instructions (Repealed)
725.APPENDIX C USEPA Interim Primary Drinking Water Standards
725.APPENDIX D Tests for Significance
725.APPENDIX E Examples of Potentially Incompatible Wastes
725.APPENDIX F Compounds with Henry's Law Constant Less Than 0.1 Y/X (at 25˚C)

AUTHORITY: Implementing Sections 7.2 and 22.4 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/7.2, 22.4, and 27].

SOURCE: Adopted in R81-22 at 5 Ill. Reg. 9781, effective May 17, 1982; amended and codified in R81-22 at 6 Ill. Reg. 4828, effective May 17, 1982; amended in R82-18 at 7 Ill. Reg.

2518, effective February 22, 1983; amended in R82-19 at 7 Ill. Reg. 14034, effective October 12, 1983; amended in R84-9 at 9 Ill. Reg. 11869, effective July 24, 1985; amended in R85-22 at 10 Ill. Reg. 1085, effective January 2, 1986; amended in R86-1 at 10 Ill. Reg. 14069, effective August 12, 1986; amended in R86-28 at 11 Ill. Reg. 6044, effective March 24, 1987; amended in R86-46 at 11 Ill. Reg. 13489, effective August 4, 1987; amended in R87-5 at 11 Ill. Reg. 19338, effective November 10, 1987; amended in R87-26 at 12 Ill. Reg. 2485, effective January 15, 1988; amended in R87-39 at 12 Ill. Reg. 13027, effective July 29, 1988; amended in R88-16 at 13 Ill. Reg. 437, effective December 28, 1988; amended in R89-1 at 13 Ill. Reg. 18354, effective November 13, 1989; amended in R90-2 at 14 Ill. Reg. 14447, effective August 22, 1990; amended in R90-10 at 14 Ill. Reg. 16498, effective September 25, 1990; amended in R90-11 at 15 Ill. Reg. 9398, effective June 17, 1991; amended in R91-1 at 15 Ill. Reg. 14534, effective October 1, 1991; amended in R91-13 at 16 Ill. Reg. 9578, effective June 9, 1992; amended in R92-1 at 16 Ill. Reg. 17672, effective November 6, 1992; amended in R92-10 at 17 Ill. Reg. 5681, effective March 26, 1993; amended in R93-4 at 17 Ill. Reg. 20620, effective November 22, 1993; amended in R93-16 at 18 Ill. Reg. 6771, effective April 26, 1994; amended in R94-7 at 18 Ill. Reg. 12190, effective July 29, 1994; amended in R94-17 at 18 Ill. Reg. 17548, effective November 23, 1994; amended in R95-6 at 19 Ill. Reg. 9566, effective June 27, 1995; amended in R95-20 at 20 Ill. Reg. 11078, effective August 1, 1996; amended in R96-10/R97-3/R97-5 at 22 Ill. Reg. 369, effective December 16, 1997; amended in R98-12 at 22 Ill. Reg. 7620, effective April 15, 1998; amended in R97-21/R98-3/R98-5 at 22 Ill. Reg. 17620, effective September 28, 1998; amended in R98-21/R99-2/R99-7 at 23 Ill. Reg. 1850, effective January 19, 1999; amended in R99-15 at 23 Ill. Reg. 9168, effective July 26, 1999; amended in R00-5 at 24 Ill. Reg. 1076, effective January 6, 2000; amended in R00-13 at 24 Ill. Reg. 9575, effective June 20, 2000; amended in R03-7 at 27 Ill. Reg. 4187, effective February 14, 2003; amended in R05-8 at 29 Ill. Reg. 6028, effective April 13, 2005; amended in R05-2 at 29 Ill. Reg. 6389, effective April 22, 2005; amended in R06-5/R06-6/R06-7 at 30 Ill. Reg. 3460, effective February 23, 2006; amended in R06-16/R06-17/R06-18 at 31 Ill. Reg. 1031, effective December 20, 2006; amended in R07-5/R07-14 at 32 Ill. Reg. 12566, effective July 14, 2008; amended in R09-3 at 33 Ill. Reg. 1155, effective December 30, 2008; amended in R09-16/R10-4 at 34 Ill. Reg. 18890, effective November 12, 2010; amended in R11-2/R11-16 at 35 Ill. Reg. 18052, effective October 14, 2011; amended in R13-15 at 37 Ill. Reg. 17811, effective October 24, 2013; amended in R15-1 at 39 Ill. Reg. 1746, effective January 12, 2015; amended in R16-7 at 40 Ill. Reg. 11830, effective August 9, 2016; amended in R17-14/R17-15/R18-12/R18-31 at 42 Ill. Reg. 23725, effective November 19, 2018.

SUBPART A: GENERAL PROVISIONS

**Section 725.101 Purpose, Scope, and Applicability**

a) The purpose of this Part is to establish minimum standards that define the acceptable management of hazardous waste during the period of interim status and until certification of final closure or, if the facility is subject to post-closure care requirements, until post-closure care responsibilities are fulfilled.

b) Except as provided in Section 725.980(b), the standards in this Part and 35 Ill. Adm. Code 724.652 through 724.654 apply to owners and operators of facilities that treat, store, or dispose of hazardous waste and which have fully complied with the requirements for interim status pursuant to Section 3005(e) of the Resource Conservation and Recovery Act (RCRA) (42 USC 6925(e)) and 35 Ill. Adm. Code 703, until either a permit is issued pursuant to Section 3005 of the Resource Conservation and Recovery Act (42 USC 6905) or Section 21(f) of the Environmental Protection Act~~ [415 ILCS 5/21(f)]~~, or until applicable closure and post-closure care responsibilities pursuant to this Part are fulfilled, and to those owners and operators of facilities in existence on November 19, 1980~~,~~ that have failed to provide timely notification as required by section~~Section~~ 3010(a) of RCRA (42 USC 6930(a)~~6910(a)~~) or that have failed to file Part A of the Permit Application, as required by federal 40 CFR 270.10(e) and (g) or 35 Ill. Adm. Code 703.150 and 703.152. These standards apply to all treatment, storage, or disposal of hazardous waste at these facilities~~ after November 19, 1980~~, except as specifically provided otherwise in this Part or in 35 Ill. Adm. Code 721.

BOARD NOTE: As stated in Section 3005(a) of RCRA (42 USC 6905(a)), after the effective date of regulations pursuant to that Section (i.e., 40 CFR 270 and 124) the treatment, storage, or disposal of hazardous waste is prohibited except in accordance with a permit. Section 3005(e) of RCRA (42 USC 6905(e)) provides for the continued operation of an existing facility that meets certain conditions until final administrative disposition of the owner's and operator's permit application is made.

c) The requirements of this Part do not apply to any of the following:

1) A person disposing of hazardous waste by means of ocean disposal subject to a permit issued pursuant to the federal Marine Protection, Research and Sanctuaries Act (33 USC 1401 et seq.);

BOARD NOTE: This Part applies to the treatment or storage of hazardous waste before it is loaded into an ocean vessel for incineration or disposal at sea, as provided in subsection (b)~~ of this Section~~.

2) This subsection (c)(2) corresponds with 40 CFR 265.1(c)(2), marked "reserved" by USEPA. This statement maintains structural consistency with USEPA rules;

3) The owner or operator of a POTW (publicly owned treatment works) that treats, stores, or disposes of hazardous waste;

BOARD NOTE: The owner or operator of a facility pursuant to subsections (c)(1) and (c)(3) is subject to the requirements of 35 Ill. Adm. Code 724 to the extent they are included in a permit by rule granted to such a person pursuant to 35 Ill. Adm. Code 702 and 703 or are required by Subpart F of 35 Ill. Adm. Code 704.

4) This subsection (c)(4) corresponds with 40 CFR 265.1(c)(4), which pertains exclusively to the applicability of the federal regulations in authorized states. There is no need for a parallel provision in the Illinois regulations. This statement maintains structural consistency with USEPA rules;

5) The owner or operator of a facility permitted, licensed, or registered by Illinois to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation pursuant to this Part by 35 Ill. Adm. Code 722.114~~721.105~~;

6) The owner or operator of a facility managing recyclable materials described in 35 Ill. Adm. Code 721.106(a)(2) through (a)(4), except to the extent that requirements of this Part are referred to in Subpart C, F, G, or H of 35 Ill. Adm. Code 726 or 35 Ill. Adm. Code 739;

7) A generator accumulating waste on-site in compliance with applicable conditions for exemption in 35 Ill. Adm. Code 722.114 through 722.117 and Subparts K and L of 35 Ill. Adm. Code 722~~35 Ill. Adm. Code 722.134~~, except to the extent the requirements of this Part are included in those Sections and Subparts~~35 Ill. Adm. Code 722.134~~;

8) A farmer disposing of waste pesticides from the farmer's own use in compliance with 35 Ill. Adm. Code 722.170;

9) The owner or operator of a totally enclosed treatment facility, as defined in 35 Ill. Adm. Code 720.110;

10) The owner or operator of an elementary neutralization unit or a wastewater treatment unit, as defined in 35 Ill. Adm. Code 720.110, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in Table T of 35 Ill. Adm. Code 728) or reactive (D003) waste in order to remove the characteristic before land disposal, the owner or operator must comply with the requirements set forth in Section 725.117(b);

11) Immediate Response~~response.~~

A) Except as provided in subsection (c)(11)(B)~~ of this Section~~, a person engaged in treatment or containment activities during immediate response to any of the following situations:

i) A discharge of a hazardous waste;

ii) An imminent and substantial threat of a discharge of a hazardous waste;

iii) A discharge of a material that becomes a hazardous waste when discharged; or

iv) An immediate threat to human health, public safety, property, or the environment from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosives or munitions emergency response specialist as defined in 35 Ill. Adm. Code 720.110.

B) An owner or operator of a facility otherwise regulated by this Part must comply with all applicable requirements of Subparts C and D ~~of this Part~~.

C) Any person that is covered by subsection (c)(11)(A)~~ of this Section~~ that continues or initiates hazardous waste treatment or containment activities after the immediate response is over is

subject to all applicable requirements of this Part and 35 Ill. Adm. Code 702, 703, and 705 for those activities;

D) In the case of an explosives or munitions emergency response, if a federal, state, or local official acting within the scope of his or her official responsibilities or an explosives or munitions emergency response specialist determines that immediate removal of the material or waste is necessary to adequately protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters that do not have USEPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition;

12) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of 35 Ill. Adm. Code 722.130 at a transfer facility for a period of ten days or less;

13) The addition of absorbent material to waste in a container (as defined in 35 Ill. Adm. Code 720.110) or the addition of waste to the absorbent material in a container, provided that these actions occur at the time that the waste is first placed in the containers and Sections 725.117(b), 725.271, and 725.272 are complied with;

14) A universal waste handler or universal waste transporter (as defined in 35 Ill. Adm. Code 720.110) that handles any of the wastes listed below is subject to regulation pursuant to 35 Ill. Adm. Code 733 when handling the following universal wastes:

A) Batteries, as described in 35 Ill. Adm. Code 733.102;

B) Pesticides, as described in 35 Ill. Adm. Code 733.103;

C) Mercury-containing equipment, as described in 35 Ill. Adm. Code 733.104;

D) Lamps, as described in 35 Ill. Adm. Code 733.105.

d) The following hazardous wastes must not be managed at facilities subject to regulation pursuant to this Part: USEPA hazardous waste numbers F020, F021, F022, F023, F026, or F027, unless the following conditions are fulfilled:

1) The wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;

2) The waste is stored in tanks or containers;

3) The waste is stored or treated in waste piles that meet the requirements of 35 Ill. Adm. Code 724.350(c) and all other applicable requirements of Subpart L ~~of this Part~~;

4) The waste is burned in incinerators that are certified pursuant to the standards and procedures in Section 725.452; or

5) The waste is burned in facilities that thermally treat the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in Section 725.483.

e) This Part applies to owners and operators of facilities that treat, store, or dispose of hazardous wastes referred to in 35 Ill. Adm. Code 728, and the 35 Ill. Adm. Code 728 standards are considered material conditions or requirements of the interim status standards of this Part.

f) 35 Ill. Adm. Code 726.505 identifies when the requirements of this Part apply to the storage of military munitions classified as solid waste pursuant to 35 Ill. Adm. Code 726.302. The treatment and disposal of hazardous waste military munitions are subject to the applicable permitting, procedural, and technical standards in 35 Ill. Adm. Code 702, 703, 705, 720 through 728, and 738.

g) Other bodies of regulations may apply to a person, facility, or activity, such as 35 Ill. Adm. Code 809 (special waste hauling), 35 Ill. Adm. Code 807 or 810 through 817 (solid waste landfills), 35 Ill. Adm. Code 848 or 849 (used and scrap tires), or 35 Ill. Adm. Code 1420 through 1422 (potentially infectious medical waste), depending on the provisions of those other regulations.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.104 Imminent Hazard Action**

Notwithstanding any other provisions of these regulations, enforcement actions may be brought pursuant to Title VIII of the Illinois Environmental Protection Act ~~[415 ILCS 5/Title VIII]~~.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

SUBPART B: GENERAL FACILITY STANDARDS

**Section 725.112 Required Notices**

a) Receipt from a Foreign Source~~foreign source~~. The owner or operator of a facility that has arranged to receive hazardous waste subject to Subpart H of 35 Ill. Adm. Code 722, from a foreign source must submit the following required notices:

1) As required by 35 Ill. Adm. Code 722.184(b), for imports where the competent authority of the country of export does not require the foreign exporter to submit to it a notification proposing export and obtain consent from USEPA and the competent authorities for the countries of transit, the owner or operator of the facility, if acting as the importer, must provide notification of the proposed transboundary movement in English to USEPA using the allowable methods listed in 35 Ill. Adm. Code 722.184(b)(1) ~~The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must notify the Agency and USEPA Region 5 in writing~~ at least 60 days before~~four weeks in advance of~~ the first shipment~~date the waste~~ is expected to depart the country of export~~arrive at the facility~~. The notification may cover up to one year of ~~Notice of subsequent~~ shipments of wastes having similar physical and chemical characteristics; the same United Nations/USDOT identification number from the Hazardous Materials Table in 49 CFR 172.101, incorporated by reference in 35 Ill. Adm. Code 720.111; the same USEPA hazardous waste waste numbers; and the same applicable OECD waste codes from the lists in the OECD Guidance Manual, incorporated by reference in 35 Ill. Adm. Code 720.111; and being sent from the same foreign exporter~~source is not required~~.

2) As required by 35 Ill. Adm. Code 722.184(d)(2)(O), ~~The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to Subpart H of 35 Ill. Adm. Code 722 must provide~~ a copy of the movement document bearing all required signatures ~~to the foreign exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; to the Bureau of Land, Division of Land Pollution Control, Illinois Environmental Protection Agency, P.O. Box 19276, Springfield, IL 62794-9276; and to the competent authorities of all other countries concerned~~ within three working days after receipt of the shipment to the foreign exporter; to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste respectively; and on or after the electronic import-export reporting compliance date, to EPA electronically using USEPA's Waste Import Export Tracking System (WIETS). The original of the signed movement document must be maintained at the facility for at least three years. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on USEPA's WIETS, provided that copies are readily available for viewing and production if requested by any USEPA or Agency inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with USEPA's WIETS for which the owner or operator of a facility bears no responsibility. ~~In addition, such owner or operator must send a certificate of recovery to the foreign exporter, to the competent authority of the country of export, to USEPA's Office of Enforcement and Compliance Assurance at the above address by mail, by e-mail without a digital signature followed by mail, or by fax followed by mail. The owner or operator must complete this sending of a certificate of recovery as soon as possible, but no later than 30 days after the completion of recovery, and no later than one calendar year following the receipt of the hazardous waste.~~

3) As required by 35 Ill. Adm. Code 722.184(f)(4), if the facility has physical control of the waste and it must be sent to an alternate facility or returned to the country of export, such owner or operator of the facility must inform

USEPA, using the allowable methods listed in 35 Ill. Adm. Code 722.184(b)(1) of the need to return or arrange alternate management of the shipment.

4) As required by 35 Ill. Adm. Code 722.184(g), such owner or operator must:

A) Send copies of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to the competent authority of the country of export that controls the shipment as an export of hazardous waste. For shipments recycled or disposed of on or after the electronic import-export reporting compliance date, to USEPA electronically using USEPA's WIETS.

B) If the facility performed any of recovery operations R12, R13, or RC16 or disposal operations D13 through D15 or DC17, promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11 or RC16 or one of disposal operations D1 through D12, or DC15 to DC16, to the competent authority of the country of export that controls the shipment as an export of hazardous waste. On or after the electronic import-export reporting compliance date, to USEPA electronically using USEPA's WIETS. The recovery and disposal operations in this paragraph are defined in 35 Ill. Adm. Code 722.181.

b) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator must notify the new owner or operator in writing of the requirements of this Part and 35 Ill. Adm. Code 702 and 703 (also see 35 Ill. Adm. Code 703.155).

BOARD NOTE: An owner's or operator's failure to notify the new owner or operator of the requirements of this Part in no way relieves the new owner or

operator of his obligation to comply with all applicable requirements.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.113 General Waste Analysis**

a) Waste Analysis~~analysis:~~

1) Before an owner or operator treats, stores, or disposes of any hazardous wastes, or non-hazardous wastes if applicable under Section 725.213(d), the owner or operator must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis must contain all the information that must be known to treat, store, or dispose of the waste in accordance with this Part and 35 Ill. Adm. Code 728.

2) The analysis may include data developed under 35 Ill. Adm. Code 721 and existing published or documented data on the hazardous waste or on waste generated from similar processes.

BOARD NOTE: For example, the facility's record of analyses performed on the waste before the effective date of these regulations or studies conducted on hazardous waste generated from processes similar to that which generated the waste to be managed at the facility may be included in the data base required to comply with subsection (a)(1)~~ of this Section~~, except as otherwise specified in 35 Ill. Adm. Code 728.107(b) and (c). The owner or operator of an off-site facility may arrange for the generator of the hazardous waste to supply part or all of the information required by subsection (a)(1)~~ of this Section~~. If the generator does not supply the information and the owner or operator chooses to accept a hazardous waste, the owner or operator is responsible for obtaining the information required to comply with this Section.

3) The analysis must be repeated as necessary to ensure that it is accurate and up to date. At a minimum, the analysis must be repeated as follows:

A) When the owner or operator is notified or has reason to believe that the process or operation generating the hazardous waste, or non-hazardous waste if applicable under Section 725.213(d), has

changed; and

B) For off-site facilities, when the results of the inspection required in subsection (a)(4) ~~of this Section~~ indicate that the hazardous waste received at the facility does not match the waste designated on the accompanying manifest or shipping paper.

4) The owner or operator of an off-site facility must inspect and, if necessary, analyze each hazardous waste movement received at the facility to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.

b) The owner or operator must develop and follow a written waste analysis plan that describes the procedures that the owner or operator will carry out to comply with subsection (a)~~ of this Section~~. The owner or operator must keep this plan at the facility. At a minimum, the plan must specify the following:

1) The parameters for which each hazardous waste, or non-hazardous waste if applicable under Section 725.213(d), will be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with subsection (a)~~ of this Section~~).

2) The test methods that will be used to test for these parameters.

3) The sampling method that will be used to obtain a representative sample of the waste to be analyzed. A representative sample may be obtained using either of the following methods:

A) One of the sampling methods described in Appendix A to 35 Ill. Adm. Code 721, or

B) An equivalent sampling method.

BOARD NOTE: See 35 Ill. Adm. Code 720.120(c) for related discussion.

4) The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up-to-date.

5) For off-site facilities, the waste analyses that hazardous waste generators have agreed to supply.

6) Where applicable, the methods that will be used to meet the additional waste analysis requirements for specific waste management methods, as specified in Sections 725.300, 725.325, 725.352, 725.373, 725.414, 725.441, 725.475, 725.502, 725.934(d), 725.963(d), and 725.984 and 35 Ill. Adm. Code 728.107.

7) For surface impoundments exempted from land disposal restrictions under 35 Ill. Adm. Code 728.104(a), the procedures and schedules for the following:

A) The sampling of impoundment contents;

B) The analysis of test data; and

C) The annual removal of residues that are not delisted under 35 Ill. Adm. Code 720.122 or that exhibit a characteristic of hazardous waste and either of the following is true:

i) The waste residues do not meet the applicable treatment standards of Subpart D of 35 Ill. Adm. Code 728, or

ii) Where no treatment standards have been established, the waste residues are prohibited from land disposal under 35 Ill. Adm. Code 728.132 or 728.139.

8) For an owner or operator seeking an exemption to the air emission standards of Subpart CC of 35 Ill. Adm. Code 724 in accordance with Section 725.983:

A) If direct measurement is used for the waste determination, the procedures and schedules for waste sampling and analysis, and the analysis of test data to verify the exemption.

B) If knowledge of the waste is used for the waste determination, any information prepared by the facility owner or operator, or by the generator of the waste if the waste is received from off-site, that is

used as the basis for knowledge of the waste.

c) For off-site facilities, the waste analysis plan required in subsection (b) ~~of this Section~~ must also specify the procedures that will be used to inspect and, if necessary, analyze each movement of hazardous waste received at the facility to ensure that it matches the identity of the waste designated on the accompanying manifest or shipping paper. At a minimum, the plan must describe the following:

1) The procedures that will be used to determine the identity of each movement of waste managed at the facility;

2) The sampling method that will be used to obtain a representative sample of the waste to be identified if the identification method includes sampling; and

3) The procedures that the owner or operator of an off-site landfill receiving containerized hazardous waste will use to determine whether a hazardous waste generator or treater has added a biodegradable sorbent to the waste in the container.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.114 Security**

a) The owner or operator must prevent the unknowing entry and minimize the possibility for the unauthorized entry of persons or livestock onto the active portion of his facility, unless the following are true:

1) Physical contact with the waste, structures, or equipment of the active portion of the facility will not injure unknowing or unauthorized persons or livestock that may enter the active portion of the facility; and

2) Disturbance of the waste or equipment by the unknowing or unauthorized entry of persons or livestock onto the active portion of a facility will not cause a violation of the requirements of this Part.

b) Unless exempt under subsections (a)(1) and (a)(2) ~~of this Section~~, a facility must have the following:

1) A 24-hour surveillance system (e.g., television monitoring or surveillance by guards or facility personnel) that continuously monitors and controls entry into the active portion of the facility; or

2) Controlled access, including the following minimum elements:

A) An artificial or natural barrier (e.g., a fence in good repair or a fence combined with a cliff) that completely surrounds the active portion of the facility; and

B) A means to control entry at all times through the gates or other entrances to the active portion of the facility (e.g., an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

BOARD NOTE: The requirements of subsection (b) ~~of this Section~~ are satisfied if the facility or plant within which the active portion is located itself has a surveillance system or a barrier and a means to control entry that complies with the requirements of subsection (b)(1) or (b)(2) ~~of this Section~~.

c) Unless exempt under subsection (a)(1) or (a)(2) ~~of this Section~~, a sign with the legend, "Danger − Unauthorized Personnel Keep Out~~,~~", must be posted at each entrance to the active portion of a facility and at other locations in sufficient numbers to be seen from any approach to this active portion. The sign must be legible from a distance of at least 25 feet. Existing signs with a legend other than "Danger − Unauthorized Personnel Keep Out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion and that entry onto the active portion can be dangerous.

BOARD NOTE: See Section 725.217(b) for discussion of security requirements at disposal facilities during the post-closure care period.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.116 Personnel Training**

a) Personnel Training Program~~training program.~~

1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part. The owner or operator must ensure that this program includes all the elements described in the document required under subsection (d)(3) ~~of this Section~~.

2) This program must be directed by a person trained in hazardous waste management procedures, and must include instruction that teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

3) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment and emergency systems, including the following where applicable:

A) Procedures for using, inspecting, repairing and replacing facility emergency and monitoring equipment;

B) Key parameters for automatic waste feed cut-off systems;

C) Communications or alarm systems;

D) Response to fires or explosions;

E) Response to groundwater contamination incidents; and

F) Shutdown of operations.

4) For facility employees that receive emergency response training pursuant to the federal Occupational Safety and Health Administration (OSHA) regulations at 29 CFR 1910.120(p)(8) and 1910.120(q), the facility is not required to provide separate emergency response training pursuant to this section, provided that the overall facility OSHA emergency response training meets all the requirements of this Section.

b) Facility personnel must successfully complete the program required in subsection

(a) ~~of this Section~~ upon the effective date of these regulations or six months after the date of their employment or assignment to a facility or to a new position at a facility, whichever is later. Employees hired after the effective date of these regulations must not work in unsupervised positions until they have completed the training requirements of subsection (a) ~~of this Section~~.

c) Facility personnel must take part in an annual review of the initial training required in subsection (a) ~~of this Section~~.

d) The owner or operator must maintain the following documents and records at the facility:

1) The job title for each position at the facility related to hazardous waste management and the name of the employee filling each job;

2) A written job description for each position listed under subsection (d)(1) ~~of this Section~~. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications and duties of facility personnel assigned to each position;

3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under subsection (d)(1) ~~of this Section~~;

4) Records that document that the training or job experience required under subsections (a), (b), and (c) ~~of this Section~~ has been given to and completed by facility personnel.

e) Training records on current personnel must be kept until closure of the facility. Training records on former employees must be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.119 Construction Quality Assurance Program**

a) CQA Program~~program.~~

1) A construction quality assurance (CQA) program is required for all surface impoundment, waste pile and landfill units that are required to comply with Sections 725.321(a), 725.354, and 725.401(a). The program must ensure that the constructed unit meets or exceeds all design criteria and specifications in this Part. The program must be developed and implemented under the direction of a CQA officer that is a registered professional engineer.

2) The CQA program must address the following physical components, where applicable:

A) Foundations;

B) Dikes;

C) Low-permeability soil liners;

D) Geomembranes (flexible membrane liners);

E) Leachate collection and removal systems and leak detection systems; and

F) Final cover systems.

b) Written CQA plan. Before construction begins on a unit subject to the CQA program under subsection (a)~~ of this Section~~, the owner or operator must develop a written CQA plan. The plan must identify steps that will be used to monitor and document the quality of materials and the condition and manner of their installation. The CQA plan must include the following:

1) Identification of applicable units and a description of how they will be constructed.

2) Identification of key personnel in the development and implementation of the CQA plan, and CQA officer qualifications.

3) A description of inspection and sampling activities for all unit components

identified in subsection (a)(2)~~ of this Section~~, including observations and tests that will be used before, during and after construction to ensure that the construction materials and the installed unit components meet the design specifications. The description must cover: Sampling size and locations; frequency of testing; data evaluation procedures; acceptance and rejection criteria for construction materials; plans for implementing corrective measures; and data or other information to be recorded and retained in the operating record under Section 725.173.

c) Contents of Program~~program.~~

1) The CQA program must include observations, inspections, tests and measurements sufficient to ensure the following:

A) Structural stability and integrity of all components of the unit identified in subsection (a)(2)~~ of this Section~~;

B) Proper construction of all components of the liners, leachate collection and removal system, leak detection system, and final cover system, according to permit specifications and good engineering practices, and proper installation of all components (e.g., pipes) according to design specifications;

C) Conformity of all materials used with design and other material specifications under 35 Ill. Adm. Code 724.321, 724.351, and 724.401.

2) The CQA program must include test fills for compacted soil liners, using the same compaction methods as in the full-scale unit, to ensure that the liners are constructed to meet the hydraulic conductivity requirements of 35 Ill. Adm. Code 724.321(c)(1), 724.351(c)(1), or 724.401(c)(1) in the field. Compliance with the hydraulic conductivity requirements must be verified by using in-situ testing on the constructed test fill. The test fill requirement is waived where data are sufficient to show that a constructed soil liner meets the hydraulic conductivity requirements of 35 Ill. Adm. Code 724.321(c)(1), 724.351(c)(1), or 724.401(c)(1) in the field.

d) Certification. The owner or operator of units subject to this Section must submit to the Agency by certified mail or hand delivery, at least 30 days prior to

receiving waste, a certification signed by the CQA officer that the CQA plan has been successfully carried out and that the unit meets the requirements of Sections 725.321(a), 725.354, or 725.401(a). The owner or operator may receive waste in the unit after 30 days from the Agency's receipt of the CQA certification unless the Agency determines in writing that the construction is not acceptable, or extends the review period for a maximum of 30 more days, or seeks additional information from the owner or operator during this period. Documentation supporting the CQA officer's certification must be furnished to the Agency upon request.

e) Final Agency determinations pursuant to this Section are deemed to be permit denials for purposes of appeal to the Board pursuant to Section 40 of the Environmental Protection Act ~~[415 ILCS 5/40]~~.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

SUBPART E: MANIFEST SYSTEM, RECORDKEEPING, AND REPORTING

**Section 725.171 Use of Manifest System**

a) Receipt of Manifested Hazardous Waste~~manifested hazardous waste.~~

1) If a facility receives hazardous waste accompanied by a manifest, the owner, operator, or its agent must sign and date the manifest, as indicated in subsection (a)(2) ~~of this Section~~, to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

2) If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator, or its agent must do the following:

A) The owner, operator, or agent must sign and date, by hand, each copy of the manifest;

B) The owner, operator, or agent must note any discrepancies (as defined in 35 Ill. Adm. Code 724.172) on each copy of the manifest;

C) The owner, operator, or agent must immediately give the transporter at least one copy of the manifest;

D) The owner, operator, or agent must send a copy (Page 3) of the manifest to the generator within 30 days after delivery;

E) Within 30 days after delivery, the owner, operator, or agent must send the top copy (Page 1) of the manifest to the e-Manifest System for purposes of data entry and processing. In lieu of mailing this paper copy to the e-Manifest System operator, the owner or operator may transmit to the e-Manifest System operator an image file of Page 1 of the manifest, or both a data string file and the image file corresponding to Page 1 of the manifest. Any data or image files transmitted to the e-Manifest System operator under this subsection (a) must be submitted in data file and image file formats that are acceptable to USEPA and that are supported by USEPA's electronic reporting requirements and by the e-Manifest System; and

F) The owner, operator, or agent must retain at the facility a copy of each manifest for at least three years after the date of delivery.

3) The owner or operator of~~If~~ a facility that receives hazardous waste subject to Subpart H of 35 Ill. Adm. Code 722~~imported~~ from a foreign source must:~~, the receiving facility must mail a copy of the manifest and documentation confirming USEPA's consent to the import of hazardous waste to the following address within 30 days after delivery: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.~~

A) Additionally list the relevant consent number from consent documentation supplied by USEPA to the facility for each waste listed on the hazardous waste manifest (USEPA Form 8700-22), matched to the relevant list number for the waste from block 9b. If additional space is needed, the owner or operator should use Continuation Sheets (USEPA Form 8700–22A); and

B) Send a copy of the manifest to USEPA using the addresses listed in 35 Ill. Adm. Code 722.182(e) within 30 days of delivery until the facility can submit such a copy to the e-Manifest system per subsection (a)(2)(E).

b) If a facility receives from a rail or water (bulk shipment) transporter hazardous waste that is accompanied by a shipping paper containing all the information required on the manifest (excluding the USEPA identification numbers, generator certification, and signatures), the owner or operator or its agent must do each of the following:

1) It must sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

2) It must note any significant discrepancies, as defined in Section 725.172(a), in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper;

BOARD NOTE: The owner or operator of a facility whose procedures under Section 725.113(c) include waste analysis need not perform that analysis before signing the shipping paper and giving it to the transporter. Section 725.172(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.

3) It must immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

4) The owner or operator must send a copy of the signed and dated manifest or a signed and dated copy of the shipping paper (if the manifest has not been received within 30 days after delivery) to the generator within 30 days after the delivery; and

BOARD NOTE: 35 Ill. Adm. Code 722.123(c) requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment).

5) Retain at the facility a copy of the manifest and shipping paper (if signed

in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of 35 Ill. Adm. Code 722. The provisions of 35 Ill. Adm. Code 722.115, 722.116, and 722.117 apply to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of 35 Ill. Adm. Code 722.115, 722.116, and 722.117 only apply to an owner or operator that ships hazardous waste which it generated at that facility or operating as an LQG consolidating hazardous waste from VSQGs under 35 Ill. Adm. Code 722.117(f).

~~BOARD NOTE: The provisions of 35 Ill. Adm. Code 722.134 are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of 35 Ill. Adm. Code 722.134 apply only to owners or operators that are shipping hazardous waste which they generated at that facility.~~

d) As required by 40 CFR 262.84(d)(2)(O), within~~Within~~ three working days after~~of~~ the receipt of a shipment subject to Subpart H of 35 Ill. Adm. Code 722, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the foreign exporter~~;~~ and to the ~~Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; to the Bureau of Land, Division of Land Pollution Control, Illinois Environmental Protection Agency, P.O. Box 19276, Springfield, IL 62794-9276; and to~~ competent authorities of the ~~all other~~ countries of export and transit that control the shipment as an export or transit of hazardous waste. On or after the electronic import-export reporting compliance date, to USEPA electronically using USEPA's WIETS~~concerned~~. The original copy of the tracking document must be maintained at the facility for at least three years from the date of signature. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on USEPA's WIETS, provided that copies are readily available for viewing and production if requested by any USEPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with USEPA's WIETS, for which the owner or operator of a facility bears no

responsibility.

e) A facility must determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated federally) as hazardous wastes under its state hazardous waste program. A facility must also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to that state.

f) Legal Equivalence~~equivalence~~ to Paper Manifests~~paper manifests~~. E-Manifests that are obtained, completed, transmitted in accordance with 35 Ill. Adm. Code 722.120(a)(3), and used in accordance with this Section in lieu of the paper manifest form are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in 35 Ill. Adm. Code 720 through 728 to obtain, complete, sign, provide, use, or retain a manifest.

1) Any requirement in 35 Ill. Adm. Code 720 through 728 for the owner or operator of a facility to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 35 Ill. Adm. Code 722.125.

2) Any requirement in 35 Ill. Adm. Code 720 through 728 to give, provide, send, forward, or to return to another person a copy of the manifest is satisfied when a copy of an e-Manifest is transmitted to the other person.

3) Any requirement in 35 Ill. Adm. Code 720 through 728 for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an e-Manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the hazardous waste shipment.

4) Any requirement in 35 Ill. Adm. Code 720 through 728 for an owner or operator to keep or retain a copy of each manifest is satisfied by the retention of the facility's e-Manifest copies in its account on the e-Manifest System, provided that such copies are readily available for viewing and production if requested by any USEPA or Agency inspector.

5) No owner or operator may be held liable for the inability to produce an e-Manifest for inspection under this Section if the owner or operator can demonstrate that the inability to produce the e-Manifest is due exclusively to a technical difficulty with the e-Manifest System for which the owner or operator bears no responsibility.

g) An owner or operator may participate in the e-Manifest System either by accessing the e-Manifest System from the owner's or operator's electronic equipment, or by accessing the e-Manifest System from portable equipment brought to the owner's or operator's site by the transporter that delivers the waste shipment to the facility.

h) Special Procedures Applicable~~procedures applicable~~ to Replacement Manifests~~replacement manifests~~. If a facility receives hazardous waste that is accompanied by a paper replacement manifest for a manifest that was originated electronically, the following procedures apply to the delivery of the hazardous waste by the final transporter:

1) Upon delivery of the hazardous waste to the designated facility, the owner or operator must sign and date each copy of the paper replacement manifest by hand in Item 20 (Designated Facility Certification of Receipt) and note any discrepancies in Item 18 (Discrepancy Indication Space) of the paper replacement manifest;

2) The owner or operator of the facility must give back to the final transporter one copy of the paper replacement manifest;

3) Within 30 days after delivery of the hazardous waste to the designated facility, the owner or operator of the facility must send one signed and dated copy of the paper replacement manifest to the generator and send an additional signed and dated copy of the paper replacement manifest to the e-Manifest System; and

4) The owner or operator of the facility must retain at the facility one copy of the paper replacement manifest for at least three years after the date of delivery.

i) Special Procedures Applicable~~procedures applicable~~ to Electronic Signature Methods Undergoing Tests~~electronic signature methods undergoing tests~~. If an

owner or operator using an e-Manifest signs this manifest electronically using an electronic signature method that is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, the owner or operator must also sign with an ink signature the facility's certification of receipt or discrepancies on the printed copy of the manifest provided by the transporter. Upon executing its ink signature on this printed copy, the owner or operator must retain this original copy among its records for at least three years after the date of delivery of the waste.

j) Imposition of User Fee~~user fee~~ for e-Manifest Use~~use~~. An owner or operator that is a user of the e-Manifest System may be assessed a user fee by USEPA for the origination or processing of each e-Manifest. An owner or operator may also be assessed a user fee by USEPA for the collection and processing of paper manifest copies that owners or operators must submit to the e-Manifest System operator under subsection 725.171(a)(2)(E). USEPA has stated that it would maintain and update from time-to-time the current schedule of e-Manifest System user fees, which will be determined based on current and projected e-Manifest System costs and level of use of the e-Manifest System. USEPA has said that it would publish the current schedule of e-Manifest user fees as an appendix to 40 CFR 262.

k) E-Manifest Signatures~~signatures~~. E-Manifest signatures must meet the criteria described in 35 Ill. Adm. Code 722.125.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.172 Manifest Discrepancies**

a) "Manifest discrepancies" are defined as any one of the following:

1) Significant differences (as defined by subsection (b)~~ of this Section~~) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives;

2) Rejected wastes, which may be a full or partial shipment of hazardous waste that the treatment, storage, or disposal facility cannot accept; or

3) Container residues, which are residues that exceed the quantity limits for empty containers set forth in 35 Ill. Adm. Code 721.107(b).

b) "Significant differences in quantity" are defined as the appropriate of the following: for bulk waste, variations greater than 10 percent in weight; or, for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. "Significant differences in type" are defined as obvious differences that can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or as toxic constituents not reported on the manifest or shipping paper.

c) Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Agency a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

d) Rejection of Hazardous Waste~~hazardous waste.~~

1) Upon rejecting waste or identifying a container residue that exceeds the quantity limits for empty containers set forth in 35 Ill. Adm. Code 721.107(b), the facility owner or operator must consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility owner or operator may return the rejected waste or residue to the generator. The facility owner or operator must send the waste to the alternative facility or to the generator within 60 days after the rejection or the container residue identification.

2) While the facility owner or operator is making arrangements for forwarding rejected wastes or residues to another facility under this Section, it must ensure that either the delivering transporter retains custody of the waste, or the facility owner or operator must provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under subsection (e) or (f)~~ of this Section~~.

e) Except as provided in subsection (e)(7)~~ of this Section~~, for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility owner or operator is required to prepare a new manifest in accordance

with 35 Ill. Adm. Code 722.120(a) and the instructions set forth in subsections (e)(1) through (e)(6)~~ of this Section~~:

1) The facility owner or operator must write the generator's USEPA identification number in Item 1 of the new manifest. The facility owner or operator must write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then the facility owner or operator must write the generator's site address in the designated space in Item 5.

2) The facility owner or operator must write the name of the alternate designated facility and the facility's USEPA identification number in the designated facility block (Item 8) of the new manifest.

3) The facility owner or operator must copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

4) The facility owner or operator must copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

5) The facility owner or operator must write the USDOT description for the rejected load or the residue in Item 9 (USDOT Description) of the new manifest and write the container types, quantity, and volumes of waste.

6) The facility owner or operator must sign the Generator's/Offeror's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation, and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

7) For full load rejections that are made while the transporter remains present at the facility, the facility owner or operator may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the Alternate Facility space. The facility owner or operator must retain a copy of this manifest for its records, and then give the remaining copies of

the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility owner or operator must use a new manifest and comply with subsections (e)(1) through (e)(6)~~ of this Section~~.

f) Except as provided in subsection (f)(7)~~ of this Section~~, for rejected wastes and residues that must be sent back to the generator, the facility owner or operator is required to prepare a new manifest in accordance with 35 Ill. Adm. Code 722.120(a) and the instructions set forth in subsections (f)(1) through (f)(6) and (f)(8)~~ of this Section~~:

1) The facility owner or operator must write the facility's USEPA identification number in Item 1 of the new manifest. The facility owner or operator must write the facility's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the facility's site address, then the facility owner or operator must write the facility's site address in the designated space for Item 5 of the new manifest.

2) The facility owner or operator must write the name of the initial generator and the generator's USEPA identification number in the designated facility block (Item 8) of the new manifest.

3) The facility owner or operator must copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

4) The facility owner or operator must copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

5) The facility owner or operator must write the USDOT description for the rejected load or the residue in Item 9 (USDOT Description) of the new manifest and write the container types, quantity, and volumes of waste.

6) The facility owner or operator must sign the Generator's/Offeror's Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation.

7) For full load rejections that are made while the transporter remains at the facility, the facility owner or operator may return the shipment to the generator with the original manifest by completing Item 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility owner or operator must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility owner or operator must use a new manifest and comply with subsections (f)(1) through (f)(6) and (f)(8)~~ of this Section~~.

8) For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility owner or operator must also comply with the exception reporting requirements in Section 722.142(a).

g) If a facility owner or operator rejects a waste or identifies a container residue that exceeds the quantity limits for empty containers set forth in 35 Ill. Adm. Code 721.107(b) after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility owner or operator must amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility owner or operator must also copy the manifest tracking number from Item 4 of the new manifest to the Discrepancy space of the amended manifest, and must re-sign and date the manifest to certify to the information as amended. The facility owner or operator must retain the amended manifest for at least three years from the date of amendment, and must, within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to their being amended.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.173 Operating Record**

a) The owner or operator must keep a written operating record at the facility.

b) The following information must be recorded as it becomes available and maintained in the operating record for three years unless otherwise provided as follows:

1) A description and the quantity of each hazardous waste received and the

methods and dates of its treatment, storage, or disposal at the facility, as required by Appendix A ~~to this Part~~. This information must be maintained in the operating record until closure of the facility;

2) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities the location and quantity of each hazardous waste must be recorded on a map or diagram that shows each cell or disposal area. For all facilities this information must include cross-references to manifest document numbers if the waste was accompanied by a manifest. This information must be maintained in the operating record until closure of the facility;

BOARD NOTE: See Sections 725.219, 725.379, and 725.409 for related requirements.

3) Records and results of waste analysis, waste determinations, and trial tests performed, as specified in Sections 725.113, 725.300, 725.325, 725.352, 725.373, 725.414, 725.441, 725.475, 725.502, 725.934, 725.963, and 725.984 and 35 Ill. Adm. Code 728.104(a) and 728.107;

4) Summary reports and details of all incidents that require implementing the contingency plan, as specified in Section 725.156(j);

5) Records and results of inspections, as required by Section 725.115(d) (except these data need be kept only three years);

6) Monitoring, testing, or analytical data, where required by Subpart F ~~of this Part~~ or Sections 725.119, 725.194, 725.291, 725.293, 725.295, 725.324, 725.326, 725.355, 725.360, 725.376, 725.378, 725.380(d)(1), 725.402, 725.404, 725.447, 725.477, 725.934(c) through (f), 725.935, 725.963(d) through (i), 725.964, and 725.983 through 725.990. Maintain in the operating record for three years, except for records and results pertaining to groundwater monitoring and cleanup, and response action plans for surface impoundments, waste piles, and landfills, which must be maintained in the operating record until closure of the facility;

BOARD NOTE: As required by Section 725.194, monitoring data at disposal facilities must be kept throughout the post-closure period.

7) All closure cost estimates under Section 725.242 and, for disposal facilities, all post-closure cost estimates under Section 725.244 must be maintained in the operating record until closure of the facility;

8) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension of the effective date of any land disposal restriction granted pursuant to 35 Ill. Adm. Code 728.105, a petition pursuant to 35 Ill. Adm. Code 728.106, or a certification under 35 Ill. Adm. Code 728.108 and the applicable notice required of a generator under 35 Ill. Adm. Code 728.107(a). All of this information must be maintained in the operating record until closure of the facility;

9) For an off-site treatment facility, a copy of the notice and the certification and demonstration, if applicable, required of the generator or the owner or operator under 35 Ill. Adm. Code 728.107 or 728.108;

10) For an on-site treatment facility, the information contained in the notice (except the manifest number) and the certification and demonstration, if applicable, required of the generator or the owner or operator under 35 Ill. Adm. Code 728.107 or 728.108;

11) For an off-site land disposal facility, a copy of the notice and the certification and demonstration, if applicable, required of the generator or the owner or operator of a treatment facility under 35 Ill. Adm. Code 728.107 or 728.108;

12) For an on-site land disposal facility, the information contained in the notice required of the generator or owner or operator of a treatment facility under 35 Ill. Adm. Code 728.107, except for the manifest number, and the certification and demonstration, if applicable, required under 35 Ill. Adm. Code 728.107 or 728.108;

13) For an off-site storage facility, a copy of the notice and the certification and demonstration, if applicable, required of the generator or the owner or operator under 35 Ill. Adm. Code 728.107 or 728.108;

14) For an on-site storage facility, the information contained in the notice (except the manifest number) and the certification and demonstration, if

applicable, required of the generator or the owner or operator under 35 Ill. Adm. Code 728.107 or 728.108; and

15) Monitoring, testing or analytical data, and corrective action, where required by Sections 725.190 and 725.193(d)(2) and (d)(5), and the certification, as required by Section 725.296(f), must be maintained in the operating record until closure of the facility.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.175 Annual Report**

The owner and operator must complete~~prepare~~ and submit a Hazardous Waste Report (USEPA Form 8700-13 A/B)~~single copy of an annual report~~ to the Agency by March 1 of the following~~each~~ year and~~. The report form and instructions supplied by the Agency must be used for this report. The annual report~~ must cover facility activities during the previous calendar year. ~~and must include the following information:~~

~~a) The USEPA identification number (Section 725.111), name and address of the facility;~~

~~b) The calendar year covered by the report;~~

~~c) For off-site facilities, the USEPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report must give the name and address of the foreign generator;~~

~~d) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities this information must be listed by USEPA identification number of each generator;~~

~~e) The method of treatment, storage, or disposal for each hazardous waste;~~

~~f) Monitoring data under Section 725.194(a)(2)(B), (a)(2)(C), and (b)(2), where required;~~

~~g) The most recent closure cost estimate under Section 725.242 and for disposal facilities the most recent post-closure cost estimate under Section 725.244;~~

~~h) For generators that treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated;~~

~~i) For generators that treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years, to the extent such information is available for years prior to 1984; and~~

~~j) The certification signed by the owner or operator of the facility or the owner or operator's authorized representative.~~

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.176 Unmanifested Waste Report**

a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper, as described by 35 Ill. Adm. Code 723.120(e), and if the waste is not excluded from the manifest requirement by 35 Ill. Adm. Code 260 through 265, then the owner or operator must prepare and submit a letter to the Agency within 15 days after receiving the waste. The unmanifested waste report must contain the following information:

1) The USEPA identification number, name, and address of the facility;

2) The date the facility received the waste;

3) The USEPA identification number, name, and address of the generator and the transporter, if available;

4) A description and the quantity of each unmanifested hazardous waste the facility received;

5) The method of treatment, storage, or disposal for each hazardous waste;

6) The certification signed by the owner or operator of the facility or its authorized representative; and

7) A brief explanation of why the waste was unmanifested, if known.

b) This subsection (b) corresponds with 40 CFR 265.76(b), which USEPA has marked "reserved~~.~~". This statement maintains structural consistency with the corresponding federal regulations.

BOARD NOTE: Small quantities of hazardous waste are excluded from regulation under this Part and do not require a manifest. Where a facility received unmanifested hazardous waste, USEPA has suggested that the owner or operator obtain from each generator a certification that the waste qualifies for exclusion. Otherwise, USEPA has suggested that the owner or operator file an unmanifested waste report for the hazardous waste movement.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.177 Additional Reports**

In addition to submitting the annual report and unmanifested waste reports described in Sections 725.175 and 725.176, the owner or operator must also report the following information to the Agency:

a) Releases, fires, and explosions, as specified in Section 725.156(j);

b) Groundwater contamination and monitoring data, as specified in Section 725.193 and 725.194;

c) Facility closure, as specified in Section 725.215; and

d) As otherwise required by Subparts AA, BB, and CC~~ of this Part~~.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

SUBPART F: GROUNDWATER MONITORING

**Section 725.190 Applicability**

a) The owner or operator of a surface impoundment, landfill, or land treatment facility that is used to manage hazardous waste must implement a groundwater

monitoring program capable of determining the facility's impact on the quality of groundwater in the uppermost aquifer underlying the facility, except as Section 725.101 and subsection (c) ~~of this Section~~ provide otherwise.

b) Except as subsections (c) and (d) ~~of this Section~~ provide otherwise, the owner or operator must install, operate, and maintain a groundwater monitoring system that meets the requirements of Section 725.191 and must comply with Sections 725.192 through 725.194. This groundwater monitoring program must be carried out during the active life of the facility and for disposal facilities during the post-closure care period as well.

c) All or part of the groundwater monitoring requirements of this Subpart F may be waived if the owner or operator can demonstrate that there is a low potential for migration of hazardous waste or hazardous waste constituents from the facility via the uppermost aquifer to water supply wells (domestic, industrial, or agricultural) or to surface water. This demonstration must be in writing and must be kept at the facility. This demonstration must be certified by a qualified geologist or geotechnical engineer and must establish the following:

1) The potential for migration of hazardous waste or hazardous waste constituents from the facility to the uppermost aquifer by an evaluation of the following information:

A) A water balance of precipitation, evapotranspiration, runoff, and infiltration; and

B) Unsaturated zone characteristics (i.e., geologic materials, physical properties, and depth to ground water); and

2) The potential for hazardous waste or hazardous waste constituents that enter the uppermost aquifer to migrate to a water supply well or surface water by an evaluation of the following information:

A) Saturated zone characteristics (i.e., geologic materials, physical properties, and rate of groundwater flow); and

B) The proximity of the facility to water supply wells or surface water.

d) If an owner or operator assumes (or knows) that groundwater monitoring of indicator parameters in accordance with Sections 725.191 and 725.192 would show statistically significant increases (or decreases in the case of pH) when evaluated pursuant to Section 725.193(b), it may install, operate, and maintain an alternate groundwater monitoring system (other than the one described in Sections 725.191 and 725.192). If the owner or operator decides to use an alternate groundwater monitoring system it must have done as follows:

1) The owner or operator must develop a specific plan, certified by a qualified geologist or geotechnical engineer, that satisfies the requirements of federal 40 CFR 265.93(d)(3) for an alternate groundwater monitoring system. This plan is to be placed in the facility's operating record and maintained until closure of the facility;

2) The owner or operator must have initiated the determinations specified in federal 40 CFR 265.93(d)(4);

3) The owner or operator must prepare a written report in accordance with Section 725.193(d)(5) and place it in the facility's operating record and maintain until closure of the facility;

4) The owner or operator must continue to make the determinations specified in Section 725.193(d)(4) on a quarterly basis until final closure of the facility; and

5) The owner or operator must comply with the recordkeeping and reporting requirements in Section 725.194(b).

e) The groundwater monitoring requirements of this Subpart F may be waived with respect to any surface impoundment of which the following is true:

1) The impoundment is used to neutralize wastes that are hazardous solely because they exhibit the corrosivity characteristic pursuant to 35 Ill. Adm. Code 721.122 or which are listed as hazardous wastes in Subpart D of 35 Ill. Adm. Code 721 only for this reason; and

2) The impoundment contains no other hazardous wastes, if the owner or operator can demonstrate that there is no potential for migration of hazardous wastes from the impoundment. The demonstration must

establish, based upon consideration of the characteristics of the wastes and the impoundment, that the corrosive wastes will be neutralized to the extent that they no longer meet the corrosivity characteristic before they can migrate out of the impoundment. The demonstration must be in writing and must be certified by a qualified professional.

f) A permit or enforceable document can contain alternative requirements for groundwater monitoring that replace all or part of the requirements of this Subpart F applicable to a regulated unit (as defined in 35 Ill. Adm. Code 724.190), as provided pursuant to 35 Ill. Adm. Code 703.161, where the Board has determined by an adjusted standard granted pursuant to Section 28.1 of the Act ~~[415 ILCS 5/28.1]~~ and Subpart D of 35 Ill. Adm. Code 104 the following:

1) The regulated unit is situated among solid waste management units (or areas of concern), a release has occurred, and both the regulated unit and one or more solid waste management units (or areas of concern) are likely to have contributed to the release; and

2) It is not necessary to apply the groundwater monitoring requirements of this Subpart F because the alternative requirements will adequately protect human health and the environment. The alternative standards for the regulated unit must meet the requirements of 35 Ill. Adm. Code 724.201(a).

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.192 Sampling and Analysis**

a) The owner or operator must obtain and analyze samples from the installed groundwater monitoring system. The owner or operator must develop and follow a groundwater sampling and analysis plan. The owner or operator must keep this plan at the facility. The plan must include procedures and techniques for each of the following:

1) Sample collection;

2) Sample preservation and shipment;

3) Analytical procedures; and

4) Chain of custody control.

BOARD NOTE: See "Procedures Manual For Ground Water Monitoring At Solid Waste Disposal Facilities~~,~~", USEPA document number EPA-530/SW-611, and "Methods for Chemical Analysis of Water and Wastes~~,~~", USEPA document number EPA-600/4-79-020, incorporated by reference in 35 Ill. Adm. Code 720.111(a), for discussions of sampling and analysis procedures.

b) The owner or operator must determine the concentration or value of the following parameters in groundwater samples in accordance with subsections (c) and (d)~~ of this Section~~:

1) Parameters characterizing the suitability of the groundwater as a drinking water supply, as specified in Appendix C~~ to this Part~~.

2) The following parameters establishing groundwater quality:

A) Chloride,

B) Iron,

C) Manganese,

D) Phenols,

E) Sodium, and

F) Sulfate.

BOARD NOTE: These parameters are to be used as a basis for comparison in the event a groundwater quality assessment is required under Section 725.193(d).

3) The following parameters used as indicators of groundwater contamination:

A) pH,

B) Specific Conductance,

C) Total Organic Carbon, and

D) Total Organic Halogen.

c) Establishing Background Concentrations~~background concentrations.~~

1) For all monitoring wells, the owner or operator must establish initial background concentrations or values of all parameters specified in subsection (b)~~ of this Section~~. The owner or operator must do this quarterly for one year.

2) For each of the indicator parameters specified in subsection (b)(3)~~ of this Section~~, the owner or operator must obtain at least four replicate measurements for each sample and determine the initial background arithmetic mean and variance by pooling the replicate measurements for the respective parameter concentrations or values in samples obtained from upgradient wells during the first year.

d) After the first year, the owner or operator must sample all monitoring wells and analyze the samples with the following frequencies:

1) Samples collected to establish groundwater quality must be obtained and analyzed for the parameters specified in subsection (b)(2) ~~of this Section~~ at least annually.

2) Samples collected to indicate groundwater contamination must be obtained and analyzed for the parameters specified in subsection (b)(3) ~~of this Section~~ at least semi-annually.

e) The owner or operator must determine the elevation of the groundwater surface at each monitoring well each time a sample is obtained.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.193 Preparation, Evaluation, and Response**

a) The~~By no later than November 19, 1981, the~~ owner or operator must prepare~~have~~

~~prepared~~ an outline of a groundwater quality assessment program. The outline must describe a more comprehensive groundwater monitoring program (than that described in Sections 725.191 and 725.192) capable of determining each of the following:

1) Whether hazardous waste or hazardous waste constituents have entered the groundwater;

2) The rate and extent of migration of hazardous waste or hazardous waste constituents in the groundwater; and

3) The concentrations of hazardous waste or hazardous waste constituents in the groundwater.

b) For each indicator parameter specified in Section 725.192(b)(3), the owner or operator must calculate the arithmetic mean and variance, based on at least four replicate measurements on each sample, for each well monitored in accordance with Section 725.192(d)(2) and compare these results with its initial background arithmetic mean. The comparison must consider individually each of the wells in the monitoring system and must use the Student's t-test at the 0.01 level of significance (see Appendix D) to determine statistically significant increases (and decreases, in the case of pH) over initial background.

c) Well Comparisons~~.~~

1) If the comparisons for the upgradient wells made under subsection (b) ~~of this Section~~ show a significant increase (or pH decrease) the owner or operator must submit this information in accordance with Section 725.194(a)(2)(B).

2) If the comparisons for downgradient wells made under subsection (b) ~~of this Section~~ show a significant increase (or pH decrease) the owner or operator must then immediately obtain additional groundwater samples for those downgradient wells where a significant difference was detected, split the samples in two and obtain analyses of all additional samples to determine whether the significant difference was a result of laboratory error.

d) Notice to the Agency~~.~~

1) If the analyses performed under subsection (c)(2) ~~of this Section~~ confirm the significant increase (or pH decrease) the owner or operator must provide written notice to the Agency – within seven days after the date of such confirmation – that the facility may be affecting groundwater quality.

2) Within 15 days after the notification under subsection (d)(1) ~~of this Section~~, the owner or operator must develop a specific plan, based on the outline required under subsection (a) ~~of this Section~~ and certified by a qualified geologist or geotechnical engineer for a groundwater quality assessment at the facility. This plan must be placed in the facility operating record and be maintained until closure of the facility.

3) The plan to be submitted under Section 725.190(d)(1) or subsection (d)(2) ~~of this Section~~ must specify all of the following:

   A) The number, location, and depth of wells;

   B) Sampling and analytical methods for those hazardous wastes or hazardous waste constituents in the facility;

   C) Evaluation procedures, including any use of previously gathered groundwater quality information; and

   D) A schedule of implementation.

4) The owner or operator must implement the groundwater quality assessment plan that satisfies the requirements of subsection (d)(3) ~~of this Section~~ and, at a minimum, determine each of the following:

   A) The rate and extent of migration of the hazardous waste or hazardous waste constituents in the groundwater; and

   B) The concentrations of the hazardous waste or hazardous waste constituents in the groundwater.

5) The owner or operator must make his first determination under subsection (d)(4) ~~of this Section~~, as soon as technically feasible, and prepare a report containing an assessment of the groundwater quality. This report must be

placed in the facility operating record and be maintained until closure of the facility.

6) If the owner or operator determines, based on the results of the first determination under subsection (d)(4)~~ of this Section~~, that no hazardous waste or hazardous waste constituents from the facility have entered the groundwater, then he may reinstate the indicator evaluation program described in Section 725.192 and subsection (b)~~ of this Section~~. If the owner or operator reinstates the indicator evaluation program, he must so notify the Agency in the report submitted under subsection (d)(5)~~ of this Section~~.

7) If the owner or operator determines, based on the first determination under subsection (d)(4)~~ of this Section~~, that hazardous waste or hazardous waste constituents from the facility have entered the groundwater, then the owner or operator must do either of the following:

A) It must continue to make the determinations required under subsection (d)(4)~~ of this Section~~ on a quarterly basis until final closure of the facility if the groundwater quality assessment plan was implemented prior to final closure of the facility; or

B) It may cease to make the determinations required under subsection (d)(4)~~ of this Section~~ if the groundwater quality assessment plan was implemented during the post-closure care period.

e) Notwithstanding any other provision of this Subpart F, any groundwater quality assessment to satisfy the requirements of subsection (d)(4) ~~of this Section~~ that is initiated prior to final closure of the facility must be completed and reported in accordance with subsection (d)(5)~~ of this Section~~.

f) Unless the groundwater is monitored to satisfy the requirements of subsection (d)(4) ~~of this Section~~ at least annually the owner or operator must evaluate the data on groundwater surface elevations obtained under Section 725.192(e) to determine whether the requirements under Section 725.191(a) for locating the monitoring wells continues to be satisfied. If the evaluation shows that Section 725.191(a) is no longer satisfied, the owner or operator must immediately modify the number, location, or depth of the monitoring wells to bring the groundwater monitoring system into compliance with this requirement.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

SUBPART G: CLOSURE AND POST-CLOSURE CARE

**Section 725.210 Applicability**

Except as Section 725.101 provides otherwise, the following requirements apply as indicated:

a) Sections 725.211 through 725.215 (which concern closure) apply to the owners and operators of all hazardous waste management facilities; and

b) Sections 725.216 through 725.220 (which concern post-closure care) apply to the owners and operators of the following:

1) All hazardous waste disposal facilities;

2) Waste piles and surface impoundments from which the owner or operator intends to remove the wastes at closure to the extent that these Sections are made applicable to such facilities in Section 725.328 or 725.358;

3) Tank systems that are required pursuant to Section 725.297 to meet requirements for landfills; or

4) Containment buildings that are required pursuant to Section 725.1102 to meet the requirement for landfills.

c) Section 725.221 applies to owners and operators of units that are subject to the requirements of 35 Ill. Adm. Code 703.161 and which are regulated under an enforceable document (as established pursuant to 35 Ill. Adm. Code 703.161).

d) A permit or enforceable document can contain alternative requirements that replace all or part of the closure and post-closure care requirements of this Subpart G (and the unit-specific standards in Section 725.211(c)) applying to a regulated unit (as defined in 35 Ill. Adm. Code 724.190), as provided in 35 Ill. Adm. Code 703.161, where the Board has determined by an adjusted standard granted pursuant to Section 28.1 of the Act ~~[415 ILCS 5/28.1]~~ and Subpart D of 35 Ill. Adm. Code 104 the following:

1) The regulated unit is situated among solid waste management units (or areas of concern), a release has occurred, and both the regulated unit and one or more solid waste management units (or areas of concern) are likely to have contributed to the release; and

2) It is not necessary to apply the closure requirements of this Subpart G (and those referenced herein) because the alternative requirements will adequately protect human health and the environment, and will satisfy the closure performance standard of Section 725.211(a) and (b).

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.212 Closure Plan; Amendment of Plan**

a) Written Plan~~plan~~. Within six months after the effective date of the rule that first subjects a facility to provisions of this Section, the owner or operator of a hazardous waste management facility must have a written closure plan. Until final closure is completed and certified in accordance with Section 725.215, a copy of the most current plan must be furnished to the Agency upon request including request by mail. In addition, for facilities without approved plans, it must also be provided during site inspections on the day of inspection to any officer, employee, or representative of the Agency.

b) Content of Plan~~plan~~. The plan must identify the steps necessary to perform partial or final closure of the facility at any point during its active life. The closure plan must include the following minimal information:

1) A description of how each hazardous waste management unit at the facility will be closed in accordance with Section 725.211;

2) A description of how final closure of the facility will be conducted in accordance with Section 725.211. The description must identify the maximum extent of the operation that will be unclosed during the active life of the facility;

3) An estimate of the maximum inventory of hazardous wastes ever on-site over the active life of the facility and a detailed description of the methods to be used during partial and final closure, including, but not limited to methods for removing, transporting, treating, storing, or disposing of all

hazardous waste, and identification of and the types of off-site hazardous waste management units to be used, if applicable;

4) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to satisfy the closure performance standard;

5) A detailed description of other activities necessary during the partial and final closure periods to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, groundwater monitoring, leachate collection, and runon and runoff control;

6) A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities that will allow tracking of the progress of partial and final closure. (For example, in the case of a landfill unit, estimates of the time required to treat or dispose of all hazardous waste inventory and of the time required to place a final cover must be included.);

7) An estimate of the expected year of final closure for facilities that use trust funds to demonstrate financial assurance under Section 725.243 or 725.245 and whose remaining operating life is less than twenty years, and for facilities without approved closure plans; and

8) For a facility where alternative requirements are established at a regulated unit under Section 725.190(f), 725.210(d), or 725.240(d), as provided under 35 Ill. Adm. Code 703.161, either the alternative requirements applying to the regulated unit or a reference to the enforceable document containing those alternative requirements.

c) Amendment of Plan~~plan~~. The owner or operator may amend the closure plan at any time prior to the notification of partial or final closure of the facility. An

owner or operator with an approved closure plan must submit a written request to the Agency to authorize a change to the approved closure plan. The written request must include a copy of the amended closure plan for approval by the Agency.

1) The owner or operator must amend the closure plan whenever any of the following occurs:

   A) Changes in the operating plans or facility design affect the closure plan;

   B) Whenever there is a change in the expected year of closure, if applicable;

   C) In conducting partial or final closure activities, unexpected events require a modification of the closure plan; or

   D) The owner or operator requests the establishment of alternative requirements, as provided under 35 Ill. Adm. Code 703.161, to a regulated unit under Section 725.190(f), 725.210(c), or 725.240(d).

2) The owner or operator must amend the closure plan at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred that has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must amend the closure plan no later than 30 days after the unexpected event. These provisions also apply to owners or operators of surface impoundments and waste piles that intended to remove all hazardous wastes at closure, but are required to close as landfills in accordance with Section 725.410.

3) An owner or operator with an approved closure plan must submit the modified plan to the Agency at least 60 days prior to the proposed change in facility design or operation, or no more than 60 days after an unexpected event has occurred that has affected the closure plan. If an unexpected event has occurred during the partial or final closure period, the owner or operator must submit the modified plan no more than 30 days after the unexpected event. These provisions also apply to owners or operators of surface impoundments and waste piles that intended to

remove all hazardous wastes at closure but are required to close as landfills in accordance with Section 725.410. If the amendment to the plan is a Class 2 or 3 modification according to the criteria in 35 Ill. Adm. Code 703.280, the modification to the plan must be approved according to the procedures in subsection (d)(4)~~ of this Section~~.

4) The Agency may request modifications to the plan under the conditions described in subsection (c)(1)~~ of this Section~~. An owner or operator with an approved closure plan must submit the modified plan within 60 days after the request from the Agency, or within 30 days if the unexpected event occurs during partial or final closure. If the amendment is considered a Class 2 or 3 modification according to the criteria in 35 Ill. Adm. Code 703.280, the modification to the plan must be approved in accordance with the procedures in subsection (d)(4)~~ of this Section~~.

d) Notification of Partial Closure~~partial closure~~ and Final Closure~~final closure.~~

1) When notice is Required~~required.~~

A) The owner or operator must submit the closure plan to the Agency at least 180 days prior to the date on which the owner or operator expects to begin closure of the first surface impoundment, waste pile, land treatment, or landfill unit, or final closure if it involves such a unit, whichever is earlier.

B) The owner or operator must submit the closure plan to the Agency at least 45 days prior to the date on which the owner or operator expects to begin partial or final closure of a boiler or industrial furnace.

C) The owner or operator must submit the closure plan to the Agency at least 45 days prior to the date on which the owner or operator expects to begin final closure of a facility with only tanks, container storage, or incinerator units.

D) An owner or operator with an approved closure plan must notify the Agency in writing at least 60 days prior to the date on which the owner or operator expects to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final

closure of a facility involving such a unit.

E) An owner or operator with an approved closure plan must notify the Agency in writing at least 45 days prior to the date on which the owner or operator expects to begin partial or final closure of a boiler or industrial furnace.

F) An owner or operator with an approved closure plan must notify the Agency in writing at least 45 days prior to the date on which the owner or operator expects to begin final closure of a facility with only tanks, container storage, or incinerator units.

2) The date when the owner or operator "expects to begin closure" must be either of the following dates:

A) Within 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a hazardous waste management unit demonstrates to the Agency that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and that the owner or operator has taken and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all interim status requirements, the Agency must approve an extension to this one-year limit; or

B) For units meeting the requirements of Section 725.213(d), no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of non-hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional non-hazardous wastes, no later than one year after the date on which the unit received the most recent volume of non-hazardous wastes. If the owner or operator demonstrates to the Agency that the hazardous waste management unit has the capacity to receive additional non-hazardous wastes and that the owner and operator

have taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, the Agency must approve an extension to this one-year limit.

3) The owner or operator must submit the closure plan to the Agency no later than 15 days after occurrence of either of the following events:

A) Termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or

B) Issuance of a judicial decree or Board order to cease receiving hazardous wastes or to close the facility or unit.

4) The Agency must provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications of the plan no later than 30 days from the date of the notice. The Agency must also, in response to a request or at its own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. The Agency must give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments and the two notices may be combined.) The Agency must approve, modify, or disapprove the plan within 90 days after its receipt. If the Agency does not approve the plan, the Agency must provide the owner or operator with a detailed written statement of reasons for the refusal, and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The Agency must approve or modify this plan in writing within 60 days. If the Agency modifies the plan, this modified plan becomes the approved closure plan. The Agency must assure that the approved plan is consistent with Sections 725.211 through 725.215 and the applicable requirements of Sections 725.190 et seq., 725.297, 725.328, 725.358, 725.380, 725.410, 725.451, 725.481, 725.504, and 725.1102. A copy of this modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

e) Removal of Wastes~~wastes~~ and Decontamination~~decontamination~~ or

Dismantling~~dismantling~~ of Equipment~~equipment~~. Nothing in this Section precludes the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.213 Closure; Time Allowed for Closure**

a) Within 90 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes, if the owner or operator complies with all the applicable requirements of subsections (d) and (e) ~~of this Section~~ at a hazardous waste management unit or facility, or 90 days after approval of the closure plan, whichever is later, the owner or operator must treat, remove from the unit or facility, or dispose of on-site all hazardous wastes in accordance with the approved closure plan. The Agency must approve a longer period if the owner or operator demonstrates the following:

1) The need to remain in operation by showing either of the following conditions exists:

A) The activities required to comply with this subsection (a) will, of necessity, take longer than 90 days to complete; or

B) All of the following conditions are true:

i) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive non-hazardous wastes, if the owner or operator complies with subsections (d) and (e)~~ of this Section~~;

ii) There is a reasonable likelihood that the owner or operator, or another person will recommence operation of the hazardous waste management unit or facility within one year; and

iii) Closure of the hazardous waste management unit or facility

would be incompatible with continued operation of the site; and

2) The owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment including compliance with all applicable interim status requirements.

b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes, if the owner or operator complies with all applicable requirements of subsections (d) and (e) ~~of this Section~~ at the hazardous waste management unit or facility, or 180 days after approval of the closure plan, if that is later. The Agency must approve an extension to the closure period if the owner or operator demonstrates the following:

1) The need to remain in operation by showing either of the following conditions exists:

A) The partial or final closure activities will, of necessity, take longer than 180 days to complete; or

B) All of the following conditions are true:

i) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or the final volume of non-hazardous wastes, if the owner or operator complies with all the applicable requirements of subsections (d) and (e) ~~of this Section~~; and

ii) There is a reasonable likelihood that the owner or operator or another person will recommence operation of the hazardous waste management unit or facility within one year; and

iii) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

2) The owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including compliance with all applicable interim status requirements.

c) The demonstration referred to in subsections (a)(1) and (b)(1) ~~of this Section~~ must be made as follows:

1) The demonstration in subsection (a)(1) ~~of this Section~~ must be made at least 30 days prior to the expiration of the 90-day period in subsection (a) ~~of this Section~~; and

2) The demonstrations in subsection (b)(1) ~~of this Section~~ must be made at least 30 days prior to the expiration of the 180-day period in subsection (b) ~~of this Section~~, unless the owner or operator is otherwise subject to deadlines in subsection (d) ~~of this Section~~.

d) Continued Receipt~~receipt~~ of Non-Hazardous Waste~~non-hazardous waste~~. The Agency must permit an owner or operator to receive non-hazardous wastes in a landfill, land treatment unit or surface impoundment unit after the final receipt of hazardous wastes at that unit if the following are true:

1) The owner or operator submits an amended Part B application, or a new Part B application if none was previously submitted, and demonstrates the following:

A) The unit has the existing design capacity as indicated on the Part A application to receive non-hazardous wastes;

B) There is a reasonable likelihood that the owner or operator or another person will receive non-hazardous waste in the unit within one year after the final receipt of hazardous wastes;

C) The non-hazardous wastes will not be incompatible with any remaining wastes in the unit, or with the facility design and operating requirements of the unit or facility pursuant to this Part;

D) Closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

E) The owner or operator is operating and will continue to operate in compliance with all applicable interim status requirements;

2) The Part B application includes an amended waste analysis plan, groundwater monitoring and response program, human exposure assessment required pursuant to 35 Ill. Adm. Code 703.186, closure and post-closure care plans, updated cost estimates, and demonstrations of financial assurance for closure and post-closure care, as necessary and appropriate, to reflect any changes due to the presence of hazardous constituents in the non-hazardous wastes and changes in closure activities, including the expected year of closure, if applicable pursuant to Section 725.212(b)(7), as a result of the receipt of non-hazardous wastes following the final receipt of hazardous wastes;

3) The Part B application is amended, as necessary and appropriate, to account for the receipt of non-hazardous wastes following receipt of the final volume of hazardous wastes; and

4) The Part B application and the demonstrations referred to in subsections (d)(1) and (d)(2) ~~of this Section~~ are submitted to the Agency no later than 180 days prior to the date on which the owner or operator of the facility receives the known final volume of hazardous wastes or no later than 90 days after this Section applies to the facility, whichever is later.

e) Surface Impoundments~~impoundments~~. In addition to the requirements in subsection (d) ~~of this Section~~, an owner or operator of a hazardous waste surface impoundment that is not in compliance with the liner and leachate collection system requirements in Section 725.321(a) must receive non-hazardous wastes only as authorized by an adjusted standard pursuant to this subsection (e).

1) The petition for adjusted standard must include the following:

A) A plan for removing hazardous wastes; and

B) A contingent corrective measures plan.

2) The removal plan must provide for the following:

A) Removing all hazardous liquids;

B) Removing all hazardous sludges to the extent practicable without impairing the integrity of the liner or liners, if any; and

C) Removal of hazardous wastes no later than 90 days after the final receipt of hazardous wastes. The Board will allow a longer time, if the owner or operator demonstrates the following:

i) That the removal of hazardous wastes will, of necessity, take longer than the allotted period to complete; and

ii) That an extension will not pose a threat to human health and the environment.

3) The following is required of contingent corrective measures plan:

A) It must meet the requirements of a corrective action plan pursuant to Section 724.199, based upon the assumption that a release has been detected from the unit.

B) It may be a portion of a corrective action plan previously submitted pursuant to Section 724.199.

C) It may provide for continued receipt of non-hazardous wastes at the unit following a release only if the owner or operator demonstrates that continued receipt of wastes will not impede corrective action.

D) It must provide for implementation within one year after a release, or within one year after the grant of the adjusted standard, whichever is later.

4) Release. A release is a statistically significant increase (or decrease in the case of pH) in hazardous constituents over background levels, detected in accordance with the requirements in Subpart F~~ of this Part~~.

5) In the event of a release, the owner or operator of the unit must perform the following actions:

A) Within 35 days, the owner or operator must file with the Board a petition for adjusted standard pursuant to Section 28.1 of the Act ~~[415 ILCS 5/28.1]~~ and Subpart D of 35 Ill. Adm. Code 104. If the Board finds that it is necessary to do so in order to adequately protect human health and the environment, the Board will modify the adjusted standard to require the owner or operator to perform either of the following actions:

i) Begin to implement the corrective measures plan in less than one year; or

ii) Cease the receipt of wastes until the plan has been implemented.

iii) The Board will retain jurisdiction or condition the adjusted standard so as to require the filing of a new petition to address any required closure pursuant to subsection (e)(7) ~~of this Section~~;

B) The owner or operator must implement the contingent corrective measures plan; and

C) The owner or operator may continue to receive wastes at the unit if authorized by the approved contingent measures plan.

6) Annual Report~~report~~. During the period of corrective action, the owner or operator must provide annual reports to the Agency that fulfill the following requirements:

A) They must describe the progress of the corrective action program;

B) They must compile all groundwater monitoring data; and

C) They must evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

7) Required Closure~~closure~~. The owner or operator must commence closure of the unit in accordance with the closure plan and the requirements of this

Part if the Board terminates the adjusted standard, or if the adjusted standard terminates pursuant to its terms.

A) The Board will terminate the adjusted standard if the owner or operator failed to implement corrective action measures in accordance with the approved contingent corrective measures plan.

B) The Board will terminate the adjusted standard if the owner or operator fails to make substantial progress in implementing the corrective measures plan and achieving the facility's groundwater protection standard, or background levels if the facility has not yet established a groundwater protection standard.

C) The adjusted standard will automatically terminate if the owner or operator fails to implement the removal plan.

D) The adjusted standard will automatically terminate if the owner or operator fails to timely file a required petition for adjusted standard.

8) Adjusted Standard Procedures~~standard procedures~~. The following procedures must be used in granting, modifying or terminating an adjusted standard pursuant to this subsection.

A) Except as otherwise provided, the owner or operator must follow the procedures of Section 28.1 of the Act ~~[415 ILCS 5/28.1]~~ and Subpart D of 35 Ill. Adm. Code 104 to petition the Board for an adjusted standard.

B) Initial Justification~~justification~~. The Board will grant an adjusted standard, pursuant to subsection (e)(1)~~ of this Section~~, if the owner or operator demonstrates that the removal plan and contingent corrective measures plans meet the requirements of subsections (e)(2) and (e)(3)~~ of this Section~~.

C) The Board will include the following conditions in granting an adjusted standard pursuant to subsection (e)(1)~~ of this Section~~:

i) A plan for removing hazardous wastes;

ii) A requirement that the owner or operator remove hazardous wastes in accordance with the plan;

iii) A contingent corrective measures plan;

iv) A requirement that, in the event of a release, the owner or operator must, within 35 days, file with the Board a petition for adjusted standard, implement the corrective measures plan, and file semi-annual reports with the Agency;

v) A condition that the adjusted standard will terminate if the owner or operator fails to implement the removal plan or timely file a required petition for adjusted standard; and

vi) A requirement that, in the event the adjusted standard is terminated, the owner or operator must commence closure of the unit in accordance with the requirements of the closure plan and this Part.

D) Justification in the Event~~event~~ of a Release~~release~~. The Board will modify or terminate the adjusted standard pursuant to a petition filed pursuant to subsection (e)(5)(A)~~ of this Section~~, as provided in that subsection or in subsection (e)(7)~~ of this Section~~.

9) The owner or operator may file a revised closure plan within 15 days after an adjusted standard is terminated.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.217 Post-Closure Care and Use of Property**

a) Post-Closure Care~~closure care.~~

1) Post-closure care for each hazardous waste management unit subject to the requirements of Sections 725.217 through 725.220 must begin after completion of closure of the unit and continue for 30 years after that date. It must consist of at least the following:

A) Monitoring and reporting in accordance with the requirements of Subparts F, K, L, M, and N~~ of this Part~~; and

B) Maintenance and monitoring of waste containment systems in accordance with the requirements of Subparts F, K, L, M, and N~~ of this Part~~.

2) Any time preceding closure of a hazardous waste management unit subject to post-closure care requirements or final closure, or any time during the post-closure period for a particular hazardous waste disposal unit, the Board will, by an adjusted standard granted pursuant to Section 28.1 of the Act ~~[415 ILCS 5/28.1]~~ and Subpart D of 35 Ill. Adm. Code 104 or by an order in some other appropriate type of proceeding (e.g., an enforcement proceeding), do the following:

A) Shorten the post-closure care period applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if the Board finds that the reduced period is sufficient to adequately protect human health and the environment (e.g., leachate or groundwater monitoring results; characteristics of the hazardous waste; application of advanced technology; or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure); or

B) Extend the post-closure care period applicable to the hazardous waste management unit or facility, if the Board finds that the extended period is necessary to adequately protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels that may be harmful to human health and the environment).

3) As provided by Section 725.218(i), the Board will utilize site-specific rulemaking to adjust the length of the post-closure care period.

b) The Agency must require, at partial or final closure, continuation of any of the security requirements of Section 725.214 during part or all of the post-closure period when either of the following occurs:

1) Hazardous wastes may remain exposed after completion of partial or final

closure; or

2) Access by the public or domestic livestock may pose a hazard to human health.

c) Post-closure use of property on or in which hazardous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liners, or any other components of any containment system or the function of the facility's monitoring systems, unless the Agency determines either of the following with respect to the disturbance:

1) It is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

2) It is necessary to reduce a threat to human health or the environment.

d) All post-closure care activities must be performed in accordance with the provisions of the approved post-closure plan, as specified in Section 725.218.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.218 Post-Closure Care Plan; Amendment of Plan**

a) Written Plan. The owner or operator of a hazardous waste disposal unit must have a written post-closure care plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous wastes at closure must prepare a post-closure care plan and submit it to the Agency within 90 days after the date that the owner or operator or Agency determines that the hazardous waste management unit or facility must be closed as a landfill, subject to the requirements of Sections 725.217 through 725.220.

b) Until final closure of the facility, a copy of the most current post-closure care plan must be furnished to the Agency upon request, including request by mail. In addition, for facilities without approved post-closure care plans, it must also be provided during site inspections, on the day of inspection, to any officer, employee, or representative of the Agency. After final closure has been certified, the person or office specified in subsection (c)(3) must keep the approved post-closure care plan during the post-closure care period.

c) For each hazardous waste management unit subject to the requirements of this Section, the post-closure care plan must identify the activities that will be carried on after closure of each disposal unit and the frequency of these activities and include the following minimal information:

1) A description of the planned monitoring activities and frequencies at which they will be performed to comply with Subparts F, K, L, M, and N ~~of this Part~~ during the post-closure care period;

2) A description of the planned maintenance activities and frequencies at which they will be performed to ensure the following:

A) The integrity of the cap and final cover or other containment systems in accordance with the requirements of Subparts K, L, M, and N ~~of this Part~~; and

B) The function of the monitoring equipment in accordance with the requirements of Subparts F, K, L, M, and N ~~of this Part~~;

3) The name, address, and phone number of the person or office to contact about the hazardous waste disposal unit or facility during the post-closure care period;

4) For a facility subject to Section 725.221, provisions that satisfy the requirements of Section 725.221(a)(1) and (a)(3); and

5) For a facility where alternative requirements are established at a regulated unit under Section 725.190(f), 725.210(d), or 725.240(d), as provided under 35 Ill. Adm. Code 703.161, either the alternative requirements that apply to the regulated unit, or a reference to the enforceable document containing those requirements.

d) Amendment of Plan~~plan~~. The owner or operator may amend the post-closure care plan at any time during the active life of the facility or during the post-closure care period. An owner or operator with an approved post-closure care plan must submit a written request to the Agency to authorize a change to the approved plan. The written request must include a copy of the amended post-closure care plan for approval by the Agency.

1) The owner or operator must amend the post-closure care plan whenever the following occur:

A) Changes in operating plans or facility design affect the post-closure care plan; or

B) Events occur during the active life of the facility, including partial and final closures, that affect the post-closure care plan; and

C) The owner or operator requests the establishment of alternative requirements to a regulated unit under Section 725.190(f), 725.210(d), or 725.240(d).

2) The owner or operator must amend the post-closure care plan at least 60 days prior to the proposed changes in facility design or operation, or no later than 60 days after an unexpected event has occurred that has affected the post-closure care plan.

3) An owner or operator with an approved post-closure care plan must submit the modified plan to the Agency at least 60 days prior to the proposed change in facility design or operation, or no more than 60 days after an unexpected event has occurred that has affected the post-closure care plan. If an owner or operator of a surface impoundment or a waste pile that intended to remove all hazardous wastes at closure in accordance with Section 725.328(b) or 725.358(a) is required to close as a landfill in accordance with Section 725.410, the owner or operator must submit a post-closure care plan within 90 days after the determination by the owner or operator or Agency that the unit must be closed as a landfill. If the amendment to the post-closure care plan is a Class 2 or 3 modification according to the criteria in 35 Ill. Adm. Code 703.280, the modification to the plan must be approved according to the procedures in subsection (f)~~ of this Section~~.

4) The Agency may request modifications to the plan under the conditions described in subsection (d)(1)~~ of this Section~~. An owner or operator with an approved post-closure care plan must submit the modified plan no later than 60 days after the request from the Agency. If the amendment to the plan is considered a Class 2 or 3 modification according to the criteria in 35 Ill. Adm. Code 703.280 the modifications to the post-closure care plan

must be approved in accordance with the procedures in subsection (f)~~ of this Section~~. If the Agency determines that an owner or operator of a surface impoundment or waste pile that intended to remove all hazardous wastes at closure must close the facility as a landfill, the owner or operator must submit a post-closure care plan for approval to the Agency within 90 days after the determination.

e) The owner or operator of a facility with hazardous waste management units subject to these requirements must submit the post-closure care plan to the Agency at least 180 days before the date the owner or operator expects to begin partial or final closure of the first hazardous waste disposal unit. The date when the owner or operator "expects to begin closure" of the first hazardous waste disposal unit must be either within 30 days after the date on which the hazardous waste management unit receives the known final volume of hazardous waste or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous wastes. The owner or operator must submit the closure plan to the Agency no later than 15 days after either of the following:

1) Termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or

2) Issuance of a judicial decree or Board order to cease receiving wastes or close.

f) Procedures~~.~~

1) Except as provided in subsection (f)(2)~~ of this Section~~, the Agency must provide the owner or operator and the public through a newspaper notice the opportunity to submit written comments on the post-closure care plan and request modifications to the plan, no later than 30 days after the date of the notice. The Agency may also, in response to a request or at its own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the post-closure care plan. The Agency must give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments and the two notices may be combined.) The Agency must approve, modify, or disapprove the plan

within 90 days after its receipt. If the Agency determines not to approve the plan, the Agency must provide the owner or operator with a detailed statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statements. The Agency must approve or modify this plan in writing within 60 days. If the Agency modifies the plan, this modified plan becomes the approved post-closure care plan. Any final Agency determination must ensure that the approved post-closure care plan is consistent with Sections 725.217 through 725.220. A copy of this modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

2) The Agency must not provide notice or the opportunity for public comment if, in a prior proceeding, the Board has ordered the modifications to the plan.

g) The post-closure care plan and length of the post-closure care period may be modified at any time prior to the end of the post-closure care period in either of the following two ways:

1) The owner or operator or any member of the public may petition to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility based on cause, or alter the requirements of the post-closure care period based on cause.

A) The petition must include evidence demonstrating either of the following:

i) The secure nature of the hazardous waste management unit or facility makes the post-closure care requirements unnecessary or supports reduction of the post-closure care period specified in the current post-closure care plan (e.g., leachate or groundwater monitoring results; characteristics of the waste; application of advanced technology; or alternative disposal, treatment, or re-use techniques indicate that the facility is secure), or

ii) The requested extension in the post-closure care period or alteration of post-closure care requirements is necessary to

prevent threats to human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels that may be harmful to human health and the environment).

B) These petitions must be considered only when they present new and relevant information not previously considered.

i) Except as provided in subsection (g)(1)(B)(ii), whenever the Agency is considering a petition, it must provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments within 30 days after the date of the notice. The Agency must also, in response to a request or at its own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure care plan. The Agency must give the public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments and the two notices may be combined.) After considering the comments, the Agency must issue a final determination, based upon the criteria set forth in subsection (g)(1)~~ of this Section~~.

ii) The Agency must not provide notice or the opportunity for public comment if, in a prior proceeding, the Board has ordered the modifications to the plan.

C) If the Agency denies the petition, it must send the petitioner a brief written response giving a reason for the denial.

2) The Agency must tentatively decide to modify the post-closure care plan if the Agency determines that it is necessary to prevent threats to human health and the environment. The Agency may propose to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility based on cause or alter the requirements of the post-closure care period based on cause.

A) The Agency must provide the owner or operator and the affected

public, through a newspaper notice, the opportunity to submit written comments within 30 days after the date of the notice and the opportunity for a public hearing as in subsection (g)(1)(B)~~ of this Section~~. After considering the comments, the Agency must issue a final determination.

B) The Agency must base its final determination upon the same criteria as required for petitions under subsection (g)(1)(A)~~ of this Section~~. A modification of the post-closure care plan may include, where appropriate, the temporary suspension rather than permanent deletion of one or more post-closure care requirements. At the end of the specified period of suspension, the Agency would then determine whether the requirements should be permanently discontinued or reinstated to prevent threats to human health and the environment.

h) The Agency procedures described in Sections 725.212 through 725.219 are in the nature of permit amendments. Amendment of refusal to amend the plan is a permit denial for purposes of appeal pursuant to 35 Ill. Adm. Code 105. The Agency must not amend permits in such a manner so that the permit would not conform with Board regulations.

i) If any person seeks a closure or post-closure care plan that would not conform with Board regulations, such person must file a site-specific rulemaking petition pursuant to 35 Ill. Adm. Code 102 or a variance petition pursuant to Sections 35 through 38 of the Act ~~[415 ILCS 5/35 through 38]~~ and Subpart B of 35 Ill. Adm. Code 104.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.219 Post-Closure Notices**

Within 90 days after closure is completed, the owner or operator of a disposal facility must submit to the County Recorder and to the Agency a survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the County Recorder must contain a note, prominently displayed, that states the owner's or operator's obligation to restrict disturbance of the site as specified in Section 725.217(c). In addition, the owner or operator must submit to the Agency and to the County

Recorder a record of the type, location, and quantity of hazardous waste disposed of within each cell or area of the facility. The owner or operator must identify the type, location, and quantity of hazardous wastes disposed of within each cell or area of the facility. For wastes disposed of before these regulations were promulgated, the owner or operator must identify the type, location, and quantity of the wastes to the best of his knowledge and in accordance with any records the owner or operator has kept.

a) No later than 60 days after certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the County Recorder, to any local zoning authority, or any authority with jurisdiction over local land use, and to the Agency, a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator must identify the type, location, and quantity of the hazardous wastes to the best of the owner or operator's knowledge and in accordance with any records the owner or operator has kept.

b) Within 60 days after certification of closure of the first hazardous waste disposal unit and within 60 days after certification of closure of the last hazardous waste disposal unit, the owner or operator must do the following:

1) Record, in accordance with Illinois law, a notation on the deed to the facility property, or on some other instrument that is normally examined during title search, that will in perpetuity notify any potential purchaser of the property of the following:

A) The land has been used to manage hazardous wastes;

B) Its use is restricted pursuant to Subpart G~~ of this Part~~; and

C) The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by Sections 725.216 and 725.219(a) have been filed with the County Recorder, any local zoning authority, or any authority with jurisdiction over local land use, and with the Agency; and

2) Submit to the Agency a certification signed by the owner or operator that the owner or operator has recorded the notation specified in subsection

(b)(1)~~ of this Section~~, together with a copy of the document in which the notation has been placed.

c) If the owner or operator or any subsequent owner of the land upon which a hazardous waste disposal unit was located wishes to remove hazardous wastes and hazardous waste residues; the liner, if any; and all contaminated structures, equipment, and soils, such person must request a modification to the approved post-closure plan in accordance with the requirements of Section 725.218(g). The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of Section 725.217(c). By removing hazardous waste, the owner or operator may become a generator of hazardous waste and must manage it in accordance with all applicable requirements of 35 Ill. Adm. Code 702, 703, 720 through 728, and 738. If the owner or operator is granted approval to conduct the removal activities, the owner or operator may request that the Agency approve either of the following:

1) Removal of the notation on the deed to the facility property or other instrument normally examined during title search, or

2) Addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.221 Alternative Post-Closure Care Requirements**

a) An owner or operator that is subject to the requirement to obtain a post-closure care permit under Subpart B of 35 Ill. Adm. Code 703 but which obtains an enforceable document in lieu of a post-closure permit, as provided in 35 Ill. Adm. Code 703.161, must comply with the following requirements:

1) The requirements to submit information about the facility in 35 Ill. Adm. Code 703.214;

2) The requirements for facility-wide corrective action in 35 Ill. Adm. Code 724.201; and

3) The requirements of 35 Ill. Adm. Code 724.191 through 724.200.

b) Implementation of Alternative Requirements~~.~~

1) Public Notice~~notice~~, Public Comments~~public comments~~, and Public Hearing~~public hearing~~.

A) In establishing alternative requirements in an enforceable document in lieu of a permit under this Section, the Board will assure a meaningful opportunity for public involvement that, at a minimum, includes public notice and opportunity for public comment, as provided under the relevant provisions of the Act:

i) For a site-specific rulemaking, in Sections 27 and 28 of the Act ~~[415 ILCS 5/27 and 28]~~.

ii) For an adjusted standard, in Section 28.1 of the Act ~~[415 ILCS 5/28.1]~~.

iii) For a variance, in Sections 35 through 38 of the Act ~~[415 ILCS 5/35 through 38]~~.

iv) For an order issued pursuant to Section 33(a) of the Act ~~[415 ILCS 5/33(a)]~~, in Sections 31, 32, and 33 of the Act ~~[415 ILCS 5/31, 32, and 33]~~.

B) When an owner or operator submits a plan to the Agency pursuant to an appropriate statutory or regulatory authority, the Agency must provide public notice and an opportunity for public hearing on the plan according to the requirements of Subparts D and E of 35 Ill. Adm. Code 705 as follows:

i) When the Agency becomes involved in remedial action at the facility under regulations or in an enforcement action;

ii) On the proposed preferred remedy and on the assumptions on which the remedy is based, especially those relating to land use and site characterization; and

iii) At the time of a proposed decision that remedial action is complete at the facility.

C) The requirements of subsection (b)(1)(B) ~~of this Section~~ must be met before the Agency may consider that the facility owner or operator has met the requirements of 35 Ill. Adm. Code 703.161, unless the facility qualifies for a modification to these public participation requirements under either of subsection (b)(2) or (b)(3) ~~of this Section~~.

2) If the Agency determines that even a short delay in the implementation of a remedy would adversely affect human health or the environment, the Agency may delay compliance with the requirements of subsection (b)(1)(B) ~~of this Section~~ and immediately implement the remedy. However, the Agency must assure involvement of the public at the earliest opportunity and, in all cases, upon making the decision that additional remedial action is not needed at the facility.

3) The Agency may allow a remediation initiated prior to August 6, 1999 to substitute for corrective action required under a post-closure care permit ~~even if the public involvement requirements of subsection (b)(1)(B) of this Section have not been met, so long as the Agency assures that notice and comment on the decision that no further remediation is necessary to adequately protect human health and the environment takes place at the earliest reasonable opportunity after August 6, 1999~~.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

SUBPART H: FINANCIAL REQUIREMENTS

**Section 725.240 Applicability**

a) The requirements of Sections 725.242, 725.243, and 725.247 through 725.250 apply to owners and operators of all hazardous waste facilities, except as provided otherwise in this Section or in Section 725.101.

b) The requirements of Sections 725.244 and 725.245 apply only to owners and operators of any of the following:

1) Disposal facilities;

2) Tank systems that are required pursuant to Section 725.297 to meet the requirements for landfills; or

3) Containment buildings that are required pursuant to Section 725.1102 to meet the requirements for landfills.

c) States and the federal government are exempt from the requirements of this Subpart H.

d) A permit or enforceable document can contain alternative requirements that replace all or part of the financial assurance requirements of this Subpart H applying to a regulated unit, as provided in 35 Ill. Adm. Code 703.161, where the Board or Agency has done the following:

1) The Board, by an adjusted standard granted pursuant to Section 28.1 of the Act ~~[415 ILCS 5/28.1]~~ and Subpart D of 35 Ill. Adm. Code 104, has established alternative requirements for the regulated unit established pursuant to Section 725.190(f) or Section 724.210(d); and

2) The Board has determined that it is not necessary to apply the financial assurance requirements of this Subpart H because the alternative financial assurance requirements will adequately protect human health and the environment.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.241 Definitions of Terms as Used in this Subpart H**

a) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 725.212.

b) "Current closure cost estimate" means the most recent of the estimates prepared in accordance with Sections 725.242(a), (b), and (c).

c) "Current post-closure cost estimate" means the most recent of the estimates prepared in accordance with Sections 725.244(a), (b), and (c).

d) "Parent corporation" means a corporation that directly owns at least 50 percent of the voting stock of the corporation that is the facility owner or operator; the latter

corporation is deemed a "subsidiary" of the parent corporation.

e) "Post-closure plan" means the plan for post-closure care prepared in accordance with the requirements of Sections 725.217 through 725.220.

f) The following terms are used in the specifications for the financial tests for closure, post-closure care, and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

"Assets" mean all existing and all probable future economic benefits obtained or controlled by a particular entity.

"Current assets" mean cash or other assets or resources commonly identified as those that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

"Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

"Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 35 Ill. Adm. Code 704.212(a), (b), and (c).

"Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

"Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

"Net working capital" means current assets minus current liabilities.

"Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles, such as goodwill and rights to patents or royalties.

g) In the liability insurance requirements the terms "bodily injury" and "property damage" have the meanings given below. The Board intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

"Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, that results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

"Bodily injury" means bodily injury, sickness, or disease sustained by a person, including death resulting from any of these at any time. However, this term does not include those liabilities that, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

BOARD NOTE: Derived from the Insurance Services Office, Inc. definition of this term.

"Environmental damage" means the injurious presence in or upon land, the atmosphere or any watercourse or body of water of solid, liquid, gaseous, or thermal contaminants, irritants, or pollutants.

BOARD NOTE: Derived from the Insurance Services Office, Inc. definition of this term. This term is used in the definition of "pollution incident.".

"Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

"Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.

"Pollutant"~~"Pollutants"~~ means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste.

BOARD NOTE: Derived from the Insurance Services Office, Inc. definition of this term. This definition is used in the definition of "pollution incident~~.~~".

"Pollution incident" means emission, discharge, release or escape of pollutants into or upon land, the atmosphere, or any watercourse or body of water, provided that such emission, discharge, release, or escape results in "environmental damage~~.~~". The entirety of any such emission, discharge, release, or escape must be deemed to be one "pollution incident~~.~~". "Waste" includes materials to be recycled, reconditioned, or reclaimed. The term "pollution incident" includes an "occurrence~~.~~".

BOARD NOTE: Derived from the Insurance Services Office, Inc. definition of this term. This definition is used in the definition of "property damage~~.~~".

"Property damage" means as follows:

Either of the following:

Physical injury to, destruction of, or contamination of tangible property, including all resulting loss of use of that property; or

Loss of use of tangible property that is not physically injured, destroyed, or contaminated, but has been evacuated, withdrawn from use, or rendered inaccessible because of a "pollution incident~~.~~".

This term does not include those liabilities that, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage.

BOARD NOTE: Derived from the Insurance Services Office, Inc.

definition of this term.

"Sudden accidental occurrence" means an occurrence that is not continuous or repeated in nature.

h) "Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that the Agency can reasonably determine that a substantial business relationship currently exists between the guarantor and the owner or operator that is adequate consideration to support the obligation of the guarantee relating to any liability towards a third-party. "Applicable state law~~,~~", as used in this subsection (h), means the laws of the State of Illinois and those of any sister state that govern the guarantee and the adequacy of the consideration.

BOARD NOTE: Derived from 40 CFR 265.141(h) (2017)~~(2014)~~ and the discussion at 53 Fed. Reg. 33938, 33941-33943 (Sep. 1, 1988). This term is also independently defined in 35 Ill. Adm. Code 724.141(h) and 727.240(b)(8). Any Agency determination that a substantial business relationship exists is subject to Board review pursuant to Section 40 of the Act ~~[415 ILCS 5/40]~~.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.242 Cost Estimate for Closure**

a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in Sections 725.211 through 725.215 and applicable closure requirements of Sections 725.297, 725.328, 725.358, 725.380, 725.410, 725.451, 725.481, 725.504, and 725.1102.

1) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see Section 725.212(b)); and

2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party

that is neither a parent nor a subsidiary of the owner or operator. (See definition of "parent corporation" in Section 725.241(d).) The owner or operator may use costs for on-site disposal if the owner or operator demonstrates that on-site disposal capacity will exist at all times over the life of the facility.

3) The closure cost estimate must not incorporate any salvage value that may be realized by the sale of hazardous wastes, or non-hazardous wastes if permitted by the Agency pursuant to Section 725.213(d), facility structures or equipment, land or other facility assets at the time of partial or final closure.

4) The owner or operator must not incorporate a zero cost for hazardous waste, or non-hazardous waste if permitted by the Agency pursuant to Section 725.213(d), that may have economic value.

b) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instruments used to comply with Section 725.243. For an owner or operator using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Agency, as specified in Section 725.243(e)(5). The adjustment may be made by recalculating the closure cost estimate in current dollars, or by using an inflation factor derived from the most recent annual Implicit Price Deflator for Gross National Product (Deflator), as published by the U.S. Department of Commerce in its Survey of Current Business, as specified in subsections (b)(1) and (b)(2)~~ of this Section~~. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

BOARD NOTE: The table of Deflators is available as Table 1.1.9., "Implicit Price Deflators for Gross Domestic Product~~,~~", in the National Income and Product Account Tables, published by U.S. Department of Commerce, Bureau of

Economic Analysis, National Economic Accounts, available on-line at the following web address: www.bea.gov/national/nipaweb/TableView.asp?SelectedTable=13&FirstYear=2002&LastYear=2004&Freq=Qtr.

c) During the active life of the facility, the owner or operator must revise the closure cost estimate no later than 30 days after a revision has been made to the closure plan that increases the cost of closure. If the owner or operator has an approved closure plan, the closure cost estimate must be revised no later than 30 days after the Agency has approved the request to modify the closure plan if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in subsection (b)~~ of this Section~~.

d) The owner or operator must keep the following at the facility during the operating life of the facility: the latest closure cost estimate prepared in accordance with subsections (a) and (c)~~ of this Section~~, and, when this estimate has been adjusted in accordance with subsection (b)~~ of this Section~~, the latest adjusted closure cost estimate.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.243 Financial Assurance for Closure**

An owner or operator of each facility must establish financial assurance for closure of the facility. The owner or operator must choose from the options specified in subsections (a) through (e)~~ of this Section~~.

a) Closure Trust Fund~~trust fund.~~

1) An owner or operator may satisfy the requirements of this Section by establishing a closure trust fund that conforms to the requirements of this subsection and submitting an original, signed duplicate of the trust agreement to the Agency. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or State agency.

2) The wording of the trust agreement must be as specified in 35 Ill. Adm. Code 724.251, and the trust agreement must be accompanied by a formal certification of acknowledgment, as specified in 35 Ill. Adm. Code 724.251. Schedule A of the trust agreement must be updated within 60

days after a change in the amount of the current closure cost estimate covered by the agreement.

3) Payments into the trust fund must be made annually by the owner or operator ~~over the 20 years beginning May 19, 1981, or~~ over the remaining operating life of the facility as estimated in the closure plan~~, whichever period is shorter~~; this period is hereafter referred to as the "pay-in period~~.~~". The payments into the closure trust fund must be made as follows:

A) ~~The first payment must be made before May 19, 1981, except as provided in subsection (a)(5) of this Section.~~ The first payment must be at least equal to the current closure cost estimate, except as provided in subsection (f)~~ of this Section~~, divided by the number of years in the pay-in period.

B) Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula:

$$\text{Next Payment} = \frac{(CE\text{-}CV)}{Y}$$

Where:

CE = the current closure cost estimate
CV = the current value of the trust fund
Y = the number of years remaining in the pay-in period

4) The owner or operator may accelerate payments into the trust fund or may deposit the full amount of the current closure cost estimate at the time the fund is established. However, the owner or operator must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subsection (a)(3)~~ of this Section~~.

5) If the owner or operator establishes a closure trust fund after having used one or more alternate mechanisms specified in this Section, the owner or operator's first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments

made as specified in subsection (a)(3)~~ of this Section~~.

6) After the pay-in period is completed, whenever the current closure cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance, as specified in this Section, to cover the difference.

7) If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the Agency for release of the amount in excess of the current closure cost estimate.

8) If an owner or operator substitutes other financial assurance, as specified in this Section, for all or part of the trust fund, the owner or operator may submit a written request to the Agency for release of the amount in excess of the current closure cost estimate covered by the trust fund.

9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsection (a)(7) or (a)(8)~~ of this Section~~, the Agency must instruct the trustee to release to the owner or operator such funds as the Agency specifies in writing.

10) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursement for closure expenditures by submitting itemized bills to the Agency. The owner or operator may request reimbursement for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities, the Agency must instruct the trustee to make reimbursement in those amounts as the Agency specifies in writing if the Agency determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Agency determines that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, it must

withhold reimbursement of such amounts as it deems prudent until it determines, in accordance with subsection (h)~~ of this Section~~, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Agency does not instruct the trustee to make such reimbursements, the Agency must provide the owner or operator a detailed written statement of reasons.

11) The Agency must agree to termination of the trust when either of the following occurs:

A) An owner or operator substitutes alternate financial assurance, as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h)~~ of this Section~~.

b) Surety Bond Guaranteeing Payment~~bond guaranteeing payment~~ into a Closure Trust Fund~~closure trust fund.~~

1) An owner or operator may satisfy the requirements of this Section by obtaining a surety bond that conforms to the requirements of this subsection (b) and submitting the bond to the Agency. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

BOARD NOTE: The U.S. Department of the Treasury updates Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies~~,~~", on an annual basis pursuant to 31 CFR 223.16. Circular 570 is available on the Internet from the following website: http://www.fms.treas.gov/c570/.

2) The wording of the surety bond must be as specified in 35 Ill. Adm. Code 724.251.

3) The owner or operator that uses a surety bond to satisfy the requirements of this Section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from

the Agency. This standby trust fund must meet the requirements specified in subsection (a)~~ of this Section~~, except as follows:

A) An original, signed duplicate of the trust agreement must be submitted to the Agency with the surety bond; and

B) Until the standby trust fund is funded pursuant to the requirements of this Section, the following are not required by these regulations:

i) Payments into the trust fund, as specified in subsection (a);

ii) Updating of Schedule A of the trust agreement (see 35 Ill. Adm. Code 724.251(a)) to show current closure cost estimates;

iii) Annual valuations, as required by the trust agreement; and

iv) Notices of nonpayment, as required by the trust agreement.

4) The bond must guarantee that the owner or operator will:

A) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility;

B) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure is issued by the Board or a court of competent jurisdiction; or

C) Provide alternate financial assurance, as specified in this Section, and obtain the Agency's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the bond from the surety.

5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

6) The penal sum of the bond must be in an amount at least equal to the

current closure cost estimate, except as provided in subsection (f)~~ of this Section~~.

7) Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance, as specified in this Section, to cover the increase. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the Agency.

8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.

9) The owner or operator may cancel the bond if the Agency has given prior written consent based on its receipt of evidence of alternate financial assurance, as specified in this Section.

c) Closure Letter~~letter~~ of Credit~~credit.~~

1) An owner or operator may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this subsection (c) and submitting the letter to the Agency. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or State agency.

2) The wording of the letter of credit must be as specified in 35 Ill. Adm. Code 724.251.

3) An owner or operator that uses a letter of credit to satisfy the requirements of this Section must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Agency must be deposited by the issuing institution directly into the standby trust

fund in accordance with instructions from the Agency. This standby trust fund must meet the requirements of the trust fund specified in subsection (a)~~ of this Section~~, except as follows:

A) An original, signed duplicate of the trust agreement must be submitted to the Agency with the letter of credit; and

B) Unless the standby trust fund is funded pursuant to the requirements of this Section, the following are not required by these regulations:

i) Payments into the trust fund, as specified in subsection (a) ~~of this Section~~;

ii) Updating of Schedule A of the trust agreement (as specified in 35 Ill. Adm. Code 724.251) to show current closure cost estimates;

iii) Annual valuations, as required by the trust agreement; and

iv) Notices of nonpayment as required by the trust agreement.

4) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date and providing the following information: the USEPA identification number, name, and address of the facility, and the amount of funds assured for closure of the facility by the letter of credit.

5) The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Agency by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Agency have received the notice, as evidenced by the return receipts.

6) The letter of credit must be issued in an amount at least equal to the current closure cost estimate, except as provided in subsection (f)~~ of this~~

~~Section~~.

7) Whenever the current closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance, as specified in this Section, to cover the increase. Whenever the current closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate following written approval by the Agency.

8) Following a final judicial determination or Board order finding that the owner or operator has failed to perform final closure in accordance with the approved closure plan when required to do so, the Agency may draw on the letter of credit.

9) If the owner or operator does not establish alternate financial assurance, as specified in this Section, and obtain written approval of such alternate assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice from issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Agency must draw on the letter of credit. The Agency may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Agency must draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance, as specified in this Section, and obtain written approval of such assurance from the Agency.

10) The Agency must return the letter of credit to the issuing institution for termination when one of the following occurs:

A) An owner or operator substitutes alternate financial assurance, as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h)~~ of this Section~~.

d) Closure Insurance~~insurance.~~

1) An owner or operator may satisfy the requirements of this Section by obtaining closure insurance that conforms to the requirements of this subsection and submitting a certificate of such insurance to the Agency. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

2) The wording of the certificate of insurance must be as specified in 35 Ill. Adm. Code 724.251.

3) The closure insurance policy must be issued for a face amount at least equal to the current closure cost estimate, except as provided in subsection (f)~~ of this Section~~. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

4) The closure insurance policy must guarantee that funds will be available to close the facility whenever final closure occurs. The policy must also guarantee that, once final closure begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Agency to such party or parties as the Agency specifies.

5) After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursement for closure expenditures by submitting itemized bills to the Agency. The owner or operator may request reimbursement for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the Agency must instruct the insurer to make reimbursement in such amounts as the Agency specifies in writing if the Agency determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the Agency determines that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, it must withhold reimbursement of such amounts as it deems prudent until it determines, in accordance with

subsection (h)~~ of this Section~~, that the owner or operator is no longer required to maintain financial assurance for final closure of the particular facility. If the Agency does not instruct the insurer to make such reimbursements, the Agency must provide the owner or operator with a detailed written statement of reasons.

6) The owner or operator must maintain the policy in full force and effect until the Agency consents to termination of the policy by the owner or operator as specified in subsection (d)(10)~~ of this Section~~. Failure to pay the premium, without substitution of alternate financial assurance as specified in this Section, will constitute a significant violation of these regulations, warranting such remedy as the Board may impose pursuant to the Environmental Protection Act. Such violation will be deemed to begin upon receipt by the Agency of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

7) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

8) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Agency. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Agency and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that, on or before the date of expiration, one of the following occurs:

A) The Agency deems the facility abandoned;

B) Interim status is terminated or revoked;

C) Closure is ordered by the Board or a court of competent jurisdiction;

D) The owner or operator is named as debtor in a voluntary or involuntary proceeding under 11 USC (Bankruptcy); or

E) The premium due is paid.

9) Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the Agency.

10) The Agency must give written consent to the owner or operator that the owner or operator may terminate the insurance policy when either of the following occurs:

A) An owner or operator substitutes alternate financial assurance, as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h)~~ of this Section~~.

e) Financial Test~~test~~ and Corporate Guarantee~~corporate guarantee~~ for Closure~~closure.~~

1) An owner or operator may satisfy the requirements of this Section by demonstrating that the owner or operator passes a financial test as specified in this subsection. To pass this test the owner or operator must meet the criteria of either subsection (e)(1)(A) or (e)(1)(B)~~ of this Section~~:

A) The owner or operator must have all of the following:

i) Two of the following three ratios: a ratio of total liabilities

to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5;

ii) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates;

iii) Tangible net worth of at least $10 million; and

iv) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

B) The owner or operator must have all of the following:

i) A current rating for its most recent bond issuance of AAA, AA, A, or BBB, as issued by Standard and Poor's, or Aaa, Aa, A, or Baa, as issued by Moody's;

ii) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates;

iii) Tangible net worth of at least $10 million; and

iv) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

2) The phrase "current closure and post-closure cost estimates~~,~~", as used in subsection (e)(1)~~ of this Section~~, refers to the cost estimates required to be shown in subsections 1 through 4 of the letter from the owner's or operator's chief financial officer (see 35 Ill. Adm. Code 724.251). The phrase "current plugging and abandonment cost estimates~~,~~", as used in

subsection (e)(1)~~ of this Section~~, refers to the cost estimates required to be shown in subsections 1 through 4 of the letter from the owner's or operator's chief financial officer (see 35 Ill. Adm. Code 704.240).

3) To demonstrate that the owner or operator meets this test, the owner or operator must submit each of the following items to the Agency:

A) A letter signed by the owner's or operator's chief financial officer and worded as specified in 35 Ill. Adm. Code 724.251;

B) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

C) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating the following:

i) That the accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

ii) In connection with that procedure, that no matters came to the accountant's attention which caused the accountant to believe that the specified data should be adjusted.

4) This subsection (e)(4) corresponds with 40 CFR 265.143(e)(4), a federal provision relating to an extension of the time to file the proofs of financial assurance required by this subsection (e) granted by USEPA. This statement maintains structural consistency with the corresponding federal regulations.

5) After the initial submission of items specified in subsection (e)(3)~~ of this Section~~, the owner or operator must send updated information to the Agency within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in subsection (e)(3)~~ of this Section~~.

6) If the owner or operator no longer meets the requirements of subsection (e)(1)~~ of this Section~~, the owner or operator must send notice to the Agency of intent to establish alternate financial assurance as specified in this Section. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

7) The Agency may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (e)(1)~~ of this Section~~, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (e)(3)~~ of this Section~~. If the Agency finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (e)(1)~~ of this Section~~, the owner or operator must provide alternate financial assurance as specified in this Section within 30 days after notification of such a finding.

8) The Agency may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the accountant's report on examination of the owner's or operator's financial statements (see subsection (e)(3)(B)~~ of this Section~~). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Agency must evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in this Section within 30 days after notification of the disallowance.

9) The owner or operator is no longer required to submit the items specified in subsection (e)(3)~~ of this Section~~ when either of the following occurs:

A) An owner or operator substitutes alternate financial assurance, as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h)~~ of this Section~~.

10) An owner or operator may meet the requirements of this Section by

obtaining a written guarantee, hereafter referred to as "corporate guarantee~~.~~". The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in subsections (e)(1) through (e)(8)~~ of this Section~~, and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in 35 Ill. Adm. Code 724.251. The corporate guarantee must accompany the items sent to the Agency as specified in subsection (e)(3)~~ of this Section~~. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this substantial business relationship" and the value received in consideration of the guarantee. The terms of the corporate guarantee must provide the following:

A) That, if the owner or operator fails to perform final closure of a facility covered by the corporate guarantee in accordance with the closure plan and other interim status requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in subsection (a)~~ of this Section~~, in the name of the owner or operator.

B) That the corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.

C) That, if the owner or operator fails to provide alternate financial assurance as specified in this Section and obtain the written approval of such alternate assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the corporate guarantee from the

guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

f) Use of Multiple Financial Mechanisms~~multiple financial mechanisms~~. An owner or operator may satisfy the requirements of this Section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit, and insurance. The mechanisms must be as specified in subsections (a) through (d)~~ of this Section~~, respectively, except that it is the combination of mechanisms, rather than the single mechanism, that must provide financial assurance for an amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Agency may use any or all of the mechanisms to provide for closure of the facility.

g) Use of a Financial Mechanism~~financial mechanism~~ for Multiple Facilities~~multiple facilities~~. An owner or operator may use a financial assurance mechanism specified in this Section to meet the requirements of this Section for more than one facility. Evidence of financial assurance submitted to the Agency must include a list showing, for each facility, the USEPA identification number, name, address, and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. The amount of funds available to the Agency must be sufficient to close all of the owner or operator's facilities. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the Agency may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

h) Release of the Owner~~owner~~ or Operator~~operator~~ from the Requirements~~requirements~~ of This~~this~~ Section. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Agency must notify the owner or operator in writing that the owner or operator is no longer required by this Section to maintain financial assurance for closure of the facility, unless the Agency determines that closure has not been in accordance with the approved closure plan. The Agency must provide the owner

or operator a detailed written statement of any such determination that closure has not been in accordance with the approved closure plan.

i) Appeal. The following Agency actions are deemed to be permit modifications or refusals to modify for purposes of appeal to the Board (35 Ill. Adm. Code 702.184(e)(3)):

1) An increase in, or a refusal to decrease the amount of, a bond, letter of credit, or insurance; or

2) Requiring alternate assurance upon a finding that an owner or operator or parent corporation no longer meets a financial test.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.244 Cost Estimate for Post-Closure Care**

a) The owner or operator of a hazardous waste disposal unit must have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in Section 725.217 through 725.220, 725.328, 725.358, 725.380, and 725.410.

1) The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is a party that is neither a parent nor a subsidiary of the owner or operator. (See the definition of "parent corporation" in Section 725.241(d).)

2) The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under Section 725.217.

b) During the active life of the facility, the owner or operator must adjust the post-closure cost estimate for inflation within 30 days after each anniversary of the date on which the first post-closure cost estimate was prepared. The adjustment must be made 60 days prior to the anniversary date of the establishment of the financial instruments used to comply with Section 725.245. For an owner or operator using the financial test or corporate guarantee, the closure cost estimate

must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Agency as specified in Section 725.245(e)(5). The adjustment may be made by recalculating the post-closure cost estimate in current dollars, or by using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business as specified in subsections (b)(1) and (b)(2)~~ of this Section~~. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

1) The first adjustment is made by multiplying the post-closure estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

2) Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

c) During the active life of the facility, the owner or operator must revise the post-closure cost estimate whenever a change in the post-closure plan no later than 30 days after a revision to the post-closure plan that increases the cost of post-closure care. If the owner or operator has an approved post-closure plan, the post-closure cost estimate must be revised no later than 30 days after the Agency has approved the request to modify the plan if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in subsection (b)~~ of this Section~~.

d) The owner or operator must keep the following at the facility during the operating life of the facility: the latest post-closure cost estimate prepared in accordance with subsections (a) and (c) ~~of this Section~~ and, when this estimate has been adjusted in accordance with subsection (b)~~ of this Section~~, the latest adjusted post-closure cost estimate.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.245 Financial Assurance for Post-Closure Monitoring and Maintenance**

An owner or operator of a facility with a hazardous waste disposal unit must establish financial assurance for post-closure care of the disposal units. The owner or operator must choose from the following options:

a) Post-Closure Trust Fund~~closure trust fund.~~

1) An owner or operator may satisfy the requirements of this Section by establishing a post-closure trust fund that conforms to the requirements of this subsection and submitting an original, signed duplicate of the trust agreement to the Agency. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or State agency.

2) The wording of the trust agreement must be as specified in 35 Ill. Adm. Code 724.251 and the trust agreement must be accompanied by a formal certification of acknowledgment (as specified in 35 Ill. Adm. Code 724.251). Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current post-closure cost estimate covered by the agreement.

3) Payments into the trust fund must be made annually by the owner or operator over ~~the 20 years beginning May 19, 1981, or over~~ the remaining operating life of the facility as estimated in the closure plan~~, whichever period is shorter~~; this period is hereafter referred to as the "pay-in period~~.~~". The payments into the post-closure trust fund must be made as follows:

A) ~~The first payment must have been made before May 19, 1981, except as provided in subsection (a)(5) of this Section.~~ The first payment must be at least equal to the current post-closure cost estimate, except as provided in subsection (f)~~ of this Section~~, divided by the number of years in the pay-in period.

B) Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula:

$$\text{Next Payment} = \frac{(CE\text{-}CV)}{Y}$$

Where:

CE = the current closure cost estimate
CV = the current value of the trust fund

Y = the number of years remaining in the pay-in period

4) The owner or operator may accelerate payments into the trust fund or may deposit the full amount of the current post-closure cost estimate at the time the fund is established. However, the owner or operator must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subsection (a)(3)~~ of this Section~~.

5) If the owner or operator establishes a post-closure trust fund after having used one or more alternate mechanisms specified in this Section, the owner or operator's first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made as specified in subsection (a)(3)~~ of this Section~~.

6) After the pay-in period is completed, whenever the current post-closure cost estimate changes during the operating life of the facility, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or obtain other financial assurance as specified in this Section to cover the difference.

7) During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current post-closure cost estimate, the owner or operator may submit a written request to the Agency for release of the amount in excess of the current post-closure cost estimate.

8) If an owner or operator substitutes other financial assurance as specified in this Section for all or part of the trust fund, owner or operator may submit a written request to the Agency for release of the amount in excess of the current post-closure cost estimate covered by the trust fund.

9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsection (a)(7) or (a)(8)~~ of this Section~~, the Agency must instruct the trustee to release to the owner or operator such funds as the Agency specifies in writing.

10) During the period of post-closure care, the Agency must approve a release of funds if the owner or operator demonstrates to the Agency that the value of the trust fund exceeds the remaining cost of post-closure care.

11) An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure care expenditures by submitting itemized bills to the Agency. Within 60 days after receiving bills for post-closure activities, the Agency must instruct the trustee to make reimbursement in those amounts as the Agency specifies in writing if the Agency determines that the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Agency does not instruct the trustee to make such reimbursements, the Agency must provide the owner or operator with a detailed written statement of reasons.

12) The Agency must agree to termination of a trust when either of the following occurs:

A) An owner or operator substitutes alternate financial assurance, as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h)~~ of this Section~~.

b) Surety Bond Guaranteeing Payment~~bond guaranteeing payment~~ into a Post-Closure Trust Fund~~post-closure trust fund.~~

1) An owner or operator may satisfy the requirements of this Section by obtaining a surety bond that conforms to the requirements of this subsection (b) and submitting the bond to the Agency. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

BOARD NOTE: The U.S. Department of the Treasury updates Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies~~,~~", on an annual basis pursuant to 31 CFR 223.16. Circular 570 is available on the

Internet from the following website: http://www.fms.treas.gov/c570/.

2) The wording of the surety bond must be as specified in 35 Ill. Adm. Code 724.251.

3) The owner or operator that uses a surety bond to satisfy the requirements of this Section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Agency. This standby trust fund must meet the requirements specified in subsection (a)~~ of this Section~~, except as follows:

A) An original, signed duplicate of the trust agreement must be submitted to the Agency with the surety bond; and

B) Until the standby trust fund is funded pursuant to the requirements of this Section, the following are not required by these regulations:

i) Payments into the trust fund, as specified in subsection (a) ~~of this Section~~;

ii) Updating of Schedule A of the trust agreement (as specified in 35 Ill. Adm. Code 724.251) to show current post-closure cost estimates;

iii) Annual valuations, as required by the trust agreement; and

iv) Notices of nonpayment, as required by the trust agreement.

4) The bond must guarantee that the owner or operator will perform the following acts:

A) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

B) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin closure is issued by the Board or a court of competent jurisdiction; or

C) Provide alternate financial assurance, as specified in this Section, and obtain the Agency's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the bond from the surety.

5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

6) The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate, except as provided in subsection (f)~~ of this Section~~.

7) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Agency or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the Agency.

8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.

9) The owner or operator may cancel the bond if the Agency has given prior written consent based on its receipt of evidence of alternate financial assurance as specified in this Section.

c) Post-Closure Letter~~closure letter~~ of Credit~~credit.~~

1) An owner or operator may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this subsection (c) and submitting the letter to the Agency.

The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or State agency.

2) The wording of the letter of credit must be as specified in 35 Ill. Adm. Code 724.251.

3) An owner or operator that uses a letter of credit to satisfy the requirements of this Section must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Agency must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Agency. This standby trust fund must meet the requirements of the trust fund specified in subsection (a)~~ of this Section~~, except as follows:

A) An original, signed duplicate of the trust agreement must be submitted to the Agency with the letter of credit; and

B) Unless the standby trust fund is funded pursuant to the requirements of this Section, the following are not required by these regulations:

i) Payments into the trust fund, as specified in subsection (a) ~~of this Section~~;

ii) Updating of Schedule A of the trust agreement (as specified in 35 Ill. Adm. Code 724.151) to show current post-closure cost estimates;

iii) Annual valuations, as required by the trust agreement; and

iv) Notices of nonpayment, as required by the trust agreement.

4) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date and providing the following information: the USEPA identification number, name, and address of the facility, and the amount of funds assured for post-closure care of the facility by the letter of credit.

5) The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Agency by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Agency have received the notice, as evidenced by the return receipts.

6) The letter of credit must be issued in an amount at least equal to the current post-closure cost estimate, except as provided in subsection (f) ~~of this Section~~.

7) Whenever the current post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current post-closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance, as specified in this Section, to cover the increase. Whenever the current cost estimate decreases during the operating life of the facility, the amount of the credit may be reduced to the amount of the current post-closure cost estimate following written approval by the Agency.

8) During the period of post-closure care, the Agency must approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the Agency that the amount exceeds the remaining cost of post-closure care.

9) Following a final judicial determination or Board order finding that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other interim status requirements, the Agency may draw on the letter of credit.

10) If the owner or operator does not establish alternate financial assurance, as specified in this Section, and obtain written approval of such alternate assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration

date, the Agency must draw on the letter of credit. The Agency may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days after any such extension the Agency must draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance, as specified in this Section, and obtain written approval of such assurance from the Agency.

11) The Agency must return the letter of credit to the issuing institution for termination when either of the following occurs:

A) An owner or operator substitutes alternate financial assurance, as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h)~~ of this Section~~.

d) Post-Closure Insurance~~closure insurance.~~

1) An owner or operator may satisfy the requirements of this Section by obtaining post-closure insurance that conforms to the requirements of this subsection and submitting a certificate of such insurance to the Agency. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

2) The wording of the certificate of insurance must be as specified in 35 Ill. Adm. Code 724.251.

3) The post-closure insurance policy must be issued for a face amount at least equal to the current post-closure estimate, except as provided in subsection (f)~~ of this Section~~. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

4) The post-closure insurance policy must guarantee that funds will be available to provide post-closure care of facility whenever the post-closure period begins. The policy must also guarantee that, once post-closure care begins, the insurer will be responsible for paying out funds, up to an

amount equal to the face amount of the policy, upon the direction of the Agency, to such party or parties as the Agency specifies.

5) An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure care expenditures by submitting itemized bills to the Agency. Within 60 days after receiving bills for post-closure activities, the Agency must instruct the insurer to make reimbursement in such amounts as the Agency specifies in writing, if the Agency determines that the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Agency does not instruct the insurer to make such reimbursements, the Agency must provide the owner or operator with a detailed written statement of reasons.

6) The owner or operator must maintain the policy in full force and effect until the Agency consents to termination of the policy by the owner or operator, as specified in subsection (d)(11)~~ of this Section~~. Failure to pay the premium, without substitution of alternate financial assurance, as specified in this Section, will constitute a significant violation of these regulations, warranting such remedy as the Board may impose pursuant to the Environmental Protection Act. Such violation will be deemed to begin upon receipt by the Agency of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

7) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

8) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Agency. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Agency and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to

renew may not occur, and the policy will remain in full force and effect in the event that, on or before the date of expiration, one of the following occurs:

A) The Agency deems the facility abandoned;

B) Interim status is terminated or revoked;

C) Closure is ordered by the Board or a court of competent jurisdiction;

D) The owner or operator is named as debtor in a voluntary or involuntary proceeding under 11 USC (Bankruptcy); or

E) The premium due is paid.

9) Whenever the current post-closure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance, as specified in this Section, to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current post-closure cost estimate following written approval by the Agency.

10) Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer must thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.

11) The Agency must give written consent to the owner or operator that the owner or operator may terminate the insurance policy when either of the following occurs:

A) An owner or operator substitutes alternate financial assurance, as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h)~~ of this Section~~.

e) Financial Test~~test~~ and Corporate Guarantee~~corporate guarantee~~ for Post-Closure Care~~post-closure care.~~

1) An owner or operator may satisfy the requirements of this Section by demonstrating that the owner or operator passes a financial test, as specified in this subsection (e). To pass this test the owner or operator must meet the criteria of either subsection (e)(1)(A) or (e)(1)(B)~~ of this Section~~:

A) The owner or operator must have each of the following:

i) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5;

ii) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates;

iii) Tangible new worth of at least $10 million; and

iv) Assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the plugging and abandonment cost estimates.

B) The owner or operator must have each of the following:

i) A current rating for its most recent bond issuance of AAA, AA, A, or BBB, as issued by Standard and Poor's, or Aaa,

Aa, A, or Baa, as issued by Moody's;

ii) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates;

iii) Tangible net worth of at least $10 million; and

iv) Assets located in the United States amounting to at least 90 percent of its total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

2) The phrase "current closure and post-closure cost estimates~~,~~", as used in subsection (e)(1)~~ of this Section~~, refers to the cost estimates required to be shown in subsections 1 through 4 of the letter from the owner's or operator's chief financial officer (see 35 Ill. Adm. Code 724.251). The phrases "current plugging and abandonment cost estimates~~,~~", as used in subsection (e)(1)~~ of this Section~~, refers to the cost estimates required to be shown in subsections 1 through 4 of the letter from the owner's or operator's chief financial officer (see 35 Ill. Adm. Code 704.240).

3) To demonstrate that it meets this test, the owner or operator must submit each of the following items to the Agency:

A) A letter signed by the owner's or operator's chief financial officer and worded as specified in 35 Ill. Adm. Code 724.251;

B) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

C) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating both of the following:

i) That the accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial

statements for the latest fiscal year with the amounts in such financial statements; and

ii) In connection with that procedure, that no matters came to the accountant's attention that caused the accountant to believe that the specified data should be adjusted.

4) This subsection (e)(4) corresponds with 40 CFR 265.143(e)(4), a federal provision relating to an extension of the time to file the proofs of financial assurance required by this subsection (e) granted by USEPA. This statement maintains structural consistency with the corresponding federal regulations.

5) After the initial submission of items specified in subsection (e)(3)~~ of this Section~~, the owner or operator must send updated information to the Agency within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in subsection (e)(3)~~ of this Section~~.

6) If the owner or operator no longer meets the requirements of subsection (e)(1)~~ of this Section~~, the owner or operator must send notice to the Agency of intent to establish alternate financial assurance, as specified in this Section. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

7) The Agency may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (e)(1)~~ of this Section~~, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (e)(3)~~ of this Section~~. If the Agency finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (e)(1)~~ of this Section~~, the owner or operator must provide alternate financial assurance, as specified in this Section, within 30 days after notification of such a finding.

8) The Agency may disallow use of this test on the basis of qualifications in

the opinion expressed by the independent certified public accountant in the accountant's report on examination of the owner's or operator's financial statements (see subsection (e)(3)(B)~~ of this Section~~). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Agency must evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance, as specified in this Section, within 30 days after notification of the disallowance.

9) During the period of post-closure care, the Agency must approve a decrease in the current post-closure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the Agency that the amount of the cost estimate exceeds the remaining cost of post-closure care.

10) The owner or operator is no longer required to submit the items specified in subsection (e)(3)~~ of this Section~~ when either of the following occurs:

A) An owner or operator substitutes alternate financial assurance, as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h)~~ of this Section~~.

11) An owner or operator may meet the requirements of this Section by obtaining a written guarantee, hereafter referred to as "corporate guarantee~~.~~". The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in subsections (e)(1) through (e)(9)~~ of this Section~~, and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in 35 Ill. Adm. Code 724.251. The corporate guarantee must accompany the items sent to the Agency as specified in subsection (e)(3)~~ of this Section~~. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business

relationship" with the owner or operator, this letter must describe this substantial business relationship" and the value received in consideration of the guarantee. The terms of the corporate guarantee must provide as follows:

A) That, if the owner or operator fails to perform post-closure care of a facility covered by the corporate guarantee in accordance with the post-closure plan and other interim status requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in subsection (a)~~ of this Section~~, in the name of the owner or operator.

B) That the corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.

C) That, if the owner or operator fails to provide alternate financial assurance, as specified in this Section, and obtain the written approval of such alternate assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

f) Use of Multiple Financial Mechanisms~~multiple financial mechanisms~~. An owner or operator may satisfy the requirements of this Section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit, and insurance. The mechanisms must be as specified in subsections (a) through (d)~~ of this Section~~, respectively, except that it is the combination of mechanisms, rather than the single mechanism, that must provide financial assurance for an amount at least equal to the current post-closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, it may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Agency may use any or all of the mechanisms to provide for post-closure care of the facility.

g) Use of a Financial Mechanism~~financial mechanism~~ for Multiple Facilities~~multiple facilities~~. An owner or operator may use a financial assurance mechanism specified in this Section to meet the requirements of this Section for more than one facility. Evidence of financial assurance submitted to the Agency must include a list showing, for each facility, the USEPA Identification Number, name, address, and the amount of funds for post-closure care assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. The amount of funds available to the Agency must be sufficient to provide post-closure care for all of the owner or operator's facilities. In directing funds available through the mechanism for post-closure care of any of the facilities covered by the mechanism, the Agency may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

h) Release of the Owner~~owner~~ or Operator~~operator~~ from the Requirements~~requirements~~ of This~~this~~ Section. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that the post-closure care period has been completed in accordance with the approved post-closure plan, the Agency must notify the owner or operator in writing that the owner or operator is no longer required by this Section to maintain financial assurance for post-closure care of that unit, unless the Agency determines that post-closure care has not been in accordance with the approved plan. The Agency must provide the owner or operator a detailed written statement of any such determination that post-closure care has not been in accordance with the approved post-closure plan.

i) Appeal. The following Agency actions are deemed to be permit modifications or refusals to modify for purposes of appeal to the Board (35 Ill. Adm. Code 702.184(e)(3)):

1) An increase in, or a refusal to decrease the amount of, a bond, letter of credit, or insurance; or

2) Requiring alternate assurance upon a finding that an owner or operator or parent corporation no longer meets a financial test.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.247 Liability Requirements**

a) Coverage for Sudden Accidental Occurrences~~sudden accidental occurrences~~. An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated, as specified in subsections (a)(1) through (a)(6)~~ of this Section~~:

1) An owner or operator may demonstrate the required liability coverage by having liability insurance, as specified in this subsection (a)(1).

A) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement and of the certificate of insurance must be as specified in 35 Ill. Adm. Code 724.251. The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Agency. If requested by the Agency, the owner or operator must provide a signed duplicate original of the insurance policy.

B) Each insurance policy must be issued by an insurer that is licensed by the Illinois Department of Financial and Professional Regulation, Division of Insurance.

2) An owner or operator may meet the requirements of this Section by passing a financial test or using the guarantee for liability coverage, as specified in subsections (f) and (g)~~ of this Section~~.

3) An owner or operator may meet the requirements of this Section by obtaining a letter of credit for liability coverage, as specified in subsection (h)~~ of this Section~~.

4) An owner or operator may meet the requirements of this Section by

obtaining a surety bond for liability coverage, as specified in subsection (i) ~~of this Section~~.

5) An owner or operator may meet the requirements of this Section by obtaining a trust fund for liability coverage, as specified in subsection (j) ~~of this Section~~.

6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this Section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances pursuant to this subsection (a)(6), the owner or operator must specify at least one such assurance as "primary" coverage, and must specify other such assurance as "excess" coverage.

7) An owner or operator must notify the Agency within 30 days whenever one of the following occurs:

A) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in subsections (a)(1) through (a)(6) ~~of this Section~~;

B) A Certification of Valid Claim for bodily injury or property damages caused by sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage pursuant to subsections (a)(1) through (a)(6) ~~of this Section~~; or

C) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance

for liability coverage pursuant to subsections (a)(1) through (a)(6) ~~of this Section~~.

b) Coverage for Nonsudden Accidental Occurrences~~nonsudden accidental occurrences~~. An owner or operator of a surface impoundment, landfill, or land treatment facility that is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. An owner or operator meeting the requirements of this Section may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. An owner or operator that combines coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual aggregate. This liability coverage may be demonstrated, as specified in subsections (b)(1) through (b)(6)~~ of this Section~~:

1) An owner or operator may demonstrate the required liability coverage by having liability insurance, as specified in this subsection (b)(1).

A) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be as specified in 35 Ill. Adm. Code 724.251. The wording of the certificate of insurance must be as specified in 35 Ill. Adm. Code 724.251. The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Agency. If requested by the Agency, the owner or operator must provide a signed duplicate original of the insurance policy.

B) Each insurance policy must be issued by an insurer that is licensed by the Illinois Department of Financial and Professional Regulation, Division of Insurance.

2) An owner or operator may meet the requirements of this Section by passing a financial test or using the guarantee for liability coverage, as specified in subsections (f) and (g)~~ of this Section~~.

3) An owner or operator may meet the requirements of this Section by obtaining a letter of credit for liability coverage, as specified in subsection (h)~~ of this Section~~.

4) An owner or operator may meet the requirements of this Section by obtaining a surety bond for liability coverage, as specified in subsection (i) ~~of this Section~~.

5) An owner or operator may meet the requirements of this Section by obtaining a trust fund for liability coverage, as specified in subsection (j) ~~of this Section~~.

6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this Section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances pursuant to this subsection (b)(6), the owner or operator must specify at least one such assurance as "primary" coverage, and must specify other such assurance as "excess" coverage.

7) An owner or operator must notify the Agency within 30 days whenever one of the following occurs:

A) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in subsections (b)(1) through (b)(6)~~ of this Section~~;

B) A Certification of Valid Claim for bodily injury or property damages caused by sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage,

or disposal facility is entered between the owner or operator and third-party claimant for liability coverage pursuant to subsections (b)(1) through (b)(6)~~ of this Section~~; or

C) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage pursuant to subsections (b)(1) through (b)(6) ~~of this Section~~.

c) Request for Adjusted Level~~adjusted level~~ of Required Liability Coverage~~required liability coverage~~. If an owner or operator demonstrates to the Agency that the levels of financial responsibility required by subsection~~subsections~~ (a) or (b) ~~of this Section~~ are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the owner or operator may obtain an adjusted level of required liability coverage from the Agency. The request for an adjusted level of required liability coverage must be submitted in writing to the Agency. If granted, the Agency's action must take the form of an adjusted level of required liability coverage, such level to be based on the Agency assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Agency may require an owner or operator that requests an adjusted level of required liability coverage to provide such technical and engineering information as is necessary to determine a level of financial responsibility other than that required by subsection (a) or (b)~~ of this Section~~. The Agency must process any request for an adjusted level of required liability coverage as if it were a permit modification request pursuant to 35 Ill. Adm. Code 703.271(e)(3) and 705.128. Notwithstanding any other provision, the Agency must hold a public hearing whenever it finds, on the basis of requests, a significant degree of public interest in a tentative decision to grant an adjusted level of required liability insurance. The Agency may also hold a public hearing at its discretion whenever such a hearing might clarify one or more issues involved in the tentative decision.

d) Adjustments by the Agency. If the Agency determines that the levels of financial responsibility required by subsection (a) or (b) ~~of this Section~~ are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the Agency must adjust the level of financial

responsibility required pursuant to subsection (a) or (b) ~~of this Section~~ as may be necessary to adequately protect human health and the environment. This adjusted level must be based on the Agency's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Agency determines that there is a significant risk to human health and the environment from non-sudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill or land treatment facility, the Agency may require that an owner or operator of the facility comply with subsection (b) ~~of this Section~~. An owner or operator must furnish to the Agency, within a time specified by the Agency in the request, which must not be less than 30 days, any information that the Agency requests to determine whether cause exists for such adjustments of level or type of coverage. The Agency must process any request for an adjusted level of required liability coverage as if it were a permit modification request pursuant to 35 Ill. Adm. Code 703.271(e)(3) and 705.128. Notwithstanding any other provision, the Agency must hold a public hearing whenever it finds, on the basis of requests, a significant degree of public interest in a tentative decision to grant an adjusted level of required liability insurance. The Agency may also hold a public hearing at its discretion whenever such a hearing might clarify one or more issues involved in the tentative decision.

e) Period of Coverage~~coverage~~. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Agency must notify the owner or operator in writing that the owner or operator is no longer required by this Section to maintain liability coverage for that facility, unless the Agency determines that closure has not been in accordance with the approved closure plan.

f) Financial Test~~test~~ for Liability Coverage~~liability coverage.~~

1) An owner or operator may satisfy the requirements of this Section by demonstrating that the owner or operator passes a financial test, as specified in this subsection (f)(1). To pass this test the owner or operator must meet the criteria of subsection (f)(1)(A) or (f)(1)(B) ~~of this Section~~:

A) The owner or operator must have each of the following:

i) Net working capital and tangible net worth each at least six

times the amount of liability coverage to be demonstrated by this test;

ii) Tangible net worth of at least $10 million; and

iii) Assets in the United States amounting to either: at least 90 percent of total assets; or at least six times the amount of liability coverage to be demonstrated by this test.

B) The owner or operator must have each of the following:

i) A current rating for the owner or operator's most recent bond issuance of AAA, AA, A, or BBB, as issued by Standard and Poor's, or Aaa, Aa, A, or Baa, as issued by Moody's;

ii) Tangible net worth of at least $10 million;

iii) Tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

iv) Assets in the United States amounting to either of the following: at least 90 percent of total assets or at least six times the amount of liability coverage to be demonstrated by this test.

2) The phrase "amount of liability coverage~~,~~", as used in subsection (f)(1)~~ of this Section~~, refers to the annual aggregate amounts for which coverage is required pursuant to subsections (a) and (b)~~ of this Section~~.

3) To demonstrate that the owner or operator meets this test, the owner or operator must submit each of the following three items to the Agency:

A) A letter signed by the owner's or operator's chief financial officer and worded as specified in 35 Ill. Adm. Code 724.251. If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by 35 Ill. Adm. Code 724.243(f) and 724.245(f), or by Sections 725.243(e) and 725.245(e), and liability coverage, it must submit the letter

specified in 35 Ill. Adm. Code 724.251 to cover both forms of financial responsibility; a separate letter, as specified in 35 Ill. Adm. Code 724.251 is not required.

B) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

C) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating as follows:

i) That the accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

ii) In connection with that procedure, that no matters came to the accountant's attention that caused the accountant to believe that the specified data should be adjusted.

5) After the initial submission of items specified in subsection (f)(3)~~ of this Section~~, the owner or operator must send updated information to the Agency within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in subsection (f)(3)~~ of this Section~~.

6) If the owner or operator no longer meets the requirements of subsection (f)(1)~~ of this Section~~, the owner or operator must obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage, as specified in this Section. Evidence of insurance must be submitted to the Agency within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

7) The Agency may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the accountant's report on examination of the owner's or operator's financial

statements (see subsection (f)(3)(B)~~ of this Section~~). An adverse opinion or a disclaimer of opinion is cause for disallowance. The Agency must evaluate other qualifications on an individual basis. The owner or operator must provide evidence of insurance for the entire amount of required liability coverage, as specified in this Section, within 30 days after notification of disallowance.

g) Guarantee for Liability Coverage~~liability coverage.~~

1) Subject to subsection (g)(2)~~ of this Section~~, an owner or operator may meet the requirements of this Section by obtaining a written guarantee, referred to as a "guarantee~~.~~". The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners and operators in subsections (f)(1) through (f)(6)~~ of this Section~~. The wording of the guarantee must be as specified in 35 Ill. Adm. Code 724.251. A certified copy of the guarantee must accompany the items sent to the Agency as specified in subsection (f)(3)~~ of this Section~~. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide as follows:

A) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.

B) The guarantee remains in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the

Agency. The guarantee must not be terminated unless and until the Agency approves alternate liability coverage complying with Section 725.247 or 35 Ill. Adm. Code 724.247.

2) The guarantor must execute the guarantee in Illinois. The guarantee must be accompanied by a letter signed by the guarantor that states as follows:

A) The guarantee was signed in Illinois by an authorized agent of the guarantor;

B) The guarantee is governed by Illinois law; and

C) The name and address of the guarantor's registered agent for service of process.

3) The guarantor must have a registered agent pursuant to Section 5.05 of the Business Corporation Act of 1983 [805 ILCS 5/5.05] or Section 105.05 of the General Not-for-Profit Corporation Act of 1986 [805 ILCS 105/105.05].

h) Letter of Credit~~credit~~ for Liability Coverage~~liability coverage.~~

1) An owner or operator may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this subsection, and submitting a copy of the letter of credit to the Agency.

2) The financial institution issuing the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by the Illinois Commissioner of Banks and Trust Companies.

3) The wording of the letter of credit must be as specified in 35 Ill. Adm. Code 724.251.

4) An owner or operator that uses a letter of credit to satisfy the requirements of this Section may also establish a trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by the issuing institution into the standby

trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by the Illinois Commissioner of Banks and Trust Companies, or that complies with the Corporate Fiduciary Act [205 ILCS 620].

5) The wording of the standby trust fund must be identical to the wording specified in 35 Ill. Adm. Code 724.251(n).

i) Surety Bond~~bond~~ for Liability Coverage~~liability coverage.~~

1) An owner or operator may satisfy the requirements of this Section by obtaining a surety bond that conforms to the requirements of this subsection (i) and submitting a copy of the bond to the Agency.

2) The surety company issuing the bond must be licensed by the Illinois Department of Financial and Professional Regulation, Division of Insurance.

3) The wording of the surety bond must be as specified in 35 Ill. Adm. Code 724.251.

j) Trust Fund~~fund~~ for Liability Coverage~~liability coverage.~~

1) An owner or operator may satisfy the requirements of this Section by establishing a trust fund that conforms to the requirements of this subsection and submitting a signed, duplicate original of the trust agreement to the Agency.

2) The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by the Illinois Commissioner of Banks and Trust Companies, or that complies with the Corporate Fiduciary Act [205 ILCS 620].

3) The trust fund for liability coverage must be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this Section. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of liability coverage to be provided, the owner or

operator, by the anniversary of the date of establishment of the fund, must either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance, as specified in this Section, to cover the difference. For purposes of this subsection, "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and nonsudden accidental occurrences required to be provided by the owner or operator by this Section, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

4) The wording of the trust fund must be as specified in 35 Ill. Adm. Code 724.251.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

SUBPART I: USE AND MANAGEMENT OF CONTAINERS

**Section 725.274 Inspections**

At least weekly, the owner or operator must inspect areas where containers are stored. The owner or operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors. See Section 725.171 for remedial action required if deterioration or leaks are detected.

~~BOARD NOTE: See Section 725.271 for remedial action required if deterioration or leaks are detected.~~

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

SUBPART J: TANK SYSTEMS

**Section 725.290 Applicability**

The regulations of this Subpart J apply to owners and operators of facilities that use tank systems for storing or treating hazardous waste, except as otherwise provided in subsection (a), (b), or (c) ~~of this Section~~ or in Section 725.101.

a) Tank systems that are used to store or treat hazardous waste that contains no free

liquids and that are situated inside a building with an impermeable floor are exempted from the requirements in Section 725.293. To demonstrate the absence or presence of free liquids in the stored or treated waste, the following test must be used: USEPA Method 9095B (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods~~,~~", USEPA publication number EPA-530/SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111(a).

b) Tank systems, including sumps, as defined in 35 Ill. Adm. Code 720.110, that serve as part of a secondary containment system to collect or contain releases of hazardous wastes are exempted from the requirements in Section 725.293(a).

c) Tanks, sumps, and other collection devices used in conjunction with drip pads, as defined in 35 Ill. Adm. Code 720.110 and regulated under Subpart W~~ of this Part~~, must meet the requirements of this Subpart J.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.291 Assessment of Existing Tank System Integrity**

a) For each existing tank system that does not have secondary containment meeting the requirements of Section 725.293, the owner or operator must determine either that the tank system is not leaking or that it is unfit for use. Except as provided in subsection (c), the owner or operator must~~, after January 12, 1988,~~ obtain and keep on file at the facility a written assessment reviewed and certified by a qualified Professional Engineer, in accordance with 35 Ill. Adm. Code 702.126(d), that attests to the tank system's integrity.

b) This assessment must determine whether the tank system is adequately designed and has sufficient structural strength and compatibility with the wastes to be stored or treated to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment must consider the following:

1) Design standards, if available, according to which the tank and ancillary equipment were constructed;

2) Hazardous characteristics of the wastes that have been or will be handled;

3) Existing corrosion protection measures;

4) Documented age of the tank system, if available, (otherwise, an estimate of the age); and

5) Results of a leak test, internal inspection, or other tank integrity examination, such that the following conditions are met:

A) For non-enterable underground tanks, this assessment must consist of a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pocket, and high water table effects.

B) For other than non-enterable underground tanks and for ancillary equipment, this assessment must be either a leak test, as described above, or an internal inspection or other tank integrity examination certified by a qualified Professional Engineer, in accordance with 35 Ill. Adm. Code 702.126(d), that addresses cracks, leaks, corrosion, and erosion.

BOARD NOTE: The practices described in the American Petroleum Institute (API) Publication, "Guide for Inspection of Refinery Equipment~~,~~", Chapter XIII, "Atmospheric and Low-Pressure Storage Tanks~~,~~", incorporated by reference in 35 Ill. Adm. Code 720.111(a), may be used, where applicable, as guidelines in conducting the integrity examination of an other than non-enterable underground tank system.

c) Tank systems that store or treat materials that become hazardous wastes ~~subsequent to July 14, 1986~~ must conduct this assessment within 12 months after the date that the waste becomes a hazardous waste.

d) If, as a result of the assessment conducted in accordance with subsection (a) ~~of this Section~~, a tank system is found to be leaking or unfit for use, the owner or operator must comply with the requirements of Sections 725.296.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.292 Design and Installation of New Tank Systems or Components**

a) An owner or operator of a new tank system or component must ensure that the

foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the wastes to be stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. The owner or operator must obtain a written assessment reviewed and certified by a qualified Professional Engineer, in accordance with 35 Ill. Adm. Code 702.126(d), attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment must include the following information:

1) Design standards according to which the tanks and ancillary equipment is or will be constructed.

2) Hazardous characteristics of the wastes to be handled.

3) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system is or will be in contact with the soil or with water, a determination by a corrosion expert of the following:

A) Factors affecting the potential for corrosion, including but not limited to the following:

i) Soil moisture content;

ii) Soil pH;

iii) Soil sulfides level;

iv) Soil resistivity;

v) Structure to soil potential;

vi) Influence of nearby underground metal structures (e.g., piping);

vii) Stray electric current;

viii) Existing corrosion-protection measures (e.g., coating,

cathodic protection, etc.); and

B) The type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:

i) Corrosion-resistant materials of construction such as special alloys, or fiberglass-reinforced plastic;

ii) Corrosion-resistant coating (such as epoxy, fiberglass, etc.) with cathodic protection (e.g., impressed current or sacrificial anodes); and

iii) Electrical isolation devices such as insulating joints and flanges, etc.

BOARD NOTE: The practices described in the National Association of Corrosion Engineers (NACE) Standard, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems~~,~~", NACE Recommended Practice RP0285, and "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems~~,~~", API Recommended Practice 1632, each incorporated by reference in 35 Ill. Adm. Code 720.111(a), may be used, where applicable, as guidelines in providing corrosion protection for tank systems.

4) For underground tank system components that are likely to be affected by vehicular traffic, a determination of design or operational measures that will protect the tank system against potential damage; and

5) Design considerations to ensure the following:

A) Tank foundations will maintain the load of a full tank;

B) Tank systems will be anchored to prevent flotation or dislodgement where the tank system is placed in a saturated zone, or is located within a seismic fault zone; and

C) Tank systems will withstand the effects of frost heave.

b) The owner and operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing or placing a new tank system or component in use, an independent, qualified installation inspector or a qualified Professional Engineer, either of whom is trained and experienced in the proper installation of tank systems or components, must inspect the system or component for the presence of any of the following items:

1) Weld breaks;

2) Punctures;

3) Scrapes of protective coatings;

4) Cracks;

5) Corrosion; and

6) Other structural damage or inadequate construction or installation. All discrepancies must be remedied before the tank system is covered, enclosed, or placed in use.

c) New tank systems or components and piping that are placed underground and which are backfilled must be provided with a backfill material that is a noncorrosive, porous, and homogeneous substance which is carefully installed so that the backfill is placed completely around the tank and compacted to ensure that the tank and piping are fully and uniformly supported.

d) All new tanks and ancillary equipment must be tested for tightness prior to being covered, enclosed or placed in use. If a tank system is found not to be tight, all repairs necessary to remedy the leaks in the system must be performed prior to the tank system being covered, enclosed, or placed in use.

e) Ancillary equipment must be supported and protected against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.

BOARD NOTE: The piping system installation procedures described in

"Installation of Underground Petroleum Storage Systems~~,~~", API Recommended Practice 1615, or "Chemical Plant and Petroleum Refinery Piping~~,~~", ASME/ANSI Standard B31.3-1987, as supplemented by B31.3a-1988 and B31.3b-1988, each incorporated by reference in 35 Ill. Adm. Code 720.111(a), may be used where applicable, as guidelines for proper installation of piping systems.

f) The owner and operator must provide the type and degree of corrosion protection necessary, based on the information provided under subsection (a)(3)~~ of this Section~~, to ensure the integrity of the tank system during use of the tanks system. An independent corrosion expert must supervise the installation of a corrosion protection system that is field fabricated to ensure proper installation.

g) The owner and operator must obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of subsections (b) through (f)~~ of this Section~~ to attest that the tank system was properly designed and installed and that repairs, pursuant to subsections (b) and (d) ~~of this Section~~ were performed. These written statements must also include the certification statement, as required in 35 Ill. Adm. Code 702.126(d).

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.293 Containment and Detection of Releases**

a) In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this Section must be provided (except as provided in subsections (f) and (g)~~ of this Section~~).

1) For a new or existing tank system or component, prior to its being put into service.

2) For a tank system that stores or treats materials that become hazardous wastes, within two years after~~of~~ the hazardous waste listing, or when the tank system has reached 15 years of age, whichever comes later.

b) Secondary containment systems must be as follows:

1) Designed, installed, and operated to prevent any migration of wastes or

accumulated liquid out of the system to the soil, groundwater, or surface water at any time during the use of the tank system; and

2) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

c) To meet the requirements of subsection (b)~~ of this Section~~, secondary containment systems must be at a minimum as follows:

1) Constructed of or lined with materials that are compatible with the wastes to be placed in the tank system and of sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation (including stresses from nearby vehicular traffic);

2) Placed on a foundation or base capable of providing support to the secondary containment system and resistance to pressure gradients above and below the system and capable of preventing failure due to settlement, compression, or uplift;

3) Provided with a leak detection system that is designed and operated so that it will detect the failure of either the primary and secondary containment structure or any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours, or as otherwise provided in the RCRA permit if the operator has demonstrated to the Agency, by way of permit application, that the existing detection technology or site conditions will not allow detection of a release within 24 hours;

4) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation must be removed from the secondary containment system within 24 hours, or as otherwise provided in the RCRA permit if the operator has demonstrated to the Agency, by way of permit application, that removal of the released waste or accumulated precipitation cannot be accomplished within 24 hours.

BOARD NOTE: If the collected material is a hazardous waste under 35 Ill. Adm. Code 721, it is subject to management as a hazardous waste in

accordance with all applicable requirements of 35 Ill. Adm. Code 722 through 728. If the collected material is discharged through a point source to waters of the State, it is subject to the NPDES permit requirement of Section 12(f) of the Environmental Protection Act and 35 Ill. Adm. Code 309. If discharged to a Publicly Owned Treatment Works (POTW), it is subject to the requirements of 35 Ill. Adm. Code 307 and 310. If the collected material is released to the environment, it may be subject to the reporting requirements of 35 Ill. Adm. Code 750.410 and federal 40 CFR 302.6.

d) Secondary containment for tanks must include one or more of the following devices:

1) A liner (external to the tank);

2) A vault;

3) A double-walled tank; or

4) An equivalent device as approved by the Board in an adjusted standards proceeding.

e) In addition to the requirements of subsections (b), (c), and (d), secondary containment systems must satisfy the following requirements:

1) External liner systems must be as follows:

A) Designed or operated to contain 100 percent of the capacity of the largest tank within the liner system's boundary;

B) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system, unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event;

C) Free of cracks or gaps; and

D) Designed and installed to completely surround the tank and to

cover all surrounding earth likely to come into contact with the waste if released from the tanks (i.e., capable of preventing lateral as well as vertical migration of the waste).

2) Vault systems must be as follows:

A) Designed or operated to contain 100 percent of the capacity of the largest tank within the vault system's boundary;

B) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system, unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event;

C) Constructed with chemical-resistant water stops in place at all joints (if any);

D) Provided with an impermeable interior coating or lining that is compatible with the stored waste and that will prevent migration of waste into the concrete;

E) Provided with a means to protect against the formation of and ignition of vapors within the vault, if the waste being stored or treated:

i) Meets the definition of ignitable waste under 35 Ill. Adm. Code 721.121; or

ii) Meets the definition of reactive waste under 35 Ill. Adm. Code 721.123 and may form an ignitable or explosive vapor; and

F) Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

3) Double-walled tanks must be as follows:

A) Designed as an integral structure (i.e., an inner tank within an outer shell) so that any release from the inner tank is contained by the outer shell;

B) Protected, if constructed of metal, from both corrosion of the primary tank interior and the external surface of the outer shell; and

C) Provided with a built-in continuous leak detection system capable of detecting a release within 24 hours or as otherwise provided in the RCRA permit if the operator has demonstrated to the Agency, by way of permit application, that the existing leak detection technology or site conditions will not allow detection of a release within 24 hours.

BOARD NOTE: The provisions outlined in the Steel Tank Institute (STI) document "Standard for Dual Wall Underground Steel Storage Tanks~~,~~", incorporated by reference in 35 Ill. Adm. Code 720.111(a), may be used as guidelines for aspects of the design of underground steel double-walled tanks.

f) Ancillary equipment must be provided with full secondary containment (e.g., trench, jacketing, double-walled piping, etc.) that meets the requirements of subsections (c) and (h)~~ of this Section~~, except for the following:

1) Aboveground piping (exclusive of flanges, joints, valves, and connections) that are visually inspected for leaks on a daily basis;

2) Welded flanges, welded joints, and welded connections that are visually inspected for leaks on a daily basis;

3) Sealless or magnetic coupling pumps and sealless valves that are visually inspected for leaks on a daily basis; and

4) Pressurized aboveground piping systems with automatic shut-off devices (e.g., excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices, etc.) that are visually inspected for leaks on a daily basis.

g) Pursuant to Section 28.1 of the Environmental Protection Act ~~[415 ILCS 5/28.1]~~, and in accordance with Subpart D of 35 Ill. Adm. Code 104, an adjusted standard will be granted by the Board regarding alternative design and operating practices only if the Board finds either that the alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous waste or hazardous constituents into the groundwater or surface water at least as effectively as secondary containment during the active life of the tank system, or that in the event of a release that does migrate to groundwater or surface water, no substantial present or potential hazard will be posed to human health or the environment. New underground tank systems may not receive an adjusted standard from the secondary containment requirements of this Section through a justification in accordance with subsection (g)(2) ~~of this Section~~.

1) When determining whether to grant alternative design and operating practices based on a demonstration of equivalent protection of groundwater and surface water, the Board will consider whether the petitioner has justified an adjusted standard based on the following factors:

A) The nature and quantity of the waste;

B) The proposed alternate design and operation;

C) The hydrogeologic setting of the facility, including the thickness of soils between the tank system and groundwater; and

D) All other factors that would influence the quality and mobility of the hazardous constituents and the potential for them to migrate to groundwater or surface water.

2) In deciding whether to grant alternative design and operating practices based on a demonstration of no substantial present or potential hazard, the Board will consider whether the petitioner has justified an adjusted standard based on the following factors:

A) The potential adverse effects on groundwater, surface water, and land quality taking the following into account:

i) The physical and chemical characteristics of the waste in the tank system, including its potential for migration;

ii) The hydrogeological characteristics of the facility and surrounding land;

iii) The potential for health risks caused by human exposure to waste constituents;

iv) The potential for damage to wildlife; crops, vegetation, and physical structures caused by exposure to waste constituents; and

v) The persistence and permanence of the potential adverse effects;

B) The potential adverse effects of a release on groundwater quality, taking the following into account:

i) The quantity and quality of groundwater and the direction of groundwater flow;

ii) The proximity and withdrawal rates of water in the area;

iii) The current and future uses of groundwater in the area; and

iv) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

C) The potential adverse effects of a release on surface water quality, taking the following into account:

i) The quantity and quality of groundwater and the direction of groundwater flow;

ii) The patterns of rainfall in the region;

iii) The proximity of the tank system to surface waters;

iv) The current and future uses of surface waters in the area

and water quality standards established for those surface waters; and

v) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality; and

D) The potential adverse effects of a release on the land surrounding the tank system, taking the following into account:

i) The patterns of rainfall in the region; and

ii) The current and future uses of the surrounding land.

3) The owner or operator of a tank system, for which alternative design and operating practices had been granted in accordance with the requirements of subsection (g)(1), at which a release of hazardous waste has occurred from the primary tank system but has not migrated beyond the zone of engineering control (as established in the alternative design and operating practices), must fulfill the following requirements:

A) It must comply with the requirements of Section 725.296, except Section 725.296(d); and

B) It must decontaminate or remove contaminated soil to the extent necessary to assure the following:

i) It must enable the tank system, for which alternative design and operating practices were granted, to resume operation with the capability for the detection of and response to releases at least equivalent to the capability it had prior to the release; and

ii) It must prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water.

C) If contaminated soil cannot be removed or decontaminated in accordance with subsection (g)(3)(B), it must comply with the requirements of Section 725.297(b).

4) The owner or operator of a tank system, for which alternative design and operating practices had been granted in accordance with the requirements of subsection (g)(1)~~ of this Section~~, at which a release of hazardous waste has occurred from the primary tank system and has migrated beyond the zone of engineering control (as established in the alternative design and operating practices, must fulfill the following requirements:

A) It must comply with the requirements of Section 725.296(a), (b), (c), and (d); and

B) It must prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed, or if groundwater has been contaminated, the owner or operator must comply with the requirements of Section 725.297(b);

C) If repairing, replacing, or reinstalling the tank system, it must provide secondary containment in accordance with the requirements of subsections (a) through (f)~~ of this Section~~, or make the alternative design and operating practices demonstration to the Board again with respect to secondary containment and meet the requirements for new tank systems in Section 725.292 if the tank system is replaced. The owner or operator must comply with these requirements even if contaminated soil is decontaminated or removed, and groundwater or surface water has not been contaminated.

h) In order to make an alternative design and operating practices demonstration, the owner or operator must follow the following procedures, in addition to those specified in Section 28.1 of the Act ~~[415 ILCS 5/28.1]~~ and Subpart D of 35 Ill. Adm. Code 104:

1) The owner or operator must file a petition for approval of alternative design and operating practices according to the following schedule:

A) For existing tank systems, at least 24 months prior to the date that secondary containment must be provided in accordance with

subsection (a)~~ of this Section~~; and

B) For new tank systems, at least 30 days prior to entering into a contract for installation of the tank system.

2) As part of the petition, the owner or operator must also submit the following to the Board:

A) A description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration must address each of the factors listed in subsection (g)(1) or (g)(2)~~ of this Section~~; and

B) The portion of the Part B permit application specified in 35 Ill. Adm. Code 703.202.

3) The owner or operator must complete its showing within 180 days after filing its petition for approval of alternative design and operating practices.

4) The Agency must issue or modify the RCRA permit so as to require the permittee to construct and operate the tank system in the manner that was provided in any Board order approving alternative design and operating practices.

i) All tank systems, until such time as secondary containment meeting the requirements of this Section is provided, must comply with the following:

1) For non-enterable underground tanks, a leak test that meets the requirements of Section 725.291(b)(5) must be conducted at least annually.

2) For other than non-enterable underground tanks and for all ancillary equipment, the owner or operator must either conduct a leak test, as described in subsection (i)(1)~~ of this Section~~, or an internal inspection or other tank integrity examination, by a qualified Professional Engineer, that addresses cracks, leaks, and corrosion or erosion at least annually. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be

assessed.

BOARD NOTE: The practices described in API Publication "Guide for Inspection of Refinery Equipment~~,~~", Chapter XIII, "Atmospheric and Low Pressure Storage Tanks~~,~~", incorporated by reference in 35 Ill. Adm. Code 720.111(a), may be used, when applicable, as guidelines for assessing the overall condition of the tank system.

3) The owner or operator must maintain on file at the facility a record of the results of the assessments conducted in accordance with subsections (i)(1) through (i)(3)~~ of this Section~~.

4) If a tank system or component is found to be leaking or unfit for use as a result of the leak test or assessment in subsections (i)(1) through (i)(3)~~ of this Section~~, the owner or operator must comply with the requirements of Section 725.296.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.295 Inspections**

a) The owner or operator must inspect the following, where present, at least once each operating day, data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells, etc.) to ensure that the tank system is being operated according to its design.

b) Except as noted under subsection (c)~~ of this Section~~, the owner or operator must inspect the following at least once each operating day:

1) Overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order;

2) Above ground portions of the tank system, if any, to detect corrosion or releases of waste; and

3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation, etc.).

BOARD NOTE: Section 725.115(c) requires the owner or operator to remedy any deterioration or malfunction the owner or operator finds. Section 725.296 requires the owner or operator to notify the Agency within 24 hours of confirming a release. Also, federal 40 CFR 302 may require the owner or operator to notify the National Response Center of a release.

c) The owner or operator of a tank system that either uses leak detection equipment to alert facility personnel to leaks or implements established workplace practices to ensure leaks are promptly identified must inspect at least weekly those areas described in subsections (b)(1) through (b)(3)~~ of this Section~~. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.

d) This subsection (d) corresponds with 40 CFR 265.195(d), which USEPA has removed and marked "reserved".~~became obsolete when USEPA terminated the Performance Track Program at 74 Fed. Reg. 22741 (May 14, 2009). USEPA has recognized that program-related rules are no longer effective at 75 Fed. Reg. 12989, 12992, note 1 (Mar. 18, 2010).~~ This statement maintains structural consistency with the corresponding federal requirements.

e) Ancillary equipment that is not provided with secondary containment, as described in Section 725.293(f)(1) through (f)(4), must be inspected at least once each operating day.

f) The owner or operator must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

1) The proper operation of the cathodic protection system must be confirmed within six months after initial installation, and annually thereafter; and

2) All sources of impressed current must be inspected or tested, as appropriate, at least every other month.

BOARD NOTE: The practices described in "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems~~,~~", NACE

Recommended Practice RP0285-85, or "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems~~,~~", API Recommended Practice 1632, each incorporated by reference in 35 Ill. Adm. Code 720.111(a), may be used, where applicable, as guidelines in maintaining and inspecting cathodic protection systems.

g) The owner or operator must document in the operating record of the facility an inspection of those items in subsections (a) and (b)~~ of this Section~~.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.296 Response to Leaks or Spills and Disposition of Tank Systems**

A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, must be removed from service immediately. The owner or operator must satisfy the following requirements:

a) Cease Using~~using~~; Prevent Flow~~prevent flow~~ or Addition~~addition~~ of Wastes~~wastes~~. The owner or operator must immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

b) Removal of Waste~~waste~~ from Tank System~~tank system~~ or Secondary Containment System~~secondary containment system.~~

1) If the release was from the tank system, the owner or operator must, within 24 hours after detection of the leak, remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

2) If the release was to a secondary containment system, all released materials must be removed within 24 hours to prevent harm to human health and the environment.

c) Containment of Visible Releases~~visible releases~~ to the Environment~~environment~~. The owner or operator must immediately conduct a visual inspection of the release and, based upon that inspection, do the following:

1) Prevent further migration of the leak or spill to soils or surface water; and

2) Remove and properly dispose of any visible contamination of the soil or surface water.

d) Notifications; Reports~~reports.~~

1) Any release to the environment, except as provided in subsection (d)(2)~~ of this Section~~, must be reported to the Agency within 24 hours after detection.

2) A leak or spill of hazardous waste is exempted from the requirements of this subsection (d) if the following occur:

A) The spill is less than or equal to a quantity of one pound (0.45 kg); and

B) The spill is immediately contained and cleaned-up.

3) Within 30 days after detection of a release to the environment, a report containing the following information must be submitted to the Agency:

A) Likely route of migration of the release;

B) Characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate, etc.);

C) Results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within 30 days, these data must be submitted to the Agency as soon as they become available;

D) Proximity to downgradient drinking water, surface water, and population areas; and

E) Description of response actions taken or planned.

e) Provision of Secondary Containment~~secondary containment~~, Repair~~repair~~, or Closure~~closure.~~

1) Unless the owner or operator satisfies the requirements of subsections (e)(2) through (e)(4)~~ of this Section~~, the tank system must be closed in accordance with Section 725.297.

2) If the cause of the release was a spill that has not damaged the integrity of the system, the owner or operator may return the system to service as soon as the released waste is removed and repairs, if necessary, are made.

3) If the cause of the release was a leak from the primary tank system into the secondary containment system, the system must be repaired prior to returning the tank system to service.

4) If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the owner or operator must provide the component of the system from which the leak occurred with secondary containment that satisfies the requirements of Section 725.293 before it is returned to service, unless the source of the leak is an aboveground portion of a tank system. If the source is an aboveground component that can be inspected visually, the component must be repaired and may be returned to service without secondary containment as long as the requirements of subsection (f) ~~of this Section~~ are satisfied. If a component is replaced to comply with the requirements of this subsection (e)(4), that component must satisfy the requirements for new tank systems or components in Sections 725.292 and 725.293. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection (e.g., the bottom of an inground or onground tank), the entire component must be provided with secondary containment in accordance with Section 725.293 prior to being returned to use.

f) Certification of Major Repairs~~major repairs~~. If the owner or operator has repaired a tank system in accordance with subsection (e)~~ of this Section~~, and the repair has been extensive (e.g., installation of an internal liner, repair of a ruptured primary containment or secondary containment vessel, etc.), the tank system must not be returned to service unless the owner or operator has obtained a certification by a qualified Professional Engineer, in accordance with 35 Ill. Adm. Code 702.126(d), that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be

placed in the operating record and maintained until closure of the facility.

BOARD NOTE: See Section 725.115(c) for the requirements necessary to remedy a failure. Also, federal 40 CFR 302.6 requires the owner or operator to notify the National Response Center of a release of any "reportable quantity~~.~~".

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.297 Closure and Post-Closure Care**

a) At closure of a tank system, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils and structures and equipment contaminated with waste, and manage them as hazardous waste, unless 35 Ill. Adm. Code 721.103(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet all of the requirements specified in Subparts G and H~~ of this Part~~.

b) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in subsection (a)~~ of this Section~~, then the owner or operator must close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (Section 725.410). In addition, for the purposes of closure, post-closure and financial responsibility, such a tank system is then considered to be a landfill, and the owner or operator must meet all of the requirements of landfills specified in Subparts G and H~~ of this Part~~.

c) If an owner or operator has a tank system that does not have secondary containment that meets the requirements of Section 725.293(b) through (f), and which is not exempt from the secondary containment requirements in accordance with Section 725.293(g), then the following requirements apply:

1) The closure plan for the tank system must include both a plan for complying with subsection (a)~~ of this Section~~, and a contingent plan for complying with subsection (b)~~ of this Section~~;

2) A contingent post-closure plan for complying with subsection (b) ~~of this Section~~ must be prepared and submitted as part of the permit application;

3) The cost estimates calculated for closure and post-closure care must reflect the costs of complying with the contingent closure plan and the contingent post-closure plan, if these costs are greater than the costs of complying with the closure plan prepared for the expected closure under subsection (a)~~ of this Section~~;

4) Financial assurance must be based on the cost estimates in subsection (c)(3)~~ of this Section~~; and

5) For the purposes of the contingent closure and post-closure plans, such a tank system is considered to be a landfill, and the contingent plans must meet all of the closure, post-closure care, and financial responsibility requirements for landfills under Subparts G and H~~ of this Part~~.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.298 Special Requirements for Ignitable or Reactive Wastes**

a) Ignitable or reactive waste must not be placed in a tank system, unless either of the following conditions is fulfilled:

1) The waste is treated, rendered or mixed before or immediately after placement in the tank system so that the following two conditions are fulfilled:

A) The resulting waste, mixture, or dissolved material no longer meets the definition of ignitable or reactive waste under 35 Ill. Adm. Code 721.121 or 721.123; and

B) Section 725.117(b) is complied with;

2) The waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

3) The tank system is used solely for emergencies.

b) The owner or operator of a facility where ignitable or reactive waste is stored or tested in tanks must comply with the requirements for the maintenance of protective distances between the waste management area and any public ways,

streets, alleys, or an adjoining property line that can be built upon as required in Tables 2-1 through 2-6 of "Flammable and Combustible Liquids Code~~,~~", NFPA 30, incorporated by reference in 35 Ill. Adm. Code 720.111(a).

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.301 Generators of 100 to 1,000 Kilograms of Hazardous Waste Per Month (Repealed)**

~~a) The requirements of this Section apply to small quantity generators that generate more than 100 kg but less than 1,000 kg of hazardous waste in a calendar month, that accumulate hazardous waste in tanks for less than 180 days (or 270 days if the generator must ship the waste greater than 200 miles), and that do not accumulate over 6,000 kg on-site at any time.~~

~~b) A generator of between 100 and 1,000 kg/mo hazardous waste must comply with the following general operating requirements:~~

~~1) Treatment or storage of hazardous waste in tanks must comply with Section 725.117(b);~~

~~2) Hazardous wastes or treatment reagents must not be placed in a tank if they could cause the tank or its inner liner to rupture, leak, corrode, or otherwise fail before the end of its intended life;~~

~~3) Uncovered tanks must be operated to ensure at least 60 centimeters (2 feet) of freeboard unless the tank is equipped with a containment structure (e.g., dike or trench), a drainage control system, or a diversion structure (e.g., standby tank) with a capacity that equals or exceeds the volume of the top 60 centimeters (2 feet) of the tank; and~~

~~4) Where hazardous waste is continuously fed into a tank, the tank must be equipped with a means to stop this inflow (e.g., waste feed cutoff system or by-pass system to a stand-by tank).~~

~~BOARD NOTE: These systems are intended to be used in the event of a leak or overflow from the tank due to a system failure (e.g., a malfunction in the treatment process, a crack in the tank, etc.).~~

~~c)~~ ~~Except as noted in subsection (d) of this Section, a generator of between 100 and 1,000 kg/mo accumulating hazardous waste in tanks must inspect the following, where present:~~

~~1)~~ ~~Discharge control equipment (e.g., waste feed cutoff systems, by-pass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order;~~

~~2)~~ ~~Data gathered from monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day to ensure that the tank is being operated according to its design;~~

~~3)~~ ~~The level of waste in the tank at least once each operating day to ensure compliance with subsection (b)(3) of this Section;~~

~~4)~~ ~~The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and~~

~~5)~~ ~~The construction materials of and the area immediately surrounding discharge confinement structures (e.g., dikes) at least weekly to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation).~~

~~BOARD NOTE: As required by Section 725.115(c), the owner or operator must remedy any deterioration or malfunction the owner or operator finds.~~

~~d)~~ ~~A generator that accumulates between 100 and 1,000 kg/mo of hazardous waste in tanks or tank systems which have full secondary containment and which either uses leak detection equipment to alert facility personnel to leaks or implements established workplace practices to ensure leaks are promptly identified must inspect at least weekly, where applicable, the areas identified in subsections (c)(1) through (c)(5) of this Section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.~~

~~e)~~ ~~This subsection (e) corresponds with 40 CFR 265.201(e), which became obsolete when USEPA terminated the Performance Track Program at 74 Fed. Reg. 22741 (May 14, 2009). USEPA has recognized that program-related rules are no longer effective at 75 Fed. Reg. 12989, 12992, note 1 (Mar. 18, 2010). This statement maintains structural consistency with the corresponding federal requirements.~~

~~f) A generator of between 100 and 1,000 kg/mo accumulating hazardous waste in tanks must, upon closure of the facility, remove all hazardous waste from tanks, discharge control equipment, and discharge confinement structures.~~

~~BOARD NOTE: At closure, as throughout the operating period, unless the owner or operator demonstrates, in accordance with 35 Ill. Adm. Code 721.103(d) or (e), that any solid waste removed from the tank is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of 35 Ill. Adm. Code 722, 723, and 725.~~

~~g) A generator of between 100 and 1,000 kg/mo must comply with the following special requirements for ignitable or reactive waste:~~

~~1) Ignitable or reactive waste must not be placed in a tank unless one of the following conditions are fulfilled:~~

~~A) The waste is treated, rendered, or mixed before or immediately after placement in a tank so that the following is true of the waste:~~

~~i) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under 35 Ill. Adm. Code 721.121 or 721.123, and~~

~~ii) Section 725.117(b) is complied with;~~

~~B) The waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or~~

~~C) The tank is used solely for emergencies.~~

~~2) The owner or operator of a facility that treats or stores ignitable or reactive waste in covered tanks must comply with the buffer zone requirements for tanks contained in Tables 2-1 through 2-6 of "Flammable and Combustible Liquids Code," NFPA 30, incorporated by reference in 35 Ill. Adm. Code 720.111(a).~~

~~h)~~ ~~A generator of between 100 and 1,000 kg/mo must comply with the following special requirements for incompatible wastes:~~

~~1)~~ ~~Incompatible wastes or incompatible wastes and materials (see appendix V of 40 CFR 265 (Examples of Potentially Incompatible Waste), incorporated by reference in 35 Ill. Adm. Code 720.111(b), for examples) must not be placed in the same tank unless Section 725.117(b) is complied with.~~

~~2)~~ ~~Hazardous waste must not be placed in an unwashed tank that previously held an incompatible waste or material unless Section 725.117(b) is complied with.~~

(Source: Repealed at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.302 Air Emission Standards**

The owner or operator must manage all hazardous waste placed in a tank in accordance with the requirements of Subparts AA, BB, and CC~~ of this Part~~.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

SUBPART K: SURFACE IMPOUNDMENTS

**Section 725.321 Design and Operating Requirements**

a) The owner or operator of each new surface impoundment unit, each lateral expansion of a surface impoundment unit, and each replacement of an existing surface impoundment unit must install two or more liners and a leachate collection and removal system between such liners, and operate the leachate collection and removal system, in accordance with 35 Ill. Adm. Code 724.321(c), unless exempted under 35 Ill. Adm. Code 724.321(d), (e), or (f).

b) The owner or operator of each unit referred to in subsection (a) ~~of this Section~~ must notify the Agency at least sixty days prior to receiving waste. The owner or operator of each facility submitting notice must file a Part B application within six months of the receipt of such notice.

c) The owner or operator of any replacement surface impoundment unit is exempt

from subsection (a) ~~of this Section~~ if the following conditions are fulfilled:

1) The existing unit was constructed in compliance with the design standards of 35 Ill. Adm. Code 724.321(c), (d), and (e); and

BOARD NOTE: The cited subsections implemented the design standards of sections 3004(o)(1)(A)(i) and (o)(5) of RCRA~~the Resource Conservation and Recovery Act~~ (42 USC 6924(o)(1)(A)(i) and (o)(5)).

2) There is no reason to believe that the liner is not functioning as designed.

d) The Agency must not require a double liner as set forth in subsection (a) ~~of this Section~~ for any monofill, if the following conditions are fulfilled:

1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents that render the wastes hazardous for reasons other than the toxicity characteristic in 35 Ill. Adm. Code 721.124, with USEPA hazardous waste numbers D004 through D017; and

2) No Migration Demonstration~~migration demonstration.~~

A) Design and Location Requirements~~location requirements.~~

i) The monofill has at least one liner for which there is no evidence that such liner is leaking. For the purposes of this subsection (d)(2)(A)(i) the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, groundwater, or surface water at any time during the active life of the facility. In the case of any surface impoundment that has been exempted from the requirements of subsection (a)~~ of this Section~~, of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of such impoundment the owner or operator must

remove or decontaminate all waste residues, all contaminated liner material and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment must comply with appropriate post-closure requirements, including but not limited to groundwater monitoring and corrective action;

ii) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is defined in 35 Ill. Adm. Code 702.110); and

iii) The monofill is in compliance with generally applicable groundwater monitoring requirements for facilities with RCRA permits; or

B) The owner or operator demonstrates to the Board that the monofill is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into groundwater or surface water at any future time.

e) In the case of any unit in which the liner and leachate collection system have been installed pursuant to the requirements of subsection (a)~~ of this Section~~, and in good faith compliance with subsection (a) ~~of this section~~ and with guidance documents governing liners and leachate collection systems under subsection (a) ~~of this Section~~, the Agency must not require a liner or leachate collection system that is different from that which was so installed pursuant to subsection (a) ~~of this Section~~ when issuing the first permit to such facility, except that the Agency is not precluded from requiring installation of a new liner when the Agency finds that any liner installed pursuant to the requirements of subsection (a) ~~of this Section~~ is leaking.

f) A surface impoundment must maintain enough freeboard to prevent any overtopping of the dike by overfilling, wave action, or a storm. Except as provided in subsection (g)~~ of this Section~~, there must be at least 60 centimeters (two feet) of freeboard.

g) A freeboard level less than 60 centimeters (two feet) may be maintained if the owner or operator obtains certification by a qualified engineer that alternate

design features or operating plans will, to the best of the engineer's knowledge and opinion, prevent overtopping of the dike. The certification, along with a written identification of alternate design features or operating plans preventing overtopping, must be maintained at the facility.

BOARD NOTE: Any point source discharge from a surface impoundment to waters of the State is subject to the requirements of Section 12 of the Environmental Protection Act ~~[415 ILCS 5/12]~~. Spills may be subject to Section 311 of the Clean Water Act (33 USC 1321).

h) Surface impoundments that are newly subject to this Part due to the promulgation of additional listings or characteristics for the identification of hazardous waste must be in compliance with subsections (a), (c), or (d) ~~of this Section~~ not later than 48 months after the promulgation of the additional listing or characteristic. This compliance period must not be cut short as the result of the promulgation of land disposal prohibitions under 35 Ill. Adm. Code 728 or the granting of an extension to the effective date of a prohibition pursuant to 35 Ill. Adm. Code 728.105, within this 48 month period.

i) Refusal to grant an exemption or waiver, or grant with conditions, may be appealed to the Board.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.322 Action Leakage Rate**

a) The owner or operator of surface impoundment units subject to Section 725.321(a) must submit a proposed action leakage rate to the Agency when submitting the notice required under Section 725.321(b). Within 60 days of receipt of the notification, the Agency must do either of the following: establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this Section, or extend the review period for up to 30 days. If no action is taken by the Agency before the original 60 or extended 90 day review periods, the action leakage rate will be approved as proposed by the owner or operator.

b) The Agency must approve an action leakage rate for surface impoundment units subject to Section 725.321(a). The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head

on the bottom liner exceeding one foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material, etc.), construction, operation, and location of the LDS; waste and leachate characteristics; the likelihood and amounts of other sources of liquids in the LDS; and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover, and creep of synthetic components of the system; overburden pressures; etc.).

c) To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly or monthly flow rate from the monitoring data obtained under Section 725.326(b) to an average daily flow rate (gallons per acre per day) for each sump. The average daily flow rate for each sump must be calculated weekly during the active life and closure period and, if the unit is closed in accordance with Section 725.328(a)(2), monthly during the post-closure care period, unless the Agency approves a different frequency pursuant to Section 725.326(b).

d) Final Agency determinations pursuant to this Section are deemed to be permit denials for purposes of appeal to the Board pursuant to Section 40 of the Environmental Protection Act ~~[415 ILCS 5/40]~~.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.324 Response Actions**

a) The owner or operator of surface impoundment units subject to Section 725.321(a) must develop and keep on site a response action plan. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in subsection (b) ~~of this Section~~.

b) If the flow rate into the LDS exceeds the action leakage rate for any sump, the owner or operator must do the following:

1) Notify the Agency in writing of the exceedance within seven days after the determination;

2) Submit a preliminary written assessment to the Agency within 14 days of

the determination, as to the amount of liquids; likely sources of liquids; possible location, size, and cause of any leaks; and short-term actions taken and planned;

3) Determine to the extent practicable the location, size, and cause of any leak;

4) Determine whether waste receipt should cease or be curtailed; whether any waste should be removed from the unit for inspection, repairs, or controls; and whether or not the unit should be closed;

5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Agency the results of the determinations specified in subsections (b)(3) through (b)(5)~~ of this Section~~, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the LDS exceeds the action leakage rate, the owner or operator must submit to the Agency a report summarizing the results of any remedial actions taken and actions planned.

c) To make the leak or remediation determinations in subsections (b)(3) through (b)(5)~~ of this Section~~, the owner or operator must do either of the following:

1) Perform the following assessments:

A) Assess the source of liquids and amounts of liquids by source;

B) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the LDS to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

C) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

2) Document why such assessments are not needed.

d) Final Agency determinations pursuant to this Section are deemed to be permit denials for purposes of appeal to the Board pursuant to Section 40 of the Environmental Protection Act ~~[415 ILCS 5/40]~~.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.325 Waste Analysis and Trial Tests**

In addition to the waste analyses required by Section 725.113, whenever a surface impoundment is to be used for either of the purposes in subsections (a) and (b) ~~of this Section~~, the owner or operator must, before treating the different waste or using the different process, perform either of the required actions listed in subsection (c) ~~of this Section~~:

a) Chemically treat a hazardous waste that is substantially different from waste previously treated in that impoundment; or

b) Chemically treat hazardous waste with a substantially different process than and previously used in that impoundment.

c) Required Actions~~actions.~~

1) The owner or operator must conduct waste analyses and trial treatment tests (e.g., bench scale or pilot plant scale tests); or

2) The owner or operator must obtain written, documented information on similar treatment of similar waste under similar operating conditions, to show that this treatment will comply with Section 725.117(b).

BOARD NOTE: As required by Section 725.113, the waste analyses plan must include analyses needed to comply with Sections 725.329 and 725.330. As required by Section 725.173, the owner or operator must place the results from each waste analysis and trial test, or the documented information in the operating record of the facility.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.326 Monitoring and Inspections**

a) The owner or operator must inspect the following:

1) The freeboard level at least once each operating day to ensure compliance with Section 725.322; and

2) The surface impoundment, including dikes and vegetation surrounding the dike, at least once a week to detect any leaks, deterioration, or failures in the impoundment.

BOARD NOTE: As required by Section 725.115(c), the owner or operator must remedy any deterioration or malfunction the owner or operator finds.

b) LDS~~.~~

1) An owner or operator required to have a LDS under Section 725.321(a) must record the amount of liquids removed from each LDS sump at least once each week during the active life and closure period.

2) After the final cover is installed, the amount of liquids removed from each LDS sump must be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two consecutive months, the amount of liquids in the sumps must be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps must be recorded at least semi-annually. If at any time during the post-closure care period the pump operating level is exceeded at units on quarterly or semi-annual recording schedules, the owner or operator must return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

3) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the Agency based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump. The timing for submission and approval of the proposed "pump operating level" will be in accordance with Section 725.322(a).

c) Final Agency determinations pursuant to this Section are deemed to be permit denials for purposes of appeal to the Board pursuant to Section 40 of the Environmental Protection Act ~~[415 ILCS 5/40]~~.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.328 Closure and Post-Closure Care**

a) At closure, the owner or operator must do either of the following:

1) Remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste or leachate and manage them as hazardous waste, unless 35 Ill. Adm. Code 721.103(d) applies; or

2) Close the impoundment and provide post-closure care for a landfill under Subpart G ~~of this Part~~ and Section 725.410, including the following:

A) Eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues;

B) Stabilize remaining wastes to a bearing capacity sufficient to support final cover; and

C) Cover the surface impoundment with a final cover designed and constructed to do the following:

i) Provide long-term minimization of the migration of liquids through the closed impoundment;

ii) Function with minimum maintenance;

iii) Promote drainage and minimize erosion or abrasion of the cover;

iv) Accommodate settling and subsidence so that the cover's integrity is maintained; and

v) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

b) In addition to the requirements of Subpart G of this Part and Section 725.410,

during the post-closure care period the owner or operator of a surface impoundment in which wastes, waste residues or contaminated materials remain after closure in accordance with subsection (a)(2) ~~of this Section~~ must:

1) Maintain the integrity and effectiveness of the final cover, including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion, or other events;

2) Maintain and monitor the LDS in accordance with 35 Ill. Adm. Code 724.321(c)(2)(D) and (c)(3) and 725.326(b) and comply with all other applicable LDS requirements of this Part;

3) Maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of Subpart F of this Part; and

4) Prevent run-on and run-off from eroding or damaging the final cover.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

SUBPART L: WASTE PILES

**Section 725.350 Applicability**

The regulations in this Subpart L apply to owners and operators of facilities that treat or store hazardous waste in piles, except as Section 725.101 provides otherwise. Alternatively, a pile of hazardous waste may be managed as a landfill under Subpart N ~~of this Part~~.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.353 Containment**

If leachate or run-off from a pile is a hazardous waste, then control of the leachate or runoff must be accomplished by either of the following means:

a) Control by Pile Design~~pile design~~, Construction~~construction~~, and Operation~~operation.~~

1) The pile must be placed on an impermeable base that is compatible with the waste under the conditions of treatment or storage;

2) The owner or operator must design, construct, operate and maintain a run-on control system capable of preventing flow onto the active portion of the pile during peak discharge from at least a 25-year storm;

3) The owner or operator must design, construct, operate and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm; and

4) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously to maintain design capacity of the system; or

b) Alternative Control~~control.~~

1) The pile must be protected from precipitation and runon by some other means; and

2) No liquids or wastes containing free liquids may be placed in the pile.

BOARD NOTE: If collected leachate or runoff is discharged through a point source to waters of the United States, it is subject to the requirements of Section 12 of the Illinois Environmental Protection Act ~~[415 ILCS 5/12]~~.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.354 Design and Operating Requirements**

The owner or operator of each new waste pile on which construction commences after January 29, 1992, each lateral expansion of a waste pile unit on which construction commences after July 29, 1992, and each such replacement of an existing waste pile unit that is to commence reuse after July 29, 1992, must install two or more liners and a leachate collection and removal system above and between such liners and operate the leachate collection and removal systems, in accordance with 35 Ill. Adm. Code 724.351(c), unless exempted under 35 Ill. Adm. Code 724.351(d), (e) or (f); and must comply with the procedures of Section 725.321(b). "Construction commences" is as defined in 35 Ill. Adm. Code 720.110 under "existing facility~~.~~". The owner or operator of each unit referred to in this Section must notify the Agency at least sixty days prior to receiving waste. The owner or operator of each facility submitting notice must file a Part B application within six months after the receipt of such notice.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.355 Action Leakage Rates**

a) The owner or operator of waste pile units subject to Section 725.354 must submit a proposed action leakage rate to the Agency when submitting the notice required under Section 725.354. Within 60 days after receipt of the notification, the Agency must either establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this Section, or it must extend the review period for up to 30 days. If no action is taken by the Agency before the original 60 or extended 90 day review period, the action leakage rate must be approved as proposed by the owner or operator.

b) The Agency must approve an action leakage rate for waste pile units subject to Section 725.354. The action leakage rate is the maximum design flow rate that the LDS can remove without the fluid head on the bottom liner exceeding one foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material, etc.), construction, operation, and location of the LDS; waste and leachate characteristics; the likelihood and amounts of other sources of liquids in the LDS; and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover, and creep of synthetic components of the system; overburden pressures; etc.).

c) To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly flow rate from the monitoring data obtained under Section 725.360, to an average daily flow rate (gallons per acre per day) for each sump. The average daily flow rate for each sump must be calculated weekly during the active life and closure period.

d) Final Agency determinations pursuant to this Section are deemed to be permit denials for purposes of appeal to the Board pursuant to Section 40 of the Environmental Protection Act ~~[415 ILCS 5/40]~~.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.358 Closure and Post-Closure Care**

a) At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate and manage them as hazardous waste, unless 35 Ill. Adm. Code 721.103(d) applies; or

b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment, as required in subsection (a)~~ of this Section~~, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, it must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (Section 725.410).

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.359 Response Actions**

a) The owner or operator of waste pile units subject to Section 725.354 must submit a response action plan to the Agency when submitting the proposed action leakage rate under Section 725.355. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in subsection (b)~~ of this Section~~.

b) If the flow rate into the leak determination system exceeds the action leakage rate for any sump, the owner or operator must do the following:

1) Notify the Agency in writing of the exceedance within seven days after the determination;

2) Submit a preliminary written assessment to the Agency within 14 days after the determination as to the amount of liquids; likely sources of liquids; possible location, size, and cause of any leaks; and short-term actions taken and planned;

3) Determine to the extent practicable the location, size, and cause of any leak;

4) Determine whether waste receipts should cease or be curtailed; whether any waste should be removed from the unit for inspection, repairs, or controls; and whether or not the unit should be closed;

5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Agency the results of the determinations specified in subsections (b)(3) through (b)(5)~~ of this Section~~, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the LDS exceeds the action leakage rate, the owner or operator must submit to the Agency a report summarizing the results of any remedial actions taken and actions planned.

c) To make the leak or remediation determinations in subsections (b)(3) through (b)(5)~~ of this Section~~, the owner or operator must do either of the following:

1) Perform the following assessments:

A) Assess the source of liquids and amounts of liquids by source;

B) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the LDS to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

C) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

2) Document why such assessments are not needed.

d) Final Agency determinations pursuant to this Section are deemed to be permit denials for purposes of appeal to the Board pursuant to Section 40 of the Environmental Protection Act~~ [415 ILCS 5/40]~~.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

SUBPART M: LAND TREATMENT

**Section 725.376 Food Chain Crops**

a) This subsection (a) corresponds with 40 CFR 265.276(a), which required notification of activity before a date long past. This statement maintains structural consistency with the corresponding federal rules.~~An owner or operator of a hazardous waste land treatment facility on which food chain crops are being grown, or have been grown and will be grown in the future, must have notified the Agency by July 16, 1982.~~

BOARD NOTE: Growing~~The growth of~~ food chain crops at a facility that has never before been used for this purpose is a significant change in process under 35 Ill. Adm. Code 703.155. The owner or operator of such a land treatment facility that proposes to grow food chain crops after May 17, 1982 must have submitted a new or revised Part A permit application.~~complied with 35 Ill. Adm. Code 703.155~~

b) Limitation Relating~~relating~~ to Arsenic~~arsenic~~, Lead~~lead~~, Mercury~~mercury~~, and Other Constituents~~other constituents.~~

1) Food chain crops must not be grown on the treated area of a hazardous waste land treatment facility, unless the owner or operator can demonstrate, based on field testing, that either of the following is true of any arsenic, lead, mercury, or other constituents identified under Section 725.373(b):

A) They will not be transferred to the food portion of the crop by plant uptake or direct contact and will not otherwise be ingested by food chain animals (e.g., by grazing); or

B) They will not occur in greater concentrations in the crops grown on the land treatment facility than in the same crops grown on untreated soils under similar conditions in the same region.

2) The information necessary to make the demonstration required by subsection (b)(1) ~~of this Section~~ must be kept at the facility and must, at a minimum, fulfill the following conditions:

A) It must be based on tests for the specific waste and application rates being used at the facility; and

B) It must include descriptions of crop and soil characteristics, sample selection, criteria, sample size determination, analytical methods, and statistical procedures.

c) Limitation Relating~~relating~~ to Cadmium~~cadmium~~. Food chain crops must not be grown on a land treatment facility receiving waste that contains cadmium unless all requirements of subsections (c)(1)(A) through (c)(1)(C) ~~of this Section~~ or all requirements of subsection (c)(2)(A) through (c)(2)(D) ~~of this Section~~ are met.

1) Cadmium Limitation~~limitation~~ for Crops~~crops~~ for Human Consumption~~human consumption~~. Application of waste must comply with all of the following conditions:

A) The pH of the waste and soil mixture is 6.5 or greater at the time of each waste application, except for waste containing cadmium at concentrations of 2 mg/kg (dry weight) or less;

B) The annual application of cadmium from waste does not exceed 0.5 ~~kilograms per hectare (~~kg/ha~~)~~ (0.45 lb/acre) on land used for production of tobacco, leafy vegetables, or root crops grown for human consumption. For other food chain crops the annual cadmium application rate does not exceed 0.5 kg/ha (0.45 lb/acre).~~the following:~~

~~ANNUAL CADMIUM APPLICATION RATE (kilograms per hectare)~~

| | |
|---|---|
| ~~Present to June 30, 1984~~ | ~~2.0~~ |
| ~~July 1, 1984 to December 31, 1986~~ | ~~1.25~~ |
| ~~Beginning January 1, 1987~~ | ~~0.5~~ |

C) The cumulative application of cadmium from waste does not exceed the levels in either subsection (c)(1)(C)(i) or (c)(1)(C)(ii) ~~of this Section~~.

i) Maximum Cumulative Application~~cumulative application~~

of Cadmium~~cadmium.~~

Maximum Cumulative Application of Cadmium~~MAXIMUM CUMULATIVE APPLICATION OF CADMIUM~~
(kilograms per hectare)

For Background Soil~~FOR BACKGROUND SOIL~~ pH Less Than~~LESS THAN~~ 6.5

| Soil Cation Exchange Capacity~~cation exchange capacity~~ (milliequivalents per 100 grams) | |
|---|---|
| Less than 5 | 5 |
| 5 to 15 | 5 |
| Greater than 15 | 5 |

FOR BACKGROUND SOIL pH GREATER THAN 6.5

| Soil Cation Exchange Capacity~~cation exchange capacity~~ (milliequivalents per 100 grams) | |
|---|---|
| Less than 5 | 5 |
| 5 to 15 | 10 |
| Greater than 15 | 20 |

ii) For soils with a background pH of less than 6.5, the cumulative cadmium application rate does not exceed the levels below (provided, that the pH of the waste and soil mixture is adjusted to and maintained at 6.5 or greater whenever food chain crops are grown):

Maximum Cumulative Application of Cadmium~~MAXIMUM CUMULATIVE APPLICATION OF CADMIUM~~
(kilograms per hectare)
For Background Soil~~FOR BACKGROUND SOIL~~ pH Less Than~~LESS THAN~~ 6.5
with~~WITH~~ pH Adjustment~~ADJUSTMENT~~

| Soil cation~~Cation~~ exchange capacity (milliequivalents per 100 grams) | |
|---|---|
| Less than 5 | 5 |
| 5 to 15 | 10 |
| Greater than 15 | 20 |

2) Cadmium limitation for crops for animal feed. Application of waste must comply with all of the following conditions:

A) The only food chain crop produced is animal feed;

B) The pH of the waste and soil mixture is 6.5 or greater at the time of waste application or at the time the crop is planted, whichever occurs later and this pH level is maintained whenever food chain crops are grown;

C) There is a facility operating plan that demonstrates how the animal feed will be distributed to preclude ingestion by humans. The facility operating plan describes the measures to be taken to safeguard against possible health hazards from cadmium entering the food chain that may result from alternative land uses; and

D) Future property owners are notified by a stipulation in the land record or property deed that states that the property has received waste at high cadmium application rates and that food chain crops must not be grown except in compliance with subsection (c)(2)~~ of this Section~~.

BOARD NOTE: As required by Section 725.173, if an owner or operator grows food chain crops on his land treatment facility, he must place the information developed in this Section in the operating record of the facility.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.378 Unsaturated Zone (Zone of Aeration) Monitoring**

a) The owner or operator must have in writing, and must implement, an unsaturated zone monitoring plan that is designed to accomplish the following:

1) It must detect the vertical migration of hazardous waste and hazardous waste constituents under the active portion of the land treatment facility, and

2) It must provide information on the background concentrations of the hazardous waste and hazardous waste constituents in similar but untreated soil nearby. This background monitoring must be conducted before or in conjunction with the monitoring required under subsection (a)(1)~~ of this Section~~.

b) The unsaturated zone monitoring plan must include, at a minimum, both of the following:

1) Soil monitoring using soil cores, and

2) Soil-pore water monitoring using devices, such as lysimeters.

c) To comply with subsection (a)(1)~~ of this Section~~, the owner or operator must demonstrate in his unsaturated zone monitoring plan that ensures the following:

1) The depth at which soil and soil-pore water samples are to be taken is below the depth to which the waste is incorporated into the soil;

2) The number of soil and soil-pore water samples to be taken is based on the variability of the following:

A) The hazardous waste constituents (as identified in Section 725.373(a) and(b)) in the waste and in the soil, and

B) The soil types; and

3) The frequency and timing of soil and soil-pore water sampling is based on the frequency, time, and rate of waste application, proximity to ground water, and soil permeability.

d) The owner or operator must keep at the facility its unsaturated zone monitoring plan and the rationale used in developing this plan.

e) The owner or operator must analyze the soil and soil-pore water samples for the hazardous waste constituents that were found in the waste during the waste analysis under Section 725.373(a) and (b).

BOARD NOTE: As required by Section 725.173, the owner or operator must place all data and information developed under this Section in the operating record of the facility.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.380 Closure and Post-Closure Care**

a) In the closure plan under Section 725.212 and the post-closure plan under Section 725.218 the owner or operator must address the following objectives and indicate how they will be achieved:

1) Control of the migration of hazardous waste and hazardous waste constituents from the treated area into the groundwater;

2) Control of the release of contaminated runoff from the facility into surface water;

3) Control of the release of airborne particulate contaminants caused by wind erosion; and

4) Compliance with Section 725.376 concerning the growth of food-chain crops.

b) The owner or operator must consider at least the following factors in addressing the closure and post-closure care objectives of subsection (a)~~ of this Section~~:

1) The type and amount of hazardous waste and hazardous waste constituents applied to the land treatment facility;

2) The mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;

3) The site location, topography, and surrounding land use with respect to the potential effects of pollutant migration (e.g., proximity to groundwater,

surface water, and drinking water sources);

4) Climate, including amount, frequency, and pH of precipitation;

5) Geological and soil profiles and surface and subsurface hydrology of the site and soil characteristics, including cation exchange capacity, total organic carbon, and pH;

6) Unsaturated zone monitoring information obtained under Section 725.378; and

7) The type, concentration, and depth of migration of hazardous waste constituents in the soil, as compared to their background concentrations.

c) The owner or operator must consider at least the following methods in addressing the closure and post-closure care objectives of subsection (a)~~ of this Section~~:

1) Removal of contaminated soils;

2) Placement of a final cover, considering the following:

A) Functions of the cover (e.g., infiltration control, erosion and runoff control, and wind erosion control); and

B) Characteristics of the cover, including material, final surface contours, thickness, porosity and permeability, slope, length of run of slope, and type of vegetation on the cover; and

3) Monitoring of groundwater.

d) In addition to the requirements of Subpart G of this Part during the closure period the owner or operator of a land treatment facility must do the following:

1) It must continue unsaturated zone monitoring in a manner and frequency specified in the closure plan, except that soil pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone;

2) It must maintain the run-on control system required under Section

725.372(b);

3) It must maintain the run-off management system required under Section 725.372(c); and

4) It must control wind dispersal of particulate matter that may be subject to wind dispersal.

e) For the purpose of complying with Section 725.215, when closure is completed the owner or operator may submit to the Agency certification both by the owner or operator and by an independent, qualified soil scientist, in lieu of a qualified Professional Engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

f) In addition to the requirements of Section 725.217, during the post-closure care period the owner or operator of a land treatment unit must fulfill the following requirements:

1) It must continue soil-core monitoring by collecting and analyzing samples in a manner and frequency specified in the post-closure plan;

2) It must restrict access to the unit as appropriate for its post-closure use;

3) It must assure that growth of food chain crops complies with Section 725.376; and

4) It must control wind dispersal of hazardous waste.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

SUBPART N: LANDFILLS

**Section 725.401 Design Requirements**

a) The owner or operator of each new landfill unit, each lateral expansion of a landfill unit, and each replacement of an existing landfill unit must install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal system, in accordance with 35 Ill. Adm. Code 724.401(c), unless exempted by 35 Ill. Adm. Code 724.401(d),

(e) or (f).

b) The owner or operator of each unit referred to in subsection (a) ~~of this Section~~ must notify the Agency at least 60 days prior to receiving waste. The owner or operator of each facility submitting notice must file a Part B application within six months of the receipt of such notice.

c) The owner or operator of any replacement landfill unit is exempt from subsection (a) ~~of this Section~~ if both of the following are true:

1) The existing unit was constructed in compliance with the design standards of 35 Ill. Adm. Code 724.401(c), (d), and (e); and

BOARD NOTE: The cited subsections implemented the design standards of sections 3004(o)(1)(A)(i) and (o)(5) of RCRA~~the Resource Conservation and Recovery Act~~ (42 USC 6924(o)(1)(A)(i) and (o)(5)).

2) There is no reason to believe that the liner is not functioning as designed.

d) The Agency must not require a double liner as set forth in subsection (a) ~~of this Section~~ for any monofill, if the following conditions are fulfilled:

1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents that render the wastes hazardous for reasons other the toxicity characteristic in 35 Ill. Adm. Code 721.124, with USEPA hazardous waste numbers D004 through D017; and

2) Alternative Demonstration~~demonstration.~~

A) Liner and Location Requirements~~location requirements.~~

i) The monofill has at least one liner for which there is no evidence that such liner is leaking;

ii) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is defined in 35 Ill. Adm. Code 702.110); and

iii) The monofill is in compliance with generally applicable groundwater monitoring requirements for facilities with RCRA permits; or

B) The owner or operator demonstrates to the Board that the monofill is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into groundwater or surface water at any future time.

e) In the case of any unit in which the liner and leachate collection system have been installed pursuant to the requirements of subsection (a)~~ of this Section~~, and in good faith compliance with subsection (a) ~~of this Section~~ and with guidance documents governing liners and leachate collection systems under subsection (a) ~~of this Section~~, the Agency must not require a liner or leachate collection system that is different from that which was so installed pursuant to subsection (a) ~~of this Section~~ when issuing the first permit to such facility, except that the Agency is not precluded from requiring installation of a new liner when the Agency finds that any liner installed pursuant to the requirements of subsection (a) ~~of this Section~~ is leaking.

f) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 25-year storm.

g) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24 hour, 25-year storm.

h) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

i) The owner or operator of a landfill containing hazardous waste that is subject to dispersal by wind must cover or otherwise manage the landfill so that wind dispersal of the hazardous waste is controlled.

BOARD NOTE: As required by Section 725.113, the waste analysis plan must include analyses needed to comply with Sections 725.412, 725.413, and 725.414. As required by Section 725.173, the owner or operator must place the results of

these analyses in the operating record of the facility.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.402 Action Leakage Rate**

a) The owner or operator of landfill units subject to Section 725.401(a) must submit a proposed action leakage rate to the Agency when submitting the notice required under Section 725.401(b). Within 60 days after receipt of the notification, the Agency must establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this Section, or extend the review period for up to 30 days. If no action is taken by the Agency before the original 60 or extended 90 day review periods, the action leakage rate will be approved as proposed by the owner or operator.

b) The Agency must approve an action leakage rate for landfill units subject to Section 725.401(a). The action leakage rate is the maximum design flow rate that the LDS can remove without the fluid head on the bottom liner exceeding one foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material, etc.); construction, operation, and location of the LDS; waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS; and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover, and creep of synthetic components of the system; overburden pressures; etc.).

c) To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly or monthly flow rate from the monitoring data obtained under Section 725.404 to an average daily flow rate (gallons per acre per day) for each sump. The average daily flow rate for each sump must be calculated weekly during the active life and closure period, and monthly during the post-closure care period unless the Agency approves a different period under Section 725.404(b).

d) Final Agency determinations pursuant to this Section are deemed to be permit denials for purposes of appeal to the Board pursuant to Section 40 of the Environmental Protection Act ~~[415 ILCS 5/40]~~.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.403 Response Actions**

a) The owner or operator of landfill units subject to Section 725.401(a) must develop and keep on site until closure of the facility a response action plan. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in subsection (b)~~ of this Section~~.

b) If the flow rate into the LDS exceeds the action leakage rate for any sump, the owner or operator must do each of the following:

1) Notify the Agency in writing of the exceedance within seven days after the determination;

2) Submit a preliminary written assessment to the Agency within 14 days after the determination, as to the amount of liquids; likely sources of liquids; possible location, size, and cause of any leaks; and short-term actions taken and planned;

3) Determine to the extent practicable the location, size, and cause of any leak;

4) Determine whether waste receipt should cease or be curtailed; whether any waste should be removed from the unit for inspection, repairs, or controls; and whether or not the unit should be closed;

5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Agency the results of the determinations specified in subsections (b)(3) through (b)(5)~~ of this Section~~, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the LDS exceeds the action leakage rate, the owner or operator must submit to the Agency a report summarizing the results of any remedial actions taken and actions planned.

c) To make the leak or remediation determinations in subsections (b)(3) through

(b)(5)~~ of this Section~~, the owner or operator must do either of the following:

1) Perform the following assessments:

A) Assess the source of liquids and amounts of liquids by source;

B) Conduct a fingerprint, hazardous constituent or other analyses of the liquids in the LDS to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

C) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

2) Document why such assessments are not needed.

d) Final Agency determinations pursuant to this Section are deemed to be permit denials for purposes of appeal to the Board pursuant to Section 40 of the Environmental Protection Act~~ [415 ILCS 5/40]~~.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.404 Monitoring and Inspections**

a) An owner or operator required to have an LDS under Section 725.401(a) must record the amount of liquids removed from each LDS sump at least once each week during the active life and closure period.

b) After the final cover is installed, the amount of liquids removed from each LDS sump must be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two consecutive months, the amount of liquids in the sumps must be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps must be recorded at least semi-annually. If at any time during the post-closure care period the pump operating level is exceeded at units on quarterly or semi-annual recording schedules, the owner or operator must return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

c) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the Agency based on pump activation level, sump dimensions and level that avoids backup into the drainage layer and minimizes head in the sump. The timing for submission and approval of the proposed "pump operating level" will be in accordance with Section 725.402(a).

d) Final Agency determinations pursuant to this Section are deemed to be permit denials for purposes of appeal to the Board pursuant to Section 40 of the Environmental Protection Act ~~[415 ILCS 5/40]~~.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.410 Closure and Post-Closure Care**

a) At final closure of the landfill or upon closure of any cell, the owner or operator must cover the landfill or cell with a final cover designed and constructed to accomplish the following:

1) It must provide long-term minimization of migration of liquids through the closed landfill;

2) It must function with minimum maintenance;

3) It must promote drainage and minimize erosion or abrasion of the cover;

4) It must accommodate settling and subsidence so that the cover's integrity is maintained; and

5) It must have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

b) After final closure, the owner or operator must comply with all post-closure requirements contained in Section 725.217 through 725.220 including maintenance and monitoring throughout the post-closure care period. The owner or operator must do the following:

1) It must maintain the integrity and effectiveness of the final cover, including making repairs to the cover as necessary to correct the effects of

settling, subsidence, erosion, or other events;

2) It must maintain and monitor the LDS in accordance with 35 Ill. Adm. Code 724.401(c)(3)(D) and (c)(4) and Section 725.404(b), and comply with all other applicable LDS requirements of this Part;

3) It must maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of Subpart F~~ of this Part~~;

4) It must prevent run-on and run-off from eroding or otherwise damaging the final cover; and

5) It must protect and maintain surveyed benchmarks used in complying with Section 725.409.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.412 Special Requirements for Ignitable or Reactive Wastes**

a) Except as provided in subsection (b) ~~of this Section~~ and in Section 725.416, ignitable or reactive waste must not be placed in a landfill, unless the waste and landfill meets all applicable requirements of 35 Ill. Adm. Code 728, and the waste is treated, rendered or mixed before or immediately after placement in a landfill so that both of the following conditions are fulfilled:

1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under 35 Ill. Adm. Code 721.121 or 721.123; and

2) Section 725.117(b) is complied with.

b) Except for prohibited wastes that remain subject to treatment standards in Subpart D of 35 Ill. Adm. Code 728, ignitable waste in containers may be landfilled without meeting the requirements of subsection (a)~~ of this Section~~, provided that the wastes are disposed of in such a way that they are protected from any material or conditions that may cause them to ignite. At a minimum, ignitable wastes must be disposed of in non-leaking containers that are carefully handled and placed so as to avoid heat, sparks, rupture, or any other condition that might cause ignition of the wastes; must be covered daily with soil or other non-combustible material

to minimize the potential for ignition of the wastes; and must not be disposed in cells that contain or will contain other wastes that may generate heat sufficient to cause ignition of the waste.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.414 Special Requirements for Liquid Wastes**

a) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

b) Containers holding free liquids must not be placed in a landfill unless one of the following conditions is fulfilled:

1) One of the following occurs with regard to all free-standing liquid:

A) It has been removed by decanting or other methods;

B) It has been mixed with sorbent or solidified so that free-standing liquid is no longer observed; or

C) It has been otherwise eliminated;

2) The container is very small, such as an ampule;

3) The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

4) The container is a lab pack, as defined in Section 724.416, and is disposed of in accordance with Section 724.416.

c) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095B (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods,", USEPA publication number EPA-530/SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111(a).

d) This subsection (d) corresponds with 40 CFR 265.314(d), which recites a past

effective date. This statement maintains structural parity with the federal regulations.

e) Sorbents used to treat free liquids to be disposed of in landfills must be nonbiodegradable. Nonbiodegradable sorbents are one of the following: materials listed or described in subsection (e)(1)~~ of this Section~~; materials that pass one of the tests in subsection (e)(2)~~ of this Section~~; or materials that are determined by the Board to be nonbiodegradable through the adjusted standard procedure of Section 28.1 of the Act ~~[415 ILCS 5/28.1]~~ and Subpart D of 35 Ill. Adm. Code 104.

1) Nonbiodegradable sorbents are the following:

A) Inorganic minerals, other inorganic materials, and elemental carbon (e.g., aluminosilicates, clays, smectites, Fuller's earth, bentonite, calcium bentonite, montmorillonite, calcined montmorillonite, kaolinite, micas (illite), vermiculites, zeolites, calcium carbonate (organic free limestone), oxides/hydroxides, alumina, lime, silica (sand), diatomaceous earth, perlite (volcanic glass), expanded volcanic rock, volcanic ash, cement kiln dust, fly ash, rice hull ash, activated charcoal/activated carbon, etc.); or

B) High molecular weight synthetic polymers (e.g., polyethylene, high density polyethylene (HDPE), polypropylene, polystyrene, polyurethane, polyacrylate, polynorborene, polyisobutylene, ground synthetic rubber, cross-linked allylstyrene, and tertiary butyl copolymers). This does not include polymers derived from biological material or polymers specifically designed to be degradable; or

C) Mixtures of these nonbiodegradable materials.

2) Tests for Nonbiodegradable Sorbents~~nonbiodegradable sorbents.~~

A) The sorbent material is determined to be nonbiodegradable under ASTM Method G21-70 (1984a) (Standard Practice for Determining Resistance of Synthetic Polymer Materials to Fungi), incorporated by reference in 35 Ill. Adm. Code 720.111(a);

B) The sorbent material is determined to be nonbiodegradable under ASTM Method G22-76 (1984b) (Standard Practice for Determining Resistance of Plastics to Bacteria), incorporated by reference in 35 Ill. Adm. Code 720.111(a); or

C) The sorbent material is determined to be non-biodegradable under OECD Guideline for Testing of Chemicals, Method301B ($CO_2$ Evolution (Modified Sturm Test)), incorporated by reference in 35 Ill. Adm. Code 720.111(a).

f) The placement of any liquid that is not a hazardous waste in a landfill is prohibited. (See 35 Ill. Adm. Code 729.311.)

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.416 Disposal of Small Containers of Hazardous Waste in Overpacked Drums (Lab Packs)**

Small containers of hazardous waste in overpacked drums (lab packs) may be placed in a landfill if the following requirements are met:

a) Hazardous waste must be packaged in non-leaking inside containers. The inside containers must be of a design and constructed of a material that will not react dangerously with, be decomposed by, or be ignited by the waste held therein. Inside containers must be tightly and securely sealed. The inside containers must be of the size and type specified in the USDOT hazardous materials regulations (49 CFR 173 (Shippers − General Requirements for Shipments and Packages), 178 (Specifications for Packagings), and 179 (Specifications for Tank Cars), each incorporated by reference in 35 Ill. Adm. Code 720.111(b)), if those regulations specify a particular inside container for the waste.

b) The inside containers must be overpacked in an open head USDOT-specification metal shipping container (49 CFR 178 (Specifications for Packagings) and 179 (Specifications for Tank Cars), of no more than 416 ~~liter~~ (110 gallon) capacity and surrounded by, at a minimum, a sufficient quantity of sorbent material, determined to be nonbiodegradable in accordance with 35 Ill. Adm. Code 725.414(e) to completely sorb all of the liquid contents of the inside containers. The metal outer container must be full after packing with inside containers and sorbent material.

c) The sorbent material used must not be capable of reacting dangerously with, being decomposed by, or being ignited by the contents of the inside containers, in accordance with Section 725.117(b).

d) Incompatible wastes, as defined in 35 Ill. Adm. Code 720.110, must not be placed in the same outside container.

e) Reactive waste, other than cyanide- or sulfide-bearing waste, as defined in 35 Ill. Adm. Code 721.123(a)(5), must be treated or rendered non-reactive prior to packaging in accordance with subsections (a) through (d)~~ of this Section~~. Cyanide- or sulfide-bearing reactive waste may be packaged in accordance with subsections (a) through (d) ~~of this Section~~ without first being treated or rendered non-reactive.

f) Such disposal is in compliance with the requirements of 35 Ill. Adm. Code 728. Persons that incinerate lab packs according to the requirements of 35 Ill. Adm. Code 728.142(c)(1) may use fiber drums in place of metal outer containers. Such fiber drums must meet the USDOT specifications in 49 CFR 173.12 (Exceptions for Shipments of Waste Materials), incorporated by reference in 35 Ill. Adm. Code 720.111(b), and be overpacked according to subsection (b)~~ of this Section~~.

g) Pursuant to 35 Ill. Adm. Code 729.312, the use of labpacks for disposal of liquid wastes or wastes containing free liquids allowed under this Section is restricted to labwaste and non-periodic waste, as those terms are defined in that Part.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

SUBPART O: INCINERATORS

**Section 725.440 Applicability**

a) The regulations in this Subpart O apply to owners or operators of hazardous waste incinerators (as defined in 35 Ill. Adm. Code 720.110), except as 35 Ill. Adm. Code 724.101 provides otherwise.

b) Integration of the MACT Standards~~.~~

1) Except as provided by subsections (b)(2) and (b)(3), the standards of this

Part no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of subpart EEE of 40 CFR 63 (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors), incorporated by reference in 35 Ill. Adm. Code 720.111(b), by conducting a comprehensive performance test and submitting to the Agency a Notification of Compliance, under 40 CFR 63.1207(j) and 63.1210(d), documenting compliance with the requirements of subpart EEE of 40 CFR 63.

2) The MACT standards of subpart EEE of 40 CFR 63 do not replace the closure requirements of Section 724.451 or the applicable requirements of Subparts A through H, BB, and CC~~ of this Part~~.

3) Section 725.445, generally prohibiting burning of hazardous waste during startup and shutdown, remains in effect if the owner or operator elects to comply with 35 Ill. Adm. Code 703.320(b)(1)(A) to minimize emissions of toxic compounds from startup and shutdown.

BOARD NOTE: Operating conditions used to determine effective treatment of hazardous waste remain effective after the owner or operator demonstrates compliance with the standards of subpart EEE of 40 CFR 63. Sections 9.1 and 39.5 of the Environmental Protection Act ~~[415 ILCS 5/9.1 and 39.5]~~ make the federal MACT standards directly applicable to entities in Illinois and authorize the Agency to issue permits based on the federal standards.

c) An owner or operator of an incinerator that burns hazardous waste is exempt from all of the requirements of this Subpart O, except Section 725.451 (Closure), provided that the owner or operator has documented, in writing, that the waste would not reasonably be expected to contain any of the hazardous constituents listed in Appendix H to 35 Ill. Adm. Code 721 and such documentation is retained at the facility, if the waste to be burned is one of the following:

1) It is listed as a hazardous waste in Subpart D of 35 Ill. Adm. Code 721, solely because it is ignitable (Hazard Code I), corrosive (Hazard Code C), or both;

2) It is listed as a hazardous waste in Subpart D of 35 Ill. Adm. Code 721, solely because it is reactive (Hazard Code R) for characteristics other than

those listed in 35 Ill. Adm. Code 721.123(a)(4) and (a)(5), and will not be burned when other hazardous wastes are present in the combustion zone;

3) It is a hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous wastes under Subpart C of 35 Ill. Adm. Code 721; or

4) It is a hazardous waste solely because it possesses the reactivity characteristics described by 35 Ill. Adm. Code 721.123(a)(1), (a)(2), (a)(3), (a)(6), (a)(7), or (a)(8) and will not be burned when other hazardous wastes are present in the combustion zone.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

SUBPART P: THERMAL TREATMENT

**Section 725.470 Other Thermal Treatment**

The regulations in this Subpart P apply to owners and operators of facilities that thermally treat hazardous waste in devices other than enclosed devices using controlled flame combustion except, as Section 725.101 provides otherwise. Thermal treatment in enclosed devices using controlled flame combustion is subject to the requirements of Subpart O ~~of this Part~~ if the unit is an incinerator, and Subpart H of 35 Ill. Adm. Code 726, if the unit is a boiler or industrial furnace, as defined in 35 Ill. Adm. Code 720.110.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

SUBPART Q: CHEMICAL, PHYSICAL, AND BIOLOGICAL TREATMENT

**Section 725.500 Applicability**

The regulations in this Subpart Q apply to owners and operators of facilities that treat hazardous waste by chemical, physical, or biological methods in other than tanks, surface impoundments, and land treatment facilities, except as Section 725.101 provides otherwise. Chemical, physical, and biological treatment of hazardous waste in tanks, surface impoundments and land treatment facilities must be conducted in accordance with Subparts J, K, and M ~~of this Part~~, respectively.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

SUBPART R: UNDERGROUND INJECTION

**Section 725.530 Applicability**

Except as Section 725.101 provides otherwise, the following apply:

a) The owner or operator of a facility that disposes of hazardous waste by underground injection is excluded from the requirements of Subparts G and H ~~of this Part~~.

b) The requirements of this Subpart R apply to owners and operators of wells that are used to dispose of hazardous waste which are classified as Class I under 35 Ill. Adm. Code 704.106(a) and which are classified as Class IV under 35 Ill. Adm. Code 704.106(d).

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

SUBPART W: DRIP PADS

**Section 725.540 Applicability**

a) The requirements of this Subpart W apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation or surface water run-on to an associated collection system.

1) An "existing drip pad" is one that fulfills the following conditions:

A) It was constructed before December 6, 1990; or

B) It was one for which the owner or operator had a design and had entered into binding financial or other agreements for construction prior to December 6, 1990.

2) All other drip pads are "new drip pads~~.~~".

3) The requirements of Section 725.543(b)(3) to install a leak collection system applies only to those drip pads that are constructed after December 24, 1992, except for those constructed after December 24, 1992 for which

the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 24, 1992.

b) The owner or operator of any drip pad that is inside or under a structure that provides protection from precipitation so that neither run-off nor run-on is generated is not subject to regulation under Section 724.672(e) or (f).

c) The requirements of this subsection are not applicable to the management of infrequent and incidental drippage in storage yards provided that the owner or operator maintains and complies with a written contingency plan that describes how the owner or operator will respond immediately to the discharge of infrequent and incidental drippage. At a minimum, the contingency plan must describe how the owner or operator will do the following:

1) Clean up the drippage;

2) Document the clean-up of the drippage;

3) Retain documentation regarding the clean-up for three years; and

4) Manage the contaminated media in a manner consistent with State and federal regulations.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.541 Assessment of Existing Drip Pad Integrity**

a) For each existing drip pad, the owner or operator must evaluate the drip pad and determine that it meets all of the requirements of this Subpart W, except the requirements for liners and leak detection systems of Section 725.543(b). The~~No later than June 6, 1991, the~~ owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified Professional Engineer that attests to the results of the evaluation. The assessment must be reviewed, updated, and re-certified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all the standards of Section 725.543 are complete. The evaluation must document the extent to which the drip pad meets each of the design and operating standards of Section 725.543, except the standards for liners and leak detection systems specified in Section 725.543(b).

b) The owner or operator must develop a written plan for upgrading, repairing and modifying the drip pad to meet the requirements of Section 725.543(b) and submit the plan to the Agency no later than two years before the date that all repairs, upgrades, and modifications will be complete. This written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of Section 725.543. The plan must be reviewed and certified by a qualified Professional Engineer.

c) Upon completion of all repairs and modifications, the owner or operator must submit to the Agency, the as-built drawings for the drip pad, together with a certification by a qualified Professional Engineer attesting that the drip pad conforms to the drawings.

d) If the drip pad is found to be leaking or unfit for use, the owner or operator must comply with the provisions of Section 725.543(m) or close the drip pad in accordance with Section 725.545.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.543 Design and Operating Requirements**

a) Drip pads must fulfill the following requirements:

1) It must not be constructed of earthen materials, wood, or asphalt, unless the asphalt is structurally supported;

2) It must be sloped to free-drain to the associated collection system treated wood drippage, rain, other waters, or solutions of drippage and water or other wastes;

3) It must have a curb or berm around the perimeter;

4) In addition, the drip pad must fulfill the following requirements:

A) It must have a hydraulic conductivity of less than or equal to 1 x $10^{-7}$ centimeters per second, e.g., existing concrete drip pads must be sealed, coated, or covered with a surface material with a hydraulic conductivity of less than or equal to 1 x $10^{-7}$ centimeters

per second such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system. This surface material must be maintained free of cracks and gaps that could adversely affect its hydraulic conductivity, and the material must be chemically compatible with the preservatives that contact the drip pad. The requirements of this provision apply only to the existing drip pads and those drip pads for which the owner or operator elects to comply with Section 725.542(b) instead of Section 725.542(a).

B) The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified Professional Engineer that attests to the results of the evaluation. The assessment must be reviewed, updated, and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this Section, except for in subsection (b)~~ of this Section~~.

5) It must be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of installation, and the stress of daily operations, e.g., variable and moving loads such as vehicle traffic, movement of wood, etc.

BOARD NOTE: In judging the structural integrity requirement of this subsection (a), the Agency should generally consider applicable standards established by professional organizations generally recognized by the industry, including ACI 318-83 (Building Code Requirements for Reinforced Concrete) or ASTM C 94-90~~,~~ (Standard Specification for Ready-Mixed Concrete), incorporated by reference in 35 Ill. Adm. Code 720.111(a).

b) If an owner or operator elects to comply with Section 725.542(a) instead of Section 725.542(b), the drip pad must have the following features:

1) A synthetic liner installed below the drip pad that is designed, constructed, and installed to prevent leakage from the drip pad into the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the drip pad. The liner must be constructed of materials that will prevent waste from being absorbed into

the liner and to prevent releases into the adjacent subsurface soil or groundwater or surface water during the active life of the facility. The liner must be constructed as follows:

A) It must be constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or drip pad leakage to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation (including stresses from vehicular traffic on the drip pad);

B) It must be placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

C) It must be installed to cover all surrounding earth that could come in contact with the waste or leakage; and

2) A leakage detection system immediately above the liner that is designed, constructed, maintained, and operated to detect leakage from the drip pad. The leakage detection system must be constructed as follows:

A) It must be constructed of materials that fulfill the following requirements:

i) They are chemically resistant to the waste managed in the drip pad and the leakage that might be generated; and

ii) They are of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying materials and by any equipment used at the drip pad; and

B) It must be designed and operated to function without clogging through the scheduled closure of the drip pad; and

C) It must be designed so that it will detect the failure of the drip pad or the presence of a release of hazardous waste or accumulated

liquid at the earliest practicable time.

3) A leakage collection system immediately above the liner that is designed, constructed, maintained, and operated to collect leakage from the drip pad such that it can be removed from below the drip pad. The date, time, and quantity of any leakage collected in this system and removed must be documented in the operating log.

c) Drip pads must be maintained such that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad.

BOARD NOTE: See subsection (m) ~~of this Section~~ for remedial action required if deterioration or leakage is detected.

d) The drip pad and associated collection system must be designed and operated to convey, drain and collect liquid resulting from drippage or precipitation in order to prevent run-off.

e) Unless the drip pad is protected by a structure, as described in Section 725.540(b), the owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the drip pad during peak discharge from at least a 24-hour, 25-year storm, unless the system has sufficient excess capacity to contain any run-on that might enter the system.

f) Unless the drip pad is protected by a structure or cover, as described in Section 725.540(b), the owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

g) The drip pad must be evaluated to determine that it meets the requirements of subsections (a) through (f)~~ of this Section~~. The owner or operator must obtain a statement from a qualified, Professional Engineer certifying that the drip pad design meets the requirements of this Section.

h) Drippage and accumulated precipitation must be removed from the associated collection system as necessary to prevent overflow onto the drip pad.

i) The drip pad surface must be cleaned thoroughly at least once every seven days

using an appropriate and effective cleaning technique, including but not limited to, rinsing, washing with detergents or other appropriate solvents, or steam cleaning, with residues being properly managed, such that accumulated residues of hazardous waste or other materials are removed as to allow weekly inspections of the entire drip pad surface without interference or hindrance from accumulated residues of hazardous waste or other materials on the drip pad. The owner or operator must document, in the facility's operating log, the date and time of each cleaning and the cleaning procedure.

j) Drip pads must be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment.

k) After being removed from the treatment vessel, treated wood from pressure and non-pressure processes must be held on the drip pad until drippage has ceased. The owner or operator must maintain records sufficient to document that all treated wood is held on the pad, in accordance with this Section, following treatment.

l) Collection and holding units associated with run-on and run-off control systems must be emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system.

m) Throughout the active life of the drip pad, if the owner or operator detects a condition that may have caused or has caused a release of hazardous waste, the condition must be repaired within a reasonably prompt period of time following discovery, in accordance with the following procedures:

1) Upon detection of a condition that may have caused or has caused a release of hazardous waste (e.g., upon detection of leakage in the leak detection system), the owner or operator must perform the following acts:

A) It must enter a record of the discovery in the facility operating log;

B) It must immediately remove from service the portion of the drip pad affected by the condition;

C) It must determine what steps must be taken to repair the drip pad, clean up any leakage from below the drip pad, and establish a

schedule for accomplishing the clean up and repairs;

D) Within 24 hours after discovery of the condition, the owner or operator must notify the Agency of the condition and, within 10 working days, provide written notice to the Agency with a description of the steps that will be taken to repair the drip pad and clean up any leakage, and the schedule for accomplishing this work.

2) The Agency must: review the information submitted; make a determination regarding whether the pad must be removed from service completely or partially until repairs and clean up are complete; and notify the owner or operator of the determination and the underlying rationale in writing.

3) Upon completing all repairs and clean up, the owner or operator must notify the Agency in writing and provide a certification, signed by an independent, qualified, registered professional engineer, that the repairs and clean up have been completed according to the written plan submitted in accordance with subsection (m)(1)(D)~~ of this Section~~.

n) The owner or operator must maintain, as part of the facility operating log, documentation of past operating and waste handling practices. This must include identification of preservative formulations used in the past, a description of drippage management practices and a description of treated wood storage and handling practices.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

SUBPART AA: AIR EMISSION STANDARDS FOR PROCESS VENTS

**Section 725.930 Applicability**

a) This Subpart AA applies to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in Section 725.101).

b) Except for Section 725.934(d) and (e), this Subpart AA applies to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that manage hazardous wastes with

organic concentrations of at least 10 ppmw (parts per million by weight), if these operations are conducted in one of the following:

1) A unit that is subject to the permitting requirements of 35 Ill. Adm. Code 702, 703, and 705;

2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of 35 Ill. Adm. Code 722.117~~722.134(a)~~ (i.e., a hazardous waste recycling unit that is not a 90-day tank or container) and that is located on a hazardous waste management facility otherwise subject to the permitting requirements of 35 Ill. Adm. Code 702, 703, and 705; or

3) A unit that is exempt from permitting under the provisions of 35 Ill. Adm. Code 722.117~~722.134(a)~~ (i.e., a "90-day" tank or container) and which is not a recycling unit under the requirements of 35 Ill. Adm. Code 721.106.

BOARD NOTE: The requirements of Sections 725.932 through 725.936 apply to process vents on hazardous waste recycling units previously exempt under 35 Ill. Adm. Code 721.106(c)(1). Other exemptions under 35 Ill. Adm. Code 721.104 and 725.101(c) are not affected by these requirements.

c) Agency decisions pursuant to this Part must be made in writing, are in the nature of permit decisions pursuant to Section 39 of the Environmental Protection Act and may be appealed to the Board pursuant to 35 Ill. Adm. Code 105.

d) The requirements of this Subpart AA do not apply to the process vents at a facility where the facility owner or operator certifies that all of the process vents that would otherwise be subject to this Subpart AA are equipped with and operating air emission controls in accordance with the process vent requirements of an applicable federal Clean Air Act regulation codified under 40 CFR 60, 61, or 63. The documentation of compliance under regulations at 40 CFR 60, 61, or 63 must be kept with, or made readily available with, the facility operating record.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.931 Definitions**

As used in this Subpart AA, all terms not defined in this Subpart AA have the meaning given them in 35 Ill. Adm. Code 724.931, section 1004 of RCRA~~the Resource Conservation and Recovery Act~~, incorporated by reference in 35 Ill. Adm. Code 720.111, and 35 Ill. Adm. Code 720 through 728, and 738.

"BTU" means British thermal unit.

"ft" means foot.

"h" means hour.

"kg" means kilogram.

"kPa" means kilopascals.

"lb" means pound.

"m" means meter.

"Mg" means Megagrams, or metric tonnes.

"MJ" means Megajoules, or ten to the sixth Joules.

"MW" means Megawatts.

"ppmv" means parts per million by volume.

"ppmw" meant parts per million by weight.

"s" means second.

"scm" means standard cubic meter.

"scft" meant standard cubic foot.

"yr" means year.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.932 Standards: Process Vents**

a) The owner or operator of a facility with process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations managing hazardous wastes with organic concentrations of at least 10 ppmw must do either of the following:

1) Reduce total organic emissions from all affected process vents at the facility below 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 tons/yr); or

2) Reduce, by use of a control device, total organic emissions from all affected process vents at the facility by 95 weight percent.

b) If the owner or operator installs a closed-vent system and control device to comply with the provisions of subsection (a)~~ of this Section~~, the closed-vent system and control device must meet the requirements of Section 725.933.

c) Determinations of vent emissions and emission reductions or total organic compound concentrations achieved by add-on control devices must be based on either engineering calculations or performance tests. If performance tests are used to determine vent emissions, emission reductions, or total organic compound concentrations achieved by add-on control devices, the performance tests must conform with the requirements of Section 725.934(c).

d) When an owner or operator and the Agency do not agree on determinations of vent emissions or emission reductions or total organic compound concentrations achieved by add-on control devices based on engineering calculations, the test methods in Section 725.934(c) must be used to resolve the disagreement.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.933 Standards: Closed-Vent Systems and Control Devices**

a) Compliance Required~~.~~

1) Owners or operators of closed-vent systems and control devices used to comply with provisions of this Part must comply with the provisions of this Section.

2) Implementation Schedule~~.~~

A) The owner or operator of an existing facility that cannot install a closed-vent system and control device to comply with the provisions of this Subpart AA on the effective date that the facility becomes subject to the provisions of this Subpart AA must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this Subpart AA for installation and startup.

B) Any unit that ~~begins operation after December 21, 1990, and which~~ is subject to the provisions of this Subpart AA when operation begins, must comply with the rules immediately (i.e., must have control devices installed and operating on startup of the affected unit); the 30-month implementation schedule does not apply.

C) The owner or operator of any facility in existence on the effective date of a statutory or regulatory amendment that renders the facility subject to this Subpart AA must comply with all requirements of this Subpart AA as soon as practicable but no later than 30 months after the effective date of the amendment. When control equipment required by this Subpart AA cannot be installed and begin operation by the effective date of the amendment, the facility owner or operator must prepare an implementation schedule that includes the following information: specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this Subpart AA. The owner or operator must enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.

D) An owner or operator of a facility or unit that becomes newly subject to the requirements of this Subpart AA ~~after December 8,~~

~~1997,~~ due to an action other than those described in subsection (a)(2)(iii) must comply with all applicable requirements immediately (i.e., the facility or unit must have control devices installed and operating on the date the facility or unit becomes subject to this Subpart AA; the 30-month implementation schedule does not apply).

b) A control device involving vapor recovery (e.g., a condenser or adsorber) must be designed and operated to recover the organic vapors vented to it with an efficiency of 95 weight percent or greater unless the total organic emission limits of Section 725.932(a)(1) for all affected process vents is attained at an efficiency less than 95 weight percent.

c) An enclosed combustion device (e.g., a vapor incinerator, boiler, or process heater) must be designed and operated to reduce the organic emissions vented to it by 95 weight percent or greater; to achieve a total organic compound concentration of 20 ppmv, expressed as the sum of the actual compounds, not carbon equivalents, on a dry basis corrected to three percent oxygen; or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760 ~~degrees Celsius (~~°C~~)~~. If a boiler or process heater is used as the control device, then the vent stream must be introduced into the flame combustion zone of the boiler or process heater.

d) Flares~~.~~

1) A flare must be designed for and operated with no visible emissions as determined by the methods specified in subsection (e)(1) except for periods not to exceed a total of five minutes during any two consecutive hours.

2) A flare must be operated with a flame present at all times, as determined by the methods specified in subsection (f)(2)(C).

3) A flare must be used only if the net heating value of the gas being combusted is 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted, or if the net heating value of the gas being combusted is 7.45 MJ/scm (200 Btu/scf) or greater if the flare is nonassisted. The net heating value of the gas being combusted must be determined by the methods specified in subsection (e)(2).

4) Exit Velocity.

A) A steam-assisted or nonassisted flare must be designed for and operated with an exit velocity, as determined by the methods specified in subsection (e)(3), less than 18.3 m/s (60 ft/s), except as provided in subsections (d)(4)(B) and (d)(4)(C).

B) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in subsection (e)(3), equal to or greater than 18.3 m/s (60 ft/s) but less than 122 m/s (400 ft/s) is allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf).

C) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in subsection (e)(3), less than the velocity, V as determined by the method specified in subsection (e)(4) and less than 122 m/s (400 ft/s) is allowed.

5) An air-assisted flare must be designed and operated with an exit velocity less than the velocity, V, as determined by the method specified in subsection (e)(5).

6) A flare used to comply with this Section must be steam-assisted, air-assisted, or nonassisted.

e) Compliance Determination and Equations.

1) Reference Method 22 (Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares) in appendix A to 40 CFR 60 (Test Methods), incorporated by reference in 35 Ill. Adm. Code 720.111(b), must be used to determine the compliance of a flare with the visible emission provisions of this Subpart AA. The observation period is two hours and must be used according to Reference Method 22.

2) The net heating value of the gas being combusted in a flare must be calculated using the following equation:

$$H_T = K \times \sum_{i=1}^{n} C_i \times H_i$$

Where:

$H_T$ = the net heating value of the sample in MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to 1 mole is 20 °C~~;~~

K = $1.74 \times 10^{-7}$ (1/ppm) (g mol/scm) (MJ/kcal) where the standard temperature for (g mol/scm) is 20 °C~~;~~

$\Sigma X_i$ = the sum of the values of X for each component i, from i=1 to n~~;~~

$C_i$ = the concentration of sample component i in ppm on a wet basis, as measured for organics by Reference Method 18 (Measurement of Gaseous Organic Compound Emissions by Gas Chromatography) in appendix A to 40 CFR 60 (Test Methods), and for carbon monoxide, by ASTM D 1946-90 (Standard Practice for Analysis of Reformed Gas by Gas Chromatography), each incorporated by reference in 35 Ill. Adm. Code 720.111~~; and~~

$H_i$ = the net heat of combustion of sample component i, kcal/gmol at 25 °C and 760 mm Hg. The heats of combustion must be determined using ASTM D 2382-88 (Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High Precision Method)), incorporated by reference in 35 Ill. Adm. Code 720.111(a), if published values are not available or cannot be calculated~~.~~

3) The actual exit velocity of a flare must be determined by dividing the volumetric flow rate (in units of standard temperature and pressure), as determined by Reference Methods 2 (Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube)), 2A (Direct Measurement of Gas Volume through Pipes and Small Ducts), 2C (Determination of Gas Velocity and Volumetric Flow Rate in Small Stacks or Ducts (Standard Pitot Tube)), or 2D (Measurement of Gas Volume Flow Rates in Small Pipes and Ducts) in appendix A to 40 CFR 60 (Test Methods),

incorporated by reference in 35 Ill. Adm. Code 720.111(b), as appropriate, by the unobstructed (free) cross-sectional area of the flare tip.

4) The maximum allowed velocity in m/s, V for a flare complying with subsection (d)(4)(C) must be determined by the following equation:

$$\log_{10}\left(V_{max}\right) = \frac{H_T + 28.8}{31.7}$$

Where:

$\log_{10}$ = logarithm to the base 10~~; and~~
$H_T$ = the net heating value as determined in subsection (e)(2)~~.~~

5) The maximum allowed velocity in m/s, V, for an air-assisted flare must be determined by the following equation:

$$V = 8.706 + 0.7084\,H_T$$

Where:

$H_T$ = the net heating value as determined in subsection (e)(2)~~.~~

f) The owner or operator must monitor and inspect each control device required to comply with this Section to ensure proper operation and maintenance of the control device by implementing the following requirements:

1) Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that provides a record of vent stream flow from each affected process vent to the control device at least once every hour. The flow indicator sensor must be installed in the vent stream at the nearest feasible point to the control device inlet but before being combined with other vent streams.

2) Install, calibrate, maintain, and operate according to the manufacturer's specifications a device to continuously monitor control device operation, as specified below:

A) For a thermal vapor incinerator, a temperature monitoring device

equipped with a continuous recorder. The device must have accuracy of ±1 percent of the temperature being monitored in °C or ±0.5 °C, whichever is greater. The temperature sensor must be installed at a location in the combustion chamber downstream of the combustion zone.

B) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device must be capable of monitoring temperature at two locations and have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5° C, whichever is greater. One temperature sensor must be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor must be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

C) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

D) For a boiler or process heater having a design heat input capacity less than 44 MW, a temperature monitoring device equipped with a continuous recorder. The device must have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5° C, whichever is greater. The temperature sensor must be installed at a location in the furnace downstream of the combustion zone.

E) For a boiler or process heater having a design heat input capacity greater than or equal to 44 MW, a monitoring device equipped with a continuous recorder to measure parameters that indicate good combustion operating practices are being used.

F) For a condenser, either of the following:

i) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the condenser; or

ii) A temperature monitoring device equipped with a

continuous recorder. The device must be capable of monitoring temperature with an accuracy of ±1 percent of the temperature being monitored in ~~degrees Celsius (~~°C~~)~~ or ±0.5 °C, whichever is greater. The temperature sensor must be installed at a location in the exhaust vent stream from the condenser exit (i.e., product side).

G) For a carbon adsorption system, such as a fixed-bed carbon adsorber that regenerates the carbon bed directly in the control device, either of the following:

i) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the carbon bed; or

ii) A monitoring device equipped with a continuous recorder to measure a parameter that indicates the carbon bed is regenerated on a regular, predetermined time cycle.

3) Inspect the readings from each monitoring device required by subsections (f)(1) and (f)(2) at least once each operating day to check control device operation and, if necessary, immediately implement the corrective measures necessary to ensure the control device operates in compliance with the requirements of this Section.

g) An owner or operator using a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device must replace the existing carbon in the control device with fresh carbon at a regular, predetermined time interval that is no longer than the carbon service life established as a requirement of Section 725.935(b)(4)(C)(vi).

h) An owner or operator using a carbon adsorption system, such as a carbon canister, that does not regenerate the carbon bed directly onsite in the control device must replace the existing carbon in the control device with fresh carbon on a regular basis by using one of the following procedures:

1) Monitor the concentration level of the organic compounds in the exhaust vent stream from the carbon adsorption system on a regular schedule, and

replace the existing carbon with fresh carbon immediately when carbon breakthrough is indicated. The monitoring frequency must be daily or at an interval no greater than 20 percent of the time required to consume the total carbon working capacity established as a requirement of Section 725.935(b)(4)(C)(vii), whichever is longer.

2) Replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of Section 725.935(b)(4)(C)(vii).

i) An owner or operator of an affected facility seeking to comply with the provisions of this Part by using a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system is required to develop documentation including sufficient information to describe the control device operation and identify the process parameter or parameters that indicate proper operation and maintenance of the control device.

j) A closed-vent system must meet either of the following design requirements:

1) A closed-vent system must be designed to operate with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background, as determined by the methods specified at Section 725.934(b), and by visual inspections; or

2) A closed-vent system must be designed to operate at a pressure below atmospheric pressure. The system must be equipped with at least one pressure gauge or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the control device is operating.

k) The owner or operator must monitor and inspect each closed-vent system required to comply with this Section to ensure proper operation and maintenance of the closed-vent system by implementing the following requirements:

1) Each closed-vent system that is used to comply with subsection (j)(1) must be inspected and monitored in accordance with the following requirements:

A) An initial leak detection monitoring of the closed-vent system must be conducted by the owner or operator on or before the date that the system becomes subject to this Section. The owner or operator must monitor the closed-vent system components and connections using the procedures specified in Section 725.934(b) to demonstrate that the closed-vent system operates with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background.

B) After initial leak detection monitoring required in subsection (k)(1)(A), the owner or operator must inspect and monitor the closed-vent system as follows:

i) Closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (e.g., a welded joint between two sections of hard piping or a bolted and gasketed ducting flange) must be visually inspected at least once per year to check for defects that could result in air pollutant emissions. The owner or operator must monitor a component or connection using the procedures specified in Section 725.934(b) to demonstrate that it operates with no detectable emissions following any time the component is repaired or replaced (e.g., a section of damaged hard piping is replaced with new hard piping) or the connection is unsealed (e.g., a flange is unbolted).

ii) Closed-vent system components or connections other than those specified in subsection (k)(1)(B)(i) must be monitored annually and at other times as requested by the Agency, except as provided for in subsection (n), using the procedures specified in Section 725.934(b) to demonstrate that the components or connections operate with no detectable emissions.

C) In the event that a defect or leak is detected, the owner or operator must repair the defect or leak in accordance with the requirements of subsection (k)(3).

D) The owner or operator must maintain a record of the inspection

and monitoring in accordance with the requirements specified in Section 725.935.

2) Each closed-vent system that is used to comply with subsection (j)(2) must be inspected and monitored in accordance with the following requirements:

A) The closed-vent system must be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork or piping or loose connections.

B) The owner or operator must perform an initial inspection of the closed-vent system on or before the date that the system becomes subject to this Section. Thereafter, the owner or operator must perform the inspections at least once every year.

C) In the event that a defect or leak is detected, the owner or operator must repair the defect in accordance with the requirements of subsection (k)(3).

D) The owner or operator must maintain a record of the inspection and monitoring in accordance with the requirements specified in Section 725.935.

3) The owner or operator must repair all detected defects as follows:

A) Detectable emissions, as indicated by visual inspection or by an instrument reading greater than 500 ppmv above background, must be controlled as soon as practicable, but not later than 15 calendar days after the emission is detected, except as provided for in subsection (k)(3)(C).

B) A first attempt at repair must be made no later than five calendar days after the emission is detected.

C) Delay of repair of a closed-vent system for which leaks have been detected is allowed if the repair is technically infeasible without a process unit shutdown, or if the owner or operator determines that

emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment must be completed by the end of the next process unit shutdown.

D) The owner or operator must maintain a record of the defect repair in accordance with the requirements specified in Section 725.935.

l) A closed-vent system or control device used to comply with provisions of this Subpart AA must be operated at all times when emissions may be vented to it.

m) The owner or operator using a carbon adsorption system to control air pollutant emissions must document that all carbon removed that is a hazardous waste and that is removed from the control device is managed in one of the following manners, regardless of the volatile organic concentration of the carbon:

1) It is regenerated or reactivated in a thermal treatment unit that meets one of the following:

A) The owner or operator of the unit has been issued a final permit under 35 Ill. Adm. Code 702, 703, and 705 that implements the requirements of Subpart X of 35 Ill. Adm. Code 724; or

B) The unit is equipped with and operating air emission controls in accordance with the applicable requirements of Subparts AA and CC ~~of this Part~~ or 35 Ill. Adm. Code 724; or

C) The unit is equipped with and operating air emission controls in accordance with a federal national emission standard for hazardous air pollutants under 40 CFR 61 (National Emission Standards for Hazardous Air Pollutants) or 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories), each incorporated by reference in 35 Ill. Adm. Code 720.111(b).

2) It is incinerated in a hazardous waste incinerator for which the owner or operator has done either of the following:

A) The owner or operator has been issued a final permit under 35 Ill. Adm. Code 702, 703, and 705 that implements the requirements of

Subpart O of 35 Ill. Adm. Code 724; or

B) The owner or operator has designed and operates the incinerator in accordance with the interim status requirements of Subpart O ~~of this Part~~.

3) It is burned in a boiler or industrial furnace for which the owner or operator has done either of the following:

A) The owner or operator has been issued a final permit under 35 Ill. Adm. Code 702, 703, and 705 that implements the requirements of Subpart H of 35 Ill. Adm. Code 726; or

B) The owner or operator has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of Subpart H of 35 Ill. Adm. Code 726.

n) Any components of a closed-vent system that are designated, as described in Section 725.935(c)(9), as unsafe to monitor are exempt from the requirements of subsection (k)(1)(B)(ii) if both of the following conditions are fulfilled:

1) The owner or operator of the closed-vent system has determined that the components of the closed-vent system are unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with subsection (k)(1)(B)(ii); and

2) The owner or operator of the closed-vent system adheres to a written plan that requires monitoring the closed-vent system components using the procedure specified in subsection (k)(1)(B)(ii) as frequently as practicable during safe-to-monitor times.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.934 Test Methods and Procedures**

a) Each owner or operator subject to the provisions of this Subpart AA must comply with the test methods and procedures requirements provided in this Section.

b) When a closed-vent system is tested for compliance with no detectable emissions,

as required in Section 725.933(k), the test must comply with the following requirements:

1) Monitoring must comply with Reference Method 21 (Determination of Volatile Organic Compound Leaks) in appendix A to 40 CFR 60 (Test Methods), incorporated by reference in 35 Ill. Adm. Code 720.111(b).

2) The detection instrument must meet the performance criteria of Reference Method 21.

3) The instrument must be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

4) Calibration gases must be:

A) Zero air (less than 10 ppm of hydrocarbon in air).

B) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

5) The background level must be determined as set forth in Reference Method 21.

6) The instrument probe must be traversed around all potential leak interfaces as close to the interface as possible, as described in Reference Method 21.

7) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

c) Performance tests to determine compliance with Section 725.932(a) and with the total organic compound concentration limit of Section 725.933(c) must comply with the following:

1) Performance tests to determine total organic compound concentrations and mass flow rates entering and exiting control devices must be conducted and data reduced in accordance with the following reference methods and calculation procedures:

A) Reference Method 2 (Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube)) in appendix A to 40 CFR 60 (Test Methods), incorporated by reference in 35 Ill. Adm. Code 720.111(b), for velocity and volumetric flow rate.

B) Reference Method 18 (Measurement of Gaseous Organic Compound Emissions by Gas Chromatography) or 25A (Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer) in appendix A to 40 CFR 60 (Test Methods), incorporated by reference in 35 Ill. Adm. Code 720.111(b), for organic content. If Reference Method 25A is used, the organic hazardous air pollutant (HAP) used as the calibration gas must be the single HAP that represents the largest percent by volume of the emissions. The use of Reference Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

C) Each performance test must consist of three separate runs, each run conducted for at least 1 hour under the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. For the purpose of determining total organic compound concentrations and mass flow rates, the average of results of all runs applies. The average must be computed on a time-weighted basis.

D) Total organic mass flow rates must be determined by the following equation:

i) For a source utilizing Reference Method 18:

$$E_h = Q_{2sd} \times \left( \sum_{i=1}^{n} C_i \times MW_i \right) \times 0.0416 \times 10^{-6}$$

Where:

$E_h$ = The total organic mass flow rate, kg/h~~;~~
$Q_{2sd}$ = The volumetric flow rate of gases entering

| | | |
|---|---|---|
| | | or exiting control device, dscm/h, as determined by Reference Method 2~~;~~ |
| n | = | The number of organic compounds in the vent gas~~;~~ |
| $C_i$ | = | The organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Reference Method 18~~;~~ |
| $MW_i$ | = | The molecular weight of organic compound i in the vent gas, kg/kg-mol~~;~~ |
| 0.0416 | = | The conversion factor for molar volume, kg-mol/$m^3$, at 293 K and 760 mm Hg~~; and~~ |
| $10^{-6}$ | = | The conversion factor from ppm~~.~~ |

ii) For a source utilizing Reference Method 25A:

$$E_h = Q \times C \times MW \times 0.0416 \times 10^{-6}$$

Where:

| | | |
|---|---|---|
| $E_h$ | = | The total organic mass flow rate, kg/h~~;~~ |
| Q | = | The volumetric flow rate of gases entering or exiting control device, dscm/h, as determined by Reference Method 2~~;~~ |
| C | = | The organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Reference Method 25A~~;~~ |
| MW | = | The molecular weight of propane, 44 kg/kg-mol~~;~~ |
| 0.0416 | = | The conversion factor for molar volume, kg-mol/$m^3$, at 293 K and 760 mm Hg~~; and~~ |
| $10^{-6}$ | = | The conversion factor from ppm~~.~~ |

E) The annual total organic emission rate must be determined by the following equation:

$$A = F \times H$$

Where:

A = total organic emission rate, kg/y~~;~~
F = the total organic mass flow rate, kg/h, as calculated in subsection (c)(1)(D)~~; and~~
H = the total annual hours of operation for the affected unit, h/y~~.~~

F) Total organic emissions from all affected process vents at the facility must be determined by summing the hourly total organic mass emissions rates (F, as determined in subsection (c)(1)(D)) and by summing the annual total organic mass emission rates (A, as determined in subsection (c)(1)(E)) for all affected process vents at the facility.

2) The owner or operator must record such process information as is necessary to determine the conditions of the performance tests. Operations during periods of startup, shutdown, and malfunction do not constitute representative conditions for the purpose of a performance test.

3) The owner or operator of an affected facility must provide, or cause to be provided, performance testing facilities as follows:

A) Sampling ports adequate for the test methods specified in subsection (c)(1).

B) Safe sampling platforms.

C) Safe access to sampling platforms.

D) Utilities for sampling and testing equipment.

4) For the purpose of making compliance determinations, the time-weighted average of the results of the three runs must apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the Agency's approval, be determined using the average of the results of the two other runs.

d) To show that a process vent associated with a hazardous waste distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation is not subject to the requirements of this Subpart AA, the owner or operator must make an initial determination that the time-weighted, annual average total organic concentration of the waste managed by the waste management unit is less than 10 ppmw using one of the following two methods:

1) Direct measurement of the organic concentration of the waste using the following procedures:

A) The owner or operator must take a minimum of four grab samples of waste for each wastestream managed in the affected unit under process conditions expected to cause the maximum waste organic concentration.

B) For waste generated onsite, the grab samples must be collected at a point before the waste is exposed to the atmosphere, such as in an enclosed pipe or other closed system that is used to transfer the waste after generation to the first affected distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation. For waste generated offsite, the grab samples must be collected at the inlet to the first waste management unit that receives the waste provided the waste has been transferred to the facility in a closed system such as a tank truck and the waste is not diluted or mixed with other waste.

C) Each sample must be analyzed and the total organic concentration of the sample must be computed using Method 9060A (Total Organic Carbon) of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods~~,~~", USEPA publication number EPA-530/SW-846, incorporated by reference under 35 Ill. Adm. Code 720.111(a), or analyzed for its individual constituents.

D) The arithmetic mean of the results of the analyses of the four samples apply for each wastestream managed in the unit in determining the time-weighted, annual average total organic concentration of the waste. The time-weighted average is to be calculated using the annual quantity of each waste stream processed and the mean organic concentration of each wastestream

managed in the unit.

2) Using knowledge of the waste to determine that its total organic concentration is less than 10 ppmw. Documentation of the waste determination is required. Examples of documentation that must be used to support a determination under this subsection (d)(2) include the following:

A) Production process information documenting that no organic compounds are used;

B) Information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to generate a wastestream having a total organic content less than 10 ppmw; or

C) Prior speciation analysis results on the same wastestream where it is documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

e) The determination that distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that manage hazardous wastes with time-weighted, annual average total organic concentrations less than 10 ppmw must be made as follows:

1) By the effective date that the facility becomes subject to the provisions of this Subpart AA or by the date when the waste is first managed in a waste management unit, whichever is later;

2) For continuously generated waste, annually; and

3) Whenever there is a change in the waste being managed or a change in the process that generates or treats the waste.

f) When an owner or operator and the Agency do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, the dispute may be resolved using direct measurement, as specified in subsection (d)(1).

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.935 Recordkeeping Requirements**

a) Compliance Required.

1) Each owner or operator subject to the provisions of this Subpart AA must comply with the recordkeeping requirements of this Section.

2) An owner or operator of more than one hazardous waste management unit subject to the provisions of this Subpart AA may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.

b) Owners and operators must record the following information in the facility operating record:

1) For facilities that comply with the provisions of Section 725.933(a)(2), an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The schedule must also include a rationale of why the installation cannot be completed at an earlier date. The implementation schedule must be in the facility operating record by the effective date that the facility becomes subject to the provisions of this Subpart AA.

2) Up-to-date documentation of compliance with the process vent standards in Section 725.932, including the following:

A) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (i.e., the total emissions for all affected vents at the facility), and the approximate location within the facility of each affected unit (e.g., identify the hazardous waste management units on a facility plot plan).

B) Information and data supporting determination of vent emissions

and emission reductions achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, determinations of vent emissions and emission reductions must be made using operating parameter values (e.g., temperatures, flow rates, or vent stream organic compounds and concentrations) that represent the conditions that result in maximum organic emissions, such as when the waste management unit is operating at the highest load or capacity level reasonably expected to occur. If the owner or operator takes any action (e.g., managing a waste of different composition or increasing operating hours of affected waste management units) that would result in an increase in total organic emissions from affected process vents at the facility, then a new determination is required.

3) Where an owner or operator chooses to use test date to determine the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan. The test plan must include the following:

A) A description of how it is determined that the planned test is going to be conducted when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. This must include the estimated or design flow rate and organic content of each vent stream and define the acceptable operating ranges of key process and control device parameters during the test program.

B) A detailed engineering description of the closed-vent system and control device including the following:

i) Manufacturer's name and model number of control device;

ii) Type of control device;

iii) Dimensions of the control device;

iv) Capacity; and

v) Construction materials.

C) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

4) Documentation of compliance with Section 725.933 must include the following information:

A) A list of all information references and sources used in preparing the documentation;

B) Records, including the dates of each compliance test required by Section 725.933(j);

C) If engineering calculations are used, a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions~~,~~", USEPA publication number EPA-450/2-81-005, incorporated by reference in 35 Ill. Adm. Code 720.111(a), or other engineering texts, approved by the Agency, that present basic control device design information. Documentation provided by the control device manufacturer or vendor that describes the control device design in accordance with subsections (b)(4)(C)(i) through (b)(4)(C)(vii) may be used to comply with this requirement. The design analysis must address the vent stream characteristics and control device operation parameters as specified below.

i) For a thermal vapor incinerator, the design analysis must consider the vent stream composition, constituent concentrations, and flow rate. The design analysis must also establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

ii) For a catalytic vapor incinerator, the design analysis must consider the vent stream composition, constituent

concentrations, and flow rate. The design analysis must also establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

iii) For a boiler or process heater, the design analysis must consider the vent stream composition, constituent concentrations, and flow rate. The design analysis must also establish the design minimum and average flame zone temperatures, combustion zone residence time and description of method and location where the vent stream is introduced into the combustion zone.

iv) For a flare, the design analysis must consider the vent stream composition, constituent concentrations, and flow rate. The design analysis must also consider the requirements specified in Section 725.933(d).

v) For a condenser, the design analysis must consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis must also establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream and design average temperatures of the coolant fluid at the condenser inlet and outlet.

vi) For a carbon adsorption system, such as a fixed-bed adsorber that regenerates the carbon bed directly onsite in the control device, the design analysis must consider the vent stream composition, constituent concentrations, flow rate, relative humidity and temperature. The design analysis must also establish the design exhaust vent stream organic compound concentration level, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total steam flow over the period of each complete carbon bed regeneration cycle, duration of the carbon bed steaming and cooling/drying cycles, design carbon bed temperature after regeneration, design carbon bed regeneration time and design service life

of carbon.

vii) For a carbon adsorption system, such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device, the design analysis must consider the vent stream composition, constituent concentrations, flow rate, relative humidity and temperature. The design analysis must also establish the design outlet organic concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule;

D) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur;

E) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 percent or greater unless the total organic concentration limit of Section 725.932(a) is achieved at an efficiency less than 95 weight percent or the total organic emission limits of Section 725.932(a) for affected process vents at the facility are attained by a control device involving vapor recovery at an efficiency less than 95 weight percent. A statement provided by the control device manufacturer or vendor certifying that the control equipment meets the design specifications may be used to comply with this requirement; and

F) If performance tests are used to demonstrate compliance, all test results.

c) Design documentation and monitoring operating and inspection information for each closed-vent system and control device required to comply with the provisions of this Part must be recorded and kept up-to-date in the facility operating record. The information must include the following:

1) Description and date of each modification that is made to the closed-vent system or control device design;

2) Identification of operating parameter, description of monitoring device, and diagram of monitoring sensor location or locations used to comply with Section 725.933(f)(1) and (f)(2);

3) Monitoring, operating and inspection information required by Section 725.933(f) through (k);

4) Date, time, and duration of each period that occurs while the control device is operating when any monitored parameter exceeds the value established in the control device design analysis, as specified below:

A) For a thermal vapor incinerator designed to operate with a minimum residence time of 0.50 second at a minimum temperature of 760 °C, any period when the combustion temperature is below 760 °C.

B) For a thermal vapor incinerator designed to operate with an organic emission reduction efficiency of 95 percent or greater, any period when the combustion zone temperature is more than 28 °C below the design average combustion zone temperature established as a requirement of subsection (b)(4)(C)(i).

C) For a catalytic vapor incinerator, any period when either of the following occurs:

i) Temperature of the vent stream at the catalyst bed inlet is more than 28 °C below the average temperature of the inlet vent stream established as a requirement of subsection (b)(4)(C)(ii); or

ii) Temperature difference across the catalyst bed is less than 80 percent of the design average temperature difference established as a requirement of subsection (b)(4)(C)(ii).

D) For a boiler or process heater, any period when either of the

following occurs:

i) Flame zone temperature is more than 28 °C below the design average flame zone temperature established as a requirement of subsection (b)(4)(C)(iii); or

ii) Position changes where the vent stream is introduced to the combustion zone from the location established as a requirement of subsection (b)(4)(C)(iii).

E) For a flare, period when the pilot flame is not ignited.

F) For a condenser that complies with Section 725.933(f)(2)(F)(i), any period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the condenser are more than 20 percent greater than the design outlet organic compound concentration level established as a requirement of subsection (b)(4)(C)(v).

G) For a condenser that complies with Section 725.933(f)(2)(F)(ii), any period when either of the following occurs:

i) Temperature of the exhaust vent stream from the condenser is more than 6 °C above the design average exhaust vent stream temperature established as a requirement of subsection (b)(4)(C)(v); or

ii) Temperature of the coolant fluid exiting the condenser is more than 6 °C above the design average coolant fluid temperature at the condenser outlet established as a requirement of subsection (b)(4)(C)(v).

H) For a carbon adsorption system, such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device and which complies with Section 725.933(f)(2)(G)(i), any period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the carbon bed are more than 20 percent greater than the design exhaust vent stream organic compound

concentration level established as a requirement of subsection (b)(4)(C)(vi).

I) For a carbon adsorption system, such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device and which complies with Section 725.933(f)(2)(G)(ii), any period when the vent stream continues to flow through the control device beyond the predetermined carbon bed regeneration time established as a requirement of subsection (b)(4)(C)(vi);

5) Explanation for each period recorded under subsection (c)(4) of the cause for control device operating parameter exceeding the design value and the measures implemented to correct the control device operation;

6) For carbon adsorption systems operated subject to requirements specified in Section 725.933(g) or (h)(2), any date when existing carbon in the control device is replaced with fresh carbon;

7) For carbon adsorption systems operated subject to requirements specified in Section 725.933(h)(1), a log that records:

A) Date and time when control device is monitored for carbon breakthrough and the monitoring device reading.

B) Date when existing carbon in the control device is replaced with fresh carbon;

8) Date of each control device startup and shutdown;

9) An owner or operator designating any components of a closed-vent system as unsafe to monitor pursuant to Section 725.933(n) must record in a log that is kept in the facility operating record the identification of closed-vent system components that are designated as unsafe to monitor in accordance with the requirements of Section 725.933(n), an explanation for each closed-vent system component stating why the closed-vent system component is unsafe to monitor, and the plan for monitoring each closed-vent system component; and

10) When each leak is detected, as specified in Section 725.933(k), the following information must be recorded:

A) The instrument identification number, the closed-vent system component identification number, and the operator name, initials, or identification number;

B) The date the leak was detected and the date of first attempt to repair the leak;

C) The date of successful repair of the leak;

D) Maximum instrument reading measured by Reference Method 21 (Determination of Volatile Organic Compound Leaks) of appendix A to 40 CFR 60 (Test Methods), incorporated by reference in 35 Ill. Adm. Code 720.111(b), after it is successfully repaired or determined to be nonrepairable; and

E) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

i) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

ii) If delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked on-site before depletion and the reason for depletion.

d) Records of the monitoring, operating and inspection information required by subsections (c)(3) through (c)(10) must be maintained by the owner or operator for at least three years following the date of each occurrence, measurement, corrective action, or record.

e) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser or carbon adsorption system,

monitoring and inspection information indicating proper operation and maintenance of the control device must be recorded in the facility operating record.

f) Up-to-date information and data used to determine whether or not a process vent is subject to the requirements in Section 725.932, including supporting documentation as required by Section 725.934(d)(2), when application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced is used, must be recorded in a log that is kept in the facility operating record.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

SUBPART BB: AIR EMISSION STANDARDS FOR EQUIPMENT LEAKS

**Section 725.950 Applicability**

a) The regulations in this Subpart BB apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in Section 725.101).

b) Except as provided in Section 725.964(k), this Subpart BB applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in one of the following:

1) A unit that is subject to the RCRA permitting requirements of 35 Ill. Adm. Code 702, 703, and 705;

2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of 35 Ill. Adm. Code 722.117~~722.134(a)~~ (i.e., a hazardous waste recycling unit that is not a "90-day" tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of 35 Ill. Adm. Code 702, 703, and 705; or

3) A unit that is exempt from permitting under the provisions of 35 Ill. Adm. Code 722.117~~722.134(a)~~ (i.e., a "90-day" tank or container) and which is not a recycling unit under the provisions of 35 Ill. Adm. Code 721.106.

c) Each piece of equipment to which this Subpart BB applies must be marked in such a manner that it can be distinguished readily from other pieces of equipment.

d) Equipment that is in vacuum service is excluded from the requirements of Sections 725.952 to 725.960, if it is identified as required in Section 725.964(g)(5).

e) Equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year is excluded from the requirements of Sections 725.952 through 725.960 if it is identified as required in Section 725.964(g)(6).

f) This subsection (f) corresponds with 40 CFR 265.1050(f), which relates exclusively to a facility outside Illinois. This statement maintains structural consistency with the corresponding federal regulations.

g) Purged coatings and solvents from surface coating operations subject to the federal national emission standards for hazardous air pollutants (NESHAPs) for the surface coating of automobiles and light-duty trucks at subpart IIII of 40 CFR 63 (National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks) are not subject to the requirements of this Subpart BB.

BOARD NOTE: The requirements of Sections 725.952 through 725.964 apply to equipment associated with hazardous waste recycling units previously exempt under 35 Ill. Adm. Code 721.106(c)(1). Other exemptions under 35 Ill. Adm. Code 721.104 and 725.101(e) are not affected by these requirements.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.951 Definitions**

As used in this Subpart BB, all terms have the meaning given them in Section 725.931, section 1004 of RCRA~~the Resource Conservation and Recovery Act~~, incorporated by reference in 35 Ill. Adm. Code 720.111, and 35 Ill. Adm. Code 720 through 728, and 738.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.953 Standards: Compressors**

a) Each compressor must be equipped with a seal system that includes a barrier fluid system and that prevents leakage of total organic emissions to the atmosphere, except as provided in subsections (h) and (i)~~ of this Section~~.

b) The following must be true of each compressor seal system, as required in subsection (a)~~ of this Section~~:

1) Operated with the barrier fluid at a pressure that is at all times greater than the compressor stuffing box pressure;

2) Equipped with a barrier fluid system that is connected by a closed-vent system to a control device that complies with the requirements of Section 725.960; or

3) Equipped with a system that purges the barrier fluid into a hazardous wastestream with no detectable emissions to atmosphere.

c) The barrier fluid must not be a hazardous waste with organic concentrations 10 percent or greater by weight.

d) Each barrier fluid system, as described in subsections (a) through (c)~~ of this Section~~, must be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

e) Inspections~~.~~

1) Each sensor, as required in subsection (d)~~ of this Section~~, must be checked daily or must be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly, unless the compressor is located within the boundary of an unmanned plant site, in which case the sensor must be checked daily.

2) The owner or operator must determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

f) If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined under subsection (e)(2)~~ of this Section~~, a leak is

detected.

g) Repairs~~.~~

1) When a leak is detected, it must be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section 725.959.

2) A first attempt at repair (e.g., tightening the packing gland) must be made no later than five calendar days after each leak is detected.

h) A compressor is exempt from the requirements of subsections (a) and (b) ~~of this Section~~ if it is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of Section 725.960, except as provided in subsection (i) ~~of this Section~~.

i) Any compressor that is designated, as described in Section 725.964(g)(2), for no detectable emission as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of subsections (a) through (h) ~~of this Section~~ if the following is true of the compressor:

1) It is determined to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Section 725.963(c).

2) It is tested for compliance with subsection (i)(1) ~~of this Section~~ initially upon designation, annually and other times as specified by the Agency pursuant to Section 725.950(e).

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.954 Standards: Pressure Relief Devices in Gas/Vapor Service**

a) Except during pressure releases, each pressure relief device in gas/vapor service must be operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background as measured by the method specified in Section 725.963(c).

b) Actions Following Pressure Release~~following pressure release.~~

1) After each pressure release, the pressure relief device must be returned to a condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than 5 calendar days after each pressure release, except as provided in Section 725.959.

2) No later than five calendar days after the pressure release, the pressure relief device must be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Section 725.963(c).

c) Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in Section 725.960 is exempt from the requirements of subsections (a) and (b)~~ of this Section~~.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.955 Standards: Sampling Connecting Systems**

a) Each sampling connection system must be equipped with a closed-purge, closed-loop, or closed-vent system. This system must collect the sample purge for return to the process or for routing to the appropriate treatment system. Gases displaced during filling of the sample container are not required to be collected or captured.

b) Each closed-purge, closed-loop, or closed-vent system as required in subsection (a) ~~of this Section~~ must meet one of the following requirements:

1) Return the purged process fluid directly to the process line;

2) Collect and recycle the purged process fluid; or

3) Be designed and operated to capture and transport all the purged process fluid to a waste management unit that complies with the applicable requirements of Sections 725.985 through 725.987 or a control device that complies with the requirements of Section 725.960.

c) In-situ sampling systems and sampling systems without purges are exempt from the requirements of subsections (a) and (b)~~ of this Section~~.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.956 Standards: Open-Ended Valves or Lines**

a) Equipment~~.~~

1) Each open-ended valve or line must be equipped with a cap, blind flange, plug, or a second valve.

2) The cap, blind flange, plug, or second valve must seal the open end at all times except during operations requiring hazardous wastestream flow through the open-ended valve or line.

b) Each open-ended valve or line equipped with a second valve must be operated in a manner such that the valve on the hazardous wastestream end is closed before the second valve is closed.

c) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but must comply with subsection (a) ~~of this Section~~ at all other times.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.957 Standards: Valves in Gas/Vapor or Light Liquid Service**

a) Each valve in gas/vapor or light liquid service must be monitored monthly to detect leaks by the methods specified in Section 725.963(b) and must comply with subsections (b) through (e)~~ of this Section~~, except as provided in subsections (f), (g), and (h) ~~of this Section~~ and in Sections 725.961 and 725.962.

b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

c) Monitoring Frequency~~.~~

1) Any valve for which a leak is not detected for two successive months must

be monitored the first month of every succeeding quarter, beginning with the next quarter, until a leak is detected.

2) If a leak is detected, the valve must be monitored monthly until a leak is not detected for two successive months,

d) Leak Repair ~~repair.~~

1) When a leak is detected, it must be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in Section 725.959.

2) A first attempt at repair must be made no later than five calendar days after each leak is detected.

e) First attempts at repair include, but are not limited to the following best practices where practicable:

1) Tightening of bonnet bolts;

2) Replacement of bonnet bolts;

3) Tightening of packing gland nuts; or

4) Injection of lubricant into lubricated packing.

f) Any valve that is designated, as described in Section 725.964(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of subsection (a) ~~of this Section~~ if the valve fulfills the following requirements:

1) It has no external actuating mechanism in contact with the hazardous wastestream;

2) It is operated with emissions less than 500 ppm above background as determined by the method specified in Section 725.963(c); and

3) It is tested for compliance with subsection (f)(2) initially upon designation, annually, and at other times as specified by the Agency

pursuant to Section 725.950(e).

g) Any valve that is designated, as described in Section 725.964(h)(1), as an unsafe-to-monitor valve is exempt from the requirements of subsection (a), if the following conditions are fulfilled:

1) The owner or operator of the valve determines that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with subsection (a)~~ of this Section~~; and

2) The owner or operator of the valve adheres to a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times.

h) Any valve that is designated, as described in Section 725.964(h)(2), as a difficult-to-monitor valve is exempt from the requirements of subsection (a), if the following conditions are fulfilled:

1) The owner or operator of the valve determines that the valve cannot be monitored without elevating the monitoring personnel more than two meters above a support surface;

2) The hazardous waste management unit within which the valve is located was in operation before June 21, 1990; and

3) The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.958 Standards: Pumps, Valves, Pressure Relief Devices, Flanges, and Other Connectors**

a) Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service and flanges and other connectors must be monitored within five days by the method specified in Section 725.963(b), if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.

b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

c) Repairs~~.~~

1) When a leak is detected, it must be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section 725.959.

2) The first attempt at repair must be made no later than five calendar days after each leak is detected.

d) First attempts at repair include, but are not limited to, the best practices described under Section 725.957(e).

e) Any connector that is inaccessible or is ceramic or ceramic-lined (e.g., porcelain, glass, or glass-lined) is exempt from the monitoring requirements of subsection (a) ~~of this Section~~ and from the recordkeeping requirements of Section 725.964.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.960 Standards: Closed-Vent Systems and Control Devices**

a) An owner or operator of a closed-vent system or control device subject to this Subpart BB must comply with the provisions of Section 725.933.

b) Implementation Schedule~~.~~

1) The owner or operator of an existing facility that cannot install a closed-vent system and control device to comply with the provisions of this Subpart BB on the effective date that the facility becomes subject to the provisions of this Subpart BB must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this Subpart BB for installation and startup.

2) Any unit that ~~begins operation after December 21, 1990, and which~~ is subject to the provisions of this Subpart BB when operation begins, must

comply with the rules immediately (i.e., the unit must have control devices installed and operating on startup of the affected unit); the 30-month implementation schedule does not apply.

3) The owner or operator of any facility in existence on the effective date of a statutory or regulatory amendment that renders the facility subject to this Subpart BB must comply with all requirements of this Subpart BB as soon as practicable but no later than 30 months after the effective date of the amendment. When control equipment required by this Subpart BB cannot be installed and begin operation by the effective date of the amendment, the facility owner or operator must prepare an implementation schedule that includes the following information: Specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this Subpart BB. The owner or operator must enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.

4) An owner or operator of a facility or unit that becomes newly subject to the requirements of this Subpart BB due to an action other than those described in subsection (b)(3) ~~of this Section~~ must comply with all applicable requirements immediately (i.e., the facility or unit must have control devices installed and operating on the date the facility or unit becomes subject to this Subpart BB; the 30-month implementation schedule does not apply).

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.961 Percent Leakage Alternative for Valves**

a) An owner or operator subject to the requirements of Section 725.957 may elect to have all valves within a hazardous waste management unit comply with an alternative standard that allows no greater than two percent of the valves to leak.

b) The following requirements must be met if an owner or operator decides to comply with the alternative standard of allowing two percent of valves to leak:

1) A performance test as specified in subsection (c) ~~of this Section~~ must be conducted initially upon designation, annually and other times as specified by the Agency pursuant to Section 725.950(e); and

2) If a valve leak is detected it must be repaired in accordance with Section 725.957(d) and (e).

c) Performance tests must be conducted in the following manner:

1) All valves subject to the requirements in Section 725.957 within the hazardous waste management unit must be monitored within 1 week by the methods specified in Section 725.963(b);

2) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected; and

3) The leak percentage must be determined by dividing the number of valves subject to the requirements in Section 725.957 for which leaks are detected by the total number of valves subject to the requirements in Section 725.957 within the hazardous waste management unit.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.962 Skip Period Alternative for Valves**

a) An owner or operator subject to the requirements of Section 725.957 may elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in subsections (b)(2) and (b)(3) ~~of this Section~~.

b) Reduced Monitoring~~.~~

1) An owner or operator must comply with the requirements for valves, as described in Section 725.957, except as described in subsections (b)(2) and (b)(3) ~~of this Section~~.

2) After two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two percent, an owner or operator may begin to skip one of the quarterly leak detection periods (i.e., the

owner or operator may monitor for leaks once every six months) for the valves subject to the requirements in Section 725.957.

3) After five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two percent, an owner or operator may begin to skip three of the quarterly leak detection periods (i.e., the owner or operator may monitor for leaks once every year) for the valves subject to the requirements in Section 725.957.

4) If the percentage of valves leaking is greater than two percent, the owner or operator must monitor monthly in compliance with the requirements in Section 725.957, but may again elect to use this Section after meeting the requirements of Section 725.957(c)(1).

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.963 Test Methods and Procedures**

a) Each owner or operator subject to the provisions of this Subpart BB must comply with the test methods and procedures requirements provided in this Section.

b) Leak detection monitoring, as required in Sections 725.952 through 725.962, must comply with the following requirements:

1) Monitoring must comply with Reference Method 21 (Determination of Volatile Organic Compound Leaks) in appendix A to 40 CFR 60 (Test Methods), incorporated by reference in 35 Ill. Adm. Code 720.111(b);

2) The detection instrument must meet the performance criteria of Reference Method 21;

3) The instrument must be calibrated before use on each day of its use by the procedures specified in Reference Method 21;

4) Calibration gases must be as follows:

A) Zero air (less than 10 ppm of hydrocarbon in air);

B) A mixture of methane or n-hexane and air at a concentration of

approximately, but less than, 10,000 ppm methane or n-hexane; and

5) The instrument probe must be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

c) When equipment is tested for compliance with no detectable emissions, as required in Sections 725.952(e), 725.953(i), 725.954, and 725.957(f), the test must comply with the following requirements:

1) The requirements of subsections (b)(1) through (b)(4) ~~of this Section~~ apply;

2) The background level must be determined as set forth in Reference Method 21;

3) The instrument probe must be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21; and

4) This arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

d) In accordance with the waste analysis plan required by Section 725.113(b), an owner or operator of a facility must determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds 10 percent by weight using the following:

1) Methods described in ASTM Methods D 2267-88 (Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography), E 168-88 (Standard Practices for General Techniques of Infrared Quantitative Analysis), E 169-87 (Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis), or E 260-85 (Standard Practice for Packed Column Gas Chromatography), each incorporated by reference in 35 Ill. Adm. Code 720.111(a);

2) Method 9060A (Total Organic Carbon) of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods~~,~~", USEPA publication number

EPA-530/SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111(a), or analyzed for its individual organic constituents; or

3) Application of the knowledge of the nature of the hazardous wastestream or the process by which it was produced. Documentation of a waste determination by knowledge is required. Examples of documentation that must be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to have a total organic content less than 10 percent, or prior speciation analysis results on the same wastestream where it is also documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

e) If an owner or operator determines that a piece of equipment contains or contacts a hazardous waste with organic concentrations at least 10 percent by weight, the determination can be revised only after following the procedures in subsection (d)(1) or (d)(2)~~ of this Section~~.

f) When an owner or operator and the Agency do not agree on whether a piece of equipment contains or contacts a hazardous waste with organic concentrations at least 10 percent by weight, the procedures in subsection (d)(1) or (d)(2) ~~of this Section~~ must be used to resolve the dispute.

g) Samples used in determining the percent organic content must be representative of the highest total organic content hazardous waste that is expected to be contained in or contact the equipment.

h) To determine if pumps or valves are in light liquid service, the vapor pressures of constituents must either be obtained from standard reference texts or be determined by ASTM D 2879-92 (Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope), incorporated by reference in 35 Ill. Adm. Code 720.111(a).

i) Performance tests to determine if a control device achieves 95 weight percent organic emission reduction must comply with the procedures of Section 725.934(c)(1) through (c)(4).

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.964 Recordkeeping Requirements**

a) Lumping Units.

1) Each owner or operator subject to the provisions of this Subpart BB must comply with the recordkeeping requirements of this Section.

2) An owner or operator of more than one hazardous waste management unit subject to the provisions of this Subpart BB may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.

b) Owners and operators must record the following information in the facility operating record:

1) For each piece of equipment to which this Subpart BB applies, the following:

A) Equipment identification number and hazardous waste management unit identification;

B) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan);

C) Type of equipment (e.g., a pump or pipeline valve);

D) Percent-by-weight total organics in the hazardous wastestream at the equipment;

E) Hazardous waste state at the equipment (e.g., gas/vapor or liquid); and

F) Method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals");

2) For facilities that comply with the provisions of Section 725.933(a)(2), an implementation schedule, as specified in that Section;

3) Where an owner or operator chooses to use test data to demonstrate the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan, as specified in Section 725.935(b)(3); and

4) Documentation of compliance with Section 725.960, including the detailed design documentation or performance test results specified in Section 725.935(b)(4).

c) When each leak is detected, as specified in Section 725.952, 725.953, 725.957, or 725.958, the following requirements apply:

1) A weatherproof and readily visible identification, marked with the equipment identification number, the date evidence of a potential leak was found in accordance with Section 725.958(a), and the date the leak was detected, must be attached to the leaking equipment;

2) The identification on equipment except on a valve, may be removed after it has been repaired; and

3) The identification on a valve may be removed after it has been monitored for two successive months as specified in Section 725.957(c) and no leak has been detected during those two months.

d) When each leak is detected, as specified in Sections 725.952, 725.953, 725.957, or 725.958, the following information must be recorded in an inspection log and must be kept in the facility operating record:

1) The instrument and operator identification numbers and the equipment identification number;

2) The date evidence of a potential leak was found in accordance with Section 725.958(a);

3) The date the leak was detected and the dates of each attempt to repair the leak;

4) Repair methods applied in each attempt to repair the leak;

5) "Above 10,000~~,~~", if the maximum instrument reading measured by the methods specified in Section 725.963(b) after each repair attempt is equal to or greater than 10,000 ppm;

6) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak;

7) Documentation supporting the delay of repair of a valve in compliance with Section 725.959(c);

8) The signature of the owner or operator (or designate) whose decision it was that repair could not be effected without a hazardous waste management unit shutdown;

9) The expected date of successful repair of the leak if a leak is not repaired within 15 calendar days; and

10) The date of successful repair of the leak.

e) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of Section 725.960 must be recorded and kept up-to-date in the facility operating record as specified in Section 725.935(c)(1) and (c)(2), and monitoring, operating and inspection information in Section 725.935(c)(3) through (c)(8).

f) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, monitoring and inspection information indicating proper operation and maintenance of the control device must be recorded in the facility operating record.

g) The following information pertaining to all equipment subject to the requirements in Sections 725.952 through 725.960 must be recorded in a log that is kept in the facility operating record:

1) A list of identification numbers for equipment (except welded fittings)

subject to the requirements of this Subpart BB.

2) List of Equipment.

A) A list of identification numbers for equipment that the owner or operator elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, under the provisions of Sections 725.952(e), 725.953(i), and 725.957(f).

B) The designation of this equipment as subject to the requirements of Section 725.952(e), 725.953(i), or 725.957(f) must be signed by the owner or operator.

3) A list of equipment identification numbers for pressure relief devices required to comply with Section 725.954(a).

4) Compliance Tests.

A) The dates of each compliance test required in Sections 725.952(e), 725.953(i), 725.954, and 725.957(f).

B) The background level measured during each compliance test.

C) The maximum instrument reading measured at the equipment during each compliance test.

5) A list of identification numbers for equipment in vacuum service.

6) Identification, either by list or location (area or group) of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per year.

h) The following information pertaining to all valves subject to the requirements of Section 725.957(g) and (h) must be recorded in a log that is kept in the facility operating record:

1) A list of identification numbers for valves that are designated as unsafe to monitor, an explanation for each valve stating why the valve is unsafe to

monitor, and the plan for monitoring each valve; and

2) A list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the planned schedule for monitoring each valve.

i) The following information must be recorded in the facility operating record for valves complying with Section 725.962:

1) A schedule of monitoring; and

2) The percent of valves found leaking during each monitoring period.

j) The following information must be recorded in a log that is kept in the facility operating record:

1) Criteria required in Sections 725.952(d)(5)(B) and 725.953(e)(2) and an explanation of the criteria; and

2) Any changes to these criteria and the reasons for the changes.

k) The following information must be recorded in a log that is kept in the facility operating record for use in determining exemptions, as provided in Section 725.950 and other specific Subparts:

1) An analysis determining the design capacity of the hazardous waste management unit;

2) A statement listing the hazardous waste influent to and effluent from each hazardous waste management unit subject to the requirements in Sections 725.952 through 725.960 and an analysis determining whether these hazardous wastes are heavy liquids; and

3) An up-to-date analysis and the supporting information and data used to determine whether or not equipment is subject to the requirements in Sections 725.952 through 725.960. The record must include supporting documentation, as required by Section 725.963(d)(3), when application of the knowledge of the nature of the hazardous wastestream or the process by which it was produced is used. If the owner or operator takes any

action (e.g., changing the process that produced the waste) that could result in an increase in the total organic content of the waste contained in or contacted by equipment determined not to be subject to the requirements in Sections 725.952 through 725.960, then a new determination is required.

l) Records of the equipment leak information required by subsection (d) and the operating information required by subsection (e) need be kept only three years.

m) The owner or operator of any facility with equipment that is subject to this Subpart and to federal regulations at 40 CFR 60, 61, or 63 may elect to determine compliance with this Subpart BB by documentation of compliance either pursuant to Section 725.964 or by documentation of compliance with the regulations at 40 CFR 60 (Standards of Performance for New Stationary Sources), 61 (National Emission Standards for Hazardous Air Pollutants), or 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories), pursuant to the relevant provisions of 40 CFR 60, 61, or 63, each incorporated by reference in 35 Ill. Adm. Code 720.111(b). The documentation of compliance under the regulation at 40 CFR 60, 61, or 63 must be kept with or made readily available with the facility operating record.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

SUBPART CC: AIR EMISSION STANDARDS FOR TANKS, SURFACE IMPOUNDMENTS, AND CONTAINERS

**Section 725.980 Applicability**

a) The requirements of this Subpart CC apply to owners and operators of all facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments, or containers that are subject to Subpart I, J, or K~~ of this Part~~, except as Section 725.101 and subsection (b) ~~of this Section~~ provide otherwise.

b) The requirements of this Subpart CC do not apply to the following waste management units at the facility:

1) A waste management unit that holds hazardous waste placed in the unit before December 6, 1996, and in which no hazardous waste was added to the unit on or after December 6, 1996;

2) A container that has a design capacity less than or equal to 0.1 $m^3$ (3.5 $ft^3$ or 26.4 gal);

3) A tank in which an owner or operator has stopped adding hazardous waste and the owner or operator has begun implementing or completed closure pursuant to an approved closure plan;

4) A surface impoundment in which an owner or operator has stopped adding hazardous waste (except to implement an approved closure plan) and the owner or operator has begun implementing or completed closure pursuant to an approved closure plan;

5) A waste management unit that is used solely for on-site treatment or storage of hazardous waste that is placed in the unit as a result of implementing remedial activities required pursuant to the Act or Board regulations or pursuant to the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h); CERCLA authorities; or similar federal or State authorities;

6) A waste management unit that is used solely for the management of radioactive mixed waste in accordance with all applicable regulations pursuant to the authority of the Atomic Energy Act of 1954 (42 USC 2011 et seq.) and the Nuclear Waste Policy Act of 1982 (42 USC 10101 et seq.);

7) A hazardous waste management unit that the owner or operator certifies is equipped with and operating air emission controls in accordance with the requirements of an applicable federal Clean Air Act regulation codified pursuant to 40 CFR 60 (Standards of Performance for New Stationary Sources), 61 (National Emission Standards for Hazardous Air Pollutants), or 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories). For the purpose of complying with this subsection (b)(7), a tank for which the air emission control includes an enclosure, as opposed to a cover, must be in compliance with the enclosure and control device requirements of Section 725.985(i), except as provided in Section 725.983(c)(5); and

8) A tank that has a process vent, as defined in 35 Ill. Adm. Code 725.931.

c) This subsection (c) corresponds with 40 CFR 265.1080(c), which requires incorporation of requirements of Subpart CC of 35 Ill. Adm. Code 724 into a permit issued prior to a date long past and compliance with this Subpart CC until the permit issues. This statement maintains structural consistency with the corresponding federal rules.~~For the owner and operator of a facility subject to this Subpart CC that has received a final RCRA permit prior to December 6, 1996, the following requirements apply:~~

~~1) The requirements of Subpart CC of 35 Ill. Adm. Code 724 must be incorporated into the permit when the permit is reissued, renewed, or modified in accordance with the requirements of 35 Ill. Adm. Code 703 and 705.~~

~~2) Until the date when the permit is reissued, renewed, or modified in accordance with the requirements of 35 Ill. Adm. Code 703 and 705, the owner and operator is subject to the requirements of this Subpart CC.~~

d) The requirements of this Subpart CC, except for the recordkeeping requirements specified in Section 725.990(i), are stayed for a tank or container used for the management of hazardous waste generated by organic peroxide manufacturing and its associated laboratory operations, when the owner or operator of the unit meets all of the following conditions:

1) The owner or operator identifies that the tank or container receives hazardous waste generated by an organic peroxide manufacturing process producing more than one functional family of organic peroxides or multiple organic peroxides within one functional family, that one or more of these organic peroxides could potentially undergo self-accelerating thermal decomposition at or below ambient temperatures, and that organic peroxides are the predominant products manufactured by the process. For the purposes of this subsection, "organic peroxide" means an organic compound that contains the bivalent -O-O- structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical;

2) The owner or operator prepares documentation, in accordance with Section 725.990(i), explaining why an undue safety hazard would be created if air emission controls specified in Sections 725.985 through 725.988 are installed and operated on the tanks and containers used at the

facility to manage the hazardous waste generated by the organic peroxide manufacturing process or processes meeting the conditions of subsection (d)(1)~~ of this Section~~; and

3) The owner or operator notifies the Agency in writing that hazardous waste generated by an organic peroxide manufacturing process or processes meeting the conditions of subsection (d)(1) ~~of this Section~~ are managed at the facility in tanks or containers meeting the conditions of subsection (d)(2)~~ of this Section~~. The notification must state the name and address of the facility and be signed and dated by an authorized representative of the facility owner or operator.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.981 Definitions**

As used in this Subpart CC~~ and in 35 Ill. Adm. Code 724~~, all terms not defined in this Section~~herein~~ will have the meanings given to them in section 1004 of RCRA, ~~the Act~~ and 35 Ill. Adm. Code 720 through 728.

"Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous waste, as determined in accordance with the requirements of Section 725.984.

"Closure device" means a cap, hatch, lid, plug, seal, valve, or other type of fitting that blocks an opening in a cover so that when the device is secured in the closed position it prevents or reduces air pollutant emissions to the atmosphere. Closure devices include devices that are detachable from the cover (e.g., a sampling port cap), manually operated (e.g., a hinged access lid or hatch), or automatically operated (e.g., a spring-loaded pressure relief valve).

"Continuous seal" means a seal that forms a continuous closure that completely covers the space between the edge of the floating roof and the wall of a tank. A continuous seal may be a vapor-mounted seal, liquid-mounted seal, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

"Cover" means a device that provides a continuous barrier over the hazardous waste managed in a unit to prevent or reduce air emissions to the atmosphere. A

cover may have openings (such as access hatches, sampling ports, and gauge wells) that are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is used. A cover may be a separate piece of equipment that can be detached and removed from the unit or a cover may be formed by structural features permanently integrated into the design of the unit.

"Enclosure" means a structure that surrounds a tank or container, captures organic vapors emitted from the tank or container, and vents the captured vapors through a closed-vent system to a control device.

"External floating roof" means a pontoon-type or double-deck type cover that rests on the surface of a hazardous waste being managed in a tank with no fixed roof.

"Fixed roof" means a cover that is mounted on a unit in a stationary position and does not move with fluctuations in the level of the material managed in the unit.

"Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.

"Floating roof" means a cover consisting of a double-deck, pontoon single-deck, or internal floating cover that rests upon and is supported by the material being contained, and is equipped with a continuous seal.

"Hard-piping" means pipe or tubing that is manufactured and properly installed in accordance with relevant standards and good engineering practices.

"In light material service" means that the container is used to manage a material for which both of the following conditions apply: the vapor pressure of one or more of the organic constituents in the material is greater than 0.3 kilopascals (kPa) at 20° C~~20°C~~ (1.2 inches $H_2O$ at 68° F~~68°F~~); and the total concentration of the pure organic constituents having a vapor pressure greater than 0.3 kPa at 20° C~~20°C~~ (1.2 inches $H_2O$ at 68° F~~68°F~~) is equal to or greater than 20 percent by weight.

"Internal floating roof" means a cover that rests or floats on the material surface (but not necessarily in complete contact with it) inside a tank that has a fixed roof.

"Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof, continuously around the circumference of the tank.

"Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. A failure that is caused in part by poor maintenance or careless operation is not a malfunction.

"Maximum organic vapor pressure" means the sum of the individual organic constituent partial pressures exerted by the material contained in a tank at the maximum vapor pressure-causing conditions (i.e., temperature, agitation, pH effects of combining wastes, etc.) reasonably expected to occur in the tank. For the purpose of this Subpart CC, maximum organic vapor pressure is determined using the procedures specified in Section 725.984(c).

"Metallic shoe seal" means a continuous seal that is constructed of metal sheets that are held vertically against the wall of the tank by springs, weighted levers, or other mechanisms and which is connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

"No detectable organic emissions" means no escape of organics to the atmosphere, as determined using the procedure specified in Section 725.984(d).

"Point of waste origination" means as follows:

When the facility owner or operator is the generator of the hazardous waste, the "point of waste origination" means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste, as defined in 35 Ill. Adm. Code 721.

BOARD NOTE: In this case, this term is being used in a manner similar to the use of the term "point of generation" in air standards established for waste management operations under authority of the federal Clean Air Act in 40 CFR 60 (Standards of Performance for New Stationary Sources), 61 (National Emission Standards for Hazardous Air Pollutants), and 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories).

When the facility owner and operator are not the generator of the hazardous waste, "point of waste origination" means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

"Point of waste treatment" means the point where a hazardous waste to be treated in accordance with Section 725.983(c)(2) exits the treatment process. Any waste determination must be made before the waste is conveyed, handled, or otherwise managed in a manner that allows the waste to volatilize to the atmosphere.

"Safety device" means a closure device, such as a pressure relief valve, frangible disc, fusible plug, or any other type of device that functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this Subpart CC, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

"Single-seal system" means a floating roof having one continuous seal. This seal may be vapor-mounted, liquid-mounted, or a metallic shoe seal.

"Vapor-mounted seal" means a continuous seal that is mounted so that there is a vapor space between the hazardous waste in the unit and the bottom of the seal.

"Volatile organic concentration" or "VO concentration" means the fraction by weight of organic compounds contained in a hazardous waste expressed in terms of parts per million (ppmw), as determined by direct measurement or by knowledge of the waste, in accordance with the requirements of Section 725.984. For the purpose of determining the VO concentration of a hazardous waste,

organic compounds with a Henry's law constant value of at least 0.1 mole-fraction-in-the-gas-phase/mole- fraction-in-the-liquid-phase (0.1 Y/X) (which can also be expressed as $1.8x10^{-6}$ atmospheres/gram-mole/$m^3$) at 25° C (77° F) must be included. Appendix F ~~of this Part~~ presents a list of compounds known to have a Henry's law constant value less than the cutoff level.

"Waste determination" means performing all applicable procedures in accordance with the requirements of Section 725.984 to determine whether a hazardous waste meets standards specified in this Subpart CC. Examples of a waste determination include performing the procedures in accordance with the requirements of Section 725.984 to determine the average VO concentration of a hazardous waste at the point of waste origination, determining the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste, the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards, or determining the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

"Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095B (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods~~,~~", USEPA publication number EPA-530/SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111(a). A waste stabilization process includes mixing the hazardous waste with binders or other materials and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification~~.~~". This does not include the addition of absorbent materials to the surface of a waste to absorb free liquid without mixing, agitation, or subsequent curing.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.982 Schedule for Implementation of Air Emission Standards**

a) This subsection (a) corresponds with 40 CFR 265.1082(a), which required compliance before dates long past. This statement maintains structural consistency with the corresponding federal rules.~~An owner or operator of a~~

~~facility in existence on December 6, 1996 and subject to Subpart I, J, or K of this Part must meet the following requirements:~~

~~1) The owner or operator must install and begin operation of all control equipment required to comply with this Subpart CC and complete modifications of production or treatment processes to satisfy exemption criteria in accordance with Section 725.983(c) by December 6, 1996, except as provided in subsection (a)(2) of this Section; and~~

~~2) When control equipment or waste management units required to comply with this Subpart CC cannot be installed and in operation or modifications of production or treatment processes to satisfy exemption criteria in accordance with Section 725.983(c) cannot be completed by December 6, 1996, the owner or operator must do the following:~~

~~A) Install and begin operation of the control equipment and waste management units, and complete modifications of production or treatment processes as soon as possible but no later than December 8, 1997;~~

~~B) Prepare an implementation schedule that includes the following information: specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, waste management units, and production or treatment process modifications; the dates of initiation of on-site installation of the control equipment, or waste management units, and modifications of production or treatment processes; the dates of completion of the control equipment or waste management unit installation, and production or treatment process modifications; and the dates of performance of testing to demonstrate that the installed equipment or waste management units, and modified production or treatment processes, meet the applicable standards of this Subpart CC;~~

~~C) For a facility subject to the recordkeeping requirements of Section 725.173, the owner or operator must enter the implementation schedule specified in subsection (a)(2)(B) of this Section in the operating record no later than December 6, 1996; and~~

~~D) For a facility not subject to Section 725.173 of this Section, the~~

~~owner or operator must enter the implementation schedule specified in subsection (a)(2)(B) of this section in a permanent, readily available file located at the facility no later than December 6, 1996.~~

b) An owner or operator of a facility or unit in existence on the effective date of statutory or regulatory amendments under the Act that render the facility subject to Subpart I, J, or K ~~of this Part~~ must meet the following requirements:

1) The owner or operator must install and begin operation of all control equipment required to comply with this Subpart CC and complete modifications of production or treatment processes to satisfy exemption criteria of Section 725.983(c) by the effective date of the amendment, except as provided in subsection (b)(2) ~~of this Section~~.

2) When control equipment or waste management units required to comply with this Subpart CC cannot be installed and begin operation or when modifications of production or treatment processes to satisfy the exemption criteria of Section 725.983(c) cannot be completed by the effective date of the amendment, the owner or operator must undertake the following actions:

A) Install and begin operation of the control equipment or waste management unit and complete modification of production or treatment processes as soon as possible, but no later than 30 months after the effective date of the amendment; and

B) Maintenance of Implementation Schedule~~implementation schedule.~~

i) For facilities subject to the recordkeeping requirements of Section 725.173, enter and maintain the implementation schedule specified in subsection (a)(2)(B) ~~of this Section~~ in the operating record no later than the effective date of the amendment, or

ii) For facilities not subject to Section 725.173, the owner or operator must enter and maintain the implementation schedule specified in subsection (a)(2)(B) ~~of this Section~~ in

a permanent, readily available file located at the facility site no later than the effective date of the amendment.

c) The owner or operator of a facility or unit that becomes newly subject to the requirements of this Subpart CC ~~after December 8, 1997~~ due to an action other than those described in subsection (b) ~~of this Section~~ must comply with all applicable requirements immediately (i.e., the owner or operator must have control devices installed and operating on the date the facility or unit becomes subject to the requirements of this Subpart CC; the 30-month implementation schedule does not apply to the owner or operator of such a facility).

d) This subsection (d) corresponds with 40 CFR 265.1082(d), which allowed extension of a long-past compliance date. This statement maintains structural consistency with the federal rule.~~The Board will grant an adjusted standard pursuant to Section 28.1 of the Act and Subpart D of 35 Ill. Adm. Code 104 that extends the implementation date for control equipment at a facility to a date later than December 8, 1997 when the facility owner or operator proves the following:~~

~~1) That special circumstances beyond the facility owner's or operator's control have delayed or will delay installation or operation of control equipment; and~~

~~2) That the owner or operator has made all reasonable and prudent attempts to comply with the requirements of this Subpart CC.~~

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.983 Standards: General**

a) This Section applies to the management of hazardous waste in tanks, surface impoundments, and containers subject to this Subpart CC.

b) The owner or operator must control air pollutant emissions from each hazardous waste management unit in accordance with the standards specified in Sections 725.985 through 725.988, as applicable to the hazardous waste management unit, except as provided for in subsection (c).

c) A tank, surface impoundment, or container is exempted from standards specified in Sections 725.985 through 725.988, provided that all hazardous waste placed in the waste management unit is one of the following:

1) A tank, surface impoundment, or container for which all hazardous waste entering the unit has an average VO concentration at the point of waste origination of less than 500 parts per million by weight (ppmw). The average VO concentration must be determined by the procedures specified in Section 725.984(a). The owner or operator must review and update, as necessary, this determination at least once every 12 months following the date of the initial determination for the hazardous waste streams entering the unit;

2) A tank, surface impoundment, or container for which the organic content of all the hazardous waste entering the waste management unit has been reduced by an organic destruction or removal process that achieves any one of the following conditions:

A) The process removes or destroys the organics contained in the hazardous waste to such a level that the average VO concentration of the hazardous waste at the point of waste treatment is less than the exit concentration limit ($C_t$) established for the process. The average VO concentration of the hazardous waste at the point of waste treatment and the exit concentration limit for the process must be determined using the procedures specified in Section 725.984(b);

B) The process removes or destroys the organics contained in the hazardous waste to such a level that the organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the average VO concentration of the hazardous waste at the point of waste treatment is less than 100 ppmw. The organic reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste treatment must be determined using the procedures specified in Section 725.984(b);

C) The process removes or destroys the organics contained in the hazardous waste to such a level that the actual organic mass removal rate (MR) for the process is equal to or greater than the required organic mass removal rate (RMR) established for the process. The required organic mass removal rate and the actual

organic mass removal rate for the process must be determined using the procedures specified in Section 725.984(b);

D) The process is a biological process that destroys or degrades the organics contained in the hazardous waste so that either of the following conditions is met:

i) The organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the organic biodegradation efficiency ($R_{bio}$) for the process is equal to or greater than 95 percent. The organic reduction efficiency and the organic biodegradation efficiency for the process must be determined using the procedures specified in Section 725.984(b); and

ii) The total actual organic mass biodegradation rate ($MR_{bio}$) for all hazardous waste treated by the process is equal to or greater than the required organic mass removal rate (RMR). The required organic mass removal rate and the actual organic mass biodegradation rate for the process must be determined using the procedures specified in Section 725.984(b);

E) The process is one that removes or destroys the organics contained in the hazardous waste and meets all of the following conditions:

i) From the point of waste origination through the point where the hazardous waste enters the treatment process, the hazardous waste is continuously managed in waste management units that use air emission controls in accordance with the standards specified in Section 725.985 through Section 725.988, as applicable to the waste management unit;

ii) From the point of waste origination through the point where the hazardous waste enters the treatment process, any transfer of the hazardous waste is accomplished through continuous hard-piping or other closed system transfer that does not allow exposure of the waste to the

atmosphere;

BOARD NOTE: The USEPA considers a drain system that meets the requirements of federal subpart RR of 40 CFR 63(National Emission Standards for Individual Drain Systems) to be a closed system.

iii) The average VO concentration of the hazardous waste at the point of waste treatment is less than the lowest average VO concentration at the point of waste origination determined for each of the individual hazardous waste streams entering the process or 500 ppmw, whichever value is lower. The average VO concentration of each individual hazardous waste stream at the point of waste origination must be determined using the procedures specified in Section 725.984(a). The average VO concentration of the hazardous waste at the point of waste treatment must be determined using the procedures specified in Section 725.984(b);

F) A process that removes or destroys the organics contained in the hazardous waste to a level such that the organic reduction efficiency (R) for the process is equal to or greater than 95 percent and the owner or operator certifies that the average VO concentration at the point of waste origination for each of the individual waste streams entering the process is less than 10,000 ppmw. The organic reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste origination must be determined using the procedures specified in Sections 725.984(b) and 725.984(a), respectively;

G) A hazardous waste incinerator for which either of the following conditions is true:

i) The owner or operator has been issued a final permit under 35 Ill. Adm. Code 702, 703, and 705 that implements the requirements of Subpart O of 35 Ill. Adm. Code 724; or

ii) The owner or operator has designed and operates the

incinerator in accordance with the interim status requirements of Subpart O~~ of this Part~~;

H) A boiler or industrial furnace for which either of the following conditions is true:

i) The owner or operator has been issued a final permit under 35 Ill. Adm. Code 702, 703, and 705 that implements the requirements of Subpart H of 35 Ill. Adm. Code 726; or

ii) The owner or operator has designed and operates the industrial furnace or incinerator in accordance with the interim status requirements of Subpart H of 35 Ill. Adm. Code 726; and

I) For the purpose of determining the performance of an organic destruction or removal process in accordance with the conditions in each of subsections (c)(2)(A) through (c)(2)(F), the owner or operator must account for VO concentrations determined to be below the limit of detection of the analytical method by using the following VO concentration:

i) If Reference Method 25D (Determination of the Volatile Organic Concentration of Waste Samples) in appendix A to 40 CFR 60 (Test Methods), incorporated by reference in 35 Ill. Adm. Code 720.111(b), is used for the analysis, one-half the blank value determined in the method at Section 4.4 of Reference Method 25D or a value of 25 ppmw, whichever is less; and

ii) If any other analytical method is used, one-half the sum of the limits of detection established for each organic constituent in the waste that has a Henry's law constant value at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) (which can also be expressed as $1.8 \times 10^{-6}$ atmospheres/gram-mole/$m^3$) at 25 °C;

3) A tank or surface impoundment used for biological treatment of hazardous

waste in accordance with the requirements of subsection (c)(2)(D);

4) A tank, surface impoundment, or container for which all hazardous waste placed in the unit fulfills either of the following two conditions:

A) It meets the numerical concentration limits for organic hazardous constituents, applicable to the hazardous waste, as specified in Table T to 35 Ill. Adm. Code 728; or

B) The organic hazardous constituents in the waste have been treated by the treatment technology established by USEPA for the waste, as set forth in 35 Ill. Adm. Code 728.142(a), or treated by an equivalent method of treatment approved by the Agency pursuant to 35 Ill. Adm. Code 728.142(b); or

5) A tank used for bulk feed of hazardous waste to a waste incinerator, and all of the following conditions are met:

A) The tank is located inside an enclosure vented to a control device that is designed and operated in accordance with all applicable requirements specified under federal subpart FF of 40 CFR 61(National Emission Standards for Benzene Waste Operations), incorporated by reference in 35 Ill. Adm. Code 720.111(b), for a facility at which the total annual benzene quantity from the facility waste is equal to or greater than 10 megagrams (11 tons) per year;

B) The enclosure and control device serving the tank were installed and began operation prior to November 25, 1996; and

C) The enclosure is designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T – Criteria for and Verification of a Permanent or Temporary Total Enclosure" under appendix B to 40 CFR 52.741 (VOM Measurement Techniques for Capture Efficiency), incorporated by reference in 35 Ill. Adm. Code 720.111(b). The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical or electrical equipment; or to direct air flow into the enclosure. The owner or operator must perform

the verification procedure for the enclosure as specified in Section 5.0 of"Procedure T – Criteria for and Verification of a Permanent or Temporary Total Enclosure" annually.

d) The Agency may at any time perform or request that the owner or operator perform a waste determination for a hazardous waste managed in a tank, surface impoundment, or container that is exempted from using air emission controls under the provisions of this Section as follows:

1) The waste determination for average VO concentration of a hazardous waste at the point of waste origination must be performed using direct measurement in accordance with the applicable requirements of Section 725.984(a). The waste determination for a hazardous waste at the point of waste treatment must be performed in accordance with the applicable requirements of Section 725.984(b);

2) In performing a waste determination pursuant to subsection (d)(1), the sample preparation and analysis must be conducted as follows:

A) In accordance with the method used by the owner or operator to perform the waste analysis, except in the case specified in subsection (d)(2)(B); and

B) If the Agency determines that the method used by the owner or operator was not appropriate for the hazardous waste managed in the tank, surface impoundment, or container, then the Agency may choose an appropriate method;

3) Where the owner or operator is requested to perform the waste determination, the Agency may elect to have an authorized representative observe the collection of the hazardous waste samples used for the analysis;

4) Where the results of the waste determination performed or requested by the Agency do not agree with the results of a waste determination performed by the owner or operator using knowledge of the waste, then the results of the waste determination performed in accordance with the requirements of subsection (d)(1) must be used to establish compliance with the requirements of this Subpart CC; and

5) Where the owner or operator has used an averaging period greater than one hour for determining the average VO concentration of a hazardous waste at the point of waste origination, the Agency may elect to establish compliance with this Subpart CC by performing or requesting that the owner or operator perform a waste determination using direct measurement, based on waste samples collected within a 1-hour period, as follows:

A) The average VO concentration of the hazardous waste at the point of waste origination must be determined by direct measurement in accordance with the requirements of Section 725.984(a);

B) Results of the waste determination performed or requested by the Agency showing that the average VO concentration of the hazardous waste at the point of waste origination is equal to or greater than 500 ppmw must constitute noncompliance with this Subpart CC, except in a case as provided for in subsection (d)(5)(C); and

C) Where the average VO concentration of the hazardous waste at the point of waste origination previously has been determined by the owner or operator using an averaging period greater than one hour to be less than 500 ppmw but because of normal operating process variations the VO concentration of the hazardous waste determined by direct measurement for any given 1-hour period may be equal to or greater than 500 ppmw, information that was used by the owner or operator to determine the average VO concentration of the hazardous waste (e.g., test results, measurements, calculations, and other documentation) and recorded in the facility records in accordance with the requirements of Sections 725.984(a) and 725.990 must be considered by the Agency together with the results of the waste determination performed or requested by the Agency in establishing compliance with this Subpart CC.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.984 Waste Determination Procedures**

a) Determination of Volatile Organic (VO) Concentration at the Point of Waste Origination.

1) An owner or operator must determine the average VO concentration at the point of waste origination for each hazardous waste placed in a waste management unit exempted under the provisions of Section 725.983(c)(1) from using air emission controls in accordance with standards specified in Section 725.985 through Section 725.988, as applicable to the waste management unit.

A) An owner or operator must make an initial determination of the average VO concentration of the waste stream before the first time any portion of the material in the hazardous waste stream is placed in a waste management unit exempted under the provisions of Section 725.983(c)(1) from using air emission controls. Thereafter, an owner or operator must make an initial determination of the average VO concentration of the waste stream for each averaging period that a hazardous waste is managed in the unit.

B) An owner or operator must perform a new waste determination whenever changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the VO concentration limits specified in Section 725.983(c)(1).

2) For a waste determination that is required by subsection (a)(1), the average VO concentration of a hazardous waste at the point of waste origination must be determined using either direct measurement, as specified in subsection (a)(3), or by knowledge of the waste, as specified in subsection (a)(4).

3) Direct Measurement.

A) Identification. The owner or operator must identify and record the point of waste origination for the hazardous waste.

B) Sampling. Samples of the hazardous waste stream must be

collected at the point of waste origination in such a manner that volatilization of organics contained in the waste and in the subsequent sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

i) The averaging period to be used for determining the average VO concentration for the hazardous waste stream on a mass-weighted average basis must be designated and recorded. The averaging period can represent any time interval that the owner or operator determines is appropriate for the hazardous waste stream but must not exceed one year.

ii) A sufficient number of samples, but no fewer than four samples, must be collected for a hazardous waste determination. All of the samples for a given waste determination must be collected within a one-hour period. The average of the four or more sample results constitutes a waste determination for the waste stream. One or more waste determinations may be required to represent the complete range of waste compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the source or process generating the hazardous waste stream. Examples of such normal variations are seasonal variations in waste quantity or fluctuations in ambient temperature.

iii) All samples must be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan must describe the procedure by which representative samples of the hazardous waste stream are collected so that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan must be maintained on-site in the facility operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and

handling procedures in Reference Method 25D (Determination of the Volatile Organic Concentration of Waste Samples) in appendix A to 40 CFR 60 (Test Methods), incorporated by reference in 35 Ill. Adm. Code 720.111(b).

iv) Sufficient information, as specified in the "site sampling plan" required under subsection (a)(3)(B)(iii), must be prepared and recorded to document the waste quantity represented by the samples and, as applicable, the operating conditions for the source or process generating the hazardous waste represented by the samples.

C) Analysis. Each collected sample must be prepared and analyzed in accordance with Reference Method 25D in appendix A to 40 CFR 60 for the total concentration of volatile organic constituents or using one or more methods when the individual organic compound concentrations are identified and summed and the summed waste concentration accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) (which can also be expressed as 1.8 x $10^{-6}$ atmospheres/ gram-mole/$m^3$) at 25 °C (77 °F). At the owner's or operator's discretion, the owner or operator may adjust test data measured by any appropriate method to discount any contribution to the total volatile organic concentration that is a result of including a compound with a Henry's law constant value of less than 0.1 Y/X at 25 °C ~~(77° F)~~. If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at 25 °C contained in the waste. To adjust these data, the measured concentration of each individual chemical constituent contained in the waste is multiplied by the constituent-specific adjustment factor~~factors~~ ($f_{m25D}$) approved in writing by the Agency. Other test methods may be used if they meet the requirements in subsection (a)(3)(C)(i) or (a)(3)(C)(ii) and provided the requirement is met to reflect all organic compounds in the waste with Henry's law constant values greater than or equal to 0.1 Y/X (which can also be expressed as 1.8 x $10^{-6}$

atmospheres/gram-mole/$m^3$) at 25 °C.

i) Any USEPA standard method that has been validated in accordance with appendix D to 40 CFR 63 (Alternative Validation Procedure for EPA Waste and Wastewater Methods), incorporated by reference in 35 Ill. Adm. Code 720.111(b); or

ii) Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or 5.3, and the corresponding calculations in Section 6.1 or 6.3, of Method 301 (Field Validation of Pollutant Measurement Methods from Various Waste Media) in appendix A to 40 CFR 63 (Test Methods), incorporated by reference in 35 Ill. Adm. Code 720.111(b). The data are acceptable if they meet the criteria specified in Section 6.1.5 or 6.3.3 of Method 301. If correction is required under Section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

D) Calculations.

i) The average VO concentration ($\overline{C}$) on a mass-weighted basis must be calculated by using the results for all waste determinations conducted in accordance with subsections (a)(3)(B) and (a)(3)(C) and the following equation:

$$\overline{C} = \frac{1}{Q_T} \times \sum_{i=1}^{n} \left( Q_i \times C_i \right)$$

Where:

$\overline{C}$ = Average VO concentration of the hazardous waste at the point of waste origination on a mass-weighted basis, in ppmw;

i = Individual waste determination "i" of the hazardous waste;

n = Total number of waste determinations of the hazardous waste conducted for the averaging period (not to exceed one year)~~;~~

$Q_i$ = Mass quantity of the hazardous waste stream represented by $C_i$, in kg/hr~~;~~

$Q_T$ = Total mass quantity of the hazardous waste during the averaging period, in kg/hr~~; and~~

$C_i$ = Measured VO concentration of waste determination "i~~,~~", as determined in accordance with subsection (a)(3)(C) (i.e., the average of the four or more samples specified in subsection (a)(3)(B)(ii)), in ppmw~~.~~

ii) For the purpose of determining $C_i$, for individual waste samples analyzed in accordance with subsection (a)(3)(C), the owner or operator must account for VO concentrations determined to be below the limit of detection of the analytical method by using the VO concentration determined according to subsection (a)(3)(G).

E) Provided that the test method is appropriate for the waste as required under subsection (a)(3)(C), the Agency must determine compliance based on the test method used by the owner or operator as recorded pursuant to Section 725.990(f)(1).

F) The quality assurance program elements required under subsections (a)(3)(C)(vi) and (a)(3)(C)(vii) are as follows:

i) Documentation of site-specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, preparation, introduction, and analysis steps.

ii) Measurement of the overall accuracy and precision of the specific procedures.

BOARD NOTE: Subsections (a)(3)(F)(i) and (a)(3)(F)(ii) are derived from 40 CFR 265.984(a)(3)(iii)(F)(1), (a)(3)(iii)(F)(2), (a)(3)(iii)(G)(1), and (a)(3)(iii)(G)(2), which the Board has

codified here to comport with Illinois Administrative Code format requirements.

G) VO concentrations below the limit of detection must be considered to be as follows:

i) If Reference Method 25D is used for the analysis, the VO concentration must be considered to be one-half the blank value determined in the method at Section 4.4 of Reference Method 25D.

ii) If any other analytical method is used, the VO concentration must be considered to be one-half the sum of the limits of detection established for each organic constituent in the waste that has a Henry's law constant value at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) (which can also be expressed as $1.8 \times 10^{-6}$ atmospheres/gram-mole/$m^3$) at 25 °C.

BOARD NOTE: Subsections (a)(3)(G)(i) and (a)(3)(G)(ii) are derived from 40 CFR 265.984(a)(3)(iv)(A)(1) and (a)(3)(iv)(A)(2), which the Board has codified here to comport with Illinois Administrative Code format requirements.

4) Use of Owner or Operator Knowledge.

A) Documentation must be prepared that presents the information used as the basis for the owner's or operator's knowledge of the hazardous waste stream's average VO concentration. Examples of information that may be used as the basis for knowledge include the following: material balances for the source or process generating the hazardous waste stream; constituent-specific chemical test data for the hazardous waste stream from previous testing that are still applicable to the current waste stream; previous test data for other locations managing the same type of waste stream; or other knowledge based on information included in manifests, shipping papers, or waste certification notices.

B) If test data are used as the basis for knowledge, then the owner or operator must document the test method, sampling protocol, and the means by which sampling variability and analytical variability are accounted for in the determination of the average VO concentration. For example, an owner or operator may use organic concentration test data for the hazardous waste stream that are validated in accordance with Method 301 as the basis for knowledge of the waste.

C) An owner or operator using chemical constituent-specific concentration test data as the basis for knowledge of the hazardous waste may adjust the test data to the corresponding average VO concentration value that would have been obtained had the waste samples been analyzed using Reference Method 25D. To adjust these data, the measured concentration for each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor ($f_{m25D}$).

D) In the event that the Agency and the owner or operator disagree on a determination of the average VO concentration for a hazardous waste stream using knowledge, then the results from a determination of average VO concentration using direct measurement, as specified in subsection (a)(3), must be used to establish compliance with the applicable requirements of this Subpart CC. The Agency may perform or request that the owner or operator perform this determination using direct measurement. The owner or operator may choose one or more appropriate methods to analyze each collected sample in accordance with the requirements of subsection (a)(3)(C).

b) Determination of VO Concentration at the Point of Waste Treatment.

1) An owner or operator must perform the applicable waste determination for each treated hazardous waste placed in a waste management unit exempted under the provisions of Section 725.983(c)(2)(A) through (c)(2)(F) from using air emission controls in accordance with the standards specified in Sections 725.985 through 725.988, as applicable to the waste management unit.

A) An owner or operator must make an initial determination of the average VO concentration of the waste stream before the first time any portion of the material in the treated waste stream is placed in the waste management unit exempt under Section 725.983(c)(2), (c)(3), or (c)(4) from using air emission controls. Thereafter, an owner or operator must update the information used for the waste determination at least once every 12 months following the date of the initial waste determination.

B) An owner or operator must perform a new waste determination whenever changes to the process generating or treating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to such a level that the applicable treatment conditions specified in Section 725.983(c)(2), (c)(3), or (c)(4) are not achieved.

2) The owner or operator must designate and record the specific provision in Section 725.983(c)(2) under which the waste determination is being performed. The waste determination for the treated hazardous waste must be performed using the applicable procedures specified in subsections (b)(3) through (b)(9).

3) Procedure for Determination of VO Concentration.

A) Identification. The owner or operator must identify and record the point of waste treatment for the hazardous waste.

B) Sampling. Samples of the hazardous waste stream must be collected at the point of waste treatment in such a manner that volatilization of organics contained in the waste and in the subsequent sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

i) The averaging period to be used for determining the average VO concentration for the hazardous waste stream on a mass-weighted average basis must be designated and recorded. The averaging period can represent any time interval that the owner or operator determines is

appropriate for the hazardous waste stream but must not exceed one year.

ii) A sufficient number of samples, but no fewer than four samples, must be collected and analyzed for a hazardous waste determination. All of the samples for a given waste determination must be collected within a one-hour period. The average of the four or more sample results constitutes a waste determination for the hazardous waste stream. One or more waste determinations may be required to represent the complete range of waste compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the process generating or treating the hazardous waste stream. Examples of such normal variations are seasonal variations in waste quantity or fluctuations in ambient temperature.

iii) All samples must be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan must describe the procedure by which representative samples of the hazardous waste stream are collected so that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan must be maintained on-site in the facility operating records. An example of an acceptable sample collection and handling procedures for a total organic constituent concentration may be found in Reference Method 25D.

iv) Sufficient information, as specified in the "site sampling plan" required under subsection (a)(3)(B)(iii), must be prepared and recorded to document the waste quantity represented by the samples and, as applicable, the operating conditions for the process treating the hazardous waste represented by the samples.

C) Analysis. Each collected sample must be prepared and analyzed in accordance with Reference Method 25D for the total concentration

of volatile organic constituents or using one or more methods when the individual organic compound concentrations are identified and summed, and the summed waste concentration accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) (which can also be expressed as 1.8 x $10^{-6}$ atmospheres/gram-mole/$m^3$) at 25 °C (77° F). When the owner or operator is making a waste determination for a treated hazardous waste that is to be compared to an average VO concentration at the point of waste origination or the point of waste entry to the treatment system, to determine if the conditions of 35 Ill. Adm. Code 724.982(c)(2)(A) through (c)(2)(F) or Section 725.983(c)(2)(A) through (c)(2)(F) are met, then the waste samples must be prepared and analyzed using the same method or methods as were used in making the initial waste determinations at the point of waste origination or at the point of entry to the treatment system. At the owner's or operator's discretion, the owner or operator may adjust test data obtained by any appropriate method to discount any contribution to the total volatile organic concentration that is a result of including a compound with a Henry's law constant value less than 0.1 Y/X at 25 °C. If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at 25 °C contained in the waste. To adjust these data, the measured concentration of each individual chemical constituent contained in the waste is multiplied by the constituent-specific adjustment factor ($f_{m25D}$) approved in writing by the Agency. Other test methods may be used if they meet the requirements in subsection (a)(3)(C)(i) or (a)(3)(C)(ii) and provided the requirement is met to reflect all organic compounds in the waste with Henry's law constant values greater than or equal to 0.1 Y/X (which can also be expressed as 1.8 x $10^{-6}$ atmospheres/gram-mole/$m^3$) at 25 °C.

i) Any USEPA standard method that has been validated in accordance with appendix D to 40 CFR 63, incorporated by reference in 35 Ill. Adm. Code 720.111(b); or

ii) Any other analysis method that has been validated in

accordance with the procedures specified in Section 5.1 or 5.3, and the corresponding calculations in Section 6.1 or 6.3, of Method 301 in appendix A to 40 CFR 63, incorporated by reference in 35 Ill. Adm. Code 720.111(b). The data are acceptable if they meet the criteria specified in Section 6.1.5 or 6.3.3 of Method 301. If correction is required under Section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

D) Calculations. The average VO concentration ($\overline{C}$) on a mass-weighted basis must be calculated by using the results for all samples analyzed in accordance with subsection (b)(3)(C) and the following equation:

$$\overline{C} = \frac{1}{Q_T} \times \sum_{i=1}^{n} \left( Q_i \times C_i \right)$$

Where:

$\overline{C}$ = Average VO concentration of the hazardous waste at the point of waste treatment on a mass-weighted basis, in ppmw~~;~~

i = Individual determination "i" of the hazardous waste~~;~~

n = Total number of waste determinations of the hazardous waste collected for the averaging period (not to exceed one year)~~;~~

$Q_i$ = Mass quantity of the hazardous waste stream represented by $C_i$, in kg/hr~~;~~

$Q_T$ = Total mass quantity of hazardous waste during the averaging period, in kg/hr~~; and~~

$C_i$ = Measured VO concentration of waste determinations "i~~,~~", as determined in accordance with the requirements of subsection (b)(3)(C) (i.e., the average of the four or more samples specified in subsection (b)(3)(B)(ii)), in ppmw~~.~~

E) Provided that the test method is appropriate for the waste as

required under subsection (b)(3)(C), compliance must be determined based on the test method used by the owner or operator as recorded pursuant to Section 725.990(f)(1).

4) Procedure for Determination of Exit Concentration Limit ($C_t$).

A) The point of waste origination for each hazardous waste treated by the process at the same time must be identified.

B) If a single hazardous waste stream is identified in subsection (b)(4)(A), then the exit concentration limit ($C_t$) must be 500 ppmw.

C) If more than one hazardous waste stream is identified in subsection (b)(4)(A), then the average VO concentration of each hazardous waste stream at the point of waste origination must be determined in accordance with the requirements of subsection (a). The exit concentration limit ($C_t$) must be calculated by using the results determined for each individual hazardous waste stream and the following equation:

$$C_t = \frac{\sum_{x=1}^{m}\left(Q_x \times \overline{C}_x\right) + \sum_{y=1}^{n}\left(Q_y \times 500\,ppmw\right)}{\sum_{x=1}^{m} Q_x + \sum_{y=1}^{n} Q_y}$$

Where:

$C_t$ = Exit concentration limit for treated hazardous waste, in ppmw;

x = Individual hazardous waste stream "x" that has an average VO concentration less than 500 ppmw at the point of waste origination, as determined in accordance with the requirements of subsection (a);

y = Individual hazardous waste stream "y" that has an average VO concentration equal to or greater than 500 ppmw at the point of waste origination, as determined in accordance with the requirements of subsection (a);

m = Total number of "x" hazardous waste streams treated by process~~;~~

n = Total number of "y" hazardous waste streams treated by process~~;~~

$Q_x$ = Annual mass quantity of hazardous waste stream "x~~,~~", in kg/yr~~;~~

$Q_y$ = Annual mass quantity of hazardous waste stream "y~~,~~", in kg/yr~~; and~~

$\overline{C}_x$ = Average VO concentration of hazardous waste stream "x" at the point of waste origination, as determined in accordance with the requirements of subsection (a), in ppmw~~.~~

5) Procedure for Determination of Organic Reduction Efficiency (R)~~.~~

A) The organic reduction efficiency (R) for a treatment process must be determined based on results for a minimum of three consecutive runs.

B) All hazardous waste streams entering the process and all hazardous waste streams exiting the treatment process must be identified. The owner or operator must prepare a sampling plan for measuring these streams that accurately reflects the retention time of the hazardous waste in the process.

C) For each run, information must be determined for each hazardous waste stream identified in subsection (b)(5)(B), using the following procedures:

i) The mass quantity of each hazardous waste stream entering the process ($Q_b$) and the mass quantity of each hazardous waste stream exiting the process ($Q_a$) must be determined; and

ii) The average VO concentration at the point of waste origination of each hazardous waste stream entering the process ($C_b$) during the run must be determined in accordance with the requirements of subsection (a)(3). The average VO concentration at the point of waste treatment of

each hazardous waste stream exiting the process ($C_a$) during the run must be determined in accordance with the requirements of subsection (b)(3).

D) The waste volatile organic mass flow entering the process ($E_b$) and the waste volatile organic mass flow exiting the process ($E_a$) must be calculated by using the results determined in accordance with subsection (b)(5)(C) and the following equations:

$$E_b = \frac{1}{10^6} \sum_{j=1}^{m} \left( Q_{bj} \times \overline{C_{bj}} \right)$$

$$E_a = \frac{1}{10^6} \sum_{j=1}^{m} \left( Q_{aj} \times \overline{C_{aj}} \right)$$

Where:

| | | |
|---|---|---|
| $E_a$ | = | Waste volatile organic mass flow exiting the process, in kg/hr~~;~~ |
| $E_b$ | = | Waste volatile organic mass flow entering the process, in kg/hr~~;~~ |
| m | = | Total number of runs (at least 3); |
| j | = | Individual run "j"~~;~~ |
| $Q_{bj}$ | = | Mass quantity of hazardous waste entering the process during run "j~~,~~", in kg/hr~~;~~ |
| $Q_{aj}$ | = | Average mass quantity of waste exiting the process during run "j~~,~~", in kg/hr~~;~~ |
| $\overline{C_{aj}}$ | = | Average VO concentration of hazardous waste exiting the process during run "j~~,~~", as determined in accordance with the requirements of subsection (b)(3), in ppmw~~; and~~ |
| $\overline{C_{bj}}$ | = | Average VO concentration of hazardous waste entering the process during run "j~~,~~", as determined in accordance with the requirements of subsection (a)(3), in ppmw~~.~~ |

E) The organic reduction efficiency of the process must be calculated by using the results determined in accordance with subsection

(b)(5)(D) and the following equation:

$$R = \frac{E_b - E_a}{E_b} \times 100\%$$

Where:

R = Organic reduction efficiency, in percent~~;~~

$E_b$ = Waste volatile organic mass flow entering the process, as determined in accordance with the requirements of subsection (b)(5)(D), in kg/hr~~; and~~

$E_a$ = Waste volatile organic mass flow exiting the process, as determined in accordance with the requirements of subsection (b)(5)(D), in kg/hr~~.~~

6) Procedure for Determination of Organic Biodegradation Efficiency ($R_{bio}$)~~.~~

A) The fraction of organics biodegraded ($F_{bio}$) must be determined using the procedure specified in appendix C to 40 CFR 63 (Determination of the Fraction Biodegraded ($F_{bio}$) in a Biological Treatment Unit), incorporated by reference in 35 Ill. Adm. Code 720.111(b).

B) The organic biodegradation efficiency ($R_{bio}$) must be calculated by using the following equation:

$$R_{bio} = F_{bio} \times 100\%$$

Where:

$R_{bio}$ = Organic biodegradation efficiency, in percent~~; and~~

$F_{bio}$ = Fraction of organic biodegraded, as determined in accordance with the requirements of subsection (b)(6)(A)~~.~~

7) Procedure for Determination of Required Organic Mass Removal Rate (RMR)~~.~~

A) All of the hazardous waste streams entering the treatment process must be identified.

B) The average VO concentration of the hazardous waste stream at the point of waste origination must be determined in accordance with the requirements of subsection (a).

C) For each individual hazardous waste stream that has an average volatile organic concentration equal to or greater than 500 ppmw at the point of waste origination, the average volumetric flow rate of hazardous waste and the density of the hazardous waste stream at the point of waste origination must be determined.

D) The required organic mass removal rate (RMR) for the hazardous waste must be calculated by using the average VO concentration, average volumetric flow rate, and density determined for each individual hazardous waste stream, and the following equation:

$$RMR = \sum_{y=1}^{n} \left[ V_y \times k_y \times \frac{\left(\overline{C}_y - 500\,ppmw\right)}{10^6} \right]$$

Where:

RMR = Required organic mass removal rate, in kg/hr;

y = Individual hazardous waste stream "y" that has an average volatile organic (VO) concentration equal to or greater than 500 ppmw at the point of waste origination, as determined in accordance with the requirements of subsection (a)~~;~~

n = Total number of "y" hazardous waste streams treated by process~~;~~

$V_y$ = Average volumetric flow rate of hazardous waste stream "y" at the point of waste origination, in $m^3$/hr~~;~~

$k_y$ = Density of hazardous waste stream "y~~,~~", in $kg/m^3$~~; and~~

$\overline{C}_y$ = Average VO concentration of hazardous waste stream "y" at the point of waste origination, as

determined in accordance with the requirements of subsection (a), in ppmw~~.~~

8) Procedure for Determination of Actual Organic Mass Removal Rate (MR)~~.~~

A) The actual organic mass removal rate (MR) must be determined based on results for a minimum of three consecutive runs. The sampling time for each run must be one hour.

B) The waste volatile organic mass flow entering the process ($E_b$) and the waste volatile organic mass flow exiting the process ($E_a$) must be determined in accordance with the requirements of subsection (b)(5)(D).

C) The actual organic mass removal rate (MR) must be calculated by using the mass flow rate determined in accordance with the requirements of subsection (b)(8)(B) and the following equation:

$$MR = E_b - E_a$$

Where:

MR = Actual organic mass removal rate, in kg/hr~~;~~
$E_b$ = Waste volatile organic mass flow entering the process, as determined in accordance with the requirements of subsection (b)(5)(D), in kg/hr~~; and~~
$E_a$ = Waste volatile organic mass flow exiting the process, as determined in accordance with the requirements of subsection (b)(5)(D), in kg/hr~~.~~

9) Procedure for Determination of Actual Organic Mass Biodegradation Rate ($MR_{bio}$)~~.~~

A) The actual organic mass biodegradation rate ($MR_{bio}$) must be determined based on results for a minimum of three consecutive runs. The sampling time for each run must be one hour.

B) The waste organic mass flow entering the process ($E_b$) must be

determined in accordance with the requirements of subsection (b)(5)(D).

C) The fraction of organic biodegraded ($F_{bio}$) must be determined using the procedure specified in appendix C to 40 CFR 63 (Determination of the Fraction Biodegraded ($F_{bio}$) in a Biological Treatment Unit), incorporated by reference in 35 Ill. Adm. Code 720.111(b).

D) The actual organic mass biodegradation rate ($MR_{bio}$) must be calculated by using the mass flow rates and fraction of organic biodegraded, as determined in accordance with the requirements of subsections (b)(9)(B) and (b)(9)(C), respectively, and the following equation:

$$MR_{bio} = E_b \times F_{bio}$$

Where:

$MR_{bio}$ = Actual organic mass biodegradation rate, in kg/hr~~;~~

$E_b$ = Waste organic mass flow entering the process, as determined in accordance with the requirements of subsection (b)(5)(D), in kg/hr~~; and~~

$F_{bio}$ = Fraction of organic biodegraded, as determined in accordance with the requirements of subsection (b)(9)(C)~~.~~

c) Procedure for Determination of VO in a Tank~~.~~

1) An owner or operator must determine the maximum organic vapor pressure for each hazardous waste placed in a tank using Tank Level 1 controls in accordance with standards specified in Section 725.985(c).

2) An owner or operator must use either direct measurement, as specified in subsection (c)(3), or knowledge of the waste, as specified by subsection (c)(4), to determine the maximum organic vapor pressure that is representative of the hazardous waste composition stored or treated in the

tank.

3) Direct Measurement to Determine VO.

A) Sampling. A sufficient number of samples must be collected to be representative of the waste contained in the tank. All samples must be conducted and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan must describe the procedure by which representative samples of the hazardous waste are collected so that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan must be maintained on-site in the facility operating records. An example of acceptable sample collection and handling procedures may be found in Reference Method 25D.

B) Analysis. Any appropriate one of the following methods may be used to analyze the samples and compute the maximum organic vapor pressure of the hazardous waste:

i) Reference Method 25E (Determination of Vapor Phase Organic Concentration in Waste Samples) in appendix A to 40 CFR 60 (Test Methods), incorporated by reference in 35 Ill. Adm. Code 720.111(b);

ii) Methods described in API publication 2517 (Evaporative Loss from External Floating-Roof Tanks), incorporated by reference in 35 Ill. Adm. Code 720.111(a);

iii) Methods obtained from standard reference texts;

iv) ASTM Method D 2879-92 (Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope), incorporated by reference in 35 Ill. Adm. Code 720.111(a); or

v) Any other method approved by the Agency.

4) Use of Knowledge~~knowledge~~ to Determine~~determine~~ the Maximum Organic Vapor Pressure~~maximum organic vapor pressure~~ of the Hazardous Waste~~hazardous waste~~. Documentation must be prepared and recorded that presents the information used as the basis for the owner's or operator's knowledge that the maximum organic vapor pressure of the hazardous waste is less than the maximum vapor pressure limit listed in Section 725.985(b)(1)(A) for the applicable tank design capacity category. An example of information that may be used is documentation that the hazardous waste is generated by a process for which at other locations it previously has been determined by direct measurement that the waste maximum organic vapor pressure is less than the maximum vapor pressure limit for the appropriate tank design capacity category.

d) The procedure for determining no detectable organic emissions for the purpose of complying with this Subpart CC is as follows:

1) The test must be conducted in accordance with the procedures specified in Reference Method 21 (Determination of Volatile Organic Compound Leaks) of appendix A to 40 CFR 60 (Test Methods), incorporated by reference in 35 Ill. Adm. Code 720.111(b). Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the cover and associated closure devices must be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to, any of the following: the interface of the cover and its foundation mounting, the periphery of any opening on the cover and its associated closure device, and the sealing seat interface on a spring-loaded pressure relief valve.

2) The test must be performed when the unit contains a hazardous waste having an organic concentration representative of the range of concentrations for the hazardous waste expected to be managed in the unit. During the test, the cover and closure devices must be secured in the closed position.

3) The detection instrument must meet the performance criteria of Reference Method 21, except the instrument response factor criteria in Section 3.1.2(a) of Reference Method 21 must be for the average composition of the organic constituents in the hazardous waste placed in the waste

management unit, not for each individual organic constituent.

4) The detection instrument must be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

5) Calibration gases must be as follows:

A) Zero air (less than 10 ppmv hydrocarbon in air), and

B) A mixture of methane or n-hexane in air at a concentration of approximately, but less than, 10,000 ppmv methane or n-hexane.

6) The background level must be determined according to the procedures in Reference Method 21.

7) Each potential leak interface must be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Reference Method 21. If the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface must be sampled. If the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn (e.g., some pressure relief devices), the instrument probe inlet must be placed at approximately the center of the exhaust area to the atmosphere.

8) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level must be compared with the value of 500 ppmv except when monitoring a seal around a rotating shaft that passes through a cover opening, in which case the comparison must be as specified in subsection (d)(9). If the difference is less than 500 ppmv, then the potential leak interface is determined to operate with no detectable organic emissions.

9) For the seals around a rotating shaft that passes through a cover opening, the arithmetic difference between the maximum organic concentration indicated by the instrument and the background level must be compared with the value of 10,000 ppmw. If the difference is less than 10,000 ppmw, then the potential leak interface is determined to operate with no detectable organic emissions.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.986 Standards: Surface Impoundments**

a) The provisions of this Section apply to the control of air pollutant emissions from surface impoundments for which Section 725.983(b) of this Subpart CC references the use of this Section for such air emission control.

b) The owner or operator must control air pollutant emissions from the surface impoundment by installing and operating either of the following:

1) A floating membrane cover in accordance with the provisions specified in subsection (c)~~ of this Section~~; or

2) A cover that is vented through a closed-vent system to a control device in accordance with the requirements specified in subsection (d)~~ of this Section~~.

c) The owner or operator that controls air pollutant emissions from a surface impoundment using a floating membrane cover must meet the requirements specified in subsections (c)(1) through (c)(3)~~ of this Section~~.

1) The surface impoundment must be equipped with a floating membrane cover designed to meet the following specifications:

A) The floating membrane cover must be designed to float on the liquid surface during normal operations and form a continuous barrier over the entire surface area of the liquid;

B) The cover must be fabricated from a synthetic membrane material that is either of the following:

i) High density polyethylene (HDPE) with a thickness no less than 2.5 millimeters (mm) (0.10 inch); or

ii) A material or a composite of different materials determined to have both organic permeability properties that are equivalent to those of the material listed in subsection

(c)(1)(B)(i) ~~of this Section~~ and chemical and physical properties that maintain the material integrity for the intended service life of the material;

C) The cover must be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between cover section seams or between the interface of the cover edge and its foundation mountings;

D) Except as provided for in subsection (c)(1)(E) ~~of this Section~~, each opening in the floating membrane cover must be equipped with a closure device so designed as to operate that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device;

E) The floating membrane cover may be equipped with one or more emergency cover drains for removal of stormwater. Each emergency cover drain must be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening or a flexible fabric sleeve seal; and

F) The closure devices must be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the closure devices throughout their intended service life. Factors to be considered when selecting the materials of construction and designing the cover and closure devices must include the following: the organic vapor permeability; the effects of any contact with the liquid and its vapor managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the floating membrane cover is installed.

2) Whenever a hazardous waste is in the surface impoundment, the floating membrane cover must float on the liquid and each closure device must be secured in the closed position, except as follows:

A) Opening of closure devices or removal of the cover is allowed at

the following times:

i) To provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the surface impoundment, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator must promptly replace the cover and secure the closure device in the closed position, as applicable; or

ii) To remove accumulated sludge or other residues from the bottom of surface impoundment; and

B) Opening of a safety device, as defined in Section 725.981, is allowed at any time conditions require doing so to avoid an unsafe condition.

3) The owner or operator must inspect the floating membrane cover in accordance with the following procedures:

A) The floating membrane cover and its closure devices must be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover section seams or between the interface of the cover edge and its foundation mountings; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices;

B) The owner or operator must perform an initial inspection of the floating membrane cover and its closure devices on or before the date that the surface impoundment becomes subject to this Section. Thereafter, the owner or operator must perform the inspections at least once every year except for the special conditions provided for in subsection (g) ~~of this Section~~;

C) In the event that a defect is detected, the owner or operator must repair the defect in accordance with the requirements of subsection (f)~~ of this Section~~; and

D) The owner or operator must maintain a record of the inspection in accordance with the requirements specified in Section 725.990(c).

d) The owner or operator that controls air pollutant emissions from a surface impoundment using a cover vented to a control device must meet the requirements specified in subsections (d)(1) through (d)(3)~~ of this Section~~.

1) The surface impoundment must be covered by a cover and vented directly through a closed-vent system to a control device in accordance with the following requirements:

A) The cover and its closure devices must be designed to form a continuous barrier over the entire surface area of the liquid in the surface impoundment;

B) Each opening in the cover not vented to the control device must be equipped with a closure device. If the pressure in the vapor headspace underneath the cover is less than atmospheric pressure when the control device is operating, the closure devices must be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the cover is equal to or greater than atmospheric pressure when the control device is operating, the closure device must be designed to operate with no detectable organic emissions using the procedure specified in Section 725.984(d);

C) The cover and its closure devices must be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere to the extent practical and which will maintain the integrity of the cover and closure devices throughout their intended service life. Factors to be considered when selecting the materials of construction and designing the cover and closure devices must

include the following: the organic vapor permeability; the effects of any contact with the liquid or its vapors managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the cover is installed; and

D) The closed-vent system and control device must be designed and operated in accordance with the requirements of Section 725.988.

2) Whenever a hazardous waste is in the surface impoundment, the cover must be installed with each closure device secured in the closed position and the vapor headspace underneath the cover vented to the control device, except as follows:

A) Venting to the control device is not required, and opening of closure devices or removal of the cover is allowed at the following times:

i) To provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the surface impoundment, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator must promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the surface impoundment; or

ii) To remove accumulated sludge or other residues from the bottom of the surface impoundment; and

B) Opening of a safety device, as defined in Section 725.981, is allowed at any time conditions require doing so to avoid an unsafe condition.

3) The owner or operator must inspect and monitor the air emission control equipment in accordance with the following procedures:

A) The surface impoundment cover and its closure devices must be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover section seams or between the interface of the cover edge and its foundation mountings; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices;

B) The closed-vent system and control device must be inspected and monitored by the owner or operator in accordance with the procedures specified in Section 725.988;

C) The owner or operator must perform an initial inspection of the air emission control equipment on or before the date that the surface impoundment becomes subject to this Section. Thereafter, the owner or operator must perform the inspections at least once every year except for the special conditions provided for in subsection (g)~~ of this Section~~;

D) In the event that a defect is detected, the owner or operator must repair the defect in accordance with the requirements of subsection (f)~~ of this Section~~; and

E) The owner or operator must maintain a record of the inspection in accordance with the requirements specified in Section 725.990(c).

e) The owner or operator must transfer hazardous waste to a surface impoundment subject to this Section in accordance with the following requirements:

1) Transfer of hazardous waste, except as provided in subsection (e)(2)~~ of this Section~~, to the surface impoundment from another surface impoundment subject to this Section or from a tank subject to Section 725.985 must be conducted using continuous hard-piping or another closed system that does not allow exposure of the waste to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of subpart RR of 40 CFR 63 (National Emission Standards for Individual Drain Systems), incorporated by reference in 35 Ill. Adm. Code

720.111(b); and

2) The requirements of subsection (e)(1) ~~of this Section~~ do not apply when transferring a hazardous waste to the surface impoundment under any of the following conditions:

A) The hazardous waste meets the average VO concentration conditions specified in Section 725.983(c)(1) at the point of waste origination;

B) The hazardous waste has been treated by an organic destruction or removal process to meet the requirements in Section 725.983(c)(2); or

C) The hazardous waste meets the requirements of Section 725.983(c)(4).

f) The owner or operator must repair each defect detected during an inspection performed in accordance with the requirements of subsection (c)(3) or (d)(3) ~~of this Section~~ as follows:

1) The owner or operator must make first efforts at repair of the defect no later than five calendar days after detection, and repair must be completed as soon as possible but no later than 45 calendar days after detection except as provided in subsection (f)(2) ~~of this Section~~; and

2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the surface impoundment and no alternative capacity is available at the site to accept the hazardous waste normally managed in the surface impoundment. In this case, the owner or operator must repair the defect the next time the process or unit that is generating the hazardous waste managed in the tank stops operation. Repair of the defect must be completed before the process or unit resumes operation.

g) Following the initial inspection and monitoring of the cover, as required by the applicable provisions of this Subpart CC, subsequent inspection and monitoring may be performed at intervals longer than one year in the case when inspecting or

monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions. In this case, the owner or operator may designate the cover as an "unsafe to inspect and monitor cover" and comply with all of the following requirements:

1) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required; and

2) Develop and implement a written plan and schedule to inspect and monitor the cover using the procedures specified in the applicable Section of this Subpart CC as frequently as practicable during those times when a worker can safely access the cover.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.988 Standards: Closed-Vent Systems and Control Devices**

a) This Section applies to each closed-vent system and control device installed and operated by the owner or operator to control air emissions in accordance with standards of this Subpart CC.

b) The closed-vent system must meet the following requirements:

1) The closed-vent system must route the gases, vapors, and fumes emitted from the hazardous waste in the waste management unit to a control device that meets the requirements specified in subsection (c)~~ of this Section~~;

2) The closed-vent system must be designed and operated in accordance with the requirements specified in Section 725.933(j);

3) When the closed-vent system includes bypass devices that could be used to divert the gas or vapor stream to the atmosphere before entering the control device, each bypass device must be equipped with either a flow indicator as specified in subsection (b)(3)(A)~~ of this Section~~ or a seal or locking device as specified in subsection (b)(3)(B)~~ of this Section~~. For the purpose of complying with this subsection, low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, spring-loaded pressure relief valves, and other fittings used for safety purposes are not considered

to be bypass devices.

A) If a flow indicator is used to comply with this subsection (b)(3), the indicator must be installed at the inlet to the bypass line used to divert gases and vapors from the closed-vent system to the atmosphere at a point upstream of the control device inlet. For the purposes of this subsection, a flow indicator means a device that indicates the presence of either gas or vapor flow in the bypass line.

B) If a seal or locking device is used to comply with this subsection (b)(3), the device must be placed on the mechanism by which the bypass device position is controlled (e.g., valve handle or damper lever) when the bypass device is in the closed position such that the bypass device cannot be opened without breaking the seal or removing the lock. Examples of such devices include, but are not limited to, a car-seal or a lock-and-key configuration valve. The owner or operator must visually inspect the seal or closure mechanism at least once every month to verify that the bypass mechanism is maintained in the closed position; and

4) The closed-vent system must be inspected and monitored by the owner or operator in accordance with the procedure specified in Section 725.933(k).

c) The control device must meet the following requirements:

1) The control device must be one of the following devices:

A) A control device designed and operated to reduce the total organic content of the inlet vapor stream vented to the control device by at least 95 percent by weight;

B) An enclosed combustion device designed and operated in accordance with the requirements of Section 725.933(c); or

C) A flare designed and operated in accordance with the requirements of Section 725.933(d);

2) The owner or operator that elects to use a closed-vent system and control

device to comply with the requirements of this Section must comply with the requirements specified in subsections (c)(2)(A) through (c)(2)(G) ~~of this Section~~.

A) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of subsection (c)(1)(A), (c)(1)(B), or (c)(1)(C) ~~of this Section~~, as applicable, must not exceed 240 hours per year.

B) The specifications and requirements in subsections (c)(1)(A), (c)(1)(B), and (c)(1)(C) ~~of this Section~~ for control devices do not apply during periods of planned routine maintenance.

C) The specifications and requirements in subsections (c)(1)(A), (c)(1)(B), and (c)(1)(C) ~~of this Section~~ for control devices do not apply during a control device system malfunction.

D) The owner or operator must demonstrate compliance with the requirements of subsection (c)(2)(A) ~~of this Section~~ (i.e., planned routine maintenance of a control device, during which the control device does not meet the specifications of subsection (c)(1)(A), (c)(1)(B), or (c)(1)(C) ~~of this Section~~, as applicable, must not exceed 240 hours per year) by recording the information specified in Section 725.990(e)(1)(E).

E) The owner or operator must correct control device system malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of air pollutants.

F) The owner or operator must operate the closed-vent system so that gases, vapors, or fumes are not actively vented to the control device during periods of planned maintenance or control device system malfunction (i.e., periods when the control device is not operating or not operating normally), except in cases when it is necessary to vent the gases, vapors, or fumes to avoid an unsafe condition or to implement malfunction corrective actions or planned maintenance actions;

3) The owner or operator using a carbon adsorption system to comply with

subsection (c)(1) ~~of this Section~~ must operate and maintain the control device in accordance with the following requirements:

A) Following the initial startup of the control device, all activated carbon in the control device must be replaced with fresh carbon on a regular basis in accordance with the requirements of Section 725.933(g) or 725.933(h).

B) All carbon that is a hazardous waste and that is removed from the control device must be managed in accordance with the requirements of Section 725.933(m), regardless of the average volatile organic concentration of the carbon;

4) An owner or operator using a control device other than a thermal vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with subsection (c)(1) ~~of this Section~~ must operate and maintain the control device in accordance with the requirements of Section 725.933(i);

5) The owner or operator must demonstrate that a control device achieves the performance requirements of subsection (c)(1) ~~of this Section~~ as follows:

A) An owner or operator must demonstrate using either a performance test, as specified in subsection (c)(5)(C) ~~of this Section~~, or a design analysis, as specified in subsection (c)(5)(D) ~~of this Section~~, the performance of each control device except for the following:

i) A flare;

ii) A boiler or process heater with a design heat input capacity of 44 megawatts or greater;

iii) A boiler or process heater into which the vent stream is introduced with the primary fuel;

iv) A boiler or industrial furnace burning hazardous waste for which the owner or operator has been issued a final permit under 35 Ill. Adm. Code 702, 703, and 705 and has designed and operates in accordance with the requirements

of Subpart H of 35 Ill. Adm. Code 726; or

v) A boiler or industrial furnace burning hazardous waste for which the owner or operator has designed and operates in accordance with the interim status requirements of Subpart H of 35 Ill. Adm. Code 726;

B) An owner or operator must demonstrate the performance of each flare in accordance with the requirements specified in Section 725.933(e);

C) For a performance test conducted to meet the requirements of subsection (c)(5)(A)~~ of this Section~~, the owner or operator must use the test methods and procedures specified in Section 725.934(c)(1) through (c)(4);

D) For a design analysis conducted to meet the requirements of subsection (c)(5)(A)~~ of this Section~~, the design analysis must meet the requirements specified in Section 725.935(b)(4)(C); and

E) The owner or operator must demonstrate that a carbon adsorption system achieves the performance requirements of subsection (c)(1)~~ of this Section~~ based on the total quantity of organics vented to the atmosphere from all carbon adsorption system equipment that is used for organic adsorption, organic desorption or carbon regeneration, organic recovery, and carbon disposal;

6) If the owner or operator and the Agency do not agree on a demonstration of control device performance using a design analysis, then the disagreement must be resolved using the results of a performance test performed by the owner or operator in accordance with the requirements of subsection (c)(5)(C)~~ of this Section~~. The Agency may choose to have an authorized representative observe the performance test; and

7) The closed-vent system and control device must be inspected and monitored by the owner or operator in accordance with the procedures specified in Section 725.933(f)(2) and (k). The readings from each monitoring device required by Section 725.933(f)(2) must be inspected at least once each operating day to check control device operation. Any

necessary corrective measures must be immediately implemented to ensure the control device is operated in compliance with the requirements of this Section.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.989 Inspection and Monitoring Requirements**

a) The owner or operator must inspect and monitor air emission control equipment used to comply with this Subpart CC in accordance with the requirements specified in Sections 725.985 through 725.988.

b) The owner or operator must develop and implement a written plan and schedule to perform the inspections and monitoring required by subsection (a)~~ of this Section~~. The owner or operator must incorporate this plan and schedule into the facility inspection plan required under Section 725.115.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.990 Recordkeeping Requirements**

a) Each owner or operator of a facility subject to the requirements in this Subpart CC must record and maintain the information specified in subsections (b) through (j) ~~of this Section~~, as applicable to the facility. Except for air emission control equipment design documentation and information required by subsections (i) and (j)~~ of this Section~~, records required by this Section must be maintained in the operating record for a minimum of three years. Air emission control equipment design documentation must be maintained in the operating record until the air emission control equipment is replaced or is otherwise no longer in service. Information required by subsections (i) and (j) ~~of this Section~~ must be maintained in the operating record for as long as the waste management unit is not using air emission controls specified in Sections 725.985 through 725.988, in accordance with the conditions specified in Section 725.980(d) or (b)(7), respectively.

b) The owner or operator of a tank using air emission controls in accordance with the requirements of Section 725.985 must prepare and maintain records for the tank that include the following information:

1) For each tank using air emission controls in accordance with the

requirements of Section 725.985 of this Subpart CC, the owner or operator must record the following information:

A) A tank identification number (or other unique identification description as selected by the owner or operator); and

B) A record for each inspection required by Section 725.985 that includes the following information:

i) Date inspection was conducted; and

ii) For each defect detected during the inspection, the location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of Section 725.985, the owner or operator must also record the reason for the delay and the date that completion of repair of the defect is expected; and

2) In addition to the information required by subsection (b)(1)~~ of this Section~~, the owner or operator must record the following information, as applicable to the tank:

A) The owner or operator using a fixed roof to comply with the Tank Level 1 control requirements specified in Section 725.985(c) must prepare and maintain records for each determination for the maximum organic vapor pressure of the hazardous waste in the tank performed in accordance with the requirements of Section 725.985(c). The records must include the date and time the samples were collected, the analysis method used, and the analysis results;

B) The owner or operator using an internal floating roof to comply with the Tank Level 2 control requirements specified in Section 725.985(e) must prepare and maintain documentation describing the floating roof design;

C) Owners and operators using an external floating roof to comply

with the Tank Level 2 control requirements specified in Section 725.985(f) must prepare and maintain the following records:

i) Documentation describing the floating roof design and the dimensions of the tank; and

ii) Records for each seal gap inspection required by Section 725.985(f)(3) describing the results of the seal gap measurements. The records must include the date that the measurements were performed, the raw data obtained for the measurements, and the calculations of the total gap surface area. In the event that the seal gap measurements do not conform to the specifications in Section 725.985(f)(1), the records must include a description of the repairs that were made, the date the repairs were made, and the date the tank was emptied, if necessary.

D) Each owner or operator using an enclosure to comply with the Tank Level 2 control requirements specified in Section 725.985(i) must prepare and maintain the following records:

i) Records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T−Criteria for and Verification of a Permanent or Temporary Total Enclosure" under appendix B to 40 CFR 52.741 (VOM Measurement Techniques for Capture Efficiency), incorporated by reference in 35 Ill. Adm. Code 720.111(b); and

ii) Records required for the closed-vent system and control device in accordance with the requirements of subsection (e)~~ of this Section~~.

c) The owner or operator of a surface impoundment using air emission controls in accordance with the requirements of Section 725.986 must prepare and maintain records for the surface impoundment that include the following information:

1) A surface impoundment identification number (or other unique

identification description as selected by the owner or operator);

2) Documentation describing the floating membrane cover or cover design, as applicable to the surface impoundment, that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in Section 725.986(c);

3) A record for each inspection required by Section 725.986 that includes the following information:

A) Date inspection was conducted; and

B) For each defect detected during the inspection the following information: the location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of Section 725.986(f), the owner or operator must also record the reason for the delay and the date that completion of repair of the defect is expected; and

4) For a surface impoundment equipped with a cover and vented through a closed-vent system to a control device, the owner or operator must prepare and maintain the records specified in subsection (e)~~ of this Section~~.

d) The owner or operator of containers using Container Level 3 air emission controls in accordance with the requirements of Section 725.987 must prepare and maintain records that include the following information:

1) Records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T − Criteria for and Verification of a Permanent or Temporary Total Enclosure" under appendix B to 40 CFR 52.741 (VOM Measurement Techniques for Capture Efficiency), incorporated by reference in 35 Ill. Adm. Code 720.111(b); and

2) Records required for the closed-vent system and control device in

accordance with the requirements of subsection (e)~~ of this Section~~.

e) The owner or operator using a closed-vent system and control device in accordance with the requirements of Section 725.988 must prepare and maintain records that include the following information:

1) Documentation for the closed-vent system and control device that includes the following:

A) Certification that is signed and dated by the owner or operator stating that the control device is designed to operate at the performance level documented by a design analysis as specified in subsection (e)(1)(B) ~~of this Section~~ or by performance tests as specified in subsection (e)(1)(C) ~~of this Section~~ when the tank, surface impoundment, or container is or would be operating at capacity or the highest level reasonably expected to occur;

B) If a design analysis is used, then design documentation, as specified in Section 725.935(b)(4). The documentation must include information prepared by the owner or operator or provided by the control device manufacturer or vendor that describes the control device design in accordance with Section 725.935(b)(4)(C) and certification by the owner or operator that the control equipment meets the applicable specifications;

C) If performance tests are used, then a performance test plan as specified in Section 725.935(b)(3) and all test results;

D) Information as required by Section 725.935(c)(1) and (c)(2), as applicable;

E) An owner or operator must record, on a semiannual basis, the following information for those planned routine maintenance operations that would require the control device not to meet the requirements of Section 725.988(c)(1)(A), (c)(1)(B), or (c)(1)(C), as applicable:

i) A description of the planned routine maintenance that is anticipated to be performed for the control device during

the next six-month period. This description must include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods; and

ii) A description of the planned routine maintenance that was performed for the control device during the previous six-month period. This description must include the type of maintenance performed and the total number of hours during those six months that the control device did not meet the requirements of Section 725.988(c)(1)(A), (c)(1)(B), or (c)(1)(C), as applicable, due to planned routine maintenance;

F) An owner or operator must record the following information for those unexpected control device system malfunctions that would require the control device not to meet the requirements of Section 725.988(c)(1)(A), (c)(1)(B), or (c)(1)(C), as applicable:

i) The occurrence and duration of each malfunction of the control device system;

ii) The duration of each period during a malfunction when gases, vapors, or fumes are vented from the waste management unit through the closed-vent system to the control device while the control device is not properly functioning; and

iii) Actions taken during periods of malfunction to restore a malfunctioning control device to its normal or usual manner of operation; and

G) Records of the management of carbon removed from a carbon adsorption system conducted in accordance with Section 725.988(c)(3)(B).

f) The owner or operator of a tank, surface impoundment, or container exempted from standards in accordance with the provisions of Section 725.983(c) must prepare and maintain the following records, as applicable:

1) For tanks, surface impoundments, or containers exempted under the hazardous waste organic concentration conditions specified in Section 725.983(c)(1) or 725.983(c)(2)(A) through (c)(2)(F), the owner or operator must record the information used for each waste determination (e.g., test results, measurements, calculations, and other documentation) in the facility operating log. If analysis results for waste samples are used for the waste determination, then the owner or operator must record the date, time, and location that each waste sample is collected in accordance with the applicable requirements of Section 725.984; and

2) For tanks, surface impoundments, or containers exempted under the provisions of Section 725.983(c)(2)(G) or (c)(2)(H), the owner or operator must record the identification number for the incinerator, boiler, or industrial furnace in which the hazardous waste is treated.

g) An owner or operator designating a cover as "unsafe to inspect and monitor" pursuant to Section 725.985(l) or 725.986(g) must record in a log that is kept in the facility operating record the following information: the identification numbers for waste management units with covers that are designated as "unsafe to inspect and monitor~~;~~", the explanation for each cover stating why the cover is unsafe to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

h) The owner or operator of a facility that is subject to this Subpart CC and to the control device standards in federal subpart VV of 40 CFR 60 (Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry), or subpart V of 40 CFR 61 (National Emission Standard for Equipment Leaks (Fugitive Emission Sources), each incorporated by reference in 35 Ill. Adm. Code 270.111, may elect to demonstrate compliance with the applicable Sections of this Subpart by documentation either pursuant to this Subpart CC, or pursuant to the provisions of subpart VV of 40 CFR 60 or subpart V of 40 CFR 61, to the extent that the documentation required by 40 CFR 60 or 61 duplicates the documentation required by this Section.

i) For each tank or container not using air emission controls specified in Sections 725.985 through 725.988 in accordance with the conditions specified in Section 725.980(d), the owner or operator must record and maintain the following information:

1) A list of the individual organic peroxide compounds manufactured at the facility that meet the conditions specified in Section 725.980(d)(1);

2) A description of how the hazardous waste containing the organic peroxide compounds identified pursuant to subsection (i)(1) are managed at the facility in tanks and containers. This description must include the following information:

   A) For the tanks used at the facility to manage this hazardous waste, sufficient information must be provided to describe each tank: a facility identification number for the tank, the purpose and placement of this tank in the management train of this hazardous waste, and the procedures used to ultimately dispose of the hazardous waste managed in the tanks; and

   B) For containers used at the facility to manage this hazardous waste, sufficient information must be provided to describe the following for each container: a facility identification number for the container or group of containers; the purpose and placement of this container or group of containers in the management train of this hazardous waste; and the procedures used to ultimately dispose of the hazardous waste handled in the containers; and

3) An explanation of why managing the hazardous waste containing the organic peroxide compounds identified pursuant to subsection (i)(1) ~~of this Section~~ in the tanks or containers identified pursuant to subsection (i)(2) ~~of this Section~~ would create an undue safety hazard if the air emission controls specified in Sections 725.985 through 725.988 were installed and operated on these waste management units. This explanation must include the following information:

   A) For tanks used at the facility to manage this hazardous waste, sufficient information must be provided to explain: how use of the required air emission controls on the tanks would affect the tank design features and facility operating procedures currently used to prevent an undue safety hazard during the management of this hazardous waste in the tanks; and why installation of safety devices on the required air emission controls, as allowed under this Subpart CC, would not address those situations in which

evacuation of tanks equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides; and

B) For containers used at the facility to manage this hazardous waste, sufficient information must be provided to explain: how use of the required air emission controls on the containers would affect the container design features and handling procedures currently used to prevent an undue safety hazard during management of this hazardous waste in the containers; and why installation of safety devices on the required air emission controls, as allowed under this Subpart CC, would not address those situations in which evacuation of containers equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.

j) For each hazardous waste management unit not using air emission controls specified in Sections 725.985 through 725.988 in accordance with the provisions of Section 725.980(b)(7), the owner and operator must record and maintain the following information:

1) The certification that the waste management unit is equipped with and operating air emission controls in accordance with the requirements of an applicable federal Clean Air Act regulation codified under 40 CFR 60, 61, or 63; and

2) An identification of the specific federal requirements codified under 40 CFR 60, 61, or 63 with which the waste management unit is in compliance.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

SUBPART DD: CONTAINMENT BUILDINGS

**Section 725.1101 Design and Operating Standards**

a) All containment buildings must comply with the following design and operating standards:

1) The containment building must be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements (e.g., precipitation, wind, run on) and to assure containment of managed wastes;

2) The floor and containment walls of the unit, including the secondary containment system if required under subsection (b), must be designed and constructed of materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls. The unit must be designed so that it has sufficient structural strength to prevent collapse or other failure. All surfaces to be in contact with hazardous wastes must be chemically compatible with those wastes. The containment building must meet the structural integrity requirements established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM). If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that meet the following~~these~~ criteria:

   A) They provide an effective barrier against fugitive dust emissions under subsection (c)(1)(D); and

   B) The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings;

3) Incompatible hazardous wastes or treatment reagents must not be placed in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail; and

4) A containment building must have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

b) For a containment building used to manage hazardous wastes containing free liquids or treated with free liquids (the presence of which is determined by the paint filter test, a visual examination, or other appropriate means), the owner or operator must include the following design features:

1) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (e.g., a geomembrane covered by a concrete wear surface).

2) A liquid collection and removal system to minimize the accumulation of liquid on the primary barrier of the containment building as follows:

A) The primary barrier must be sloped to drain liquids to the associated collection system; and

B) Liquids and waste must be collected and removed to minimize hydraulic head on the containment system at the earliest practicable time.

3) A secondary containment system including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system that is capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practicable time.

A) The requirements of the leak detection component of the secondary containment system are satisfied by installation of a system that is, at a minimum, as follows:

i) It is constructed with a bottom slope of 1 percent or more; and

ii) It is constructed of a granular drainage material with a hydraulic conductivity of $1 \times 10^{-2}$ cm/sec or more and a thickness of 12 inches (30.5 cm) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of $3 \times 10^{-5}$ $m^2$/sec or more.

B) If treatment is to be conducted in the building, an area in which

such treatment will be conducted must be designed to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.

C) The secondary containment system must be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building. (Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building can serve as an external liner system for a tank, provided it meets the requirements of Section 725.293(e)(1). In addition, the containment building must meet the requirements of Section~~subsections~~ 725.293(b) and (c) to be an acceptable secondary containment system for a tank.)

~~4) For existing units other than 90-day generator units, USEPA may delay the secondary containment requirement for up to two years, based on a demonstration by the owner or operator that the unit substantially meets the standards of this Subpart DD. In making this demonstration, the owner or operator must do each of the following:~~

~~A) Provide written notice to USEPA of their request by November 16, 1992. This notification must describe the unit and its operating practices with specific reference to the performance of existing systems, and specific plans for retrofitting the unit with secondary containment;~~

~~B) Respond to any comments from USEPA on these plans within 30 days; and~~

~~C) Fulfill the terms of the revised plans, if such plans are approved by USEPA.~~

c) An owner~~Owners~~ or operator~~operators~~ of a~~all~~ containment building~~buildings~~ must do each of the following:

1) It must use controls and practice to ensure containment of the hazardous waste within the unit, and at a minimum do each of the following:

A) It must maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier;

B) It must maintain the level of the stored or treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded;

C) It must take measures to prevent the tracking of hazardous waste out of the unit by personnel or by equipment used in handling the waste. An area must be designated to decontaminate equipment and any rinsate must be collected and properly managed; and

D) It must take measures to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions (see Reference Method 22 (Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares) in appendix A to 40 CFR 60 (Test Methods), incorporated by reference in 35 Ill. Adm. Code 720.111(b)). In addition, all associated particulate collection devices (e.g., fabric filter, electrostatic precipitator, etc.) must be operated and maintained with sound air pollution control practices (see 40 CFR 60 for guidance). This state of no visible emissions must be maintained effectively at all times during routine operating and maintenance conditions, including when vehicles and personnel are entering and exiting the unit;

BOARD NOTE: At 40 CFR 264.1101(c)(1)(iv), USEPA cites "40 CFR part 60, subpart 292~~.~~". At 57 Fed. Reg. 37217 (Aug.~~August~~ 18, 1992), USEPA repeats this citation in the preamble discussion of adoption of the rules. No such provision exists in the Code of Federal Regulations. While 40 CFR 60.292 of the federal regulations pertains to control of fugitive dust emissions, that provision is limited in its application to glass melting furnaces. The Board has chosen to use the general citation: "40 CFR 60~~.~~".

2) It must obtain and keep on site~~on-site~~ a certification by a qualified Professional Engineer that the containment building design meets the requirements of subsections (a) through (c);

3) Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, it must repair the condition promptly, in accordance with the following procedures:

A) Upon detection of a condition that has lead~~caused~~ to a release of hazardous wastes (e.g., upon detection of leakage from the primary barrier) the owner or operator must do the following:

i) Enter a record of the discovery in the facility operating record;

ii) Immediately remove the portion of the containment building affected by the condition from service;

iii) Determine what steps must be taken to repair the containment building, remove any leakage from the secondary collection system, and establish a schedule for accomplishing the cleanup and repairs; and

iv) Within seven days after the discovery of the condition, notify the Agency in writing of the condition, and within 14 working days, provide a written notice to the Agency with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work;

B) The Agency must review the information submitted, make a determination in accordance with Section 34 of the Act, regarding whether the containment building must be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing; and

C) Upon completing all repairs and cleanup the owner and operator must notify the Agency in writing and provide a verification,

signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with subsection (c)(3)(A)(iv); and

4) At least once every seven days, the owner or operator~~It~~ must inspect and record in the facility's operating record data gathered from monitoring and leak detection equipment, as well as the containment building~~,~~ and the area immediately surrounding the containment building, to detect signs of releases of hazardous waste~~ at least once every seven days~~.

d) For a containment building that contains areas both with and without secondary containment, the owner or operator must do the following:

1) Design and operate each area in accordance with the requirements enumerated in subsections (a) through (c);

2) Take measures to prevent the release of liquids or wet materials into areas without secondary containment; and

3) Maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

e) Notwithstanding any other provision of this Subpart DD, the Agency must, in writing, allow the use of alternatives to the requirements for secondary containment for a permitted containment building where the Agency has determined that the facility owner or operator has adequately demonstrated that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and where containment of managed wastes and liquids can be assured without a secondary containment system.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.1102 Closure and Post-Closure Care**

a) At closure of a containment building, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated

with waste and leachate, and manage them as hazardous waste unless 35 Ill. Adm. Code 721.103(e) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings must meet all of the requirements specified in Subparts G and H ~~of this Part~~.

b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in subsection (a) ~~of this Section~~, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (35 Ill. Adm. Code 725.310). In addition, for the purposes of closure, post-closure, and financial responsibility, such a containment building is then considered to be a landfill, and the owner or operator must meet all the requirements for landfills specified in Subparts G and H ~~of this Part~~.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

SUBPART EE: HAZARDOUS WASTE MUNITIONS AND EXPLOSIVES STORAGE

**Section 725.1200 Applicability**

The requirements of this Subpart EE apply to owners or operators that store munitions and explosive hazardous wastes, except as Section 725.101 provides otherwise.

BOARD NOTE: Depending on explosive hazards, hazardous waste munitions and explosives may also be managed in other types of storage units, including containment buildings (Subpart DD ~~of this Part~~), tanks (Subpart J ~~of this Part~~), or containers (Subpart I ~~of this Part~~); see 35 Ill. Adm. Code 726.305 for storage of waste military munitions.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.1201 Design and Operating Standards**

a) An owner or operator of a hazardous waste munitions and explosives storage unit must design and operate the unit with containment systems, controls, and monitoring that fulfill each of the following requirements:

1) The owner or operator minimizes the potential for detonation or other

means of release of hazardous waste, hazardous constituents, hazardous decomposition products, or contaminated run-off to the soil, groundwater, surface water, and atmosphere;

2) The owner or operator provides a primary barrier, which may be a container (including a shell) or tank, designed to contain the hazardous waste;

3) For wastes stored outdoors, the owner or operator provides that the waste and containers will not be in standing precipitation;

4) For liquid wastes, the owner or operator provides a secondary containment system that assures that any released liquids are contained and promptly detected and removed from the waste area or a vapor detection system that assures that any released liquids or vapors are promptly detected and an appropriate response taken (e.g., additional containment, such as overpacking or removal from the waste area); and

5) The owner or operator provides monitoring and inspection procedures that assure the controls and containment systems are working as designed and that releases that may adversely impact human health or the environment are not escaping from the unit.

b) Hazardous waste munitions and explosives stored under this Subpart EE may be stored in one of the following:

1) Earth-Covered Magazines~~covered magazines~~. The owner or operator of an earth-covered magazine must fulfill each of the following requirements:

A) The magazine is constructed of waterproofed, reinforced concrete or structural steel arches, with steel doors that are kept closed when not being accessed;

B) The magazine is so designed and constructed that it fulfills each of the following requirements:

i) The magazine is of sufficient strength and thickness to support the weight of any explosives or munitions stored

and any equipment used in the unit;

ii) The magazine provides working space for personnel and equipment in the unit; and

iii) The magazine can withstand movement activities that occur in the unit; and

C) The magazine is located and designed, with walls and earthen covers that direct an explosion in the unit in a safe direction, so as to minimize the propagation of an explosion to adjacent units and to minimize other effects of any explosion.

2) Above-Ground Magazines~~ground magazines~~. Above-ground magazines must be located and designed so as to minimize the propagation of an explosion to adjacent units and to minimize other effects of any explosion.

3) Outdoor or Open Storage Areas~~open storage areas~~. Outdoor or open storage areas must be located and designed so as to minimize the propagation of an explosion to adjacent units and to minimize other effects of any explosion.

c) An owner or operator must store hazardous waste munitions and explosives in accordance with a Standard Operating Procedure that specifies procedures which ensure safety, security, and environmental protection. If these procedures serve the same purpose as the security and inspection requirements of Section 725.114, the preparedness and prevention procedures of Subpart C~~ of this Part~~, and the contingency plan and emergency procedures requirements of Subpart D~~ of this Part~~, then the Standard Operating Procedure may be used to fulfill those requirements.

d) An owner or operator must package hazardous waste munitions and explosives to ensure safety in handling and storage.

e) An owner or operator must inventory hazardous waste munitions and explosives at least annually.

f) An owner or operator must inspect and monitor hazardous waste munitions and explosives and their storage units as necessary to ensure explosives safety and to

ensure that there is no migration of contaminants out of the unit.

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.1202 Closure and Post-Closure Care**

a) At closure of a magazine or unit that stored hazardous waste under this Subpart EE, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components, contaminated subsoils, and structures and equipment contaminated with waste and manage them as hazardous waste, unless 35 Ill. Adm. Code 721.103(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for magazines or units must meet all of the requirements specified in Subparts G and H~~ of this Part~~, except that the owner or operator may defer closure of the unit as long as it remains in service as a munitions or explosives magazine or storage unit.

b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in subsection (a)~~ of this Section~~, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, the owner or operator must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (see 35 Ill. Adm. Code 724.410).

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

**Section 725.APPENDIX F Compounds with Henry's Law Constant Less Than 0.1 Y/X (at 25 °C)**

| Compound name | CAS No. |
|---|---|
| Acetaldol | 107-89-1 |
| Acetamide | 60-35-5 |
| 2-Acetylaminofluorene | 53-96-3 |
| 3-Acetyl-5-hydroxypiperidine | |
| 3-Acetylpiperidine | 618-42-8 |
| 1-Acetyl-2-thiourea | 591-08-2 |
| Acrylamide | 79-06-1 |
| Acrylic acid | 79-10-7 |
| Adenine | 73-24-5 |
| Adipic acid | 124-04-9 |
| Adiponitrile | 111-69-3 |
| Alachlor | 15972-60-8 |
| Aldicarb | 116-06-3 |
| Ametryn | 834-12-8 |
| 4-Aminobiphenyl | 92-67-1 |
| 4-Aminopyridine | 504-24-5 |
| Aniline | 62-53-3 |
| o-Anisidine | 90-04-0 |
| Anthraquinone | 84-65-1 |
| Atrazine | 1912-24-9 |
| Benzenearsonic acid | 98-05-5 |
| Benzenesulfonic acid | 98-11-3 |
| Benzidine | 92-87-5 |
| Benzo(a)anthracene | 56-55-3 |
| Benzo(k)fluoranthene | 207-08-9 |
| Benzoic acid | 65-85-0 |
| Benzo(g,h,i)perylene | 191-24-2 |
| Benzo(a)pyrene | 50-32-8 |
| Benzyl alcohol | 100-51-6 |
| γ-BHC | 58-89-9 |
| Bis(2-ethylhexyl)phthalate | 117-81-7 |
| ~~Bromochloromethyl acetate~~ | |
| Bromoxynil (3,5-Dibromo-4-hydroxybenzonitrile) | 1689-84-5 |

| | |
|---|---|
| Butyric acid | 107-92-6 |
| Caprolactam (hexahydro-2H-azepin-2-one) | 105-60-2 |
| Catechol(o-dihydroxybenzene) | 120-80-9 |
| Cellulose | 9004-34-6 |
| Cell wall | |
| Chlorhydrin (3-Chloro-1,2-propanediol) | 96-24-2 |
| Chloroacetic acid | 79-11-8 |
| 2-Chloroacetophenone | 93-76-5 |
| p-Chloroaniline | 106-47-8 |
| p-Chlorobenzophenone | 134-85-0 |
| Chlorobenzilate | 510-15-6 |
| p-Chloro-m-cresol (6-chloro-m-cresol) | 59-50-7 |
| ~~3-Chloro-2,5-diketopyrrolidine~~ | |
| 2-Chloroethane-1,1-diol ~~Chloro-1,2-ethane diol~~ | 15873-56-0 |
| 4-Chlorophenol | 106-48-9 |
| Chlorophenol polymers (2-chlorophenol & 4-chlorophenol) | 95-57-8 & 106-48-9 |
| 1-(o-Chlorophenyl)thiourea | 5344-82-1 |
| N-Chlorosuccinimide (1-chloropyrrolidine-2,5-dione) | 128-09-6 |
| Chrysene | 218-01-9 |
| Citric acid | 77-92-9 |
| Creosote | 8001-58-9 |
| m-Cresol | 108-39-4 |
| o-Cresol | 95-48-7 |
| p-Cresol | 106-44-5 |
| Cresol (mixed isomers) | 1319-77-3 |
| 4-Cumylphenol | 27576-86 |
| Cyanide | 57-12-5 |
| ~~4-Cyanomethyl benzoate~~ | |
| Diazinon | 333-41-5 |
| Dibenzo(a,h)anthracene | 53-70-3 |
| Dibutylphthalate | 84-74-2 |
| 2,5-Dichloroaniline (N,N'-dichloroaniline) | 95-82-9 |
| 2,6-Dichlorobenzonitrile | 1194-65-6 |
| 2,6-Dichloro-4-nitroaniline | 99-30-9 |
| 2,5-Dichlorophenol | 333-41-5 |
| 3,4-Dichlorotetrahydrofuran | 3511-19 |
| Dichlorvos (DDVP) | 62-73-7 |
| Diethanolamine | 111-42-2 |
| N,N-Diethylaniline | 91-66-7 |

| | |
|---|---|
| Diethylene glycol | 111-46-6 |
| Diethylene glycol dimethyl ether (dimethyl Carbitol) | 111-96-6 |
| Diethylene glycol monobutyl ether (butyl Carbitol) | 112-34-5 |
| Diethylene glycol monoethyl ether acetate (Carbitol acetate) | 112-15-2 |
| Diethylene glycol monoethyl ether (Carbitol Cellosolve) | 111-90-0 |
| Diethylene glycol monomethyl ether (methyl Carbitol) | 111-77-3 |
| N,N'-Diethylhydrazine | 1615-80-1 |
| Diethyl(4-methylumbelliferyl)thionophosphate | 299-45-6 |
| Diethylphosphorothioate | 126-75-0 |
| N,N'-Diethylpropionamide | 15299-99-7 |
| Dimethoate | 60-51-5 |
| 2,3-Dimethoxystrychnidin-10-one | 357-57-3 |
| 4-Dimethylaminoazobenzene | 60-11-7 |
| 7,12-Dimethylbenz(a)anthracene | 57-97-6 |
| 3,3-Dimethylbenzidine | 119-93-7 |
| Dimethylcarbamoyl chloride | 79-44-7 |
| Dimethyldisulfide | 624-92-0 |
| Dimethylformamide | 68-12-2 |
| 1,1-Dimethylhydrazine | 57-14-7 |
| Dimethylphthalate | 131-11-3 |
| Dimethylsulfone | 67-71-0 |
| Dimethylsulfoxide | 67-68-5 |
| 4,6-Dinitro-o-cresol | 534-52-1 |
| 1,2-Diphenylhydrazine | 122-66-7 |
| Dipropylene glycol (1,1'-oxydi-2-propanol) | 110-98-5 |
| Endrin | 72-20-8 |
| Epinephrine | 51-43-4 |
| mono-Ethanolamine | 141-43-5 |
| Ethyl carbamate (urethane) | 51-79-6 |
| Ethylene glycol | 107-21-1 |
| Ethylene glycol monobutyl ether (butyl Cellosolve) | 111-76-2 |
| Ethylene glycol monoethyl ether (Cellosolve) | 110-80-5 |
| Ethylene glycol monoethyl ether acetate (Cellosolve acetate) | 111-15-9 |
| Ethylene glycol monomethyl ether (methyl Cellosolve) | 109-86-4 |
| Ethylene glycol monophenyl ether (phenyl Cellosolve) | 122-99-6 |
| Ethylene glycol monopropyl ether (propyl Cellosolve) | 2807-30-9 |
| Ethylene thiourea (2-imidazolidinethione) | 96-45-7 |
| 4-Ethylmorpholine | 100-74-3 |
| 3-Ethylphenol | 620-17-7 |

| | |
|---|---|
| Fluoroacetic acid, sodium salt | 62-74-8 |
| Formaldehyde | 50-00-0 |
| Formamide | 75-12-7 |
| Formic acid | 64-18-6 |
| Fumaric acid | 110-17-8 |
| Glutaric acid | 110-94-1 |
| Glycerin (Glycerol) | 56-81-5 |
| Glycidol | 556-52-5 |
| Glycinamide | 598-41-4 |
| Glyphosate | 1071-83-6 |
| Guthion | 86-50-0 |
| Hexamethylene-1,6-diisocyanate (1,6-diisocyanatohexane) | 822-06-0 |
| Hexamethyl phosphoramide | 680-31-9 |
| Hexanoic acid | 142-62-1 |
| Hydrazine | 302-01-2 |
| Hydrocyanic acid | 74-90-8 |
| Hydroquinone | 123-31-9 |
| Hydroxy-2-propionitrile (hydracrylonitrile) | 109-78-4 |
| Indeno(1,2,3-cd)pyrene | 193-39-5 |
| Lead acetate | 301-04-2 |
| Lead subacetate (lead acetate, monobasic) | 1335-32-6 |
| Leucine | 61-90-5 |
| Malathion | 121-75-5 |
| Maleic acid | 110-16-7 |
| Maleic anhydride | 108-31-6 |
| Mesityl oxide | 141-79-7 |
| Methane sulfonic acid | 75-75-2 |
| Methomyl | 16752-77-5 |
| p-Methoxyphenol | 150-76-5 |
| Methylacrylate | 96-33-3 |
| 2-(Methylamino)acetic acid (sarcosine, N-methylglycine) | 107-97-1 |
| Methyl bromochloroacetate | 20428-74-4 |
| Methyl-4-(cyanomethyl)benzoate | 76469-88-0 |
| 4,4'-Methylene-bis-(2-chloroaniline) | 101-14-4 |
| 4,4'-Methylenediphenyl diisocyanate (diphenyl methane diisocyanate) | 101-68-8 |
| 4,4'-Methylenedianiline (MDA) | 101-77-9 |
| ~~Methylene diphenylamine (MDA)~~ | |
| 5-Methylfurfural | 620-02-0 |
| Methylhydrazine | 60-34-4 |

| | |
|---|---|
| ~~Methyliminoacetic acid~~ | |
| Methyl methane sulfonate | 66-27-3 |
| ~~1-Methyl-2-methoxyaziridine~~ | |
| Methylparathion | 298-00-0 |
| Methyl sulfuric acid (sulfuric acid, dimethyl ester) | 77-78-1 |
| 4-Methylthiophenol | 106-45-6 |
| Monomethylformamide (N-methylformamide) | 123-39-7 |
| Nabam | 142-59-6 |
| α-Naphthol | 90-15-3 |
| β-Naphthol | 135-19-3 |
| α-Naphthylamine | 134-32-7 |
| β-Naphthylamine | 91-59-8 |
| Neopentyl glycol | 126-30-7 |
| Niacinamide | 98-92-0 |
| o-Nitroaniline | 88-74-4 |
| Nitroglycerin | 55-63-0 |
| 2-Nitrophenol | 88-75-5 |
| 4-Nitrophenol | 100-02-7 |
| N-Nitrosodimethylamine | 62-75-9 |
| Nitrosoguanidine | 674-81-7 |
| N-Nitroso-n-methylurea | 684-93-5 |
| N-Nitrosomorpholine (4-nitrosomorpholine) | 59-89-2 |
| Oxalic acid | 144-62-7 |
| Parathion | 56-38-2 |
| Pentaerythritol | 115-77-5 |
| Phenacetin | 62-44-2 |
| Phenol | 108-95-2 |
| Phenylacetic acid | 103-82-2 |
| m-Phenylene diamine | 108-45-2 |
| o-Phenylene diamine | 95-54-5 |
| p-Phenylene diamine | 106-50-3 |
| Phenyl mercuric acetate | 62-38-4 |
| Phorate | 298-02-2 |
| Phthalic anhydride | 85-44-9 |
| α-Picoline (2-methyl pyridine) | 109-06-8 |
| 1,3-Propane sulfone | 1120-71-4 |
| β-Propiolactone | 57-57-8 |
| Propoxur~~Proporur~~ (Baygon) 2-(1-methylethoxy)phenol N-methylcarbamate | 114-26-1 |

| | |
|---|---|
| Propylene glycol | 57-55-6 |
| Pyrene | 129-00-0 |
| Pyridinium bromide | 39416-48-3 |
| Quinoline | 91-22-5 |
| Quinone (p-benzoquinone) | 106-51-4 |
| Resorcinol | 108-46-3 |
| Simazine | 122-34-9 |
| Sodium acetate | 127-09-3 |
| Sodium formate | 141-53-7 |
| Strychnine | 57-24-9 |
| Succinic acid | 110-15-6 |
| Succinimide | 123-56-8 |
| Sulfanilic acid | 121-47-1 |
| Terephthalic acid | 100-21-0 |
| Tetraethyldithiopyrophosphate | 3689-24-5 |
| Tetraethylenepentamine | 112-57-2 |
| Thiofanox | 39196-18-4 |
| Thiosemicarbazide | 79-19-6 |
| 2,4-Toluenediamine | 95-80-7 |
| 2,6-Toluenediamine | 823-40-5 |
| 3,4-Toluenediamine | 496-72-0 |
| 2,4-Toluene diisocyanate | 584-84-9 |
| p-Toluic acid | 99-94-5 |
| m-Toluidine | 108-44-1 |
| 1,1,2-Trichloro-1,2,2-trifluoroethane | 76-13-1 |
| Triethanolamine | 102-71-6 |
| Triethylene glycol dimethyl ether (2,5,8,11-tetraoxadodecane, 1-methoxy-2-(2-(2-methoxyethoxy)ethoxy)ethane) | 112-49-2 |
| Tripropylene glycol | 24800-44-0 |
| Warfarin | 81-81-2 |
| 3,4-Xylenol (3,4-dimethylphenol) | 95-65-8 |

(Source: Amended at 42 Ill. Reg. 23725, effective November 19, 2018)

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Standards for Owners and Operators of Hazardous Waste Facilities Operating under a RCRA Standardized Permit

2) Code Citation: 35 Ill. Adm. Code 727

3)

| Section Numbers: | Adopted Actions: |
|---|---|
| 727.100 | Amendment |
| 727.110 | Amendment |
| 727.150 | Amendment |
| 727.170 | Amendment |
| 727.190 | Amendment |
| 727.210 | Amendment |
| 727.240 | Amendment |
| 727.270 | Amendment |
| 727.290 | Amendment |
| 727.900 | Amendment |

4) Statutory Authority: 415 ILCS 5/7.2, 22.4, and 27

5) Effective Date of Rules: November 19, 2018

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

7) Does this rulemaking contain incorporations by reference? No

8) Statement of Availability: The adopted rulemaking, a copy of the Board's opinion and order adopted October 4, 2018 in consolidated docket R17-14/R17-15/R18-12/R18-31, and all materials incorporated by reference are on file at the Board's principal office and are available for public inspection and copying.

9) Notice of Proposal published in the *Illinois Register*: 42 Ill. Reg. 11136; June 22, 2018

10) Has JCAR issued a Statement of Objection to this rulemaking? No. Section 22.4 of the Environmental Protection Act [415 ILCS 5/22.4] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

11) Differences between Proposal and Final Version: A table in a document entitled "Identical-in-Substance Rulemaking Addendum (Final)" that the Board added to consolidated docket R17-14/R17-15/R18-12/R18-31 summarizes the differences between the amendments adopted in the October 4, 2018 opinion and order and those proposed by the Board on May 24, 2018.

The differences are limited to minor corrections suggested by JCAR staff or resulting from the Board's review of its proposal. The changes are not intended to have substantive effect and intend to clarify the rules without deviating from the substance of the federal amendments on which this proceeding is based.

12) Have all the changes agreed upon by the Board and JCAR been made as indicated in the agreements issued by JCAR? Sections 13 and 22.4 of the Environmental Protection Act [415 ILCS 5/13 and 22.4] provide that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by JCAR.

Since the Notices of Proposed Amendments appeared in the June 22, 2018 issue of the *Illinois Register*, the Board received suggestions for revisions from JCAR. The Board evaluated each suggestion and incorporated some into the adopted rules, as detailed in the Identical-in-Substance Rulemaking Addendum (Final) in consolidated docket R17-14/R17-15/R18-12/R18-31, as described in item 11 above. See that Addendum for additional details on JCAR suggestions and the Board actions on each. One table in itemizes changes made in response to various suggestions. Another table indicates suggestions not incorporated into the text, with a brief explanation for each.

13) Will this rulemaking replace an emergency rule currently in effect? No

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

15) Summary and Purpose of Rulemaking: The amendments to Part 727 are a segment larger Board rulemaking. The consolidated docket R17-14/R17-15/R18-11/R18-31 rulemaking also includes amendments to 35 Ill. Adm. Code 702 through 705, 720 through 726, 728, 730, 733, 738, 739, and 810 through 812. Due to the extreme volume of the consolidated docket, each Part is covered by a notice in five separate issues of the *Illinois Register*. Included in this issue are the fourth group for publication: 35 Ill. Adm. Code 725, 727 and 730.

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

Section 22.4(a) of the Environmental Protection Act (Act) [415 ILCS 5/22.4(a] (2016) requires the Board to adopt hazardous waste rules that are identical-in-substance to United States Environmental Protection Agency's (USEPA's) Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste rules. Section 22.4(a) requires the Board to use the identical-in-substance rulemaking procedure of Section 7.2(b) of the Act [415 ILCS 5/7.2(b)] (2014). The Illinois hazardous waste rules are in 35 Ill. Adm. Code 702, 703, 705, 720 through 728, 733, 738, and 739. The Board reserved docket R17-14 to incorporate USEPA amendments adopted during the period July 1, 2016 through December 31, 2016 into the Illinois hazardous waste rules. Similarly, the Board reserved docket R18-12 for USEPA hazardous waste rules adopted during the period July 1, 2017 through December 31, 2017 and consolidated it with dockets R17-14, R17-15, and R18-12.

To save space, a more detailed description of the subjects and issues involved in the consolidated docket R17-14/R17-15/R18-11/R18-31 rulemaking in this issue of the Illinois Register only in the answer to question 5 in the Notice of Adopted Amendments for 35 Ill. Adm. Code 725. A comprehensive description is contained in the Board's opinion and order of October 4, 2018, adopting amendments in consolidated docket R17-14/R17-15/R18-11/R18-31. The opinion and order is available from the address below.

Specifically, the amendments to Part 727 incorporate USEPA's action of November 28, 2016 adopting the Generator Improvements Rule.

The consolidated docket R17-14/R17-15/R18-11/R18-31 rulemaking further makes numerous corrections and non-substantive stylistic revisions that the Board found are needed.

Tables appear in the Identical-in-Substance Rulemaking Addendum (Final) in consolidated docket R17-14/R17-15/R18-12/R18-31, as described in item 11 above, that list corrections and amendments. Persons interested in the details of those corrections and amendments should refer to the Addendum.

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

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

16) Information and questions regarding these adopted rules shall be directed to: Please reference consolidated docket R17-14/R17-15/R18-12/R18-31 and direct inquiries to the following person:

Michael J. McCambridge
Staff Attorney
Illinois Pollution Control Board
100 W. Randolph Suite 11-500
Chicago IL 60601

312/814-6924
michael.mccambridge@illinois.gov

Request copies of the Board's opinion and order of October 4, 2018 at 312/814-3620. You may also obtain a copy of the Board's opinion and order from the Internet at http://www.ipcb.state.il.us.

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

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

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

PART 727
STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A RCRA STANDARDIZED PERMIT

Section
727.100 General
727.110 General Facility Standards
727.130 Preparedness and Prevention
727.150 Contingency Plan and Emergency Procedures
727.170 Recordkeeping, Reporting, and Notifying
727.190 Releases from Solid Waste Management Units
727.210 Closure
727.240 Financial Requirements
727.270 Use and Management of Containers
727.290 Tank Systems
727.900 Containment Buildings

727.APPENDIX A Financial Assurance Forms (Repealed)
727.ILLUSTRATION A Letter of Chief Financial Officer: Financial Assurance for Facility Closure (Repealed)
727.ILLUSTRATION B Letter of Chief Financial Officer: Financial Assurance for Liability Coverage (Repealed)
727.APPENDIX B Correlation of State and Federal Provisions
727.TABLE A Correlation of Federal RCRA Standardized Permit Provisions to State Provisions
727.TABLE B Correlation of State RCRA Standardized Permit Provisions to Federal Provisions

AUTHORITY: Implementing Sections 7.2 and 22.4 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/7.2, 22.4, and 27].

SOURCE: Adopted in R06-16/R06-17/R06-18 at 31 Ill. Reg. 1146, effective December 20, 2006; amended in R07-5/R07-14 at 32 Ill. Reg. 12829, effective July 14, 2008; amended in R13-15 at 37 Ill. Reg. 17909, effective October 24, 2013; amended in R14-1/R14-2/R14-3 at 38 Ill.

Reg. 7221, effective March 13, 2014; amended in R16-7 at 40 Ill. Reg. 12011, effective August 9, 2016; amended in R17-14/R17-15/R18-12/R18-31 at 42 Ill. Reg. 24055, effective November 19, 2018.

**Section 727.100 General**

a) Purpose, Scope~~scope~~, and Applicability~~applicability.~~

1) The purpose of this Part is to establish minimum national standards that define the acceptable management of hazardous waste under a RCRA standardized permit, as such is defined in 35 Ill. Adm. Code 702.110 and 720.110, issued pursuant to Subpart J of 35 Ill. Adm. Code 703.

2) This Part applies to owners and operators of facilities that treat or store hazardous waste under a RCRA standardized permit issued pursuant to Subpart J of 35 Ill. Adm. Code 703, except as provided otherwise in Subpart A of 35 Ill. Adm. Code 721 or 35 Ill. Adm. Code 724.101(f) and (g).

BOARD NOTE: Subsection (a)~~ of this Section~~ is derived from 40 CFR 267.1 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~. The exemptions of subsection (a)(2) ~~of this Section~~ are directly derived from corresponding 40 CFR 267.1(b). The Board assumes that USEPA exempted from the RCRA standardized permit requirements those wastes excluded from the definition of hazardous waste (in Subpart A of 35 Ill. Adm. Code 721) and those exempted from the T/S/D facility standards (by 35 Ill. Adm. Code 724.101(g)). The Board has retained the reference to 35 Ill. Adm. Code 724.101(f), even though it does no more than reference corresponding 40 CFR 264.1(f), which relates exclusively to the applicability of the federal regulations.

b) Relationship to Interim Status Standards~~interim status standards~~. A facility owner or operator that has fully complied with the requirements for interim status, as defined in section 3005(e) of federal RCRA and regulations pursuant to 35 Ill. Adm. Code 703.153, must comply with the regulations specified in 35 Ill. Adm. Code 725 instead of the regulations in this Part, until final administrative disposition of the RCRA standardized permit application is made, except as provided in Subpart S of 35 Ill. Adm. Code 724.

BOARD NOTE: Subsection (b)~~ of this Section~~ is derived from 40 CFR 267.2 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

c) Effect on a Federal Imminent Hazard Action~~federal imminent hazard action~~. Notwithstanding any other provisions of this Part, enforcement actions may be brought in a federal court pursuant to section 7003 of RCRA.

BOARD NOTE: Subsection (c)~~ of this Section~~ is derived from 40 CFR 267.3 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~. The corresponding federal regulation relates to an imminent hazard action under RCRA. An enforcement action for violation of any applicable provision of the ~~Environmental Protection~~ Act ~~[415 ILCS 5] (Act)~~ is also possible.

d) Electronic Reporting~~reporting~~. The filing of any document pursuant to any provision of this Part as an electronic document is subject to 35 Ill. Adm. Code 720.104.

BOARD NOTE: Subsection (d)~~ of this Section~~ is derived from 40 CFR 3, ~~as added, and 40 CFR~~ 271.10(b), 271.11(b), and 271.12(h) (2017)~~(2005), as amended at 70 Fed. Reg. 59848 (Oct. 13, 2005)~~.

(Source: Amended at 42 Ill. Reg. 24055, effective November 19, 2018)

**Section 727.110 General Facility Standards**

a) Applicability of This~~this~~ Section. This Section applies to the owner or operator of a facility that treats or stores hazardous waste under a Subpart J of 35 Ill. Adm. Code 703 RCRA standardized permit, except as provided in Section 727.100(a)(2).

BOARD NOTE: Subsection (a) ~~of this Section~~ is derived from 40 CFR 267.10 (2017)~~(2012)~~.

b) Compliance with This~~this~~ Section. To comply with this Section, the facility owner or operator must obtain a USEPA identification number, and follow the requirements of this Part for waste analysis, security, inspections, training, special waste handling, and location standards.

BOARD NOTE: Subsection (b)~~ of this Section~~ is derived from 40 CFR 267.11

(2017)~~(2012)~~.

c) Obtaining a USEPA Identification Number~~identification number~~. The facility owner or operator must apply to USEPA Region 5 for a USEPA identification number using USEPA Form 8700-12. The owner or operator must obtain a copy of the form from the Agency, and submit a completed copy of the form to the Bureau of Land, in addition to notification to USEPA Region 5.

BOARD NOTE: Subsection (c)~~ of this Section~~ is derived from 40 CFR 267.12 (2017)~~(2012)~~.

d) Waste Analysis Requirements~~analysis requirements.~~

1) Before it treats or stores any hazardous wastes, the facility owner or operator must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis must contain all the information needed to treat or store the waste to comply with this Part and 35 Ill. Adm. Code 728.

A) The facility owner or operator may include data in the analysis that was developed pursuant to 35 Ill. Adm. Code 721 or data published or documented on the hazardous waste or on hazardous waste generated from similar processes.

B) The facility owner or operator must repeat the analysis as necessary to ensure that it is accurate and up to date. At a minimum, the owner or operator must repeat the analysis if the process or operation generating the hazardous wastes has changed.

2) The facility owner or operator must develop and follow a written waste analysis plan that describes the procedures it will follow to comply with subsection (d)(1)~~ of this Section~~. The owner or operator must keep this plan at the facility. If the owner or operator receives wastes generated from off-site and is eligible for a RCRA standardized permit, the owner or operator also must have submitted the waste analysis plan with the Notice of Intent. At a minimum, the plan must specify all of the following:

A) The hazardous waste parameters that the owner or operator will analyze and the rationale for selecting these parameters (that is,

how analysis for these parameters will provide sufficient information on the waste's properties to comply with subsection (d)(1)~~ of this Section~~).

B) The test methods the owner or operator will use to test for these parameters.

C) The sampling method the owner or operator will use to obtain a representative sample of the waste to be analyzed. The owner or operator may obtain a representative sample using either of the following methods:

i) One of the sampling methods described in Appendix A of 35 Ill. Adm. Code 721; or

ii) An equivalent sampling method.

D) How frequently the owner or operator will review or repeat the initial analysis of the waste to ensure that the analysis is accurate and up to date.

E) Where applicable, the methods the owner or operator will use to meet the additional waste analysis requirements for specific waste management methods, as specified in 35 Ill. Adm. Code 724.117, 724.934(d), 724.963(d), and 724.983.

BOARD NOTE: Subsection (d)~~ of this Section~~ is derived from 40 CFR 267.13 (2017)~~(2012)~~.

e) Security Requirements~~requirements.~~

1) The facility owner or operator must prevent, and minimize the possibility for, livestock and unauthorized people from entering the active portion of its facility.

2) The facility must have either of the features listed in subsection (e)(2)(A)~~ of this Section~~ or those listed in subsections (e)(2)(B) and (e)(2)(C)~~ of this Section~~:

A) A 24-hour surveillance system (for example, television monitoring or surveillance by guards or facility personnel) that continuously monitors and controls entry onto the active portion of the facility; or

B) An artificial or natural barrier (for example, a fence in good repair or a fence combined with a cliff) that completely surrounds the active portion of the facility; and

C) A means to control entry, at all times, through the gates or other entrances to the active portion of the facility (for example, an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

3) The facility owner or operator must post a sign at each entrance to the active portion of a facility, and at other prominent locations, in sufficient numbers to be seen from any approach to this active portion. The sign must bear the legend "Danger – Unauthorized Personnel Keep Out~~.~~". The legend must be in English and in any other language predominant in the area surrounding the facility (for example, French or Spanish), and must be legible from a distance of at least 25 feet. The owner or operator may use existing signs with a legend other than "Danger – Unauthorized Personnel Keep Out" if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion and entry onto the active portion can be dangerous.

BOARD NOTE: Subsection (e)~~ of this Section~~ is derived from 40 CFR 267.14 (2017)~~(2012)~~.

f) General Inspection Requirements~~inspection requirements.~~

1) The owner or operator must inspect its facility for malfunctions and deterioration, operator errors, and discharges that may be causing, or may lead to either of the conditions listed in subsection (f)(1)(A) or (f)(1)(B)~~ of this Section~~. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they result in harm to human health and the environment.

A) A release of hazardous waste constituents to the environment; or

B) A threat to human health.

2) The facility owner or operator must develop and follow a written schedule for inspecting monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

A) The owner or operator must keep this schedule at the facility.

B) The schedule must identify the equipment and devices that the owner or operator will inspect and what problems it will look for, such as malfunctions or deterioration of equipment (for example, inoperative sump pump, leaking fitting, etc.).

C) The frequency of the owner's or operator's inspections may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies required in Sections 727.270(e), 727.290(d) and (f), and 727.900(d) and 35 Ill. Adm. Code 724.933, 724.952, 724.953, 724.958, and 724.983 through 724.989, where applicable.

3) The facility owner or operator must remedy any deterioration or malfunction of equipment or structures that the inspection reveals in time to prevent any environmental or human health hazards. Where hazard is imminent or has already occurred, the owner or operator must take immediate remedial action.

4) The facility owner or operator must record all inspections. The owner or operator must keep these records for at least three years from the date of inspection. At a minimum, the owner or operator must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other

remedial actions.

BOARD NOTE: Subsection (f)~~ of this Section~~ is derived from 40 CFR 267.15 (2017)~~(2012)~~.

g) Employee Training~~training.~~

1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this Part. The facility owner or operator must ensure that this program includes all the elements described in the documents that are required pursuant to subsection (g)(4)(C)~~ of this Section~~.

A) A person trained in hazardous waste management procedures must direct this program, and must teach facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to their employment positions.

B) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by including instruction on emergency procedures, emergency equipment, and emergency systems, including all of the following, where applicable:

i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment.

ii) Key parameters for automatic waste feed cut-off systems.

iii) Communications or alarm systems.

iv) Response to fires or explosions.

v) Response to groundwater contamination incidents.

vi) Shutdown of operations.

2) Facility personnel must successfully complete the program required in

subsection (g)(1)~~ of this Section~~ within six months after the date of their employment or assignment to a facility or to a new position at a facility, whichever is later. Employees hired after the effective date of the owner's or operator's RCRA standardized permit must not work in unsupervised positions until they have completed the training requirements of subsection (g)(1)~~ of this Section~~.

3) Facility personnel must take part in an annual review of the initial training required in subsection (g)(1)~~ of this Section~~.

4) The facility owner or operator must maintain the following documents and records at its facility:

A) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

B) A written job description for each position listed pursuant to subsection (g)(4)(A)~~ of this Section~~. This description must include the requisite skill, education, or other qualifications, and duties of employees assigned to each position;

C) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed pursuant to subsection (g)(4)(A)~~ of this Section~~;

D) Records that document that facility personnel have received and completed the training or job experience required pursuant to subsections (g)(1), (g)(2), and (g)(3)~~ of this Section~~.

5) The facility owner or operator must keep training records on current personnel until its facility closes. The owner or operator must keep training records on former employees for at least three years from the date the employee last worked at its facility. Personnel training records may accompany personnel transferred within a company.

BOARD NOTE: Subsection (g)~~ of this Section~~ is derived from 40 CFR 267.16 (2017)~~(2012)~~.

h) Requirements for Managing Ignitable~~managing ignitable~~, Reactive~~reactive~~, or

Incompatible Wastes~~incompatible wastes.~~

1) The facility owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste by following these requirements:

   A) The owner or operator must separate these wastes and protect them from sources of ignition or reaction such as open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (for example, from heat-producing chemical reactions), and radiant heat.

   B) While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flames to specially designated locations.

   C) "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

2) If it treats or stores ignitable or reactive waste, or mixes incompatible waste or incompatible wastes and other materials, the owner or operator must take precautions to prevent reactions that do the following:

   A) Generate extreme heat or pressure, fire or explosions, or violent reactions.

   B) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment.

   C) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions.

   D) Damage the structural integrity of the device or facility.

   E) Threaten human health and the environment in any similar way.

3) The facility owner or operator must document compliance with subsection (h)(1) or (h)(2)~~ of this Section~~. The owner or operator may base this documentation on references to published scientific or engineering

literature, data from trial tests (for example bench scale or pilot scale tests), waste analyses (as specified in Section 727.110(d)), or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

BOARD NOTE: Subsection (h)~~ of this Section~~ is derived from 40 CFR 267.17 (2017)~~(2012)~~.

i) Facility Location Standards~~location standards.~~

1) The facility owner or operator may not locate any portion of a new facility where hazardous waste will be treated or stored within 61 meters (200 feet) of a fault that has had displacement in Holocene time.

A) "Fault" means a fracture along which rocks on one side have been displaced with respect to those on the other side.

B) "Displacement" means the relative movement of any two sides of a fault measured in any direction.

C) "Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene to the present.

BOARD NOTE: Under the note to corresponding 40 CFR 267.18(a)(3) and 40 CFR 270.14(b)(11), a facility that is located in a political jurisdiction other than those listed in appendix VI of 40 CFR 264, incorporated by reference in 35 Ill. Adm. Code 720.111(b), is assumed to be in compliance with this requirement. No area of Illinois is listed in appendix VI of 40 CFR 264.

2) If an owner's or operator's facility is located within a 100-year flood plain, it must be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

A) "100-year flood plain" means any land area that is subject to a one percent or greater chance of flooding in any given year from any source.

B) "Washout" means the movement of hazardous waste from the

active portion of the facility as a result of flooding.

C) "100-year flood" means a flood that has a one percent chance of being equaled or exceeded in any given year.

BOARD NOTE: Subsection (i)~~ of this Section~~ is derived from 40 CFR 267.18 (2017)~~(2012)~~.

(Source: Amended at 42 Ill. Reg. 24055, effective November 19, 2018)

**Section 727.150 Contingency Plan and Emergency Procedures**

a) Applicability of This~~this~~ Section. This Section applies to the owner or operator of a facility that treats or stores hazardous waste under a RCRA standardized permit pursuant to Subpart J of 35 Ill. Adm. Code 703, except as provided in Section 727.100(a)(2).

BOARD NOTE: Subsection (a)~~ of this Section~~ is derived from 40 CFR 267.50 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

b) The Purpose~~purpose~~ and Use~~use~~ of the Contingency Plan~~contingency plan.~~

1) The facility owner or operator must have a contingency plan for its facility. The owner or operator must design the plan to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

2) The owner or operator must implement the provisions of the plan immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents that could threaten human health or the environment.

BOARD NOTE: Subsection (b)~~ of this Section~~ is derived from 40 CFR 267.51 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

c) Contents of the Contingency Plan~~contingency plan.~~

1) The facility contingency plan must include the following information:

A) It must describe the actions facility personnel will take to comply with subsections (b) and (g)~~ of this Section~~ in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility;

B) It must describe all arrangements agreed upon pursuant to Section 727.130(g) by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services;

C) It must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see subsection (f)~~ of this Section~~), and the owner or operator must keep the list up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates;

D) It must include a current list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. In addition, the facility owner or operator must include the location and a physical description of each item on the list, and a brief outline of its capabilities; and

E) It must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. The plan must describe signals to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

2) If the facility owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan pursuant to federal 40 CFR 112, or some other emergency or contingency plan, the owner or operator needs only to amend that plan to incorporate hazardous waste management provisions that will comply with the requirements of this Part.

BOARD NOTE: Subsection (c)~~ of this Section~~ is derived from 40 CFR 267.52 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

d) Who Must Have Copies~~must have copies~~ of the Contingency Plan~~contingency plan.~~

1) The facility owner or operator must maintain a copy of the plan with all revisions at the facility; and

2) The owner or operator must submit a copy with all revisions to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

BOARD NOTE: Subsection (d)~~ of this Section~~ is derived from 40 CFR 267.53 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

e) When the Facility Owner~~facility owner~~ or Operator Must Amend~~operator must amend~~ the Contingency Plan~~contingency plan~~. The facility owner or operator must review, and immediately amend the contingency plan, if necessary, whenever any of the following occurs:

1) The facility permit is revised;

2) The plan fails in an emergency;

3) The owner or operator changes the facility (in its design, construction, operation, maintenance, or other circumstances) in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;

4) The owner or operator changes the list of emergency coordinators; or

5) The owner or operator changes the list of emergency equipment.

BOARD NOTE: Subsection (e)~~ of this Section~~ is derived from 40 CFR 267.54 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

f) The Role~~role~~ of the Emergency Coordinator~~emergency coordinator~~. At least one employee must be either on the facility premises or on call at all times (that is, available to respond to an emergency by reaching the facility within a short period of time) who has the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

BOARD NOTE: Subsection (f)~~ of this Section~~ is derived from 40 CFR 267.55 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

g) Required Emergency Procedures~~emergency procedures~~ for the Emergency Coordinator~~emergency coordinator.~~

1) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately undertake the following actions:

A) He or she must activate internal facility alarm or communication systems, where applicable, to notify all facility personnel; and

B) He or she must notify appropriate State or local agencies with designated response roles if their help is needed.

2) Whenever there is a release, fire, or explosion, the emergency coordinator must undertake the following actions:

A) He or she must immediately identify the character, exact source, amount, and areal extent of any released materials. He or she may do this by observation or review of facility records or manifests, and, if necessary, by chemical analysis; and

B) He or she must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of

the release, fire, or explosion. For example, the assessment would consider the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-off from water or chemical agents used to control fire and heat-induced explosions.

3) If the emergency coordinator determines that the facility has had a release, fire, or explosion that could threaten human health or the environment outside the facility, he or she must report his findings as follows:

A) If his or her assessment indicates that evacuation of local areas may be advisable, he or she must immediately notify appropriate local authorities. He or she must be available to help appropriate officials decide whether local areas should be evacuated; and

B) He or she must immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll-free number 800-424-8802). The report must include the following information:

i) The name and telephone number of the reporter;

ii) The name and address of facility;

iii) The time and type of incident (for example, a release or a fire);

iv) The name and quantity of materials involved, to the extent known;

v) The extent of injuries, if any; and

vi) The possible hazards to human health, or the environment outside the facility.

4) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These

measures must include, where applicable, stopping processes and operations, collecting and containing release waste, and removing or isolating containers.

5) If the facility stops operations in response to a fire, explosion, or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, when appropriate.

BOARD NOTE: Subsection (g)~~ of this Section~~ is derived from 40 CFR 267.56 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

h) The Emergency Coordinator's Responsibilities~~emergency coordinator's responsibilities~~ after an Emergency~~emergency.~~

1) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

2) The emergency coordinator must ensure that the following occur in the affected areas of the facility:

A) No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

B) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

BOARD NOTE: Subsection (h) ~~of this Section~~ is derived from 40 CFR 267.57 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

i) Emergency Notification~~notification~~ and Recordkeeping Requirements~~recordkeeping requirements.~~

1) The facility owner or operator must notify the Agency and other appropriate State and local authorities that the facility is in compliance with Section 727.150(h)(2) before operations are resumed in the affected

areas of the facility.

2) The facility owner or operator must note the time, date, and details of any incident that requires implementing the contingency plan in the operating record. Within 15 days after the incident, the owner or operator must submit a written report on the incident to the Agency. The owner or operator must include the following information in the report:

A) The name, address, and telephone number of the owner or operator;

B) The name, address, and telephone number of the facility;

C) The date, time, and type of incident (e.g., fire, explosion);

D) The name and quantity of materials involved;

E) The extent of injuries, if any;

F) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

G) The estimated quantity and disposition of recovered material that resulted from the incident.

BOARD NOTE: Subsection (i)~~ of this Section~~ is derived from 40 CFR 267.58 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

(Source: Amended at 42 Ill. Reg. 24055, effective November 19, 2018)

**Section 727.170 Recordkeeping, Reporting, and Notifying**

a) Applicability of This~~this~~ Section. This Section applies to the owner and operator of a facility that stores or non-thermally treats a hazardous waste under a RCRA standardized permit pursuant to Subpart J of 35 Ill. Adm. Code 703, except as provided in Section 727.100(a)(2). In addition, the owner or operator must comply with the manifest requirements of 35 Ill. Adm. Code 722 whenever a shipment of hazardous waste is initiated from the facility.

BOARD NOTE: Subsection (a)~~ of this Section~~ is derived from 40 CFR 267.70 (2017)~~(2007)~~.

b) Use of the Manifest System~~manifest system.~~

1) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or its agent, must do each of the following:

A) It must sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;

B) It must note any significant discrepancies in the manifest (as defined in Section 727.170(c)(1)) on each copy of the manifest;

C) It must immediately give the transporter at least one copy of the signed manifest;

D) Within 30 days after the delivery, it must send a copy of the manifest to the generator;~~ and~~

E) It must retain at the facility a copy of each manifest for at least three years from the date of delivery; and~~.~~

F) If a facility receives hazardous waste subject to Subpart H of 35 Ill. Adm. Code 722 from a foreign source, the receiving facility must do both of the following:

i) Additionally list the relevant consent number from consent documentation supplied by USEPA to the facility for each waste listed on the manifest, matched to the relevant list number for the waste from block 9b of the hazardous waste manifest (USEPA Form 8700-22). If additional space is needed, the receiving facility should use Continuation Sheets (USEPA Form 8700-22A); and

ii) Mail a copy of the hazardous waste manifest to USEPA using the addresses listed in 35 Ill. Adm. Code 722.182(e) within 30 days of delivery until the facility can submit such

a copy to the e-Manifest system per 35 Ill. Adm. Code 724.171(a)(2)(E) or 725.171(a)(2)(E).

2) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste that is accompanied by a shipping paper containing all the information required on the manifest (excluding the USEPA identification numbers, generator's certification, and signatures), the owner or operator, or its agent, must do each of the following:

A) It must sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

B) It must note any significant discrepancies (as defined in Section 727.170(c)(1)) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper;

BOARD NOTE: USEPA does not intend that the owner or operator of a facility whose procedures pursuant to Section 727.110(d)(3) include waste analysis must perform that analysis before signing the shipping paper and giving it to the transporter. Section 727.170(c)(2), however, requires reporting an unreconciled discrepancy discovered during later analysis.

C) It must immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

D) Within 30 days after the delivery, it must send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or its agent, must send a copy of the shipping paper signed and dated to the generator; and

BOARD NOTE: Section 722.123(c) requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment).

E) It must retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

3) Whenever a shipment of hazardous waste is initiated from a facility, the facility owner or operator must comply with the requirements of 35 Ill. Adm. Code 722.

BOARD NOTE: The provisions of 35 Ill. Adm. Code 722.116 or 722.117~~724.134~~ are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of 35 Ill. Adm. Code 722.116 or 722.117~~724.134~~ apply only to an owner or operator that is shipping hazardous waste that it generated at that facility.

4) As required by 35 Ill. Adm. Code 722.184(d)(2)(O), within~~Within~~ three working days after the receipt of a shipment subject to Subpart H of 35 Ill. Adm. Code 722, the owner or operator of the facility must provide a copy of the movement~~tracking~~ document bearing all required signatures to the foreign exporter;~~notifier,~~ to the ~~Agency, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and to~~ competent authorities of the~~all other concerned~~ countries of export and transit that control the shipment as an export or transit of hazardous waste. On or after the electronic import-export reporting compliance date, to USEPA electronically using USEPA's Waste Import Export Tracking System (WIETS). The original copy of the movement~~tracking~~ document must be maintained at the facility for at least three years from the date of signature. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on USEPA's WIETS, provided that copies are readily available for viewing and production if requested by any USEPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with USEPA's WIETS for which the owner or operator of a facility bears no responsibility.

BOARD NOTE: Subsection (b)~~ of this Section~~ is derived from 40 CFR 267.71 (2017)~~(2007)~~.

c) Manifest Discrepancies~~discrepancies.~~

1) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are either of the following:

A) For bulk waste, variations greater than 10 percent in weight; or

B) For batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant discrepancies in type are obvious differences that can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

2) Upon discovering a significant discrepancy, the facility owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Agency a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

BOARD NOTE: Subsection (c)~~ of this Section~~ is derived from 40 CFR 267.72 (2017)~~(2007)~~.

d) Retention of Information~~information.~~

1) The facility owner or operator must keep a written operating record at its facility.

2) The facility owner or operator must record the following information, as it becomes available, and maintain the operating record until it closes the facility:

A) A description and the quantity of each type of hazardous waste generated, and the methods and dates of its storage or treatment at the facility as required by Appendix A of 35 Ill. Adm. Code 724;

B) The location of each hazardous waste within the facility and the quantity at each location;

C) Records and results of waste analyses and waste determinations performed as specified in Section 727.110(d) and (h) and 35 Ill. Adm. Code 724.934, 724.963, 724.983, and 728.107;

D) Summary reports and details of all incidents that require the owner or operator to implement the contingency plan as specified in Section 727.150(i)(2));

E) Records and results of inspections as required by Section 727.110(f)(4) (except that the facility owner or operator needs to keep these data for only three years);

F) Monitoring, testing or analytical data, and corrective action when required by Section 727.190, Section 727. 290(b), (d), and (f) and 35 Ill. Adm. Code 724.934(c) through (f), 724.935, 724.963(d) through (i), 724.964, 724.988, 724.989, and 724.990;

G) All closure cost estimates pursuant to Section 727.240(c);

H) The facility owner or operator certification, executed at least annually, that the owner or operator has a program in place to reduce the volume and toxicity of hazardous waste that it generates to the degree that the owner or operator determines to be economically practicable; and that the proposed method of treatment or storage is that practicable method currently available to the owner or operator that minimizes the present and future threat to human health and the environment;

I) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration, if applicable, required by the facility owner or operator pursuant to 35 Ill. Adm. Code 728.107;

J) For an on-site storage facility, the information in the notice (except the manifest number), and the certification and demonstration, if applicable, required by the facility owner or operator pursuant to 35 Ill. Adm. Code 728.107;

K) For an off-site treatment facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the facility owner or operator pursuant to 35 Ill. Adm. Code 728.107 or 728.108; and

L) For an off-site storage facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator pursuant to 35 Ill. Adm. Code 728.107 or 728.108.

BOARD NOTE: Subsection (d)~~ of this Section~~ is derived from 40 CFR 267.73 (2017)~~(2007)~~.

e) Availability of Records~~records.~~

1) The facility owner or operator must furnish all records, including plans, required pursuant to this Part upon the request of any officer, employee, or representative of the Agency or USEPA and make them available at all reasonable times for inspection.

2) The retention period for all records required pursuant to this Part is extended automatically during the course of any unresolved enforcement action involving the facility or as requested in writing by the Agency.

BOARD NOTE: Any Agency request for extended records retention under this subsection (e)(2) is subject to Board review pursuant to Section 40 of the Act.

BOARD NOTE: Subsection (e)~~ of this Section~~ is derived from 40 CFR 267.74 (2017)~~(2007)~~.

f) Submission of Reports~~reports~~. The facility owner or operator must prepare an annual facility activities report and other reports listed in subsection (f)(2)~~ of this~~

~~Section~~.

1) Annual Facility Activities Report~~facility activities report~~. The facility owner or operator must prepare and submit a single copy of an annual facility activities report to the Agency by March 1 of each year. The annual facility activities report must be submitted on USEPA Form 8700-13B. The report must cover facility activities during the previous calendar year and must include the following information:

BOARD NOTE: Corresponding 40 CFR 267.75(a) (2006) requires biennial reporting. The Board has required annual reporting, since Section 20.1 of the Act ~~[415 ILCS 5/20.1 (2006)]~~ requires the Agency to assemble annual reports, and only annual facility activity reports will enable the Agency to fulfill this mandate.

A) The USEPA identification number, name, and address of the facility;

B) The calendar year covered by the report;

C) The method of treatment or storage for each hazardous waste;

D) The most recent closure cost estimate pursuant to Section 727.240(c);

E) A description of the efforts undertaken during the year to reduce the volume and toxicity of generated waste;

F) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984; and

G) The certification signed by the owner or operator.

2) Additional Reports~~reports~~. In addition to submitting the annual~~biennial~~ reports, the owner or operator must also report the following information to the Agency:

A) Releases, fires, and explosions as specified in Section 727.150(i)(2);

B) Facility closures specified in Section 727.210(h); and

C) Other information as otherwise required by Sections 727.270, 727.290, and 727.900 and Subparts AA, BB, and CC of 35 Ill. Adm. Code 724.

3) For off-site facilities, the USEPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report must give the name and address of the foreign generator.

4) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information must be listed by USEPA identification number of each generator.

BOARD NOTE: Subsection (f)~~ of this Section~~ is derived from 40 CFR 267.75 (2017)~~(2007)~~.

g) Required Notifications~~notifications~~. Before transferring ownership or operation of a facility during its operating life, the facility owner or operator must notify the new owner or operator in writing of the requirements of this Part and Subpart J of 35 Ill. Adm. Code 703.

BOARD NOTE: Subsection (g)~~ of this Section~~ is derived from 40 CFR 267.76 (2017)~~(2007)~~.

(Source: Amended at 42 Ill. Reg. 24055, effective November 19, 2018)

**Section 727.190 Releases from Solid Waste Management Units**

a) Applicability of This~~this~~ Section. This Section applies to the owner or operator of a facility that treats or stores hazardous waste under a RCRA standardized permit pursuant to Subpart J of 35 Ill. Adm. Code 703, except as provided in Section 727.100(a)(2), or unless its facility already has a permit that imposes requirements for corrective action pursuant to 35 Ill. Adm. Code 724.201.

BOARD NOTE: Subsection (a)~~ of this Section~~ is derived from 40 CFR 267.90 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

b) This subsection (b) corresponds with 40 CFR 267.91, which USEPA has marked "Reserved~~.~~". This statement maintains structural consistency with the corresponding federal rules.

c) This subsection (c) corresponds with 40 CFR 267.92, which USEPA has marked "Reserved~~.~~". This statement maintains structural consistency with the corresponding federal rules.

d) This subsection (d) corresponds with 40 CFR 267.93, which USEPA has marked "Reserved~~.~~". This statement maintains structural consistency with the corresponding federal rules.

e) This subsection (e) corresponds with 40 CFR 267.94, which USEPA has marked "Reserved~~.~~". This statement maintains structural consistency with the corresponding federal rules.

f) This subsection (f) corresponds with 40 CFR 267.95, which USEPA has marked "Reserved~~.~~". This statement maintains structural consistency with the corresponding federal rules.

g) This subsection (g) corresponds with 40 CFR 267.96, which USEPA has marked "Reserved~~.~~". This statement maintains structural consistency with the corresponding federal rules.

h) This subsection (h) corresponds with 40 CFR 267.97, which USEPA has marked "Reserved~~.~~". This statement maintains structural consistency with the corresponding federal rules.

i) This subsection (i) corresponds with 40 CFR 267.98, which USEPA has marked "Reserved~~.~~". This statement maintains structural consistency with the corresponding federal rules.

j) This subsection (j) corresponds with 40 CFR 267.99, which USEPA has marked "Reserved~~.~~". This statement maintains structural consistency with the corresponding federal rules.

k) This subsection (k) corresponds with 40 CFR 267.100, which USEPA has marked "Reserved~~.~~". This statement maintains structural consistency with the corresponding federal rules.

l) Requirements for addressing corrective action for solid waste management units.

1) The facility owner or operator must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit.

2) The Agency must specify corrective action in the supplemental portion of the facility owner's or operator's RCRA standardized permit in accordance with this subsection (l) and Subpart S of 35 Ill. Adm. Code 724. The Agency must include in the supplemental portion of the RCRA standardized permit schedules of compliance for corrective action (where corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing corrective action.

3) The facility owner or operator must implement corrective action beyond the facility property boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the Agency that, despite its best efforts, the owner or operator was unable to obtain the necessary permission to undertake such actions. The owner or operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. The owner or operator must provide assurances of financial responsibility for such corrective action.

4) The facility owner or operator of a remediation site does not have to comply with this subsection (l) unless the site is part of a facility that is subject to a permit for treating, storing, or disposing of hazardous wastes that are not remediation wastes.

BOARD NOTE: Subsection (l)~~ of this Section~~ is derived from 40 CFR 267.101 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

(Source: Amended at 42 Ill. Reg. 24055, effective November 19, 2018)

**Section 727.210 Closure**

a) Applicability of This~~this~~ Section. This Section applies to the facility owner or operator of a facility that treats or stores hazardous waste under a RCRA standardized permit pursuant to Subpart J of 35 Ill. Adm. Code 703, except as provided in Section 727.100(a)(2).

BOARD NOTE: Subsection (a)~~ of this Section~~ is derived from 40 CFR 267.110 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

b) Required General Standards When Operations Cease~~general standards when operations cease~~. The facility owner or operator must close the storage and treatment units in a manner that fulfills the following conditions:

1) It minimizes the need for further maintenance;

2) It controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere; and

3) It meets the closure requirements of this Section and the requirements of Sections 727.270(g), 727.290(l), and 727.900(i). If the facility owner or operator determines that, when applicable, the closure requirements of Section 727.290(l) (tanks) or 727.900(i) (containment buildings) cannot be met, then the owner or operator must close the unit in accordance with the requirements that apply to landfills (35 Ill. Adm. Code 724.410). In addition, for the purposes of post-closure and financial responsibility, such a tank system or containment building is then considered to be a landfill, and the owner or operator must apply for a post-closure care permit in accordance with 35 Ill. Adm. Code 702 and 703.

BOARD NOTE: Subsection (b)~~ of this Section~~ is derived from 40 CFR 267.111 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

c) Closure Procedures~~procedures.~~

1) To close a facility, the facility owner or operator must follow its approved closure plan, and follow notification requirements.

A) The facility owner or operator must submit its closure plan at the time it submits its Notice of Intent to operate under a RCRA standardized permit. Final issuance of the RCRA standardized permit constitutes approval of the closure plan, and the plan becomes a condition of the RCRA standardized permit.

B) The Agency's approval of the plan must ensure that the approved plan is consistent with Sections 727.210(b) through (f), 727.270(g), 727.290(l), and 727.900(i).

2) Content of Closure Plan~~closure plan~~. The closure plan must identify steps necessary to perform partial or final closure of the facility. The closure plan must include at least the following minimum information:

A) A description of how each hazardous waste management unit at the facility subject to this Section will be closed following the requirements of Section 727.210(b);

B) A description of how final closure of the facility will be conducted in accordance with Section 727.210(b). The description must identify the maximum extent of the operations that will be unclosed during the active life of the facility;

C) An estimate of the maximum inventory of hazardous wastes ever on site during the active life of the facility and a detailed description of the methods that the facility owner or operator will use during partial or final closure, such as methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the types of off-site hazardous waste management units to be used, if applicable;

D) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial or final closure. These might include procedures for cleaning equipment and removing contaminated soils, methods for

sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard;

E) A detailed description of other activities necessary during the closure period to ensure that partial or final closure satisfies the closure performance standards;

F) A schedule for closure of each hazardous waste management unit, and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities that allow tracking of progress of partial or final closure; and

G) For facilities that use trust funds to establish financial assurance pursuant to Section 727.240(d) and that are expected to close prior to the expiration of the permit, an estimate of the expected year of final closure.

3) The facility owner or operator may submit a written notification to the Agency for a permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility, following the applicable procedures in 35 Ill. Adm. Code 705.304.

A) Events leading to a change in the closure plan, and therefore requiring a modification, may include the following:

i) A change in the operating plan or facility design;

ii) A change in the expected year of closure, if applicable; or

iii) In conducting partial or final closure activities, an unexpected event requiring a modification of the approved closure plan.

B) The written notification or request must include a copy of the amended closure plan for review or approval by the Agency. The Agency must approve, disapprove, or modify this amended plan in

accordance with the procedures in 35 Ill. Adm. Code 703.353 and 705.304.

4) Notification before Final Closure~~final closure.~~

A) The facility owner or operator must notify the Agency in writing at least 45 days before the date that it expects to begin final closure of a treatment or storage tank, container storage area, or containment building.

B) The date when the owner or operator "expects to begin closure" must be no later than 30 days after the date that any hazardous waste management unit receives the known final volume of hazardous wastes.

C) If the facility's permit is terminated, or if the facility owner or operator is otherwise ordered, by a federal judicial decree or final order pursuant to section 3008 of RCRA (42 USC 6928), to cease receiving hazardous wastes or to close, then the requirements of this subsection (c)(4) do not apply. However, the owner or operator must close the facility following the deadlines established in subsection (f)~~ of this Section~~.

BOARD NOTE: Subsection (c)~~ of this Section~~ is derived from 40 CFR 267.112 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

d) Opportunity for Public Comment~~public comment~~ on the Plan~~plan.~~

1) The Agency must provide the facility owner or operator and the public, when the draft RCRA standardized permit is public noticed, the opportunity to submit written comments on the plan and to the draft permit as allowed by 35 Ill. Adm. Code 705.303(b). The Agency must also, in response to a request or at its own discretion, hold a public hearing whenever it determines that such a hearing might clarify one or more issues concerning the closure plan, and the permit.

2) The Agency must give public notice of the hearing 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and

the two notices may be combined.

BOARD NOTE: Subsection (d) ~~of this Section~~ is derived from 40 CFR 267.113 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

e) This subsection (e) corresponds with 40 CFR 267.114, which USEPA has marked "Reserved~~.~~". This statement maintains structural consistency with the corresponding federal rules.

f) Time Allowed~~allowed~~ for Closure~~closure.~~

1) Within 90 days after the final volume of hazardous waste is sent to a unit, the facility owner or operator must treat or remove all hazardous wastes from the unit following the approved closure plan.

2) The facility owner or operator must complete final closure activities in accordance with the approved closure plan within 180 days after the final volume of hazardous wastes is sent to the unit. The Agency may approve an extension of 180 days to the closure period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that the conditions of subsections (f)(2)(A) and (f)(2)(B)~~ of this Section~~ are fulfilled subject to the limitation of subsection (f)(2)(C)~~ of this Section~~:

A) The final closure activities will take longer than 180 days to complete due to circumstances beyond the control of the owner or operator, excluding groundwater contamination; ~~and~~

B) The facility owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed, but not operating hazardous waste management unit or facility, including compliance with all applicable permit requirements; and~~.~~

C) The owner or operator must make the demonstration of subsections (f)(2)(A) and (f)(2)(B)~~ of this Section must be made~~ at least 30 days prior to the expiration of the initial 180-day period.

3) Nothing in this subsection (f) precludes the facility owner or operator from

removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved final closure plan at any time before or after notification of final closure.

BOARD NOTE: Subsection (f)~~ of this Section~~ is derived from 40 CFR 267.115 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

g) Disposition of Contaminated Equipment~~contaminated equipment~~, Structure~~structure~~, and Soils~~soils~~. The facility owner or operator must properly dispose of or decontaminate all contaminated equipment, structures, and soils during the partial and final closure periods. By removing any hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that waste following all applicable requirements of 35 Ill. Adm. Code 722.

BOARD NOTE: Subsection (g)~~ of this Section~~ is derived from 40 CFR 267.116 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

h) Certification of Closure~~closure~~. Within 60 days after the completion of final closure of each unit under a RCRA standardized permit pursuant to Subpart J of 35 Ill. Adm. Code 705, the facility owner or operator must submit to the Agency, by registered mail, a certification that each hazardous waste management unit or facility, as applicable, has been closed following the specifications in the closure plan. Both the owner or operator and an independent registered professional engineer must sign the certification. The owner or operator must furnish documentation supporting the independent registered professional engineer's certification to the Agency upon request until the Agency releases the owner or operator from the financial assurance requirements for closure pursuant to Section 727.240(d)(10).

BOARD NOTE: Subsection (h)~~ of this Section~~ is derived from 40 CFR 267.117 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

(Source: Amended at 42 Ill. Reg. 24055, effective November 19, 2018)

**Section 727.240 Financial Requirements**

a) Applicability and Substance~~substance~~ of the Financial Requirements~~financial requirements.~~

1) The regulations in this Section apply to owners and operators who treat or store hazardous waste under a RCRA standardized permit, except as provided in Section 727.100(a)(2) or subsection (a)(4)~~ of this Section~~.

2) The facility owner or operator must do each of the following:

A) It must prepare a closure cost estimate as required in subsection (c) ~~of this Section~~;

B) It must demonstrate financial assurance for closure as required in subsection (d)~~ of this Section~~; and

C) It must demonstrate financial assurance for liability as required in subsection (h)~~ of this Section~~.

3) The owner or operator must notify the Agency if the owner or operator is named as a debtor in a bankruptcy proceeding under Title 11 (Bankruptcy) of the United States Code (see also subsection (i)~~ of this Section~~).

4) States and the federal government are exempt from the requirements of this Section.

BOARD NOTE: Subsection (a)~~ of this Section~~ is derived from 40 CFR 267.140 (2017)~~(2013)~~.

b) Definitions of Terms~~terms~~ as Used~~used~~ in This~~this~~ Section~~.~~

1) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 727.210(c).

2) "Current closure cost estimate" means the most recent of the estimates prepared in accordance with subsections (c)(1), (c)(2), and (c)(3)~~ of this Section~~.

3) This subsection (b)(3) corresponds with 40 CFR 267.141(c), which USEPA has marked "Reserved~~.~~". This statement maintains structural consistency with the corresponding federal rules.

4) "Parent corporation" means a corporation that directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator. In this instance, the owned corporation that is the facility owner or operator is deemed a "subsidiary" of the parent corporation.

5) This subsection (b)(5) corresponds with 40 CFR 267.141(e), which USEPA has marked "Reserved.". This statement maintains structural consistency with the corresponding federal rules.

6) The following terms are used in the specifications for the financial tests for closure and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices:

"Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

"Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 35 Ill. Adm. Code 704.212(a), (b), and (c).

"Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

"Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

7) In the liability insurance requirements, the terms "bodily injury" and "property damage" have the meanings given them by applicable State law. However, these terms do not include those liabilities that, consistent with standard industry practices, are excluded from coverage in liability

insurance policies for bodily injury and property damage. The Agency intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

"Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, that results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

"Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

"Sudden accidental occurrence" means an occurrence that is not continuous or repeated in nature.

8) "Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that the Agency can reasonably determine that a substantial business relationship currently exists between the guarantor and the facility owner or operator that is adequate consideration to support the obligation of the guarantee relating to any liability towards a third-party. "Applicable state law~~,~~", as used in this subsection (b)(8), means the laws of the State of Illinois and those of any sister state that govern the guarantee and the adequacy of the consideration.

BOARD NOTE: Subsection (b)~~ of this Section~~ is derived from 40 CFR 267.141 (2017)~~(2013)~~. Subsection (b)(8) is also derived from the discussion at 53 Fed. Reg. 33938, 41-43 (Sept. 1, 1988). The term "substantial business relationship" is also independently defined in 35 Ill. Adm. Code 724.241(h) and 725.241(h). Any Agency determination that a substantial business relationship exists is subject to Board review pursuant to Section 40 of the Act~~ [415 ILCS 5/40]~~.

c) Cost Estimate~~estimate~~ for Closure~~closure.~~

1) The facility owner or operator must have at the facility a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in Section 727.210(b) through (f) and applicable closure requirements in Sections 727.270(g), 727.290(l), and 727.900(i).

A) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by the closure plan (see Section 727.210(c)(2)).

B) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See the definition of parent corporation in subsection (b)(4)~~ of this Section~~.) The owner or operator may use costs for on-site disposal if it can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

C) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

D) The facility owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes that might have economic value.

2) During the active life of the facility, the facility owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instruments used to comply with subsection (d)~~ of this Section~~. For an owner or operator using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the guarantor's fiscal year and before submission of updated information to the Agency as specified in subsection (n)(3)~~ of this Section~~. The

adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross Domestic Product (Deflator) published by the U.S. Department of Commerce in its Survey of Current Business, as specified in subsections (c)(2)(A) and (c)(2)(B)~~ of this Section~~. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

A) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

B) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

BOARD NOTE: The table of Deflators is available as Table 1.1.9. in the National Income and Product Account Tables, published by U.S. Department of Commerce, Bureau of Economic Analysis, National Economic Accounts, available on-line at the following web address: www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=3&isuri=1&903=13.

3) During the active life of the facility, the facility owner or operator must revise the closure cost estimate no later than 30 days after the Agency has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in subsection (c)(2)~~ of this Section~~.

4) The facility owner or operator must keep the following at the facility during the operating life of the facility: the latest closure cost estimate prepared in accordance with subsections (c)(1) and (c)(3)~~ of this Section~~ and, when this estimate has been adjusted in accordance with subsection (c)(2)~~ of this Section~~, the latest adjusted closure cost estimate.

BOARD NOTE: Subsection (c)~~ of this Section~~ is derived from 40 CFR 267.142 (2017~~2013~~).

d) Financial Assurance~~assurance~~ for Closure~~closure~~. The facility owner or operator must establish financial assurance for closure of each storage or treatment unit that it owns or operates. In establishing financial assurance for closure, the owner or operator must choose from among the financial assurance mechanisms in subsections (d)(1) through (d)(7)~~ of this Section~~. The owner or operator can also use a combination of mechanisms for a single facility if the combination meets the requirement in subsection (d)(8)~~ of this Section~~, or it may use a single mechanism for multiple facilities as in subsection (d)(9)~~ of this Section~~. The Agency must release the owner or operator from the requirements of this subsection (d) after the owner or operator meets the criteria pursuant to subsection (d)(10)~~ of this Section~~.

1) Closure Trust Fund~~trust fund~~. An owner or operator may use the "closure trust fund" that is specified in 35 Ill. Adm. Code 724.243(a)(1), (a)(2), and (a)(6) through (a)(11). For purposes of this subsection (d)(1), the following provisions also apply:

A) Payments into the trust fund for a new facility must be made annually by the owner or operator over the remaining operating life of the facility as estimated in the closure plan, or over three years, whichever period is shorter. This period of time is hereafter referred to as the "pay-in period~~.~~".

B) For a new facility, the facility owner or operator must make the first payment into the closure trust fund before the facility may accept the initial storage. A receipt from the trustee must be submitted by the owner or operator to the Agency before this initial storage of waste. The first payment must be at least equal to the current closure cost estimate, divided by the number of years in the pay-in period, except as provided in subsection (d)(8)~~ of this Section~~ for multiple mechanisms. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The owner or operator determines the amount of each subsequent payment by subtracting the current value of the trust fund from the current closure cost estimate, and dividing this difference by the number of years remaining in the pay-in period. Mathematically, the formula is as follows:

$$NP = \frac{(CCE - CVTF)}{}$$

$$\frac{\quad}{\text{YRPP}}$$

Where:

NP = the amount of the next payment

CCE = the current closure cost estimate

CVTF = the current value of the trust fund

YRPP = the years remaining in the pay-in period~~.~~

C) The owner or operator of a facility existing on the effective date of this subsection (d)(1) can establish a trust fund to meet the financial assurance requirements of this subsection (d)(1). If the value of the trust fund is less than the current closure cost estimate when a final approval of the permit is granted for the facility, the owner or operator must pay the difference into the trust fund within 60 days.

D) The facility owner or operator may accelerate payments into the trust fund or deposit the full amount of the closure cost estimate when establishing the trust fund. However, the owner or operator must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subsections (d)(1)(B) or (d)(1)(C)~~ of this Section~~.

E) The facility owner or operator must submit a trust agreement with the wording specified by the Agency pursuant to subsection (l)(3) ~~of this Section~~.

2) Surety Bond Guaranteeing Payment~~bond guaranteeing payment~~ into a Closure Trust Fund~~closure trust fund~~. An owner or operator may use the "surety bond guaranteeing payment into a closure trust fund~~,~~", as specified in 35 Ill. Adm. Code 724.243(b), including the use of the surety bond instrument designated by the Agency pursuant to subsection (1)(3)~~ of this Section~~, and the standby trust specified at 35 Ill. Adm. Code 724.243(b)(3).

3) Surety Bond Guaranteeing Performance~~bond guaranteeing performance~~ of Closure~~closure~~. An owner or operator may use the "surety bond guaranteeing performance of closure~~,~~", as specified in 35 Ill. Adm. Code 724.243(c), the submission and use of the surety bond instrument designated by the Agency pursuant to subsection (1)(3)~~ of this Section~~, and the standby trust specified at 35 Ill. Adm. Code 724.243(c)(3).

4) Closure Letter~~letter~~ of Credit~~credit~~. An owner or operator may use the "closure letter of credit" specified in 35 Ill. Adm. Code 724.243(d), the submission and use of the irrevocable letter of credit instrument designated by the Agency pursuant to subsection (1)(3)~~ of this Section~~, and the standby trust specified in 35 Ill. Adm. Code 724.243(d)(3).

5) Closure Insurance~~insurance~~. An owner or operator may use "closure insurance~~,~~", as specified in 35 Ill. Adm. Code 724.243(e), utilizing the certificate of insurance for closure designated by the Agency pursuant to subsection (1)(3)~~ of this Section~~.

6) Corporate Financial Test~~financial test~~. An owner or operator that satisfies the requirements of this subsection (d)(6) may demonstrate financial assurance up to the amount specified in this subsection (d)(6).

A) Financial component. See subsection (m)~~ of this Section~~.

BOARD NOTE: It was necessary for the Board to codify corresponding 40 CFR 267.143(f)(1) as subsection (m)~~ of this Section~~ to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to this subsection (d), (d)(6), or (d)(6)(A) also include added subsection (m)~~ of this Section~~, as applicable.

B) Recordkeeping and Reporting Requirements~~reporting requirements~~. See subsection (n)~~ of this Section~~.

BOARD NOTE: It was necessary for the Board to codify 40 CFR 267.143(f)(2) as subsection (n)~~ of this Section~~ to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to this subsection (d), (d)(6), or (d)(6)(B) also include added subsection

(n)~~ of this Section~~, as applicable.

7) Corporate Guarantee~~guarantee.~~

A) A facility owner or operator may meet the requirements of this subsection (d) by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in subsection (d)(6)~~ of this Section~~ and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording designated by the Agency pursuant to subsection (1)(3)~~ of this Section~~. The certified copy of the guarantee must accompany the letter from the guarantor's chief financial officer and accountants' opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

B) For a new facility, the guarantee must be effective and the guarantor must submit the items in subsection (d)(7)(A) ~~of this Section~~ and the items specified in subsection (n)(1)~~ of this Section~~ to the Agency at least 60 days before the owner or operator places waste in the facility.

C) The terms of the guarantee must provide as required by subsection (o)~~ of this Section~~.

BOARD NOTE: It was necessary for the Board to codify 40 CFR 267.143(g)(3) as subsection (o)~~ of this Section~~ to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to this subsection (d), (d)(7), or (d)(7)(C) also include added subsection (o)~~ of this Section~~, as applicable.

D) If a corporate guarantor no longer meets the requirements of subsection (d)(6)(A)~~ of this Section~~, the owner or operator must, within 90 days, obtain alternative assurance, and submit the assurance to the Agency for approval. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within the next 30 days, and submit it to the Agency for approval.

E) The guarantor is no longer required to meet the requirements of this subsection (d)(7) when either of the following occurs:

i) The facility owner or operator substitutes alternate financial assurance as specified in this subsection (d); or

ii) The facility owner or operator is released from the requirements of this subsection (d) in accordance with subsection (d)(10)~~ of this Section~~.

8) Use of Multiple Financial Mechanisms~~multiple financial mechanisms~~. An owner or operator may use more than one mechanism at a particular facility to satisfy the requirements of this subsection (d). The acceptable mechanisms are trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, insurance, the financial test, and the guarantee, except owners or operators cannot combine the financial test with the guarantee. The mechanisms must be as specified in subsections (d)(1), (d)(2), (d)(4), (d)(5), (d)(6), and (d)(7)~~ of this Section~~, respectively, except it is the combination of mechanisms rather than a single mechanism that must provide assurance for an amount at least equal to the cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, it may use the trust fund as the standby trust for the other mechanisms. A single trust fund can be established for two or more mechanisms. The Agency may use any or all of the mechanisms to provide for closure of the facility.

9) Use of a Financial Mechanism~~financial mechanism~~ for Multiple Facilities~~multiple facilities~~. An owner or operator may use a financial mechanism for multiple facilities, as specified in 35 Ill. Adm. Code 724.243(h).

10) Release of the Owner~~owner~~ or Operator~~operator~~ from the Requirements~~requirements~~ of this Subsection~~subsection~~ (d). Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Agency will notify the owner or operator in writing that the owner or operator is no longer required by this subsection (d) to maintain financial assurance for final closure of the facility, unless the Agency has reason to believe that final closure has not been completed in accordance with the approved closure plan. The Agency must provide the owner or operator with a detailed written statement of any such reasons to believe that closure has not been conducted in accordance with the approved closure plan.

BOARD NOTE: Subsection (d)~~ of this Section~~ is derived from 40 CFR 267.143 (2017)~~(2013)~~.

e) This subsection (e) corresponds with 40 CFR 267.144, which USEPA has marked "Reserved~~.~~". This statement maintains structural consistency with the corresponding federal rules.

f) This subsection (f) corresponds with 40 CFR 267.145, which USEPA has marked "Reserved~~.~~". This statement maintains structural consistency with the corresponding federal rules.

g) This subsection (g) corresponds with 40 CFR 267.146, which USEPA has marked "Reserved~~.~~". This statement maintains structural consistency with the corresponding federal rules.

h) Liability Requirements~~requirements.~~

1) Coverage for Sudden Accidental Occurrences~~sudden accidental occurrences~~. The owner or operator of a hazardous waste treatment or storage facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of

at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in subsections~~subsection~~ (h)(1)(A) through (h)(1)(G)~~ of this Section~~:

A) Trust Fund~~fund~~ for Liability Coverage~~liability coverage~~. The owner or operator may meet the requirements of this subsection (h) by obtaining a trust fund for liability coverage as specified in 35 Ill. Adm. Code 724.247(j).

B) Surety Bond~~bond~~ for liability coverage. The owner or operator may meet the requirements of this subsection (h) by obtaining a surety bond for liability coverage as specified in 35 Ill. Adm. Code 724.247(i).

C) Letter of Credit~~credit~~ for Liability Coverage~~liability coverage~~. The owner or operator may meet the requirements of this subsection (h) by obtaining a letter of credit for liability coverage as specified in 35 Ill. Adm. Code 724.247(h).

D) Insurance for Liability Coverage~~liability coverage~~. The owner or operator may meet the requirements of this subsection (h) by obtaining liability insurance as specified in 35 Ill. Adm. Code 724.247(a)(1).

E) Financial Test~~test~~ for Liability Coverage~~liability coverage~~. The owner or operator may meet the requirements of this subsection (h) by passing a financial test as specified in subsection (h)(6)~~ of this Section~~.

F) Guarantee for Liability Coverage~~liability coverage~~. The owner or operator may meet the requirements of this subsection (h) by obtaining a guarantee as specified in subsection (h)(7)~~ of this Section~~.

G) Combination of Mechanisms~~mechanisms~~. The owner or operator may demonstrate the required liability coverage through the use of combinations of mechanisms as allowed by 35 Ill. Adm. Code 724.247(a)(6).

H) An owner or operator must notify the Agency in writing within 30 days whenever either of the following occurs:

i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in subsections (h)(1)(A) through (h)(1)(G)~~ of this Section~~; or

ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage pursuant to subsections (h)(1)(A) through (h)(1)(G)~~ of this Section~~; or

iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage pursuant to subsections (h)(1)(A) through (h)(1)(G)~~ of this Section~~.

2) This subsection (h)(2) corresponds with 40 CFR 267.147(b), which USEPA has marked "Reserved~~.~~". This statement maintains structural consistency with the corresponding federal rules.

3) This subsection (h)(3) corresponds with 40 CFR 267.147(c), which USEPA has marked "Reserved~~.~~". This statement maintains structural consistency with the corresponding federal rules.

4) This subsection (h)(4) corresponds with 40 CFR 267.147(d), which USEPA has marked "Reserved~~.~~". This statement maintains structural consistency with the corresponding federal rules.

5) Period of Coverage~~coverage~~. Within 60 days after receiving certifications from the facility owner or operator and an independent registered professional engineer that final closure has been completed in accordance

with the approved closure plan, the Agency must notify the owner or operator in writing that he is no longer required by this section to maintain liability coverage from that facility, unless the Agency has reason to believe that closure has not been in accordance with the approved closure plan.

6) Financial Test~~test~~ for Liability Coverage~~liability coverage~~. A facility owner or operator that satisfies the requirements of this subsection (h)(6) may demonstrate financial assurance for liability up to the amount specified in this subsection (h)(6):

A) Financial Component~~component.~~

i) If using the financial test for only liability coverage, the owner or operator must have tangible net worth greater than the sum of the liability coverage to be demonstrated by this test plus $10 million.

ii) The owner or operator must have assets located in the United States amounting to at least the amount of liability covered by this financial test.

iii) An owner or operator who is demonstrating coverage for liability and any other environmental obligations, including closure pursuant to subsection (d)(6)~~ of this Section~~, through a financial test must meet the requirements of subsection (d)(6)~~ of this Section~~.

B) Recordkeeping and Reporting Requirements~~reporting requirements~~. See subsection (p)~~ of this Section~~.

BOARD NOTE: It was necessary for the Board to codify 40 CFR 267.147(f)(2) as subsection (p)~~ of this Section~~ to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to this subsection (h), (h)(6), or (h)(6)(B) also include added subsection (p)~~ of this Section~~, as applicable.

7) Guarantee for Liability Coverage~~liability coverage.~~

A) Subject to subsection (h)(7)(B)~~ of this Section~~, a facility owner or operator may meet the requirements of this subsection (h) by obtaining a written guarantee, hereinafter referred to as "guarantee~~.~~". The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in subsections (h)(6)(A) and (h)(6)(B)~~ of this Section~~. The wording of the guarantee must be identical to the wording designated by the Agency pursuant to subsection (1)(3)~~ of this Section~~. A certified copy of the guarantee must accompany the items sent to the Agency, as specified in subsection (h)(6)(B)~~ of this Section~~. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

i) If the facility owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden accidental occurrences arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.

ii) This subsection (h)(7)(A)(ii) corresponds with 40 CFR 267.147(g)(1)(ii), which USEPA has marked "Reserved~~.~~". This statement maintains structural consistency with the corresponding federal rules.

B) Foreign Corporations. See subsection (q)~~ of this Section~~.

BOARD NOTE: It was necessary for the Board to codify 40 CFR 267.147(g)(2) as subsection (q)~~ of this Section~~ to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to this subsection (h), (h)(7), or (h)(7)(B) also include added subsection (q)~~ of this Section~~, as applicable. See the further explanation of the differences between subsection (q)~~ of this Section~~ and 40 CFR 267.147(g)(2) in the Board note appended to subsection (q).

BOARD NOTE: Subsection (h)~~ of this Section~~ is derived from 40 CFR 267.147 (2017~~2013~~).

i) Incapacity of Owners~~owners~~ or Operators~~operators~~, Guarantors~~guarantors~~, or Financial Institutions~~financial institutions.~~

1) The facility owner or operator must notify the Agency by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy) of the United States Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in subsections (d)(7) and (h)(7)~~ of this Section~~ must make such a notification if it is named as debtor, as required under the terms of the corporate guarantee designated by the Agency pursuant to subsection (1)(3)~~ of this Section~~.

2) An owner or operator who fulfills the requirements of subsection (d) or (h)~~ of this Section~~ by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.

BOARD NOTE: Subsection (i)~~ of this Section~~ is derived from 40 CFR 267.148 (2017)~~(2013)~~.

j) This subsection (j) corresponds with 40 CFR 267.149, which USEPA has marked "Reserved~~.~~". This statement maintains structural consistency with the

corresponding federal rules.

k) State Assumption~~assumption~~ of Responsibility~~responsibility.~~

1) If the State either assumes legal responsibility for an owner's or operator's compliance with the closure care or liability requirements of this Part or assures that funds will be available from State sources to cover those requirements, the owner or operator will be in compliance with the requirements of subsection (d) or (h)~~ of this Section~~ if USEPA Region 5 determines that the State's assumption of responsibility is at least equivalent to the financial mechanisms specified in this Section. USEPA has stated that USEPA Region 5 will evaluate the equivalency of State guarantees principally in terms of the following: the certainty of the availability of funds for the required closure care activities or liability coverage; and the amount of funds that will be made available. USEPA has stated that USEPA Region 5 may also consider other factors as it deems appropriate. The facility owner or operator must submit to USEPA Region 5 a letter from the State describing the nature of the State's assumption of responsibility together with a letter from the owner or operator requesting that the State's assumption of responsibility be considered acceptable for meeting the requirements of this Section. The letter from the State must include, or have attached to it, the following information: the facility's USEPA identification number, the facility name and address, and the amount of funds for closure care or liability coverage that are guaranteed by the State. USEPA has stated that USEPA Region 5 will notify the owner or operator of its determination regarding the acceptability of the State's guarantee in lieu of financial mechanisms specified in this Section. USEPA has stated that USEPA Region 5 may require the owner or operator to submit additional information as is deemed necessary to make this determination. Pending this determination, the owner or operator will be deemed to be in compliance with the requirements of subsection (d) or (h)~~ of this Section~~, as applicable.

2) If a State's assumption of responsibility is found acceptable as specified in subsection (k)(1)~~ of this Section~~ except for the amount of funds available, the owner or operator may satisfy the requirements of this Section by use of both the State's assurance and additional financial mechanisms as specified in this Section. The amount of funds available through the State and federal mechanisms must at least equal the amount required by this

Section.

BOARD NOTE: Subsection (k)~~ of this Section~~ is derived from 40 CFR 267.150 (2017)~~(2013)~~.

l) Wording of the Instruments~~instruments.~~

1) Forms for using the corporate financial test to demonstrate financial assurance for closure. The chief financial officer of an owner or operator of a facility with a RCRA standardized permit who uses a financial test to demonstrate financial assurance for that facility must complete a letter as specified in subsection (d)(6)~~ of this Section~~. The letter must be worded as designated by the Agency pursuant to subsection (1)(3)~~ of this Section~~.

2) Forms for using the financial test to demonstrate financial assurance for third-party liability. The chief financial officer of an owner or operator of a facility with a RCRA standardized permit who use a financial test to demonstrate financial assurance only for third party liability for that (or other RCRA standardized permit) facility (or those facilities) must complete a letter as specified in subsection (h)(6)~~ of this Section~~. The letter must be worded as designated by the Agency pursuant to subsection (1)(3)~~ of this Section~~.

3) The Agency must designate standardized forms based on 40 CFR 264.151 and 40 CFR 267.151 (Wording of the Instruments), each incorporated by reference in 35 Ill. Adm. Code 720.111(b), with such changes in wording as are necessary under Illinois law. Any owner or operator required to establish financial assurance under this Section must do so only upon the standardized forms promulgated by the Agency. The Agency must reject any financial assurance document that is not submitted on such standardized forms.

BOARD NOTE: Subsection (l)~~ of this Section~~ is derived from 40 CFR 267.151 (2017)~~(2013)~~.

m) Financial Component~~component~~ for Using~~using~~ the Corporate Financial Test~~corporate financial test~~ to Demonstrate Financial Assurance~~demonstrate financial assurance~~ for Closure~~closure.~~

1) The facility owner or operator must satisfy one of the following three conditions:

A) A current rating for its senior unsecured debt of AAA, AA, A, or BBB, as issued by Standard and Poor's, or Aaa, Aa, A or Baa, as issued by Moody's; or

B) A ratio of less than 1.5 comparing total liabilities to net worth; or

C) A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities.

2) The tangible net worth of the owner or operator must be greater than both of the following:

A) The sum of the current environmental obligations (see subsection (n)(1)(A)(i)~~ of this Section~~), including guarantees, covered by a financial test plus $10 million, except as provided in subsection (m)(2)(B)~~ of this Section~~; and

B) $10 million in tangible net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements provided all of the environmental obligations (see subsection (n)(1)(A)(i)~~ of this Section~~) covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and subject to the approval of the Agency.

3) The facility owner or operator must have assets located in the United States amounting to at least the sum of environmental obligations covered by a financial test as described in subsection (n)(1)(A)(i)~~ of this Section~~.

BOARD NOTE: Subsection (m)~~ of this Section~~ is derived from 40 CFR 267.143(f)(1) (2017)~~(2013)~~. The Board moved the corresponding federal provision to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to subsection (d), (d)(6), or (d)(6)(A) ~~of this Section~~ also include this added subsection (m), as applicable.

n) Recordkeeping and Reporting Requirements~~reporting requirements~~ for Using~~using~~ the Corporate Financial Test~~corporate financial test~~ to Demonstrate Financial Assurance~~demonstrate financial assurance~~ for Closure~~closure.~~

1) The facility owner or operator must submit the following items to the Agency:

A) A letter signed by the owner's or operator's chief financial officer that provides the following information:

i) It lists all the applicable current types, amounts, and sums of environmental obligations covered by a financial test. These obligations include both obligations in the programs that USEPA directly operates and obligations where USEPA has delegated authority to a State or approved a State's program. These obligations include, but are not limited to the information described in subsection (n)(1)(E) ~~of this Section~~.

BOARD NOTE: It was necessary for the Board to codify 40 CFR 267.143(f)(2)(i)(A)(*1*) through (f)(2)(i)(A)(*1*)(*vii*) as subsections~~subsection~~ (n)(1)(E) through (n)(1)(E)(vii) ~~of this Section~~ to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to subsection (d), (d)(6), or (d)(6)(B) ~~of this Section~~ or to this subsection (n), (n)(1), (n)(1)(A), or (n)(1)(A)(i) also include added subsection (n)(1)(E) through (n)(1)(E)(vii) ~~of this Section~~, as applicable.

ii) It provides evidence demonstrating that the firm meets the conditions of either subsection (m)(1)(A), (m)(1)(B), or (m)(1)(C) ~~of this Section~~ and subsections (m)(2) and (m)(3) ~~of this Section~~.

B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public

accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The Agency may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Agency deems that the matters that form the basis for the qualification are insufficient to warrant disallowance of the test. If the Agency does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this section within 30 days after the notification of disallowance.

C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies subsection (m)(1)(B) or (m)(1)(C) ~~of this Section~~ that are different from data in the audited financial statements referred to in subsection (n)(1)(B) ~~of this Section~~ or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report must be based upon an agreed upon procedures engagement in accordance with professional auditing standards and must describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

D) If the chief financial officer's letter provides a demonstration that the firm has assured for environmental obligations as provided in subsection (m)(2)(B) ~~of this Section~~, then the letter must include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reported, and that the tangible net worth of the firm is at least $10 million plus the amount of any guarantees provided.

E) Contents of the letter signed by the chief financial officer (for the purposes of subsection (n)(1)(A)(i) ~~of this Section~~):

i) The liability, closure, post-closure and corrective action cost estimates required for hazardous waste treatment, storage, and disposal facilities pursuant to the applicable provisions of 35 Ill. Adm. Code 724.201, 724.242, 724.244, 724.247, 725.242, 725.244, and 725.247;

ii) The cost estimates required for municipal solid waste management facilities pursuant to the applicable provisions of Subpart G of 35 Ill. Adm. Code 811;

iii) The current plugging cost estimates required for UIC facilities pursuant to 35 Ill. Adm. Code 704.212;

iv) The federally required cost estimates required for petroleum underground storage tank facilities pursuant to 40 CFR 280.93;

v) The federally required cost estimates required for PCB storage facilities pursuant to 40 CFR 761.65;

vi) Any federally required financial assurance required by or as part of an action undertaken pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (42 USC 9601 et seq.); and

vii) Any other environmental obligations that are assured through a financial test.

BOARD NOTE: Subsections (n)(1)(E) through (n)(1)(E)(vi) ~~of this Section~~ are derived from 40 CFR 267.143(f)(2)(i)(A)(*1*) through (f)(2)(i)(A)(*1*)(*vi*) (2017)~~(2013)~~. The Board moved the corresponding federal provision to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to subsection (d), (d)(6), (d)(6)(B), (n), (n)(1), (n)(1)(A), or (n)(1)(A)(i) ~~of this Section~~ also include added subsections (n)(1)(E) through (n)(1)(E)(vi), as applicable.

2) The owner or operator of a new facility must submit the items specified in

subsection (n)(1)~~ of this Section~~ to the Agency at least 60 days before placing waste in the facility.

3) After the initial submission of items specified in subsection (n)(1)~~ of this Section~~, the owner or operator must send updated information to the Agency within 90 days following the close of the owner's or operator's fiscal year. The Agency may provide up to an additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in subsection (n)(1)~~ of this Section~~.

4) The owner or operator is no longer required to submit the items specified in this subsection (n)~~ of this Section~~ or comply with the requirements of subsection (d)(6) ~~of this Section~~ when either of the following occurs:

A) The owner or operator substitutes alternate financial assurance as specified in subsection (d) ~~of this Section~~ that is not subject to these recordkeeping and reporting requirements; or

B) The Agency releases the owner or operator from the requirements of subsection (d)~~ of this Section~~ in accordance with subsection (d)(10)~~ of this Section~~.

5) An owner or operator who no longer meets the requirements of subsection (m) ~~of this Section~~ cannot use the financial test to demonstrate financial assurance. Instead an owner or operator who no longer meets the requirements of subsection (m)~~ of this Section~~, must do the following:

A) It must send notice to the Agency of intent to establish alternate financial assurance as specified in this section. The owner or operator must send this notice by certified mail within 90 days following the close of the owner's or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this subsection (n) and subsections (d), (m), and (o)~~ of this Section~~; and

B) It must provide alternative financial assurance within 120 days after the end of such fiscal year.

6) The Agency may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (m)~~ of this Section~~, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in this subsection (n). If the Agency finds that the owner or operator no longer meets the requirements of subsection (m)~~ of this Section~~, the owner or operator must provide alternate financial assurance that meets the requirements of subsection (d)~~ of this Section~~.

BOARD NOTE: Subsection (n)~~ of this Section~~ is derived from 40 CFR 267.143(f)(2) (2017)~~(2013)~~. The Board moved the corresponding federal provision to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to subsection (d), (d)(6), or (d)(6)(B)~~ of this Section~~ also include this added subsection (n), as applicable.

o) The terms of the guarantee for using the corporate guarantee to demonstrate financial assurance for closure must provide as follows:

1) If the facility owner or operator fails to perform closure at a facility covered by the guarantee, the guarantor will accomplish the following:

A) It will perform, or pay a third party to perform closure (performance guarantee); or

B) It will establish a fully funded trust fund as specified in subsection (d)(1)~~ of this Section~~ in the name of the owner or operator (payment guarantee).

2) The guarantee will remain in force for as long as the facility owner or operator must comply with the applicable financial assurance requirements of this Section unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency as evidenced by the return receipts.

3) If notice of cancellation is given, the facility owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the Agency, obtain alternate financial assurance, and submit

documentation for that alternate financial assurance to the Agency. If the owner or operator fails to provide alternate financial assurance and obtain the written approval of such alternative assurance from the Agency within the 90-day period, the guarantor must provide that alternate assurance in the name of the owner or operator and submit the necessary documentation for the alternative assurance to the Agency within 120 days after the cancellation notice.

BOARD NOTE: Subsection (o)~~ of this Section~~ is derived from 40 CFR 267.143(g)(3) (2017)~~(2013)~~. The Board moved the corresponding federal provision to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to subsection (d), (d)(7), or (d)(7)(C) ~~of this Section~~ also include this added subsection (o), as applicable.

p) Recordkeeping and Reporting Requirements~~reporting requirements.~~

1) The owner or operator must submit the following items to the Agency:

A) A letter signed by the owner's or operator's chief financial officer that provides evidence demonstrating that the firm meets the conditions of subsections (h)(6)(A)(i) and (h)(6)(A)(ii)~~ of this Section~~. If the firm is providing only liability coverage through a financial test for a facility or facilities with a permit pursuant to this Part 727, the letter should use the wording in subsection (l)(2) ~~of this Section~~. If the firm is providing only liability coverage through a financial test for facilities regulated pursuant to this Part 727, it should use the letter designated by the Agency pursuant to subsection (1)(3)~~ of this Section~~. If the firm is providing liability coverage through a financial test for a facility or facilities with a permit pursuant to this Part 727, and it assures closure costs or any other environmental obligations through a financial test, it must use the letter in subsection (l)(1)~~ of this Section~~ for the facilities issued a permit pursuant to this Part 727.

B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public

accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The Agency may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Agency deems that the matters that form the basis for the qualification are insufficient to warrant disallowance of the test. If the Agency does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this subsection (h) within 30 days after the notification of disallowance.

C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies subsections (h)(6)(A)(i) and (h)(6)(A)(ii)~~ of this Section~~ that are different from data in the audited financial statements referred to in subsection (p)(1)(B)~~ of this Section~~ or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report must be based upon an agreed upon procedures engagement in accordance with professional auditing standards and must describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

2) The owner or operator of a new facility must submit the items specified in subsection (p)(1)~~ of this Section~~ to the Agency at least 60 days before placing waste in the facility.

3) After the initial submission of items specified in subsection (p)(1)~~ of this Section~~, the facility owner or operator must send updated information to the Agency within 90 days following the close of the owner's or operator's fiscal year. The Agency may provide up to an additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in subsection (p)(1)~~ of this Section~~.

4) The owner or operator is no longer required to submit the items specified in this subsection (p) or comply with the requirements of subsection (h)(6) ~~of this Section~~ when either of the following occurs:

A) The facility owner or operator substitutes alternate financial assurance as specified in subsection (h) ~~of this Section~~ that is not subject to these recordkeeping and reporting requirements; or

B) The Agency releases the facility owner or operator from the requirements of subsection (h) ~~of this Section~~ in accordance with subsection (d)(10) ~~of this Section~~.

5) An owner or operator that no longer meets the requirements of subsection (h)(6)(A) ~~of this Section~~ cannot use the financial test to demonstrate financial assurance. An owner or operator who no longer meets the requirements of subsection (h)(6)(A) ~~of this Section~~, must do the following:

A) Send notice to the Agency of intent to establish alternate financial assurance as specified in this section. The facility owner or operator must send this notice by certified mail within 90 days following the close of the owner's or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this Section.

B) Provide alternative financial assurance within 120 days after the end of that fiscal year.

6) The Agency may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (h)(6)(A) ~~of this Section~~, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in this subsection (p) ~~of this Section~~. If the Agency finds that the owner or operator no longer meets the requirements of subsection (h)(6)(A) ~~of this Section~~, the owner or operator must provide alternate financial assurance that meets the requirements of subsection (h) ~~of this Section~~.

BOARD NOTE: Subsection (p) ~~of this Section~~ is derived from 40 CFR

267.147(f)(2) (2017)~~(2013)~~. The Board moved the corresponding federal provision to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to subsection (h), (h)(6), or (h)(6)(B)~~ of this Section~~ also include this added subsection (p), as applicable.

q) Foreign Corporations~~corporations.~~

1) The guarantor must execute the guarantee in Illinois. The guarantee must be accompanied by a letter signed by the guarantor that states as follows:

A) The guarantee was signed in Illinois by an authorized agent of the guarantor;

B) The guarantee is governed by Illinois law; and

C) The name and address of the guarantor's registered agent for service of process.

2) The guarantor must have a registered agent pursuant to Section 5.05 of the Business Corporation Act of 1983 [805 ILCS 5/5.05] or Section 105.05 of the General Not-for-Profit Corporation Act of 1986 [805 ILCS 105/105.05].

BOARD NOTE: Subsection (q)~~ of this Section~~ is derived from 40 CFR 267.147(g)(2) (2017)~~(2013)~~. The Board moved the corresponding federal provision to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to subsection (h), (h)(7), or (h)(7)(B)~~ of this Section~~ also includes~~include~~ this added subsection (q), as applicable. The text of 40 CFR 267.147(g)(2) is substantially identical to that of 40 CFR 264.147(g)(2). The Board has substituted the language of 35 Ill. Adm. Code 724.247(g)(2), which corresponds with 40 CFR 264.147(g)(2), for that of 40 CFR 267.147(g)(2).

(Source: Amended at 42 Ill. Reg. 24055, effective November 19, 2018)

**Section 727.270 Use and Management of Containers**

a) Applicability of This~~this~~ Section. This Section applies to the owner or operator of a facility that treats or stores hazardous waste in containers under a RCRA

standardized permit pursuant to Subpart J of 35 Ill. Adm. Code 703, except as provided in Section 727.100(a)(2).

BOARD NOTE: Subsection (a)~~ of this Section~~ is derived from 40 CFR 267.170 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

b) Standards Applicable~~applicable~~ to Containers~~containers~~. Standards apply to the condition of containers, to the compatibility of waste with containers, and to the management of containers holding hazardous waste.

1) Condition of Containers~~containers~~. If a container holding hazardous waste is not in good condition (for example, it exhibits severe rusting or apparent structural defects) or if it begins to leak, the facility owner or operator must undertake either of the following actions:

A) It must transfer the hazardous waste from the defective container to a container that is in good condition; or

B) It must manage the waste in some other way that complies with the requirements of this Part.

2) Compatibility of Waste~~waste~~ with Containers~~containers~~. To ensure that the ability of the container to contain the waste is not impaired, the facility owner or operator must use a container made of or lined with materials that are compatible and will not react with the hazardous waste to be stored.

3) Management of Containers~~containers.~~

A) The facility owner or operator must always keep a container holding hazardous waste closed during storage, except when it adds or removes waste.

B) The facility owner or operator must never open, handle, or store a container holding hazardous waste in a manner that may rupture the container or cause it to leak.

BOARD NOTE: Subsection (b) ~~of this Section~~ is derived from 40 CFR 267.171 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

c) Inspection Requirements~~requirements~~. At least weekly, the facility owner or operator must inspect areas where it stores containers, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

BOARD NOTE: Subsection (c) ~~of this Section~~ is derived from 40 CFR 267.172 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

d) Standards Applicable~~applicable~~ to the Container Storage Areas~~container storage areas.~~

1) The facility owner or operator must design and operate a containment system for its container storage areas according to the requirements in subsection (d)(2)~~ of this Section~~, except as otherwise provided by subsection (d)(3)~~ of this Section~~.

2) The design and operating requirements for a containment system are the following:

A) A base must underlie the containers that is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed;

B) The base must be sloped, or the containment system must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

C) The containment system must have sufficient capacity to contain 10 percent of the volume of all containers placed in it, or the volume of the largest container, whichever is greater. This requirement does not apply to containers that do not contain free liquids;

D) The owner or operator must prevent run-on into the containment system, unless the collection system has sufficient excess capacity

to contain the liquid, in addition to that required by subsection (d)(2)(C)~~ of this Section~~; and

E) The owner or operator must remove any spilled or leaked waste and accumulated precipitation from the sump or collection area as promptly as is necessary to prevent overflow of the collection system.

3) Except as provided in subsection (d)(4)~~ of this Section~~, the owner or operator does not need a containment system, as defined in subsection (d)(2)~~ of this Section~~, for storage areas that store containers holding only wastes with no free liquids if either of the following conditions are fulfilled:

A) The storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation; or

B) The containers are elevated or are otherwise protected from contact with accumulated liquid.

4) The facility owner or operator must have a containment system defined by subsection (d)(2) ~~of this Section~~ for storage areas that store containers holding F020, F021, F022, F023, F026, and F027 wastes, even if the wastes do not contain free liquids.

BOARD NOTE: Subsection (d)~~ of this Section~~ is derived from 40 CFR 267.173 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

e) Special Requirements~~requirements~~ for Ignitable~~ignitable~~ or Reactive Waste~~reactive waste.~~
The facility owner or operator must locate containers holding ignitable or reactive waste at least 15 meters (50 feet) from its facility property line. The owner or operator must also follow the general requirements for ignitable or reactive wastes that are specified in Section 727.110(h)(1).

BOARD NOTE: Subsection (e)~~ of this Section~~ is derived from 40 CFR 267.174 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

f) Special Requirements~~requirements~~ for Incompatible Wastes~~incompatible wastes.~~

1) The facility owner or operator must not place incompatible wastes or incompatible wastes and materials (see appendix V to 40 CFR 264, incorporated by reference in 35 Ill. Adm. Code 720.111(b), for examples) in the same container, unless it complies with Section 727.110(h)(2).

2) The facility owner or operator must not place hazardous waste in an unwashed container that previously held an incompatible waste or material.

3) The facility owner or operator must separate a storage container holding a hazardous waste that is incompatible with any waste or with other materials stored nearby in other containers, piles, open tanks, or surface impoundments from the other materials, or protect the containers by means of a dike, berm, wall, or other device.

BOARD NOTE: Subsection (f)~~ of this Section~~ is derived from 40 CFR 267.175 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

g) Requirements for Stopping~~stopping~~ the Use~~use~~ of Containers~~containers~~. The facility owner or operator must remove all hazardous waste and hazardous waste residues from the containment system. The owner or operator must decontaminate or remove remaining containers, liners, bases, and soil containing, or contaminated with, hazardous waste or hazardous waste residues.

BOARD NOTE: Subsection (g) ~~of this Section~~ is derived from 40 CFR 267.176 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

h) Air Emission Standards~~emission standards~~. The facility owner or operator must manage all hazardous waste placed in a container according to the requirements of Subparts AA, BB, and CC of 35 Ill. Adm. Code 724. Under a RCRA standardized permit, the following control devices are permissible: a thermal vapor incinerator, a catalytic vapor incinerator, a flame, a boiler, a process heater, a condenser, or a carbon absorption unit.

BOARD NOTE: Subsection (h) ~~of this Section~~ is derived from 40 CFR 267.177 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

(Source: Amended at 42 Ill. Reg. 24055, effective November 19, 2018)

**Section 727.290 Tank Systems**

a) Applicability of This~~this~~ Section. This Section applies to the owner or operator of a facility that treats or stores hazardous waste in above-ground or on-ground tanks under a RCRA standardized permit pursuant to Subpart J of 35 Ill. Adm. Code 703, except as provided in Section 727.100(a)(2).

1) A facility owner or operator does not have to meet the secondary containment requirements in subsection (f) if its tank systems do not contain free liquids and are situated inside a building with an impermeable floor. The owner or operator must demonstrate the absence or presence of free liquids in the stored or treated waste, using Method 9095B (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods~~,~~", USEPA Publication SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111(a).

2) The facility owner or operator does not have to meet the secondary containment requirements of subsection (f)(1) if its tank system, including sumps, as defined in 35 Ill. Adm. Code 720.110, is part of a secondary containment system to collect or contain releases of hazardous wastes.

BOARD NOTE: Subsection (a) is derived from 40 CFR 267.190 (2017)~~(2015)~~.

b) Required Design and Construction Standards for New Tank Systems or Components. The facility owner or operator must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the wastes to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. The owner or operator must obtain a written assessment, reviewed and certified by an independent, qualified registered professional engineer, following 35 Ill. Adm. Code 702.126(d), attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment must include, at a minimum, the following information:

1) Design standards for the construction of tanks or the ancillary equipment.

2) Hazardous characteristics of the wastes to be handled.

3) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system will be in contact with the soil or with water, a determination by a corrosion expert of the following:

A) Factors affecting the potential for corrosion, such as the following:

i) Soil moisture content;

ii) Soil pH;

iii) Soil sulfides level;

iv) Soil resistivity;

v) Structure to soil potential;

vi) Existence of stray electric current; and

vii) Existing corrosion-protection measures (for example, coating, cathodic protection, etc.).

B) The type and degree of external corrosion protection needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:

i) Corrosion-resistant materials of construction (such as special alloys, fiberglass reinforced plastic, etc.);

ii) Corrosion-resistant coating (such as epoxy, fiberglass, etc.) with cathodic protection (for example, impressed current or sacrificial anodes); and

iii) Electrical isolation devices (such as insulating joints, flanges, etc.).

4) Design considerations to ensure that the following will occur:

A) Tank foundations will maintain the load of a full tank;

B) Tank systems will be anchored to prevent flotation or dislodgment where the tank system is placed in a saturated zone, or is located within a seismic fault zone subject to the standards of Section 727.110(i)(1); and

C) Tank systems will withstand the effects of frost heave.

BOARD NOTE: Subsection (b) is derived from 40 CFR 267.191 (2017)~~(2015)~~.

c) Handling and Inspection Procedures During Installation of New Tank Systems~~.~~

1) The facility owner or operator must ensure that it follows proper handling procedures to prevent damage to a new tank system during installation. Before placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified, registered professional engineer, either of whom is trained and experienced in the proper installation of tank systems or components, must inspect the system for the presence of any of the following items:

A) Weld breaks;

B) Punctures;

C) Scrapes of protective coatings;

D) Cracks;

E) Corrosion; or

F) Other structural damage or inadequate construction or installation.

2) The facility owner or operator must remedy all discrepancies before the tank system is placed in use.

BOARD NOTE: Subsection (c) is derived from 40 CFR 267.192 (2017)~~(2015)~~.

d) Testing Requirements. The facility owner or operator must test all new tanks and

ancillary equipment for tightness before you place them in use. If the owner or operator finds a tank system that is not tight, it must perform all repairs necessary to remedy the leaks in the system before it covers, encloses, or places the tank system into use.

BOARD NOTE: Subsection (d) is derived from 40 CFR 267.193 (2017)~~(2015)~~.

e) Installation Requirements~~.~~

1) The facility owner or operator must support and protect ancillary equipment against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.

2) The facility owner or operator must provide the type and degree of corrosion protection recommended by an independent corrosion expert, based on the information provided pursuant to subsection (b)(3), to ensure the integrity of the tank system during use of the tank system. An independent corrosion expert must supervise the installation of a corrosion protection system that is field fabricated to ensure proper installation.

3) The facility owner or operator must obtain, and keep at the facility, written statements by those persons required to certify the design of the tank system and to supervise the installation of the tank system as required in subsections (c), (d), (e)(1), and (e)(2). The written statement must attest that the tank system was properly designed and installed and that the owner or operator made repairs pursuant to subsections (c) and (d). These written statements must also include the certification statement as required in 35 Ill. Adm. Code 702.126(d).

BOARD NOTE: Subsection (e) is derived from 40 CFR 267.194 (2017)~~(2015)~~.

f) Secondary Containment Requirements. To prevent the release of hazardous waste or hazardous constituents to the environment, the owner or operator must provide secondary containment that meets the requirements of this subsection (f) for all new and existing tank systems.

1) Secondary containment systems must meet both of the following requirements:

A) It must be designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to any soil, groundwater, or surface water at any time during the use of the tank system; and

B) It must be capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

2) To meet the requirements of subsection (f)(1), secondary containment systems must meet all of the following minimum requirements:

A) It must be constructed of or lined with materials that are compatible with the wastes to be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which it is exposed, climatic conditions, and the stress of daily operation (including stresses from nearby vehicular traffic);

B) It must be placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift;

C) It must be provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours; and

D) It must be sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. The facility owner or operator must remove spilled or leaked waste and accumulated precipitation from the secondary containment system within 24 hours, or as promptly as possible, to prevent harm to human health and the environment.

BOARD NOTE: Subsection (f) is derived from 40 CFR 267.195 (2017)~~(2015)~~.

g) Required Devices for Secondary Containment and Their Design, Operating, and Installation Requirements.

1) Secondary containment for tanks must include one or more of the following features:

A) A liner (external to the tank);

B) A double-walled tank; and

C) An equivalent device; the owner or operator must maintain documentation of equivalency at the facility.

2) An external liner system must fulfill the following requirements:

A) It must be designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

B) It must be designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. The additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event;

C) It must be free of cracks or gaps; and

D) It must be designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if the waste is released from the tanks (that is, it must be capable of preventing lateral as well as vertical migration of the waste).

3) A double-walled tank must fulfill the following requirements:

A) It must be designed as an integral structure (that is, it must be an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell;

B) It must be protected, if constructed of metal, from both corrosion

of the primary tank interior and of the external surface of the outer shell; and

C) It must be provided with a built-in continuous leak detection system capable of detecting a release within 24 hours.

BOARD NOTE: Subsection (g) is derived from 40 CFR 267.196 (2017)~~(2015)~~.

h) Requirements for Ancillary Equipment. The facility owner or operator must provide ancillary equipment with secondary containment (for example, trench, jacketing, double-walled piping, etc.) that meets the requirements of subsections (f)(1) and (f)(2), except for the following:

1) Above ground piping (exclusive of flanges, joints, valves, and other connections) that are visually inspected for leaks on a daily basis;

2) Welded flanges, welded joints, and welded connections, that are visually inspected for leaks on a daily basis;

3) Sealless or magnetic coupling pumps and sealless valves, that are visually inspected for leaks on a daily basis; and

4) Pressurized above ground piping systems with automatic shut-off devices (for example, excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices, etc.) that are visually inspected for leaks on a daily basis.

BOARD NOTE: Subsection (h) is derived from 40 CFR 267.197 (2017)~~(2015)~~.

i) General Operating Requirements for Tank Systems~~.~~

1) The facility owner or operator must not place hazardous wastes or treatment reagents in a tank system if the substances could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode, or otherwise fail.

2) The facility owner or operator must use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include the following minimum requirements:

A) Spill prevention controls (for example, check valves, dry disconnect couplings, etc.);

B) Overfill prevention controls (for example, level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank, etc.); and

C) Sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

3) The facility owner or operator must comply with the requirements of subsection (k) if a leak or spill occurs in the tank system.

BOARD NOTE: Subsection (i) is derived from 40 CFR 267.198 (2017)~~(2015)~~.

j) Inspection Requirements. The facility owner or operator must comply with the following requirements for scheduling, conducting, and documenting inspections:

1) It must develop and follow a schedule and procedure for inspecting overfill controls;

2) It must inspect the following at least once each operating day:

A) Aboveground portions of the tank system to detect corrosion or releases of waste;

B) Data gathered from monitoring and leak detection equipment (for example, pressure or temperature gauges, monitoring wells, etc.) to ensure that the tank system is being operated according to its design; and

C) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (for example, dikes) to detect erosion or signs of releases of hazardous waste (for example, wet spots, dead vegetation, etc.);

3) It must inspect cathodic protection systems, if present, according to, at a

minimum, the following schedule to ensure that they are functioning properly:

A) It must confirm that the cathodic protection system is operating properly within six months after initial installation and annually thereafter; and

B) It must inspect or test all sources of impressed current, as appropriate, at least every other month; and

4) It must document, in the operating record of the facility, an inspection of those items in subsections (j)(1) through (j)(3).

BOARD NOTE: Subsection (j) is derived from 40 CFR 267.199 (2017)~~(2015)~~.

k) Required Actions in Case of a Leak or a Spill. If there has been a leak or a spill from a tank system or secondary containment system, or if either system is unfit for use, the facility owner or operator must remove the system from service immediately, and it must satisfy the following requirements:

1) It must immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release;

2) It must remove the waste from the tank system or secondary containment system, as follows:

A) If the release was from the tank system, the owner or operator must, within 24 hours after detecting the leak, remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed; or

B) If the material released was to a secondary containment system, the owner or operator must remove all released materials within 24 hours or as quickly as possible to prevent harm to human health and the environment;

3) It must immediately conduct a visual inspection of the release and, based

on that inspection, undertake the following actions:

A) It must prevent further migration of the leak or spill to soils or surface water; and

B) It must remove, and properly dispose of, any visible contamination of the soil or surface water;

4) It must report any release to the environment, except as provided in subsection (k)(4)(A), to the Agency within 24 hours after its detection. If the owner or operator has reported the release to USEPA pursuant to federal 40 CFR 302, that report will satisfy this requirement, subject to the following exceptions:

A) The facility owner or operator does not need to report on a leak or spill of hazardous waste if it fulfills the following conditions:

i) The spill was less than or equal to a quantity of one pound (0.45 kg); and

ii) The facility owner or operator immediately contained and cleaned up the spill; and

B) Within 30 days of detection of a release to the environment, the owner or operator must submit a report to the Agency that contains the following information:

i) The likely route of migration of the release;

ii) The characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate, etc.);

iii) The results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within 30 days, the owner or operator must submit these data to the Agency as soon as they become available;

iv) The proximity to downgradient drinking water, surface

water, and populated areas; and

v) A description of response actions taken or planned;

5) It must either close the system or make necessary repairs, as follows:

A) Unless the owner or operator satisfies the requirements of subsections (k)(5)(B) and (k)(5)(C), it must close the tank system according to subsection (l);

B) If the cause of the release was a spill that has not damaged the integrity of the system, the owner or operator may return the system to service as soon as it removes the released waste and makes any necessary repairs; or

C) If the cause of the release was a leak from the primary tank system into the secondary containment system, the owner or operator must repair the system before returning the tank system to service; and

6) If the owner or operator has made extensive repairs to a tank system in accordance with subsection (k)(5) (for example, installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel, etc.), it may not return the tank system to service unless the repair is certified by an independent, qualified, registered, professional engineer in accordance with 35 Ill. Adm. Code 702.126(d), as follows:

A) The engineer must certify that the repaired system is capable of handling hazardous wastes without release for the intended life of the system; and

B) The facility owner or operator must submit this certification to the Agency within seven days after returning the tank system to use.

BOARD NOTE: Subsection (k) is derived from 40 CFR 267.200 (2017)~~(2015)~~.

l) Requirements When the Owner or Operator Stops Operating the Tank System. When the facility owner or operator close a tank system, it must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with

waste, and manage them as hazardous waste, unless 35 Ill. Adm. Code 721.103(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet all of the requirements specified in Sections 727.210 and 727.240.

BOARD NOTE: Subsection (l) is derived from 40 CFR 267.201 (2017)~~(2015)~~.

m) Special Requirements for Ignitable or Reactive Wastes~~.~~

1) The facility owner or operator may not place ignitable or reactive waste in tank systems, unless any of the following three conditions are fulfilled:

A) The owner or operator treats, renders, or mixes the waste before or immediately after placement in the tank system so that the following is true:

i) The owner or operator complies with Section 727.110(h)(2); and

ii) The resulting waste, mixture, or dissolved material no longer meets the definition of ignitable or reactive waste pursuant to 35 Ill. Adm. Code 721.121 or 721.123;

B) The owner or operator stores or treats the waste in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

C) The facility owner or operator uses the tank system solely for emergencies.

2) If the facility owner or operator stores or treats ignitable or reactive waste in a tank, it must comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjoining property line that can be built on, as required in Tables 2-1 through 2-6 of "Flammable and Combustible Liquids Code~~,~~", NFPA 30, incorporated by reference in 35 Ill. Adm. Code 720.111(a)).

BOARD NOTE: Subsection (m) is derived from 40 CFR 267.202 (2017)~~(2015)~~.

n) Special Requirements for Incompatible Wastes~~.~~

1) A facility owner or operator may not place incompatible wastes or incompatible wastes and materials in the same tank system, unless it complies with Section 727.110(h)(2).

2) A facility owner or operator may not place hazardous waste in a tank system that has not been decontaminated and that previously held an incompatible waste or material, unless it complies with Section 727.110(h)(2).

BOARD NOTE: Subsection (n) is derived from 40 CFR 267.203 (2017)~~(2015)~~.

o) Air Emission Standards. The facility owner or operator must manage all hazardous waste placed in a tank following the requirements of Subparts AA, BB, and CC of 35 Ill. Adm. Code 724. Under a RCRA standardized permit, the following control devices are permissible: a thermal vapor incinerator, a catalytic vapor incinerator, a flame, a boiler, a process heater, a condenser, or a carbon absorption unit.

BOARD NOTE: Subsection (o) is derived from 40 CFR 267.204 (2017)~~(2015)~~.

(Source: Amended at 42 Ill. Reg. 24055, effective November 19, 2018)

**Section 727.900 Containment Buildings**

a) Applicability of This~~this~~ Section. This Section applies to the owner or operator of a facility that treats or stores hazardous waste in containment buildings under a RCRA standardized permit pursuant to Subpart J of 35 Ill. Adm. Code 703, except as provided in Section 727.100(a)(2). Storage or treatment in a containment building is not land disposal, as defined in 35 Ill. Adm. Code 728.102, if the unit meets the requirements of subsections (b), (c), and (d)~~ of this Section~~.

BOARD NOTE: Subsection (a) ~~of this Section~~ is derived from 40 CFR 267.1100 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

b) Design and Operating Standards~~operating standards~~ for Containment

Buildings~~containment buildings~~. A containment building must comply with the design and operating standards in this subsection (b). The Agency may consider standards established by professional organizations generally recognized by the industry, such as the American Concrete Institute (ACI) or the American Society of Testing Materials (ASTM), in judging the structural integrity requirements of this subsection (b).

1) The containment building must be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements (e.g., precipitation, wind, runon, etc.), and to assure containment of managed wastes.

2) The floor and containment walls of the unit, including the secondary containment system, if required pursuant to subsection (d)~~ of this Section~~, must be designed and constructed of manmade materials of sufficient strength and thickness to accomplish the following:

A) They must support themselves, the waste contents, and any personnel and heavy equipment that operates within the unit;

B) They must prevent failure due to any of the following causes:

i) Pressure gradients, settlement, compression, or uplift;

ii) Physical contact with the hazardous wastes to which they are exposed;

iii) Climatic conditions;

iv) Stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls; or

v) Collapse or other failure.

3) All surfaces to be in contact with hazardous wastes must be chemically compatible with those wastes.

4) The facility owner or operator must not place incompatible hazardous wastes or treatment reagents in the unit or its secondary containment

system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

5) A containment building must have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

6) If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that meet these criteria:

A) The doors and windows provide an effective barrier against fugitive dust emissions pursuant to subsection (c)(4)~~ of this Section~~; and

B) The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.

7) The facility owner or operator must inspect and record in the facility's operating record, at least once every seven days, data gathered from monitoring equipment and leak detection equipment, as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

8) The facility owner or operator must obtain certification by a qualified registered professional engineer that the containment building design meets the requirements of subsections (b)(1) through (b)(6), (c), and (d)~~ of this Section~~.

BOARD NOTE: Subsection (b)~~ of this Section~~ is derived from 40 CFR 267.1101 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

c) Other Requirements~~requirements~~ for Preventing Releases~~preventing releases~~. The facility owner or operator must use controls and practices to ensure containment of the hazardous waste within the unit and must meet the following minimum requirements:

1) It must maintain the primary barrier to be free of significant cracks, gaps,

corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier;

2) It must maintain the level of the stored or treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded;

3) It must take measures to prevent personnel or by equipment used in handling the waste from tracking hazardous waste out of the unit. The owner or operator must designate an area to decontaminate equipment, and it must collect and properly manage any rinsate; and

4) It must take measures to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions (see Method 22 of appendix A to 40 CFR 60 (Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares), incorporated by reference in 35 Ill. Adm. Code 720.111(b)). In addition, the owner or operator must operate and maintain all associated particulate collection devices (for example, fabric filter, electrostatic precipitator, etc.) with sound air pollution control practices. The owner or operator must effectively maintain this state of no visible emissions at all times during routine operating and maintenance conditions, including when vehicles and personnel are entering and exiting the unit.

BOARD NOTE: Subsection (c) ~~of this Section~~ is derived from 40 CFR 267.1102 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

d) Additional Design~~design~~ and Operating Standards When Liquids Are~~operating standards when liquids are~~ in the Containment Building~~containment building~~. If a containment building will be used to manage hazardous wastes containing free liquids or treated with free liquids, as determined by the paint filter test, by a visual examination, or by other appropriate means, the facility owner or operator must include the following:

1) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (for example, a geomembrane covered by a concrete wear surface);

2) A liquid collection and removal system to minimize the accumulation of

liquid on the primary barrier of the containment building, as follows:

A) The primary barrier must be sloped to drain liquids to the associated collection system; and

B) The facility owner or operator must collect and remove liquids and waste to minimize hydraulic head on the containment system at the earliest practicable time;

3) A secondary containment system, including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practical time, as follows:

A) The facility owner or operator may meet the requirements of the leak detection component of the secondary containment system by installing a system that meets the following minimum construction requirements:

i) It is constructed with a bottom slope of one percent or more; and

ii) It is constructed of a granular drainage material with a hydraulic conductivity of $1 \times 10^{-2}$ cm/sec or more and a thickness of 12 inches (30.5 cm) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of $3 \times 10^{-5}$ $m^2$sec or more;

B) If the facility owner or operator will be conducting treatment in the building, it must design the area in which the treatment will be conducted to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building; and

C) The facility owner or operator must construct the secondary containment system using materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment

used in the containment building.

BOARD NOTE: Subsection (d)~~ of this Section~~ is derived from 40 CFR 267.1103 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

e) Alternatives to Secondary Containment Requirements~~secondary containment requirements~~. Notwithstanding any other provision of this Section, the Agency must, in writing, allow the use of alternatives to the requirements for secondary containment for a permitted containment building where the Agency has determined that the facility owner or operator has adequately demonstrated both of the following:

1) The only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and

2) The containment of managed wastes and dust suppression liquids can be assured without a secondary containment system.

BOARD NOTE: Subsection (e)~~ of this Section~~ is derived from 40 CFR 267.1104 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

f) Requirements Where~~where~~ the Containment Building Contains Areas Both~~containment building contains areas both~~ with and without Secondary Containment~~secondary containment~~. For a containment building that contains both areas that have secondary containment and areas that do not have secondary containment, the facility owner or operator must fulfill the following requirements:

1) It must design and operate each area in accordance with the requirements enumerated in subsections (b) through (d)~~ of this Section~~;

2) It must take measures to prevent the release of liquids or wet materials into areas without secondary containment; and

3) It must maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

BOARD NOTE: Subsection (f) ~~of this Section~~ is derived from 40 CFR 267.1105

(2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

g) Requirements in the Event~~event~~ of a Release~~release~~. Throughout the active life of the containment building, if the facility owner or operator detects a condition that could lead to or has caused a release of hazardous waste, it must repair the condition promptly, in accordance with the following procedures.

1) Upon detection of a condition that has lead to a release of hazardous waste (for example, upon detection of leakage from the primary barrier), the owner or operator must undertake each of the following actions:

A) It must enter a record of the discovery in the facility operating record;

B) It must immediately remove the portion of the containment building affected by the condition from service;

C) It must determine what steps it will need to take to repair the containment building, to remove any leakage from the secondary collection system, and to establish a schedule for accomplishing the cleanup and repairs; and

D) Within seven days after the discovery of the condition, it must notify the Agency of the condition, and within 14 working days, provide a written notice to the Agency with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

2) The Agency must review the information submitted, make a determination regarding whether the containment building must be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

3) Upon completing all repairs and cleanup, the facility owner or operator must notify the Agency in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with subsection (g)(1)(D)~~ of this Section~~.

BOARD NOTE: Subsection (g)~~ of this Section~~ is derived from 40 CFR 267.1106 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

h) A Containment Building That Can Be Considered Secondary Containment~~containment building that can be considered secondary containment~~. A containment building can serve as an acceptable secondary containment system for tanks placed within the building if both of the following conditions are fulfilled:

1) The containment building can serve as an external liner system for a tank if it meets the requirements of Section 727.290(g)(2); and

2) The containment building also meets the requirements of Sections 727.290(f)(1), (f)(2)(A), and (f)(2)(B).

BOARD NOTE: Subsection (h)~~ of this Section~~ is derived from 40 CFR 267.1107 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

i) Requirements When~~when~~ the Owner~~owner~~ or Operator Stops Operating~~operator stops operating~~ the Containment Building~~containment building~~. When the facility owner or operator close a containment building, it must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate and manage them as hazardous waste unless 35 Ill. Adm. Code 721.103(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings must meet all of the requirements specified in Sections 727.210 and 727.240.

BOARD NOTE: Subsection (i)~~ of this Section~~ is derived from 40 CFR 267.1108 (2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

(Source: Amended at 42 Ill. Reg. 24055, effective November 19, 2018)

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Underground Injection Control Operating Requirements

2) Code Citation: 35 Ill. Adm. Code 730

3)

| Section Numbers: | Adopted Actions: |
|---|---|
| 730.101 | Amendment |
| 730.102 | Amendment |
| 730.103 | Amendment |
| 730.104 | Amendment |
| 730.105 | Amendment |
| 730.106 | Amendment |
| 730.108 | Amendment |
| 730.113 | Amendment |
| 730.132 | Amendment |
| 730.133 | Amendment |
| 730.134 | Amendment |
| 730.151 | Amendment |
| 730.161 | Amendment |
| 730.162 | Amendment |
| 730.164 | Amendment |
| 730.165 | Amendment |
| 730.167 | Amendment |
| 730.171 | Amendment |
| 730.172 | Amendment |
| 730.181 | Amendment |
| 730.182 | Amendment |
| 730.184 | Amendment |
| 730.185 | Amendment |
| 730.188 | Amendment |
| 730.189 | Amendment |
| 730.190 | Amendment |
| 730.191 | Amendment |
| 730.193 | Amendment |
| 730.194 | Amendment |
| 730.195 | Amendment |

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

5) Effective Date of Rules: November 19, 2018

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

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

7) Does this rulemaking contain incorporations by reference? No

8) Statement of Availability: The adopted rulemaking, a copy of the Board's opinion and order adopted October 4, 2018 in consolidated docket R17-14/R17-15/R18-12/R18-31, and all materials incorporated by reference are on file at the Board's principal office and are available for public inspection and copying.

9) Notice of Proposal published in the *Illinois Register*: 42 Ill. Reg. 12549; July 6, 2018

10) Has JCAR issued a Statement of Objection to this ulemaking? No. Section 13 of the Environmental Protection Act [415 ILCS 5/13] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

11) Differences between Proposal and Final Version: A table in a document entitled "Identical-in-Substance Rulemaking Addendum (Final)" that the Board added to consolidated docket R17-14/R17-15/R18-12/R18-31 summarizes the differences between the amendments adopted in the October 4, 2018 opinion and order and those proposed by the Board on May 24, 2018.

The differences are limited to minor corrections suggested by JCAR staff or resulting from the Board's review of its proposal. The changes are not intended to have substantive effect and intend to clarify the rules without deviating from the substance of the federal amendments on which this proceeding is based.

12) Have all the changes agreed upon by the Board and JCAR been made as indicated in the agreements issued by JCAR? Section 13 of the Environmental Protection Act [415 ILCS 5/13] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by JCAR.

Since the Notices of Proposed Amendments appeared in the July 6, 2018 issue of the *Illinois Register*, the Board received suggestions for revisions from JCAR. The Board evaluated each suggestion and incorporated some into the adopted rules, as detailed in the

Identical-in-Substance Rulemaking Addendum (Final) in consolidated docket R17-14/R17-15/R18-12/R18-31, as described in item 11 above. See that Addendum for additional details on JCAR suggestions and the Board actions on each. One table in itemizes changes made in response to various suggestions. Another table indicates suggestions not incorporated into the text, with a brief explanation for each.

13) Will this rulemaking replace an emergency rule currently in effect? No

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

15) Summary and Purpose of Rulemaking: The amendments to Part 730 are a segment larger Board rulemaking. The consolidated docket R17-14/R17-15/R18-11/R18-31 rulemaking also includes amendments to 35 Ill. Adm. Code 702 through 705, 720 through 728, 733, 738, 739, and 810 through 812. Due to the extreme volume of the consolidated docket, each Part is covered by a notice in four separate issues of the Illinois Register. Included in this issue are the fourth group for publication: 35 Ill. Adm. Code 725, 727 and 730.

Section 13(c) of the Act [415 ILCS 5/13(c)] (2016) requires the Board to adopt UIC rules that are identical-in-substance to UIC rules adopted by USEPA. The Illinois UIC rules are in 35 Ill. Adm. Code 704, 730, and 738. USEPA did not amend its UIC rules in any way that requires Board action during 2016 or 2017. Rather, the Board reviewed the Illinois UIC rules and finds that non-substantive revisions and corrections are needed in 35 Ill. Adm. Code 704, 730, and 738. See 415 ILCS 5/7.2(b) (2016). The Board opened docket R18-31 for this purpose and consolidated it with dockets R17-14, R17-15, and R18-12.

To save space, a more detailed description of the subjects and issues involved in the consolidated docket R17-14/R17-15/R18-11/R18-31 rulemaking in this issue of the Illinois Register only in the answer to question 5 in the Notice of Adopted Amendments for 35 Ill. Adm. Code 725. A comprehensive description is contained in the Board's opinion and order of October 4, 2018, adopting amendments in consolidated docket R17-14/R17-15/R18-11/R18-31. The opinion and order is available from the address below.

Specifically, the amendments to Part 730 incorporate numerous corrections and non-substantive stylistic revisions that the Board found are needed.

Tables appear in the Identical-in-Substance Rulemaking Addendum (Final) in consolidated docket R17-14/R17-15/R18-12/R18-31, as described in item 11 above, that

list corrections and amendments. Persons interested in the details of those corrections and amendments should refer to the Addendum.

Section 13(c) of the Environmental Protection Act [415 ILCS 5/13(c)] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

16) Information and questions regarding these adopted rules shall be directed to: Please reference consolidated docket R17-14/R17-15/R18-12/R18-31 and direct inquiries to the following person:

Michael J. McCambridge
Staff Attorney
Illinois Pollution Control Board
100 W. Randolph Suite 11-500
Chicago IL 60601

312/814-6924
michael.mccambridge@illinois.gov

Request copies of the Board's opinion and order of October 4, 2018 at 312/814-3620. You may also obtain a copy of the Board's opinion and order from the Internet at http://www.ipcb.state.il.us.

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

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER d: UNDERGROUND INJECTION CONTROL AND UNDERGROUND STORAGE TANK PROGRAMS

PART 730
UNDERGROUND INJECTION CONTROL OPERATING REQUIREMENTS

SUBPART A: GENERAL

Section
730.101 Applicability, Scope, and Effective Date
730.102 Laws Authorizing Regulations
730.103 Definitions
730.104 Criteria for Exempted Aquifers
730.105 Classification of Injection Wells
730.106 Area of Review
730.107 Corrective Action
730.108 Mechanical Integrity
730.109 Criteria for Establishing Permitting Priorities
730.110 Plugging and Abandoning Wells

SUBPART B: CRITERIA AND STANDARDS APPLICABLE TO CLASS I NON-HAZARDOUS WASTE INJECTION WELLS

Section
730.111 Applicability
730.112 Construction Requirements
730.113 Operating, Monitoring, and Reporting Requirements
730.114 Information to be Considered by the Agency

SUBPART C: CRITERIA AND STANDARDS APPLICABLE TO CLASS II INJECTION WELLS

Section
730.121 Adoption of Criteria and Standards Applicable to Class II Injection Wells by the Illinois Department of Natural Resources, Office of Mines and Minerals

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

SUBPART D: CRITERIA AND STANDARDS APPLICABLE TO CLASS III INJECTION WELLS

Section
730.131 Applicability
730.132 Construction Requirements
730.133 Operating, Monitoring, and Reporting Requirements
730.134 Information to be Considered by the Agency

SUBPART F: CRITERIA AND STANDARDS APPLICABLE TO CLASS V INJECTION WELLS

Section
730.151 Applicability
730.152 Inventory and Assessment (Repealed)

SUBPART G: CRITERIA AND STANDARDS APPLICABLE TO CLASS I HAZARDOUS WASTE INJECTION WELLS

Section
730.161 Applicability and Definitions
730.162 Minimum Criteria for Siting
730.163 Area of Review
730.164 Corrective Action for Wells in the Area of Review
730.165 Construction Requirements
730.166 Logging, Sampling, and Testing Prior to New Well Operation
730.167 Operating Requirements
730.168 Testing and Monitoring Requirements
730.169 Reporting Requirements
730.170 Information to be Evaluated
730.171 Closure
730.172 Post-Closure Care
730.173 Financial Responsibility for Post-Closure Care

SUBPART H: CRITERIA AND STANDARDS APPLICABLE TO CLASS VI WELLS

Section
730.181 Applicability
730.182 Required Class VI Injection Well Permit Information

730.183 Minimum Criteria for Siting
730.184 Area of Review and Corrective Action
730.185 Financial Responsibility
730.186 Injection Well Construction Requirements
730.187 Logging, Sampling, and Testing Prior to Injection Well Operation
730.188 Injection Well Operating Requirements
730.189 Mechanical Integrity
730.190 Testing and Monitoring Requirements
730.191 Reporting Requirements
730.192 Injection Well Plugging
730.193 Post-Injection Site Care and Site Closure
730.194 Emergency and Remedial Response
730.195 Alternative Class VI Injection Well Depth Requirements

AUTHORITY: Implementing Sections 7.2, 13, and 22.4 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/7.2, 13, 22.4, and 27].

SOURCE: Adopted in R81-32 at 6 Ill. Reg. 12479, effective March 3, 1984; amended in R82-19 at 7 Ill. Reg. 14426, effective March 3, 1984; recodified at 10 Ill. Reg. 14174; amended in R89-2 at 14 Ill. Reg. 3130, effective February 20, 1990; amended in R89-11 at 14 Ill. Reg. 11959, effective July 9, 1990; amended in R93-6 at 17 Ill. Reg. 15646, effective September 14, 1993; amended in R94-5 at 18 Ill. Reg. 18391, effective December 20, 1994; amended in R95-4 at 19 Ill. Reg. 10047, effective June 27, 1995; amended in R00-11/R01-1 at 24 Ill. Reg. 18680, effective December 7, 2000; amended in R06-16/R06-17/R06-18 at 31 Ill. Reg. 1281, effective December 20, 2006; amended in R11-14 at 36 Ill. Reg. 1661, effective January 20, 2012; amended in R17-14/R17-15/R18-12/R18-31 at 42 Ill. Reg. 24145, effective November 19, 2018.

## SUBPART A: GENERAL

### Section 730.101 Applicability, Scope, and Effective Date

a) This Part sets forth technical criteria and standards for the Underground Injection Control (UIC) Program. This Part must be read in conjunction with 35 Ill. Adm. Code 702, 704, and 705, which also apply to the UIC program. 35 Ill. Adm. Code 702 and 704 prescribe the regulatory requirements for the UIC permit program. 35 Ill. Adm. Code 704 further outlines hazardous waste management requirements and sets forth the financial assurance requirements applicable to Class I hazardous waste injection wells and requirements applicable to certain types of Class V injection wells. 35 Ill. Adm. Code 705 describes the procedures

the Agency must use for issuing UIC permits.

b) Any~~On and after February 1, 1984, any~~ underground injection that is not authorized by rule or by permit is unlawful.

c) Electronic Reporting~~reporting~~. The filing of any document pursuant to any provision of this Part as an electronic document is subject to 35 Ill. Adm. Code 720.104.

BOARD NOTE: Subsection (c) ~~of this Section~~ is derived from 40 CFR 3 and 145.11(a)(33) (2017)~~(2011)~~.

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

**Section 730.102 Laws Authorizing Regulations**

The laws authorizing these regulations and all other UIC program regulations are included in the Environmental Protection Act ~~[415 ILCS 5]~~, as amended.

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

**Section 730.103 Definitions**

The following definitions apply to the underground injection control program.

"Abandoned well" means a well whose use has been permanently discontinued or that is in a state of disrepair such that it cannot be used for its intended purpose or for observation purposes.

"Act" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (P.L. 94-580, as amended by P.L. 95-609, 42 USC 6901).

"Administrator" means the Administrator of the U.S. Environmental Protection Agency or the Administrator's designee.

"Agency" means the Illinois Environmental Protection Agency.

"Application" means the Agency forms for applying for a permit, including any

additions, revisions, or modifications to the forms. For RCRA, application also includes the information required by the Agency pursuant to 35 Ill. Adm. Code 703.182-703.188 and 703.200 (contents of Part B of the RCRA application).

"Aquifer" means a geologic formation, group of formations or part of a formation that is capable of yielding a significant amount of water to a well or spring.

"Area of review" means the area surrounding an "injection well" described according to the criteria set forth in Section 730.106 or, in the case of an area permit, the project area plus a circumscribing area the width of which is either 402 meters (one-quarter mile) or a number calculated according to the criteria set forth in Section 730.106.

"Casing" means a pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and thus prevent the walls from caving, to prevent loss of drilling mud into porous ground or to prevent water, gas, or other fluid from entering or leaving the hole.

"Catastrophic collapse" means the sudden and utter failure of overlying "strata" caused by removal of underlying materials.

"Cementing" means the operation whereby a cement slurry is pumped into a drilled hole or forced behind the casing.

"Cesspool" means a "drywell" that receives untreated sanitary waste containing human excreta and which sometimes has an open bottom or perforated sides.

"Confining bed" means a body of impermeable or distinctly less permeable material stratigraphically adjacent to one or more aquifers.

"Confining zone" means a geologic formation, group of formations, or part of a formation that is capable of limiting fluid movement above an injection zone.

"Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

"Conventional mine" means an open pit or underground excavation for the production of minerals.

~~"Date of approval by USEPA of the Illinois UIC program" means February 1, 1984.~~

"Director" means the Director of the Illinois Environmental Protection Agency or the Administrator's designee.

"Disposal well" means a well used for the disposal of waste into a subsurface stratum.

"Drywell" means a well, other than an improved sinkhole or subsurface fluid distribution system, that is completed above the water table so that its bottom and sides are typically dry except when receiving fluids.

~~"Effective date of the UIC program" means February 1, 1984.~~

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

"EPA" or "USEPA" means the United States Environmental Protection Agency.

"Exempted aquifer" means an "aquifer" or its portion that meets the criteria in the definition of "underground source of drinking water" but which has been exempted according to the procedures of 35 Ill. Adm. Code 704.123, 704.104, and 702.105.

"Existing injection well" means an "injection well" other than a "new injection well~~.~~".

"Experimental technology" means a technology that has not been proven feasible under the conditions in which it is being tested.

"Facility or activity" means any HWM facility, UIC injection well, or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the "State" RCRA or UIC program.

"Fault" means a surface or zone of rock fracture along which there has been displacement.

"Flow rate" means the volume per unit time of the flow of a gas or other fluid substance that emerges from an orifice, pump or turbine or which passes along a conduit or channel.

"Fluid" means material or substance that flows or moves, whether in a semisolid, liquid sludge, gas, or any other form or state.

"Formation" means a body of rock characterized by a degree of lithologic homogeneity that is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

"Formation fluid" means fluid present in a formation under natural conditions as opposed to introduced fluids, such as drilling mud.

"Generator" means any person, by site location, whose act or process produces hazardous waste identified or listed in 35 Ill. Adm. Code 721.

"Groundwater" means water below the land surface in a zone of saturation.

"Hazardous waste" means a hazardous waste as defined in 35 Ill. Adm. Code 721.103.

"Hazardous waste management facility" or "HWM facility" means all contiguous land, and structures, other appurtenances and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combination of them).

"HWM facility" means Hazardous waste management facility.

"Illinois" means the State of Illinois.

"Improved sinkhole" means a naturally occurring karst depression or other natural crevice that is found in volcanic terrain and other geologic settings that have been modified by man for the purpose of directing and emplacing fluids into the subsurface.

"Injection well" means a well into which fluids are being injected.

"Injection zone" means a geologic formation, group of formations, or part of a formation receiving fluids through a well.

"Lithology" means the description of rocks on the basis of their physical and chemical characteristics.

"Owner or operator" means the owner or operator of any facility or activity subject to regulation under RCRA, UIC, or the Environmental Protection Act.

"Packer" means a device lowered into a well that can be expanded to produce a fluid-tight seal.

"Permit" means an authorization, license, or equivalent control document issued by the Agency to implement the requirements of this Part and 35 Ill. Adm. Code 702 through 705. Permit does not include RCRA interim status (Subpart C of 35 Ill. Adm. Code 703), UIC authorization by rule (Subpart C of 35 Ill. Adm. Code 704), or any permit that has not yet been the subject of final Agency action, such as a draft permit or a proposed permit.

"Plugging" means the act or process of stopping the flow of water, oil, or gas into or out of a formation through a borehole or well penetrating that formation.

"Plugging record" means a systematic listing of permanent or temporary abandonment of water, oil, gas, test, exploration, and waste injection wells, and may contain a well log, description of amounts and types of plugging material used, the method employed for plugging, a description of formations that are sealed and a graphic log of the well showing formation location, formation thickness, and location of plugging structures.

"Point of injection~~,~~", for a Class V injection well, means the last accessible sampling point prior to waste fluids being released into the subsurface environment through the well. For example, the point of injection of a Class V septic system might be the distribution box – the last accessible sampling point before the waste fluids drain into the underlying soils. For a dry well, it is likely to be the well bore itself.

"Pressure" means the total load or force per unit area acting on a surface.

"Project" means a group of wells in a single operation.

"Radioactive Waste" means any waste that contains radioactive material in concentrations that exceed those listed in Table II, column 2 in appendix B to 10 CFR 20 (Water Effluent Concentrations), incorporated by reference in 35 Ill. Adm. Code 720.111.

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

"Sanitary waste" means liquid or solid wastes originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned. Sources of these wastes may include single or multiple residences, hotels and motels, restaurants, bunkhouses, schools, ranger stations, crew quarters, guard stations, campgrounds, picnic grounds, day-use recreation areas, other commercial facilities, and industrial facilities, provided the waste is not mixed with industrial waste.

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

"Septic system" means a well that is used to emplace sanitary waste below the surface and which is typically comprised of a septic tank and subsurface fluid distribution system or disposal system.

"Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Sole or principal source aquifer" means an aquifer that has been designated by the Administrator pursuant to section~~Section~~ 1424(a) or (e) of SDWA (42 USC 300h-3(a) or (e)).

"State" means the State of Illinois.

"Stratum" (plural strata) means a single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material.

"Subsidence" means the lowering of the natural land surface in response to: earth

movements; lowering of fluid pressure, removal of underlying supporting material by mining or solution of solids, either artificially or from natural causes; compaction due to wetting (hydrocompaction); oxidation of organic matter in soils; or added load on the land surface.

"Subsurface fluid distribution system" means an assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground.

"Surface casing" means the first string of well casing to be installed in the well.

"Total dissolved solids" or "TDS" means the total dissolved (filterable) solids, as determined by use of the method specified in 40 CFR 136.3 (Identification of Test Procedures; the method for filterable residue), incorporated by reference in 35 Ill. Adm. Code 720.111.

"UIC" means the Underground Injection Control program under Part C of the Safe Drinking Water Act (42 USC 300h through 300h-8), including the approved Illinois program.

"Underground injection" means a "well injection~~.~~".

"Underground source of drinking water" or "USDW" means an aquifer or its portion is not an exempted aquifer, as defined in this Section, and of which the following is true:

It supplies any public water system; or

It contains a sufficient quantity of groundwater to supply a public water system; and

It currently supplies drinking water for human consumption; or

It contains less than 10,000 mg/ℓ total dissolved solids.~~; and~~

~~It is not an exempted "aquifer."~~

"USDW" means underground source of drinking water.

"Well" means a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; a dug hole whose depth is greater than the largest surface dimension; an improved sinkhole; or a subsurface fluid distribution system.

"Well injection" means the subsurface emplacement of fluids through a well.

"Well monitoring" means the measurement, by on-site instruments or laboratory methods, of the quality of water in a well.

"Well plug" means a watertight and gastight seal installed in a borehole or well to prevent movement of fluids.

"Well stimulation" means several processes used to clean the well bore, enlarge channels, and increase pore space in the interval to be injected, thus making it possible for wastewater to move more readily into the formation, and includes surging, jetting, blasting, acidizing, and hydraulic fracturing.

BOARD NOTE: Derived from 40 CFR 146.3 (2017)~~(2011)~~.

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

**Section 730.104 Criteria for Exempted Aquifers**

An aquifer or a portion of an aquifer that meets the criteria for an "underground source of drinking water" in Section 730.103 is an "exempted aquifer" for a Class I, Class III, or Class V injection well if the Board determines pursuant to 35 Ill. Adm. Code 704.123 that the aquifer meets the criteria of either subsections (a) and (b) or (a) and (c)~~ of this Section~~. For a Class VI injection well, the Board must determine that the well meets the criteria of subsection (d)~~ of this Section~~.

a) The aquifer does not currently serve as a source of drinking water.~~; and~~

b) The aquifer cannot now and will not in the future serve as a source of drinking water because one or more of the following is true of the aquifer:

1) The aquifer is mineral, hydrocarbon, or geothermal energy producing, or a permit applicant can demonstrate, as part of a permit application for a Class II or III injection well, that the aquifer contains minerals or

hydrocarbons that are expected to be commercially producible considering their quantity and location;

2) The aquifer is situated at a depth or location that makes recovery of water for drinking water purposes economically or technologically impractical;

3) The aquifer is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption; or

4) The aquifer is located over a Class III injection well mining area subject to subsidence or catastrophic collapse.~~; or~~

c) The total dissolved solids content of the groundwater in the aquifer is more than 3,000 and less than 10,000 mg/ℓ, and the aquifer is not reasonably expected to supply a public water system.

d) The areal extent of an aquifer exemption for a Class II enhanced oil recovery or enhanced gas recovery well is expanded for the exclusive purpose of Class VI injection for geologic sequestration pursuant to 35 Ill. Adm. Code 704.123(d) if the Agency determines that the aquifer meets the following criteria:

1) The aquifer does not currently serve as a source of drinking water;

2) The total dissolved solids content of the ground water in the aquifer is greater than 3,000 mg/ℓ and less than 10,000 mg/ℓ; and

3) The aquifer is not reasonably expected to supply a public water system.

BOARD NOTE: Derived from 40 CFR 146.4 (2017)~~(2011)~~.

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

**Section 730.105 Classification of Injection Wells**

Injection wells are classified as follows:

a) Class I Injection Wells~~injection wells~~. A Class I injection well is any of the following:

1) A Class I hazardous waste injection well that is used by a generator of hazardous waste or an owner or operator of a hazardous waste management facility to inject hazardous waste beneath the lowermost formation containing an underground source of drinking water within 402 meters (one-quarter mile) of the well bore.

2) An industrial or municipal disposal well that injects fluids beneath the lowermost formation containing an underground source of drinking water within 402 meters (one-quarter mile) of the well bore.

3) A radioactive waste disposal well that injects fluids below the lowermost formation containing an underground source of drinking water within 402 meters (one-quarter mile) of the well bore.

b) Class II Injection Wells~~injection wells~~. A Class II injection well is one that injects any of the following types of fluids:

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

2) Fluids that are used for enhanced recovery of oil or natural gas; and

3) Fluids that are used for storage of hydrocarbons that are liquid at standard temperature and pressure.

c) Class III Injection Wells~~injection wells~~. A Class III injection well is one that injects fluid for extraction of minerals, including one used in any of the following activities:

1) Mining of sulfur by the Frasch process;

2) In situ production of uranium or other metals. This category includes only in situ production from ore bodies that have not been conventionally mined. Solution mining of conventional mines, such as stopes leaching, is included in Class V; or

3) Solution mining of salts or potash.

BOARD NOTE: Class III injection well would include a well that is used for the recovery of geothermal energy to produce electric power, but would not include a well that is used in heating or aquaculture that falls under Class V.

d) Class IV Injection Wells~~injection wells~~. A Class IV injection well is any of the following:

1) A well used by a generator of hazardous waste or of radioactive waste, by an owner or operator of a hazardous waste management facility, or by an owner or operator of a radioactive waste disposal site to dispose of hazardous waste or radioactive waste into a formation that contains an underground source of drinking water within 402 meters (one-quarter mile) of the well.

2) A well used by a generator of hazardous waste or of radioactive waste, by an owner or operator of a hazardous waste management facility, or by an owner or operator of a radioactive waste disposal site to dispose of hazardous waste or radioactive waste above a formation that contains an underground source of drinking water within 402 meters (one-quarter mile) of the well.

3) A well used by a generator of hazardous waste or an owner or operator of a hazardous waste management facility to dispose of hazardous waste that cannot be classified pursuant to subsection (a)(1), (d)(1), or (d)(2) ~~of this Section~~ (e.g., wells used to dispose of hazardous wastes into or above a formation that contains an aquifer that has been exempted pursuant to Section 730.104).

e) Class V Injection Wells~~injection wells~~. A Class V injection well is any not included in Class I, Class II, Class III, Class IV, or Class VI. Specific types of Class V injection wells include the following:

1) Air conditioning return flow wells used to return the water used in a heat pump for heating or cooling to the supply aquifer;

2) Cesspools, including multiple dwelling, community, or regional cesspools, or other devices that receive wastes that have an open bottom and

sometimes have perforated sides. The UIC requirements do not apply to single family residential cesspools or to non-residential cesspools that receive solely sanitary wastes and have the capacity to serve fewer than 20 persons a day;

3) Cooling water return flow wells used to inject water previously used for cooling;

4) Drainage wells used to drain surface fluid, primarily storm runoff, into a subsurface formation;

5) Dry wells used for the injection of wastes into a subsurface formation;

6) Recharge wells used to replenish the water in an aquifer;

7) Salt water intrusion barrier wells used to inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water;

8) Sand backfill and other backfill wells used to inject a mixture of water and sand, mill tailings, or other solids into mined out portions of subsurface mines whether what is injected is a radioactive waste or not;

9) Septic system wells used to inject the waste or effluent from a multiple dwelling, business establishment, community, or regional business establishment septic tank. The UIC requirements do not apply to single family residential septic system wells, or to nonresidential septic system wells that are used solely for the disposal of sanitary waste and which have the capacity to serve fewer than 20 persons a day;

10) Subsidence control wells (not used for the purpose of oil or natural gas production) used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water;

11) Radioactive waste disposal wells other than Class IV injection wells;

12) Injection wells associated with the recovery of geothermal energy for heating, aquaculture, or production of electric power;

13) Wells used for solution mining of conventional mines such as stopes leaching;

14) Wells used to inject spent brine into the same formation from which it was withdrawn after extraction of halogens or their salts; and

15) Injection wells used in experimental technologies.

f) Class VI Injection Wells~~injection wells~~. A Class VI injection well is any of the following:

1) An injection well that is not experimental in nature and which is used for geologic sequestration of carbon dioxide beneath the lowermost formation containing a USDW;

2) An injection well that is used for geologic sequestration of carbon dioxide and which has been granted a permit that includes alternative injection well depth requirements pursuant to Section 730.195; or

3) An injection well that is used for geologic sequestration of carbon dioxide and which has received an expansion to the areal extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption pursuant to Section 730.104 and 35 Ill. Adm. Code 704.123(d).

BOARD NOTE: Derived from 40 CFR 146.5 (2017)~~(2011)~~.

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

**Section 730.106 Area of Review**

The area of review for each injection well or each field, project, or area in Illinois must be determined according to either subsection (a) or (b)~~ of this Section~~. The Agency may solicit input from the owners or operators of injection wells within Illinois as to which method is most appropriate for each geographic area or field.

a) Zone of Endangering Influence~~endangering influence~~.

1) The zone of endangering influence must be the applicable of the following:

A) In the case of an application for a well permit pursuant to 35 Ill. Adm. Code 704.161, that area the radius of which is the lateral distance in which the pressures in the injection zone may cause the migration of the injection or formation fluid into an underground source of drinking water; or

B) In the case of an application for an area permit pursuant to 35 Ill. Adm. Code 704.162, the project area plus a circumscribing area the width of which is the lateral distance from the perimeter of the project area, in which the pressures in the injection zone may cause the migration of the injection or formation fluid into an underground source of drinking water.

2) Computation of the zone of endangering influence may be based upon the parameters listed below and should be calculated for an injection time period equal to the expected life of the injection well or pattern. The following modified This equation illustrates one form that the mathematical model may take.

$$r = \sqrt{\frac{2.25\ kHt}{S \times 10^{x}}}$$

where:

$$x = \frac{4\ \pi\ KH\ (h_w - h_{bo} \times S_b G_b)}{2.3\ Q}$$

r = Radius of endangering influence from injection well (length)
k = Hydraulic conductivity of the injection zone (length/time)
H = Thickness of the injection zone (length)
t = Time of injection (time)
S = Storage coefficient (dimensionless)
Q = Injection rate (volume/time)
$h_{bo}$ = Observed original hydrostatic head of injection zone (length) measured from the base of the lowermost underground source of drinking water
$h_w$ = Hydrostatic head of underground source of drinking water

(length) measured from the base of the lowest underground source of drinking water

$S_pG_b$ = Specific gravity of fluid in the injection zone (dimensionless)

$\pi$ = 3.14159 (dimensionless)~~.~~

3) The above equation is based on the following assumptions:

A) The injection zone is homogenous and isotropic;

B) The injection zone has infinite area extent;

C) The injection well penetrates the entire thickness of the injection zone;

D) The well diameter is infinitesimal compared to "r" when injection time is longer than a few minutes; and

E) The emplacement of fluid into the injection zone creates instantaneous increase in pressure.

b) Fixed Radius~~radius.~~

1) In the case of an application for a well permit pursuant to 35 Ill. Adm. Code 704.161, a fixed radius around the well of not less than 402 meters (one-quarter mile) may be used.

2) In the case of an application for an area permit pursuant to 35 Ill. Adm. Code 704.162, a fixed width of not less than 402 meters (one-quarter mile) for the circumscribing area may be used.

3) In determining the fixed radius, the following factors must be taken into consideration: the chemistry of injected and formation fluids; the hydrogeology; the population and groundwater use and dependence; and historical practices in the area.

c) If the area of review is determined by a mathematical model pursuant to subsection (a)~~ of this Section~~, the permissible radius is the result of such calculation even if it is less than 402 meters (one-quarter mile).

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

**Section 730.108 Mechanical Integrity**

a) The owner or operator must demonstrate mechanical integrity when required by other Sections. An injection well has mechanical integrity if both of the following conditions are fulfilled:

1) There is no significant leak in the casing, tubing, or packer; and

2) There is no significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection bore.

b) One of the following tests must be used to demonstrate the absence of significant leaks pursuant to subsection (a)(1)~~ of this Section~~:

1) Following an initial pressure test, monitoring of the tubing-casing annulus pressure with sufficient frequency to be representative, as determined by the Agency, while maintaining an annulus pressure different from atmospheric pressure measured at the surface; or

2) A pressure test with liquid or gas.

c) One of the following methods may be used to determine the absence of significant fluid movement pursuant to subsection (a)(2)~~ of this Section~~:

1) The results of a temperature or noise log;

2) For Class III injection wells where the nature of the casing precludes the use of the logging techniques prescribed at subsection (c)(1)~~ of this Section~~, cementing records demonstrating the presence of adequate cement to prevent migration; or

3) For Class III injection wells where the Agency elects to rely on cementing records to demonstrate the absence of significant fluid movement, the monitoring program prescribed by 35 Ill. Adm. Code 730.113(b) must be designed to verify the absence of significant fluid movement.

d) The Agency may allow the use of a test to demonstrate mechanical integrity other

than those listed in subsections (b) and (c)~~ of this Section~~. To obtain approval, the owner or operator must submit a written request to the Agency that sets forth the proposed test and all technical data supporting its use. The Agency must approve the request if the test will reliably demonstrate the mechanical integrity of wells for which its use is proposed.

e) In conducting and evaluating the tests enumerated in this Section or others to be allowed by the Agency, the owner or operator and the Agency must apply methods and standards generally accepted in the industry. When the owner or operator reports the results of mechanical integrity tests to the Agency, it must include a description of the test and the method used. In making its evaluation, the Agency must review monitoring and other test data submitted since the previous evaluation.

f) The Agency may require additional or alternative tests if the results presented by the owner or operator pursuant to subsection (e) ~~of this Section~~ are not satisfactory to the Agency to demonstrate that there is no movement of fluid into or between USDWs resulting from the injection activity.

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

SUBPART B: CRITERIA AND STANDARDS APPLICABLE
TO CLASS I NON-HAZARDOUS WASTE INJECTION WELLS

**Section 730.113 Operating, Monitoring, and Reporting Requirements**

a) Operating Requirements. Operating requirements must, at a minimum, specify the following:

1) That, except during stimulation, injection pressure at the wellhead must not exceed a maximum that must be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. In no case must injection pressure initiate fractures in the confining zone or cause the movement of injection or formation fluids into an underground source of drinking water;

2) That injection between the outermost casing protecting underground sources of drinking water and the well bore is prohibited; and

3) That, unless an alternative to a packer has been approved pursuant to Section 730.112(c), the annulus between the tubing and the long string of casings must be filled with a fluid approved by permit condition, and a pressure prescribed by permit condition must be maintained on the annulus.

b) Monitoring Requirements. Monitoring requirements must, at a minimum, include all of the following:

1) The analysis of the injected fluids with sufficient frequency to yield representative data of their characteristics;

2) Installation and use of continuous recording devices to monitor injection pressure, flow rate, and volume, and the pressure on the annulus between the tubing and the long string of casing;

3) A demonstration of mechanical integrity pursuant to Section 730.108 at least once every five years during the life of the well; and

4) The type, number, and location of wells within the area of review to be used to monitor any migration of fluids into and pressure in the underground sources of drinking water, the parameters to be measured, and the frequency of monitoring.

c) Reporting Requirements. Reporting requirements must, at a minimum, include:

1) Quarterly reports to the Agency on each of the following:

A) The physical, chemical, and other relevant characteristics of injection fluids;

B) The monthly average, maximum, and minimum values for injection pressure, flow rate and volume, and annular pressure; and

C) The results of monitoring prescribed pursuant to subsection (b)(4) ~~of this Section~~.

2) Reporting the results, with the first quarterly report after the completion of

each of the following:

A) Periodic tests of mechanical integrity;

B) Any other test of the injection well conducted by the permittee if required by permit condition; and

C) Any well work over.

d) Ambient ~~Monitoring~~monitoring.~~

1) Based on a site-specific assessment of the potential for fluid movement from the well or injection zone and on the potential value of monitoring wells to detect such movement, the Agency must require the owner or operator to develop a monitoring program. At a minimum, the Agency must require monitoring of the pressure buildup in the injection zone annually, including at a minimum, a shut down of the well for a time sufficient to conduct a valid observation of the pressure fall-off curve.

2) When prescribing a monitoring system the Agency may also require:

A) Continuous monitoring for pressure changes in the first aquifer overlying the confining zone. When such a well is installed, the owner or operator must, on a quarterly basis, sample the aquifer and analyze for constituents specified by permit condition;

B) The use of indirect, geophysical techniques to determine the position of the waste front, the water quality in a formation designated by permit condition or to provide other site-specific data;

C) Periodic monitoring of the ground water quality in the first aquifer overlying the injection zone;

D) Periodic monitoring of the ground water quality in the lowermost USDW; and

E) Any additional monitoring necessary to determine whether fluids are moving into or between USDWs.

BOARD NOTE: Derived from 40 CFR 146.13 (2017)~~(2005)~~.

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

SUBPART D: CRITERIA AND STANDARDS APPLICABLE TO CLASS III INJECTION WELLS

**Section 730.132 Construction Requirements**

a) A new Class III injection well must be cased and cemented to prevent the migration of fluids into or between underground sources of drinking water. The Agency may waive the cementing requirements for a new well in existing projects or portions of existing projects if~~where~~ it has substantial evidence that no contamination of underground sources of drinking water would result. The casing and cement used in the construction of each newly drilled well must be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors must be considered:

1) The depth to the injection zone;

2) The injection pressure, external pressure, internal pressure, axial loading, etc.;

3) The hole size;

4) The size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, and construction material);

5) The corrosiveness of injected fluids and formation fluids;

6) The lithology of injection and confining zones; and

7) The type and grade of cement.

b) Appropriate logs and other tests must be conducted during the drilling and construction of a new Class III injection well. A descriptive report interpreting the results of such logs and tests must be prepared by a knowledgeable log analyst and submitted to the Agency. The logs and tests appropriate to each type of Class

III injection well must be determined based on the intended function, depth, construction, and other characteristics of the well; the availability of similar data in the area of the drilling site; and the need for additional information that may arise from time to time as the construction of the well progresses. Deviation checks must be conducted on all holes where pilot holes and reaming are used, unless the hole will be cased and cemented by circulating cement to the surface. If~~Where~~ deviation checks are necessary, they must be conducted at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling.

c) If~~Where~~ the injection zone is a formation that is naturally water-bearing, the following information concerning the injection zone must be determined or calculated for a new Class III injection well or project:

1) The fluid pressure;

2) The fracture pressure; and

3) The physical and chemical characteristics of the formation fluids.

d) If~~Where~~ the injection formation is not a water-bearing formation, the information in subsection (c)(2) ~~of this Section~~ must be submitted.

e) If~~Where~~ injection is into a formation that contains water with less than 10,000 mg/ℓ TDS, monitoring wells must be completed into the injection zone and into any underground sources of drinking water above the injection zone that could be affected by the mining operation. These wells must be located in such a fashion as to detect any excursion of injection fluids, process by-products, or formation fluids outside the mining area or zone. If the operation may be affected by subsidence or catastrophic collapse, the monitoring wells must be located so that they will not be physically affected.

f) If~~Where~~ injection is into a formation that does not contain water with less than 10,000 mg/ℓ TDS, no monitoring wells are necessary in the injection stratum.

g) If~~Where~~ the injection well penetrates a~~wells penetrate an~~ USDW in an area subject to subsidence or catastrophic collapse, an adequate number of monitoring wells must be completed into the USDW to detect any movement of injected fluids, process by-products, or formation fluids into the USDW. The monitoring

wells must be located outside the physical influence of the subsidence or catastrophic collapse.

h) In determining the number, location, construction, and frequency of monitoring of the monitoring wells the following criteria must be considered:

1) The population relying on the USDW affected or potentially affected by the injection operation;

2) The proximity of the injection operation to points of withdrawal of drinking water;

3) The local geology and hydrology;

4) The operating pressures and whether a negative pressure gradient is being maintained;

5) The nature and volume of the injected fluid, the formation water, and the process by-products; and

6) The injection well density.

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

**Section 730.133 Operating, Monitoring, and Reporting Requirements**

a) Operating Requirements~~requirements~~. Operating requirements prescribed must, at a minimum, specify each of the following:

1) That, except during well stimulation, the injection pressure at the wellhead must be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. In no case must injection pressure initiate fractures in the confining zone or cause the migration of injection or formation fluids into an underground source of drinking water; and

2) That injection between the outermost casing protecting underground sources of drinking water and the well bore is prohibited.

b) Monitoring Requirements~~requirements.~~

1) Monitoring requirements must, at a minimum, specify the following information~~ set forth in subsections (b)(1) through (b)(5) of this Section~~:

A~~1~~) Monitoring of the nature of injected fluids with sufficient frequency to yield representative data on its characteristics. Whenever the injection fluid is modified to the extent that the analysis required by Section 730.134 (a)(7)(C) is incorrect or incomplete, the owner or operator must provide the Agency with a new analysis as required by Section 730.134 (a)(7)(C);

B~~2~~) Monitoring of injection pressure and either flow rate or volume semimonthly, or metering and daily recording of injected and produced fluid volumes, as appropriate;

C~~3~~) Demonstration of mechanical integrity pursuant to Section 730.108 at least once every five years during the life of the well for salt solution mining;

D~~4~~) Monitoring of the fluid level in the injection zone semi-monthly, where appropriate, and monitoring of the parameters chosen to measure water quality in the monitoring wells required by Section 730.132(e) semi-monthly; and

E~~5~~) Quarterly monitoring of wells required by Section 730.132(g).

2~~6~~) A Class III injection well may be monitored on a field or project basis, rather than on an individual well basis, by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well operating with a common manifold. Separate monitoring systems for each well are not required provided the owner or operator demonstrates that manifold monitoring is comparable to individual well monitoring.

c) Reporting Requirements~~requirements.~~

1) Reporting requirements must, at a minimum, include the following information set forth in subsections (c)(1) and (c)(2)~~ of this Section,~~

~~subject to subsection (c)(3) of this Section~~:

A~~1~~) Quarterly reporting to the Agency on required monitoring; and

B~~2~~) Results of mechanical integrity and any other periodic test required by the Agency reported with the first regular quarterly report after the completion of the test.

2~~3~~) Monitoring may be reported on a project or field basis rather than individual well basis where manifold monitoring is used.

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

**Section 730.134 Information to be Considered by the Agency**

This Section sets forth information that must be considered by the Agency in authorizing a Class III injection well. Certain maps, cross-sections, tabulations of wells within the area of review, and other data may be included in the application by reference provided they are current, readily available to the Agency (for example, in the Agency's files) and sufficiently identified to be retrieved.

a) Prior to the issuance of a permit to operate an existing Class III injection well or area or for the construction of a new Class III injection well, the Agency must consider the following:

1) The information required in 35 Ill. Adm. Code 702.120 through 702.124 and 704.161(c);

2) A map showing the injection well or project area for which the permit is sought and the applicable area of review. Within the area of review, the map must show the number or name and location of all existing producing wells, injection wells, abandoned wells, dry holes, public water systems, and water wells. The map may also show surface bodies of waters, mines (surface and subsurface), quarries and other pertinent surface features including residences and roads, and faults if known or suspected. Only information of public record and pertinent information known to the applicant is required to be included on this map;

3) A tabulation of data reasonably available from public records or otherwise

known to the applicant on wells within the area of review included on the map required pursuant to subsection (a)(2) ~~of this Section~~ that penetrate the proposed injection zone. Such data must include a description of each well's type, construction, date drilled, location, depth, record of plugging and completion, and any additional information the Agency may require. In cases where the information would be repetitive and the wells are of similar age, type, and construction the Agency may elect to only require data on a representative number of wells;

4) Maps and cross-sections indicating the vertical limits of all underground sources of drinking water within the area of review, their position relative to the injection formation and the direction of water movements, where known, in every underground source of drinking water that may be affected by the proposed injection;

5) Maps and cross-sections detailing the geologic structure of the local area;

6) Generalized map and cross-sections illustrating the regional geologic setting;

7) Proposed operating data, as follows:

A) The average and maximum daily rate and volume of fluid to be injected;

B) The average and maximum injection pressure; and

C) Qualitative analysis and ranges in concentrations of all constituents of injected fluids. The applicant may request confidentiality as specified in 35 Ill. Adm. Code 101.107. If the information is proprietary an applicant may, in lieu of the ranges in concentrations, choose to submit maximum concentrations that must not be exceeded. In such a case the applicant must retain records of the undisclosed concentrations and provide them upon request to the Agency as part of any enforcement investigation;

8) A proposed formation testing program to obtain the information required by Section 730.132(c);

9) A proposed stimulation program;

10) The proposed injection procedure;

11) Schematic or other appropriate drawings of the surface and subsurface construction details of the system;

12) Plans (including maps) for meeting the monitoring requirements of Section 730.133(b);

13) Expected changes in pressure, native fluid displacement, direction of movement of injection fluid;

14) Contingency plans to cope with all shut-ins or well failures so as to prevent the migration of contaminating fluids into underground sources of drinking water;

15) A certificate that the applicant has assured, through a performance bond or other appropriate means, the resources necessary to close, plug, or abandon the well as required by 35 Ill. Adm. Code 704.189; and

16) The corrective action proposed to be taken pursuant to 35 Ill. Adm. Code 704.193.

b) Prior to granting approval for the operation of a Class III injection well, the Agency must consider the following information:

1) All available logging and testing data on the well;

2) A satisfactory demonstration of mechanical integrity for all new wells and for all existing salt solution pursuant to Section 730.108;

3) The anticipated maximum pressure and flow rate at which the permittee will operate;

4) The results of the formation testing program;

5) The actual injection procedures; and

6) The status of corrective action on defective wells in the area of review.

c) Prior to granting approval for the plugging and abandonment of a Class III injection well, the Agency must consider the following information:

1) The type and number of plugs to be used;

2) The placement of each plug including the elevation of the top and bottom;

3) The type, grade, and quantity of cement to be used;

4) The method of placement of the plugs; and

5) The procedure to be used to meet the requirements of Section 730.110(c).

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

SUBPART F: CRITERIA AND STANDARDS APPLICABLE TO CLASS V INJECTION WELLS

**Section 730.151 Applicability**

This Subpart F sets forth criteria and standards for underground injection control programs to regulate all injection not regulated in Subparts B, D, and E~~ of this Part~~. A Class II injection well, however, is not regulated by this Subpart F.

a) Generally, a well covered by this Subpart F injects non-hazardous fluids into or above formations that contain underground sources of drinking water. It includes all wells listed in Section 730.105(e) but is not limited to those types of injection wells.

b) It also includes a well not covered in Class IV that injects radioactive materials listed in table II, column 2 in appendix B to 10 CFR 20 (Water Effluent Concentrations), incorporated by reference in 35 Ill. Adm. Code 720.111(b).

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

SUBPART G: CRITERIA AND STANDARDS APPLICABLE TO CLASS I HAZARDOUS WASTE INJECTION WELLS

**Section 730.161 Applicability and Definitions**

a) This Subpart G establishes criteria and standards for underground injection control programs to regulate Class I hazardous waste injection wells. Unless otherwise noted, this Subpart G supplements the requirements of Subpart A ~~of this Part~~ and applies instead of Subpart B ~~of this Part~~ to a Class I hazardous waste injection well.

b) Definitions. The following definitions apply for the purposes of this Subpart G:

"Cone of influence" means that area around the well within which increased injection zone pressures caused by injection into the hazardous waste injection well would be sufficient to drive fluids into a USDW.

"Existing well" means a Class I hazardous waste injection well that had a UIC permit or UIC permit by rule prior to August 25, 1988, or a well that has become a Class I hazardous waste injection well as a result of a change in the definition of the injected waste which would render the waste hazardous pursuant to 35 Ill. Adm. Code 721.103.

"Injection interval" means that part of the injection zone in which the well is screened, or in which the waste is otherwise directly emplaced.

"New well" means any Class I hazardous waste injection well that is not an existing well.

"Transmissive fault or fracture" is a fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

BOARD NOTE: Derived from 40 CFR 146.61 (2017)~~(2005)~~.

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

**Section 730.162 Minimum Criteria for Siting**

a) All Class I hazardous waste injection wells must be sited such that they inject into a formation that is beneath the lowermost formation containing, within 402 meters

(one-quarter mile) of the well bore, a USDW.

b) The siting of a Class I hazardous waste injection well must be limited to an area that is geologically suitable. The Agency must determine geologic suitability based upon its consideration of the following:

1) An analysis of the structural and stratigraphic geology, the hydrogeology, and the seismicity of the region;

2) An analysis of the local geology and hydrogeology of the well site, including, at a minimum, detailed information regarding stratigraphy, structure, and rock properties; aquifer hydrodynamics; and mineral resources; and

3) A determination that the geology of the area can be described confidently and that limits of waste fate and transport can be accurately predicted through the use of models.

c) Class I hazardous waste injection wells must be sited such that the following is true:

1) The injection zone has sufficient permeability, porosity, thickness, and area extent to prevent migration of fluids into USDWs; and

2) The confining zone is as follows:

A) It is laterally continuous and free of transecting, transmissive faults, or fractures over an area sufficient to prevent the movement of fluids into a USDW; and

B) It contains at least one formation of sufficient thickness and with lithologic and stress characteristics capable of preventing vertical propagation of fractures.

d) Alternative Injection Zone Demonstrations

1) The owner or operator must demonstrate one of the following alternatives ~~in subsections (d)(1) through (d)(3) of this Section to the Agency, subject to subsection (d)(4) of this Section~~:

A~~1~~) That the confining zone is separated from the base of the lowermost USDW by at least one sequence of permeable and less permeable strata that will provide an added layer of protection for the USDW in the event of fluid movement in an unlocated borehole or transmissive fault;

B~~2~~) That, within the area of review, the piezometric surface of the fluid in the injection zone is less than the piezometric surface of the lowermost USDW, considering density effects, injection pressures, and any significant pumping in the overlying USDW; or

C~~3~~) There is no USDW present.

2~~4~~) The owner or operator of a site that does not meet the requirements in subsection (d)(1), (d)(2), or (d)(3) ~~of this Section~~ may petition the Board for an adjusted standard pursuant to Subpart D of 35 Ill. Adm. Code104. The Board may grant an adjusted standard approving such a site if it determines that because of site geology, nature of the wastes involved, or other considerations; abandoned boreholes; or other conduits would not cause an endangerment of USDWs. A petition for an adjusted standard pursuant to this subsection (d)(4) must include the following components:

A) Those portions of a permit application for the particular injection activities and site that are relevant to the Board's determination; and

B) Such other relevant information that the Board may by order require pursuant to 35 Ill. Adm. Code 104.228.

BOARD NOTE: Derived from 40 CFR 146.62 (2017)~~(2005)~~.

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

**Section 730.164 Corrective Action for Wells in the Area of Review**

For the purposes of a Class I hazardous waste injection well, this Section applies instead of 35 Ill. Adm. Code 704.193 and Section 730.107.

a) The owner or operator of a Class I hazardous waste injection well must, as part of the permit application, submit a plan to the Agency outlining the protocol used to accomplish both of the following:

1) Identify all wells penetrating the confining zone or injection zone within the area of review; and

2) Determine whether wells are adequately completed or plugged.

b) The owner or operator of a Class I hazardous waste injection well must identify the location of all wells within the area of review that penetrate the injection zone or the confining zone and must submit both of the following, as required in Section 730.170(a):

1) A tabulation of all wells within the area of review that penetrate the injection zone or the confining zone; and

2) A description of each well or type of well and any records of its plugging or completion.

c) For wells that the Agency determines are improperly plugged, completed, or abandoned, or for which plugging or completion information is unavailable, the applicant must also submit a plan consisting of such steps or modification as are necessary to prevent movement of fluids into or between USDWs. Where the plan is adequate, the Agency must incorporate it into the permit as a condition. Where the Agency's review of an application indicates the permittee's plan is inadequate (based at a minimum on the factors in subsection (e)~~ of this Section~~), the Agency must do the appropriate of the following:

1) It must require the applicant to revise the plan;

2) It must prescribe a plan for corrective action as a condition of the permit; or

3) It must deny the application.

d) Requirements~~.~~

1) Existing Injection Wells~~injection wells~~. Any permit issued for an existing

Class I hazardous waste injection well requiring corrective action other than pressure limitations must include a compliance schedule pursuant to 35 Ill. Adm. Code 702.162 requiring any corrective action accepted or prescribed pursuant to subsection (c)~~ of this Section~~. Any such compliance schedule must provide for compliance no later than two years following issuance of the permit and must require observance of appropriate pressure limitations pursuant to subsection (d)(3) ~~of this Section~~ until all other corrective action measures have been implemented.

2) New Injection Wells~~injection wells~~. No owner or operator of a new Class I hazardous waste injection well may begin injection until all corrective actions required pursuant to this Section have been taken.

3) The Agency may require pressure limitations instead of plugging. If pressure limitations are used instead of plugging, the Agency must require as a permit condition that injection pressure be limited so that pressure in the injection zone at the site of any improperly completed or abandoned well within the area of review would not be sufficient to drive fluids into or between USDWs. This pressure limitation must satisfy the corrective action requirements. Alternatively, such injection pressure limitation may be made part of a compliance schedule pursuant to 35 Ill. Adm. Code 702.162 and may be required to be maintained until all other required corrective actions have been implemented.

e) The Agency must consider the following criteria and factors in determining the adequacy of corrective action proposed by the applicant pursuant to subsection (c) ~~of this Section~~ and in determining the additional steps needed to prevent fluid movement into and between USDWs:

1) The nature and volume of injected fluid;

2) The nature of native fluids or byproducts of injection;

3) Geology;

4) Hydrology;

5) The history of the injection operation;

6) Any completion and plugging records;

7) The closure procedures in effect at the time the well was closed;

8) Any hydraulic connections with USDWs;

9) The reliability of the procedures used to identify abandoned wells; and

10) Any other factors that might affect the movement of fluids into or between USDWs.

BOARD NOTE: Derived from 40 CFR 146.64 (2017)~~(2005)~~.

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

**Section 730.165 Construction Requirements**

a) General. All existing and new Class I hazardous waste injection wells must be constructed and completed to accomplish each of the following:

1) Prevent the movement of fluids into or between USDWs or into any unauthorized zones;

2) Permit the use of appropriate testing devices and workover tools; and

3) Permit continuous monitoring of injection tubing and long string casing as required pursuant to Section 730.167(f);

b) Compatibility. All well materials must be compatible with fluids with which the materials may be expected to come into contact. The owner or operator must employ any compatibility testing method specified by permit condition. The owner or operator may otherwise refer to "Technical Assistance Document: Corrosion, Its Detection and Control in Injection Wells~~,~~", USEPA publication number EPA-570/9-87-002, incorporated by reference at 35 Ill. Adm. Code 720.111.

c) Casing and Cementing New Wells~~cementing new wells.~~

1) Casing and cement used in the construction of each newly drilled well

must be designed for the life expectancy of the well, including the post-closure care period. The casing and cementing program must be designed to prevent the movement of fluids into or between USDWs, and to prevent potential leaks of fluids from the well. The Agency must consider the following information as required by Section 730.170 in determining and specifying casing and cementing requirements:

A) The depth to the injection zone;

B) The injection pressure, external pressure, internal pressure, and axial loading;

C) The hole size;

D) The size and grade of all casing strings (well thickness, diameter, nominal weight, length, joint specification, and construction material);

E) The corrosiveness of injected fluid, formation fluids, and temperature;

F) The lithology of the injection and confining zones;

G) The type or grade of cement; and

H) The quantity and chemical composition of the injected fluid.

2) One surface casing string must, at a minimum, extend into the confining bed below the lowest formation that contains a USDW and be cemented by circulating cement from the base of the casing to the surface, using a minimum of 120 percent of the calculated annular volume. The Agency may require more than 120 percent when the geology or other circumstances warrant it.

3) At least one long string casing, using a sufficient number of centralizers, must extend to the injection zone and must be cemented by circulating cement to the surface in one or more stages:

A) Of sufficient quantity and quality to withstand the maximum

operating pressure; and

B) In a quantity no less than 120 percent of the calculated volume necessary to fill the annular space. The Agency must require more than 120 percent when the geology or other circumstances warrant it.

4) Circulation of cement may be accomplished by staging. The Agency may approve an alternative method of cementing in cases where the cement cannot be recirculated to the surface, provided the owner or operator can demonstrate by using logs that the cement is continuous and does not allow fluid movement behind the well bore.

5) Casings, including any casing connections, must be rated to have sufficient structural strength to withstand both of the following conditions for the design life of the well:

A) The maximum burst and collapse pressures that may be experienced during the construction, operation, and closure of the well; and

B) The maximum tensile stress that may be experienced at any point along the length of the casing during the construction, operating, and closure of the well.

6) At a minimum, cement and cement additives must be of sufficient quality and quantity to maintain integrity over the design life of the well.

d) Tubing and Packer~~packer.~~

1) All Class I hazardous waste injection wells must inject fluids through tubing with a packer set at a point specified by permit condition.

2) In determining and specifying requirements for tubing and packer, the following factors must be considered:

A) The depth of setting;

B) The characteristics of injection fluid (chemical content,

corrosiveness, temperature, and density);

C) The injection pressure;

D) The annular pressure;

E) The rate (intermittent or continuous), temperature, and volume of injected fluid;

F) The size of casing; and

G) The tubing tensile, burst, and collapse strengths.

3) The Agency may approve the use of a fluid seal if it determines in writing that the following conditions are met:

A) The operator demonstrates that the seal will provide a level of protection comparable to a packer;

B) The operator demonstrates that the staff is, and will remain, adequately trained to operate and maintain the well and to identify and interpret variations in parameters of concern;

C) The permit contains specific limitations on variations in annular pressure and loss of annular fluid;

D) The design and construction of the well allows continuous monitoring of the annular pressure and mass balance of annular fluid; and

E) A secondary system is used to monitor the interface between the annulus fluid and the injection fluid and the permit contains requirements for testing the system every three months and recording the results.

BOARD NOTE: Derived from 40 CFR 146.65 (2017)~~(2005)~~.

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

**Section 730.167 Operating Requirements**

a) Except during stimulation, the owner or operator must assure that injection pressure at the wellhead does not exceed a maximum that must be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. The owner or operator must assure that the injection pressure does not initiate fractures or propagate existing fractures in the confining zone, nor cause the movement of injection or formation fluids into a USDW.

b) Injection between the outermost casing protecting USDWs and the well bore is prohibited.

c) The owner or operator must maintain an annulus pressure that exceeds the operating injection pressure, unless the Agency determines in writing that such a requirement might harm the integrity of the well. The fluid in the annulus must be noncorrosive, or must contain a corrosion inhibitor.

d) The owner or operator must maintain mechanical integrity of the injection well at all times.

e) Permit requirements for owners or operators of hazardous waste injection wells that inject wastes that have the potential to react with the injection formation to generate gases must include the following:

1) Conditions limiting the temperature, pH, or acidity of the injected waste; and

2) Procedures necessary to assure that pressure imbalances that might cause a backflow or blowout do not occur.

f) The owner or operator must install and use continuous recording devices to monitor each of the following: the injection pressure; the flow rate, volume, and temperature of injected fluids; and the pressure on the annulus between the tubing and the long string casing, and must install and use either of the following:

1) Automatic alarm and automatic shut-off systems, designed to sound and shut-in the well when pressures and flow rates or other parameters specified by permit condition exceed a range or gradient specified in the

permit; or

2) Automatic alarms, designed to sound when the pressures and flow rates or other parameters exceed a rate or gradient specified in the permit, in cases where the owner or operator certifies that a trained operator will be on-site at all times when the well is operating.

g) If an automatic alarm or shutdown is triggered, the owner or operator must immediately investigate and identify the cause of the alarm or shutoff without undue delay. If, upon such investigation, the well appears to be lacking mechanical integrity, or if monitoring required pursuant to subsection (f) ~~of this Section~~ otherwise indicates that the well may be lacking mechanical integrity, the owner or operator must undertake all of the following actions:

1) It must stop injecting waste fluids unless authorized by permit condition to continue or resume injection;

2) It must take all necessary steps to determine the presence or absence of a leak; and

3) It must notify the Agency within 24 hours after the alarm or shutdown.

h) If a loss of mechanical integrity is discovered pursuant to subsection (g) ~~of this Section~~ or during periodic mechanical integrity testing, the owner or operator must undertake all of the following actions:

1) It must immediately cease injection of waste fluids;

2) It must take all steps reasonably necessary to determine whether there may have been a release of hazardous wastes or hazardous waste constituents into any unauthorized zone;

3) It must notify the Agency within 24 hours after loss of mechanical integrity is discovered;

4) It must notify the Agency when injection can be expected to resume; and

5) It must restore and demonstrate mechanical integrity pursuant to Section 730.108 prior to resuming injection of waste fluids.

i) Whenever the owner or operator obtains evidence that there may have been a release of injected wastes into an unauthorized zone, the following must occur:

1) The owner or operator must immediately cease injection of waste fluids, and undertake all of the following actions:

A) It must notify the Agency within 24 hours of obtaining such evidence;

B) It must take all necessary steps to identify and characterize the extent of any release;

C) It must comply with any remediation plan specified by permit condition;

D) It must implement any remediation plan specified by permit condition; and

E) Where such release is into a USDW currently serving as a water supply, it must place a notice in a newspaper of general circulation.

2) The Agency must permit the operator to resume injection prior to completing cleanup action if the owner or operator demonstrates that the injection operation will not endanger USDWs.

j) The owner or operator must notify the Agency and obtain a permit modification prior to conducting any well workover.

BOARD NOTE: Derived from 40 CFR 146.67 (2017)~~(2005)~~.

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

**Section 730.171 Closure**

a) Closure Plan~~plan~~. The owner or operator of a Class I hazardous waste injection well must prepare, maintain, and comply with a plan for closure of the well that meets the requirements of subsection (d) ~~of this Section~~ and is specified by permit condition. The obligation to implement the closure plan survives the termination

of a permit or the cessation of injection activities. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit.

1) The owner or operator must submit the plan as a part of the permit application and, upon approval by the Agency, such plan must be a condition of any permit issued.

2) The owner or operator must submit any proposed significant revision to the method of closure reflected in the plan for approval by the Agency no later than the date on which notice of closure is required to be submitted to the Agency pursuant to subsection (b)~~ of this Section~~.

3) The plan must assure financial responsibility, as required in 35 Ill. Adm. Code 704.189.

4) The plan must include the following information:

A) The type and number of plugs to be used;

B) The placement of each plug including the evaluation of the top and bottom of each plug;

C) The type and grade and quantity of material to be used in plugging;

D) The method of placement of the plugs;

E) Any proposed test or measure to be made;

F) The amount, size, and location (by depth) of casing and any other materials to be left in the well;

G) The method and location where casing is to be parted, if applicable;

H) The procedure to be used to meet the requirements of subsection (d)(5)~~ of this Section~~; and

I) The estimated cost of closure.

5) The Agency must modify a closure plan following the procedures of Subpart C of 35 Ill. Adm. Code 702.

6) An owner or operator of a Class I hazardous waste injection well who stops injection temporarily~~,~~ may keep the well open if the following conditions are fulfilled~~of subsection (a)(6)(A) and (a)(6)(B) of this Section are true of owner or operator, subject to subsection (a)(6)(C) of this Section~~:

A) The owner or operator has~~Has~~ received authorization from the Agency; and

B) The owner or operator has~~Has~~ described actions or procedures, satisfactory to the Agency, that the owner or operator will take actions to ensure that the well will not endanger USDWs during the period of temporary disuse. These actions and procedures must include compliance with the technical requirements applicable to active injection wells unless otherwise waived by permit condition.

BOARD NOTE: An Agency determination on authorizing keeping the well open~~C)For the purposes of this subsection (a), submitting a description of actions or procedures for Agency authorization~~ is in the nature of a permit determination~~application~~, and the owner or operator may appeal the Agency's determination~~decision~~ to the Board.

7) The owner or operator of a well that has ceased operations for more than two years must notify the Agency at least 30 days prior to resuming operation of the well.

b) Notice of Intent~~intent~~ to Close~~close~~. The owner or operator must notify the Agency at least 60 days before closure of a well.

c) Closure Report~~report~~. Within 60 days after closure, or at the time of the next quarterly report (whichever is less), the owner or operator must submit a closure report to the Agency. If the quarterly report is due less than 15 days after completion of closure, then the report must be submitted within 60 days after closure. The report must be certified as accurate by the owner or operator and by

the person who performed the closure operation (if other than the owner or operator). Such report must consist of either of the following documents:

1) A statement that the well was closed in accordance with the closure plan previously submitted and approved by the Agency; or

2) Where actual closure differed from the plan previously submitted, a written statement specifying the differences between the previous plan and the actual closure.

d) Standards for Well Closure~~well closure.~~

1) Prior to closing the well, the owner or operator must observe and record the pressure decay for a time specified by permit condition. The Agency must analyze the pressure decay and the transient pressure observations conducted pursuant to Section 730.168(e)(1)(A) and determine whether the injection activity has conformed to predicted values.

2) Prior to well closure, appropriate mechanical integrity testing must be conducted to ensure the integrity of that portion of the long string casing and cement that will be left in the ground after closure. Testing methods may include the following:

A) Pressure tests with liquid or gas;

B) Radioactive tracer surveys;

C) Noise, temperature, pipe evaluation, or cement bond logs; and

D) Any other test required by permit condition.

3) Prior to well closure, the well must be flushed with a buffer fluid.

4) Upon closure, a Class I hazardous waste injection well must be plugged with cement in a manner that will not allow the movement of fluids into or between USDWs.

5) Placement of the cement plugs must be accomplished by one of the following means:

A) The Balance Method;

B) The Dump Bailer Method;

C) The Two-Plug Method; or

D) An alternative method, specified by permit condition, that will reliably provide a comparable level of protection.

6) Each plug used must be appropriately tagged and tested for seal and stability before closure is completed.

7) The well to be closed must be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once or by a comparable method prescribed by permit condition, prior to the placement of the cement plugs.

BOARD NOTE: Derived from 40 CFR 146.71 (2017)~~(2005)~~.

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

**Section 730.172 Post-Closure Care**

a) The owner or operator of a Class I hazardous waste injection well must prepare, maintain, and comply with a plan for post-closure care that meets the requirements of subsection (b) ~~of this Section~~ and is specified by permit condition. The obligation to implement the post-closure plan survives the termination of a permit or the cessation of injection activities. The requirement to maintain an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit.

1) The owner or operator must submit the plan as a part of the permit application and, upon approval by the Agency, such plan must be a condition of any permit issued.

2) The owner or operator must submit any proposed significant revision to the plan as appropriate over the life of the well, but no later than the date of the closure report required pursuant to Section 730.171(c).

3) The plan must assure financial responsibility, as required in Section 730.173.

4) The plan must include the following information:

A) The pressure in the injection zone before injection began;

B) The anticipated pressure in the injection zone at the time of closure;

C) The predicted time until pressure in the injection zone decays to the point that the well's cone of influence no longer intersects the base of the lowermost USDW;

D) The predicted position of the waste front at closure;

E) The status of any cleanups required pursuant to Section 730.164; and

F) The estimated cost of proposed post-closure care.

5) At the request of the owner or operator, or on its own initiative, the Agency may modify the post-closure plan after submission of the closure report following the procedures in 35 Ill. Adm. Code 705.128.

b) The owner or operator must undertake each of the following activities:

1) It must continue and complete any cleanup action required pursuant to Section 730.164, if applicable;

2) It must continue to conduct any groundwater monitoring required under the permit until pressure in the injection zone decays to the point that the well's cone of influence no longer intersects the base of the lowermost USDW. The Agency must extend the period of post-closure monitoring if it determines in writing that the well may endanger a USDW;

3) It must submit a survey plat to the local zoning authority designated by permit condition. The plat must indicate the location of the well relative

to permanently surveyed benchmarks. A copy of the plat must be submitted to USEPA, Region 5;

4) It must notify the Illinois Department of Natural Resources, Office of Mines and Minerals, the State Department of Public Health, and any unit of local government authorized to grant permits under the Water Well Construction Code [415 ILCS 30] in the area where the well is located as to the depth and location of the well and the confining zone; and

5) It must retain, for a period of three years following well closure, records reflecting the nature, composition, and volume of all injected fluids. Owners or operators must deliver the records to the Agency at the conclusion of the retention period.

c) Each owner of a Class I hazardous waste injection well, and the owner of the surface or subsurface property on or in which a Class I hazardous waste injection well is located, must record a notation on the deed to the facility property or on some other instrument that is normally examined during title search that will in perpetuity provide any potential purchaser of the property the following information:

1) The fact that land has been used to manage hazardous waste;

2) The names of the Illinois Department of Natural Resources, Office of Mines and Minerals and the local zoning authority with which the plat was filed, as well as the address of USEPA Region 5; and

3) The type and volume of waste injected, the injection interval or intervals into which it was injected, and the period over which injection occurred.

d) In addition to the requirements stated in this Section, each owner of a Class I hazardous waste injection well must comply with any other State or federal law or local ordinance that requires the reporting of any potential environmental or physical impairment of real property to subsequent or prospective owners.

BOARD NOTE: The Responsible Property Transfer Act of 1988 [765 ILCS 90] (RPTA) formerly required the disclosure and recordation of any environmental impairment of real property in Illinois. The General Assembly repealed that statute in P.A. 92-299, Section 5, effective August 9, 2001. Section 10 of that

repeal provided for continued maintenance of documents prepared and recorded under RPTA prior to its repeal.

BOARD NOTE: Derived from 40 CFR 146.72 (2017)~~(2011)~~.

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

SUBPART H: CRITERIA AND STANDARDS APPLICABLE TO CLASS VI WELLS

**Section 730.181 Applicability**

a) This Subpart H establishes criteria and standards for Class VI carbon dioxide geologic sequestration injection wells.

b) This Subpart H applies to any injection well that is used to inject carbon dioxide specifically for the purpose of geologic sequestration.

c) This Subpart H also applies to the owner or operator of a permit- or rule-authorized Class I, Class II, or Class V experimental carbon dioxide injection well that seeks to apply for a Class VI geologic sequestration permit for its well. An owner or operator that seeks to convert an existing Class I, Class II, or Class V experimental injection well to a Class VI geologic sequestration well must demonstrate to the Agency that the well was engineered and constructed to meet the requirements of Section 146.86(a) and to ensure protection of USDWs, in lieu of requirements at Sections 146.86(b) and 146.87(a). The~~By December 10, 2011, the~~ owner or operator of either a Class I injection well that was previously permitted for the purpose of geologic sequestration or a Class V experimental technology injection well that is no longer being used for experimental purposes and which will continue injection of carbon dioxide for the purpose of geologic sequestration must apply for a Class VI permit. A converted well must still meet all other requirements of this Part.

d) Definitions. The following definitions apply to this Subpart H. To the extent that these definitions conflict with those that appear in 35 Ill. Adm. Code 702.110 or Section 730.103, the definitions of this Section govern for Class VI wells:

"Area of review" means the region surrounding the geologic sequestration project where a USDW may be endangered by the injection activity. The area of review is delineated using computational modeling that accounts for the physical and

chemical properties of all phases of the injected carbon dioxide stream and displaced fluids, and is based on available site characterization, monitoring, and operational data, as set forth in Section 730.184.

"Carbon dioxide plume" means the sub-surface three-dimensional extent underground of an injected carbon dioxide stream.

"Carbon dioxide stream" means carbon dioxide that has been captured from an emission source (e.g., a power plant), plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process. This Subpart H does not apply to any carbon dioxide stream that meets the definition of a hazardous waste in 35 Ill. Adm. Code 721.103.

"Confining zone" means a geologic formation, a group of formations, or a part of a formation that stratigraphically overlies an injection zone and which acts as barrier to fluid movement. For a Class VI injection well that is operating under a permit that includes alternative injection well depth requirements, "confining zone" means a geologic formation, a group of formations, or a part of a formation that stratigraphically overlies and underlies the injection zone.

"Corrective action" means the use of Agency-approved methods to ensure that wells within an area of review do not serve as conduits for the movement of fluids into a USDW.

"Geologic sequestration" means the long-term containment of a gaseous, liquid, or supercritical carbon dioxide stream in subsurface geologic formations. This term does not apply to carbon dioxide capture or transport.

"Geologic sequestration project" means any of the following three types of injection wells:

An injection well or wells that are used to emplace a carbon dioxide stream beneath the lowermost formation containing a USDW;

An injection well or wells that are used for geologic sequestration of carbon dioxide and which have been granted a permit that includes alternative injection well depth requirements pursuant to requirements at Section 730.195; or

An injection well or wells that are used for geologic sequestration of carbon dioxide and which have received an expansion to the areal extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption pursuant to Section 730.104 and 35 Ill. Adm. Code 704.123(d).

A geologic sequestration project includes the subsurface three-dimensional extent of the carbon dioxide plume, the associated area of elevated pressure, and displaced fluids, as well as the surface area above that delineated region.

"Injection zone" means a geologic formation, a group of formations, or a part of a formation that is of sufficient areal extent, thickness, porosity, and permeability to receive carbon dioxide through a well or wells associated with a geologic sequestration project.

"Post-injection site care" means appropriate monitoring and other actions (including corrective action) needed following cessation of injection to ensure that no USDW is endangered, as required under Section 730.193.

"Pressure front" means the zone of elevated pressure that is created by the injection of carbon dioxide into the subsurface. For the purposes of this Subpart H, the pressure front of a carbon dioxide plume refers to a zone where there is a pressure differential sufficient to cause the movement of injected fluids or formation fluids into a USDW.

"Site closure" means the point or time, as determined by the Agency pursuant to Section 730.193, at which the owner or operator of a geologic sequestration site is released from post-injection site care responsibilities.

"Transmissive fault or fracture" means a fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

BOARD NOTE: This Section corresponds with 40 CFR 146.81 (2017)~~(2011)~~.

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

**Section 730.182 Required Class VI Injection Well Permit Information**

This Section sets forth the information that the Agency must consider when authorizing a Class VI injection well. For a converted Class I, Class II, or Class V experimental injection well, certain maps, cross-sections, tabulations of wells within the area of review, and other data may be included in the application by reference, provided they are current, readily available to the Agency, and sufficiently identified as to be retrieved. In cases where USEPA issues the permit, all the information in this Section must be submitted to the USEPA, Region 5.

a) Prior to the issuance of a permit for the construction of a new Class VI injection well or the conversion of an existing Class I, Class II, or Class V injection well to a Class VI injection well, the owner or operator must submit, pursuant to Section 730.191(e), and the Agency must consider, the following:

1) The information required by 35 Ill. Adm. Code 702.123(a) through (f);

2) A map showing the injection well for which a permit is sought and the applicable area of review consistent with Section 730.184. Within the area of review, the map must show the number or name and location of all injection wells, producing wells, abandoned wells, plugged wells, or dry holes; deep stratigraphic boreholes; Agency- or USEPA-approved subsurface cleanup sites; surface bodies of water, springs, mines (surface and subsurface), quarries, water wells; and other pertinent surface features, including structures intended for human occupancy, state boundaries, and roads. The map should also show faults, if known or suspected. Only information of public record is required to be included on this map;

3) Information on the geologic structure and hydrogeologic properties of the proposed storage site and overlying formations, including the following documents and information:

A) Maps and cross sections of the area of review;

B) The location, orientation, and properties of known or suspected faults and fractures that may transect the confining zones in the area of review and a determination that the faults and fractures would not interfere with containment;

C) Data on the depth, areal extent, thickness, mineralogy, porosity, permeability, and capillary pressure of the injection and confining zones; including geology and facies changes based on field data,

which may include geologic cores, outcrop data, seismic surveys, well logs, and names and lithologic descriptions;

D) Geomechanical information on fractures, stress, ductility, rock strength, and in-situ fluid pressures within the confining zones;

E) Information on the seismic history that includes the presence and depth of seismic sources and a determination that the seismicity would not interfere with containment; and

F) Geologic and topographic maps and cross sections that illustrate regional geology, hydrogeology, and the geologic structure of the local area;

4) A tabulation of all wells within the area of review that penetrate the injection or confining zones. The tabulated data must include a description of each well's type, construction, date drilled, location, depth, applicable records of plugging and completion, and any additional information that the Agency may require to evaluate the request for a permit;

5) Maps and stratigraphic cross sections indicating the general vertical and lateral limits of all USDWs, water wells, and springs within the area of review, their positions relative to the injection zones, and the direction of water movement, where known;

6) Baseline geochemical data on subsurface formations that includes all USDWs in the area of review;

7) Proposed operating data for the proposed geologic sequestration site that includes that following items of information:

A) The average and maximum daily rate and volume or mass, and the total anticipated volume or mass, of the carbon dioxide stream;

B) The average and maximum injection pressures;

C) The sources of the carbon dioxide stream; and

D) An analysis of the chemical and physical characteristics of the carbon dioxide stream;

8) A proposed program for pre-operational formation testing that fulfills the requirements of Section 730.187 to obtain an analysis of the chemical and physical characteristics of the injection zones and confining zones;

9) A proposed stimulation program, a description of stimulation fluids to be used, and a determination that stimulation will not interfere with containment;

10) A proposed procedure to outline steps necessary to conduct injection operation;

11) Schematics or other appropriate drawings of the surface and subsurface construction details of the well;

12) Injection well construction procedures that fulfill the requirements of Section 730.186;

13) A proposed area of review and corrective action plan that fulfills the requirements of Section 730.184;

14) A demonstration which is sufficient to support an Agency determination that the applicant has met the financial responsibility requirements under Section 730.185;

15) A proposed testing and monitoring plan, as required by Section 730.190;

16) A proposed injection well plugging plan, as required by Section 730.192(b);

17) A proposed post-injection site care and site closure plan, as required by Section 730.193(a);

18) At the Agency's discretion, a demonstration of an alternative post-injection site care timeframe required, as required by Section 730.193(c);

19) A proposed emergency and remedial response plan, as required by Section 730.194(a);

20) A list of contacts, submitted to the Agency, for those states identified to be within the area of review of the Class VI project based on information provided pursuant to subsection (a)(2)~~ of this Section~~; and

21) Any other information requested by the Agency that would support an Agency determination whether to issue the requested permit.

b) Pursuant to this Section, and as required by 40 CFR 145.23(f)(13), the Agency must notify any states that the Agency determines are within the area of review of the Class VI project based on information submitted pursuant to subsections (a)(2) and (a)(20) ~~of this Section~~ of the permit application in writing.

c) Prior to granting a permit for the operation of a Class VI injection well, the Agency must consider the following information:

1) The final area of review based on modeling, using data obtained during the logging and testing of the well and the formation required by subsections (c)(2), (c)(3), (c)(4), (c)(6), (c)(7), and (c)(10)~~ of this Section~~;

2) Any relevant updates to the information on the geologic structure and hydrogeologic properties of the proposed storage site and overlying formations, submitted pursuant to subsection (a)(3)~~ of this Section~~, based on data obtained during the logging and testing of the well and the formation required by subsections (c)(3), (c)(4), (c)(6), (c)(7), and (c)(10) ~~of this Section~~;

3) Information on the compatibility of the carbon dioxide stream with fluids in the injection zones and minerals in both the injection and the confining zones, based on the results of the formation testing program, and with the materials used to construct the well;

4) The results of the formation testing program required by subsection (a)(8) ~~of this Section~~;

5) Final injection well construction procedures that fulfill the requirements of Section 730.186;

6) The status of any corrective action on wells in the area of review;

7) All available logging and testing program data on the well required by Section 730.187;

8) A demonstration of mechanical integrity pursuant to Section 730.189;

9) Any updates to the proposed area of review and corrective action plan, the testing and monitoring plan, the injection well plugging plan, the post-injection site care and site closure plan, or the emergency and remedial response plan, and any updates to the alternative post-injection site care timeframe demonstration, which the applicant has submitted pursuant to subsection (a)~~ of this Section~~, that are necessary to address new information collected during logging and testing of the well and the formation, as required by this Section; and

10) Any other information requested by the Agency.

d) An owner or operator which seeks a permit that includes alternative injection well depth requirements to the generally applicable requirement to inject below the lowermost USDW must also refer to Section 730.195 and submit a supplemental report, as required at Section 730.195(a). The supplemental report is not part of the permit application.

BOARD NOTE: This Section corresponds with 40 CFR 146.82 (2017)~~(2011)~~.

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

**Section 730.184 Area of Review and Corrective Action**

a) The area of review is the region surrounding the geologic sequestration project where the injection activity may endanger a USDW. The area of review is delineated using computational modeling that accounts for the physical and chemical properties of all phases of the injected carbon dioxide stream and which is based on available site characterization, monitoring, and operational data.

b) The owner or operator of a Class VI injection well must prepare, maintain, and comply with a plan to delineate the area of review for a proposed geologic

sequestration project; must periodically reevaluate the delineation; and must perform corrective action that meets the requirements of this Section and which is sufficient to support an Agency determination that the corrective action is acceptable. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. As a part of the permit application to the Agency, the owner or operator must submit an area of review and corrective action plan that includes the following information:

1) The method that the owner or operator will use for delineating the area of review which meets the requirements of subsection (c)~~ of this Section~~, including the model that the owner or operator will use, assumptions that the owner or operator will make, and the site characterization data on which the owner or operator will base the model;

2) A description of each of the following:

A) The minimum fixed frequency, not to exceed five years, at which the owner or operator proposes to reevaluate the area of review;

B) The monitoring and operational conditions that would warrant a reevaluation of the area of review prior to the next scheduled reevaluation as determined by the minimum fixed frequency established pursuant to subsection (b)(2)(A)~~ of this Section~~;

C) How monitoring and operational data (e.g., injection rate, pressure, etc.) will be used to inform an area of review reevaluation; and

D) How the owner or operator will conduct corrective action to meet the requirements of subsection (d)~~ of this Section~~, including the following information:

i) What corrective action the owner or operator will perform prior to injection;

ii) What, if any, portions of the area of review the owner or operator will address with corrective action on a phased basis and how that phasing will be determined;

iii) How the owner or operator will adjust corrective action if there are changes in the area of review; and

iv) How the owner or operator will guarantee site access for future corrective action.

c) The owner or operator of a Class VI injection well must perform the following actions to delineate the area of review and identify all wells that require corrective action:

1) The owner or operator must predict, using existing site characterization, monitoring and operational data, and computational modeling, the projected lateral and vertical migration of the carbon dioxide plume and formation fluids in the subsurface from the commencement of injection activities until the plume movement ceases, until pressure differentials sufficient to cause the movement of injected fluids or formation fluids into a USDW are no longer present, or until the end of a fixed time period determined by the Agency. The model must fulfill the following requirements:

A) The model must be based on detailed geologic data collected to characterize the injection zones, confining zones and any additional zones; and anticipated operating data, including injection pressures, rates, and total volumes over the proposed life of the geologic sequestration project;

B) The model must take into account any geologic heterogeneities, other discontinuities, data quality, and their possible impact on model predictions; and

C) The model must consider potential migration through faults, fractures, and artificial penetrations;~~.~~

2) Using methods approved by the Agency, the owner or operator must identify all penetrations, including active and abandoned wells and underground mines, in the area of review that may penetrate the confining zones and must provide a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion, and any additional information the Agency may require; and

3) The owner or operator must determine which abandoned wells in the area of review have been plugged in a manner that prevents the movement of carbon dioxide or other fluids that may endanger USDWs, including use of materials compatible with the carbon dioxide stream.

d) The owner or operator of a Class VI injection well must perform corrective action on all wells in the area of review that are determined to need corrective action, using methods designed to prevent the movement of fluid into or between USDWs, including use of materials compatible with the carbon dioxide stream, where appropriate.

e) At the minimum fixed frequency, not to exceed five years, as specified in the area of review and corrective action plan, or when monitoring and operational conditions warrant, the owner or operator of a Class VI injection well must fulfill each of the following requirements:

1) The owner or operator must reevaluate the area of review in the same manner specified in subsection (c)(1)~~ of this Section~~;

2) The owner or operator must identify all wells in the reevaluated area of review that require corrective action in the same manner specified in subsection (c)~~ of this Section~~;

3) The owner or operator must perform corrective action on wells requiring corrective action in the reevaluated area of review in the same manner specified in subsection (d)~~ of this Section~~; and

4) The owner or operator must submit an amended area of review and corrective action plan or demonstrate through monitoring data and modeling results sufficiently to support an Agency finding that no amendment to the area of review and corrective action plan is needed. Any amendments to the area of review and corrective action plan must be approved by the Agency, must be incorporated into the permit, and are subject to the permit modification requirements set forth in 35 Ill. Adm. Code 704.262 or 704.264, as appropriate.

f) The emergency and remedial response plan (as required by Section 730.194) and the demonstration of financial responsibility (as described by Section 730.185)

must account for the area of review delineated as specified in subsection (c)(1) ~~of this Section~~ or the most recently evaluated area of review delineated pursuant to subsection (e) ~~of this Section~~, regardless of whether corrective action in the area of review is phased.

g) The owner or operator must retain all modeling inputs and data used to support area of review reevaluations under subsection (e) ~~of this Section~~ for 10 years.

BOARD NOTE: This Section corresponds with 40 CFR 146.84 (2017)~~(2011)~~.

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

**Section 730.185 Financial Responsibility**

a) The owner or operator of an injection well to which this Subpart H applies must demonstrate and maintain financial responsibility that the Agency has determined fulfills the following conditions:

1) The financial responsibility instruments used must be from the following list of qualifying instruments:

A) A trust fund;

B) A surety bond;

C) A letter of credit;

D) Insurance;

E) Self insurance (i.e., the financial test and corporate guarantee);

F) An escrow account; or

G) Any other instruments that the Agency determines are satisfactory.

2) The qualifying instruments must be sufficient to cover the following costs:

A) The costs of corrective action (that meets the requirements of Section 730.184);

B) The costs of injection well plugging (that meets the requirements of Section 730.192);

C) The costs of post-injection site care and site closure (that meets the requirements of Section 730.193); and

D) The costs of emergency and remedial response (that meets the requirements of Section 730.194).

3) The financial responsibility instruments must be sufficient to address endangerment of underground sources of drinking water.

4) The qualifying financial responsibility instruments must comprise protective conditions of coverage.

A) Protective conditions of coverage must include, at a minimum, cancellation, renewal, and continuation provisions; specifications on when the provider becomes liable following a notice of cancellation if there is a failure to renew with a new qualifying financial instrument, and requirements for the provider to meet a minimum rating, minimum capitalization, and have the ability to pass the bond rating when applicable.

i) Cancellation. For purposes of this Subpart H, the owner or operator must provide that its financial mechanism may not cancel, terminate, or fail to renew, except for failure to pay that financial instrument. If there is a failure to pay the financial instrument, the financial institution may elect to cancel, terminate, or fail to renew the instrument by sending notice by certified mail to the owner or operator and the Agency. The cancellation must not be final for 120 days after receipt of cancellation notice by the owner or operator and the Agency. The owner or operator must provide an alternative financial responsibility demonstration within 60 days after notice of cancellation, and if an alternate financial responsibility demonstration is not acceptable (or possible), any funds from the instrument

being cancelled must be released within 60 days of notification by the Agency.

ii) Renewal. For purposes of this Subpart H, an owner or operator must renew all financial instruments, if an instrument expires, for the entire term of the geologic sequestration project. The instrument may be automatically renewed, as long as the owner or operator has the option of renewal at the face amount of the expiring instrument. The automatic renewal of an instrument must, at a minimum, provide the holder with the option of renewal at the face amount of the expiring financial instrument.

iii) Cancellation, termination, or failure to renew may not occur and the financial instrument will remain in full force and effect in the event that any of the following occurs on or before the date of expiration: the Agency deems the facility abandoned; or the permit is revoked or a new permit is denied; closure is ordered by the Agency or a court of competent jurisdiction; the owner or operator is named as debtor in a voluntary or involuntary bankruptcy proceeding under Title 11 of the United States Code; or the amount due on the instrument is fully paid.

B) This subsection (a)(4)(B) would correspond with 40 CFR 706.85(a)(4)(ii) if such existed. USEPA codified a paragraph (a)(4)(i) without a paragraph (a)(4)(ii). Illinois codification requirements do not allow codification of a subsection level unless multiple subsections exist at that level. This statement maintains structural consistency with the corresponding federal rules.

5) The qualifying financial responsibility instruments must be approved by the Agency.

A) The Agency must consider and approve the financial responsibility demonstration for all the phases of the geologic sequestration project prior to issuing a Class VI injection well permit (Section 730.182).

B) The owner or operator must provide any updated information related to their financial responsibility instruments on an annual basis and if there are any changes, the Agency must evaluate, within a reasonable time, the financial responsibility demonstration to confirm that the instruments used remain adequate for use. The owner or operator must maintain financial responsibility requirements regardless of the status of the Agency's review of the financial responsibility demonstration.

C) The Agency must disapprove the use of a financial instrument if the Agency determines that it is not sufficient to meet the requirements of this Section.

6) The owner or operator may demonstrate financial responsibility by using one or multiple qualifying financial instruments for specific phases of the geologic sequestration project.

A) In the event that the owner or operator combines more than one instrument for a specific geologic sequestration phase (e.g., well plugging), such combination must be limited to instruments that are not based on financial strength or performance (i.e., self insurance or performance bond), for example trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, escrow account, and insurance. In this case, it is the combination of mechanisms, rather than the single mechanism, that must provide financial responsibility for an amount at least equal to the current cost estimate.

B) When using a third-party instrument to demonstrate financial responsibility, the owner or operator must provide a proof that the third-party provider fulfills either of the following:

i) The provider must have passed financial strength requirements of subsection (b)(6)(E) ~~of this Section~~ based on credit ratings; or

ii) The provider must have met a minimum rating, minimum capitalization, and have the ability to pass the bond rating

set forth in subsection (b)(6)(E)~~ of this Section~~, when applicable.

C) An owner or operator using certain types of third-party instruments must establish a standby trust fund to enable the Agency to be party to the financial responsibility agreement without the Agency being the beneficiary of any funds. The standby trust fund must be used along with other financial responsibility instruments (e.g., surety bonds, letters of credit, or escrow accounts) to provide a location to place funds if needed.

D) An owner or operator may deposit money to an escrow account to cover financial responsibility requirements. This account must segregate funds sufficient to cover estimated costs for Class VI (geologic sequestration) financial responsibility from other accounts and uses.

E) An owner or operator or its guarantor may use self insurance to demonstrate financial responsibility for geologic sequestration projects if the owner or operator or its guarantor fulfill the following requirements:

i) The owner or operator or its guarantor must meet a tangible net worth of an amount approved by the Agency;

ii) The owner or operator or its guarantor must have a net working capital and tangible net worth each at least six times the sum of the current well plugging, post-injection site care, and site closure cost;

iii) The owner or operator or its guarantor must have assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current well plugging, post injection site care, and site closure cost;

iv) The owner or operator or its guarantor must submit a report of its bond rating and financial information annually; and

v) The owner or operator or its guarantor must either have a bond rating test of AAA, AA, A, or BBB, as issued by Standard & Poor's, or Aaa, Aa, A, or Baa, as issued by Moody's, or meet all of the following five financial ratio thresholds: a ratio of total liabilities to net worth less than 2.0; a ratio of current assets to current liabilities greater than 1.5; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; a ratio of current assets minus current liabilities to total assets greater than -0.1; and a net profit (revenues minus expenses) greater than 0.

F) An owner or operator that is not able to meet the corporate financial test criteria of subsection (a)(6)(E) ~~of this Section~~ may arrange a corporate guarantee by demonstrating that its corporate parent meets the financial test requirements on its behalf. The corporate parent's demonstration that it meets the financial test requirement is insufficient if it has not also guaranteed to fulfill the obligations for the owner or operator.

G) An owner or operator may obtain an insurance policy to cover the estimated costs of geologic sequestration activities that require financial responsibility. This insurance policy must be obtained from a third-party provider.

b) The requirement to maintain adequate financial responsibility and resources is directly enforceable regardless of whether the requirement is a condition of the permit.

1) The owner or operator must maintain financial responsibility and resources until both of the following events have occurred:

A) The Agency has received and approved the completed post-injection site care and site closure plan; and

B) The Agency has approved site closure.

2) The owner or operator may be released from a financial instrument in the following circumstances:

A) The owner or operator has completed the phase of the geologic sequestration project for which the financial instrument was required, and the owner or operator has fulfilled all of its financial obligations, as determined by the Agency, including obtaining financial responsibility for the next phase of the geologic sequestration project, if required; or

B) The owner or operator has submitted a replacement financial instrument, and the owner or operator has received written approval from the Agency that accepts the new financial instrument and which releases the owner or operator from the previous financial assurance instrument.

c) The owner or operator must have a detailed written estimate, in current dollars, of the cost of performing corrective action on wells in the area of review, plugging the injection wells, post-injection site care, site closure, and emergency and remedial response.

1) The cost estimate must be performed for each phase separately, and the cost estimate must be based on the costs to the Agency of hiring a third party to perform the required activities. A third party is a party who is not within the corporate structure of the owner or operator.

2) During the active life of the geologic sequestration project, the owner or operator must adjust the cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instruments used to comply with subsection (a)~~ of this Section~~, and the owner or operator must provide this adjustment to the Agency. The owner or operator must also provide to the Agency written updates of adjustments to the cost estimate within 60 days after any amendments to the area of review and corrective action plan (Section 730.184), the injection well plugging plan (Section 730.192), the post-injection site care and site closure plan (Section 730.193), and the emergency and remedial response plan (Section 730.194).

3) The Agency must approve any decrease or increase to the initial cost estimate. During the active life of the geologic sequestration project, the owner or operator must revise the cost estimate no later than 60 days after

any of the following events has occurred: the Agency has approved the request to modify the area of review and corrective action plan (Section 730.184), the Agency has approved the injection well plugging plan (Section 730.192), the Agency has approved the post-injection site care and site closure plan (Section 730.193), or the Agency has approved the emergency and response plan (Section 730.194), if the change in the plan increases the cost. If the change to the plan decreases the cost, any withdrawal of funds must be approved by the Agency. Any decrease to the value of the financial assurance instrument must first be approved by the Agency. The revised cost estimate must be adjusted for inflation as specified at subsection (c)(2)~~ of this Section~~.

4) Within 60 days after an increase in the current cost estimate to an amount greater than the face amount of a financial instrument currently in use, the owner or operator must either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of that increase to the Agency, or obtain other financial responsibility instruments to cover the increase. Whenever the current cost estimate decreases, the owner or operator may reduce the face amount of the financial assurance instrument to the amount of the current cost estimate only in accordance with a written approval from the Agency.

d) The owner or operator must notify the Agency by certified mail of adverse financial conditions, such as bankruptcy, that may affect the ability to carry out injection well plugging and post-injection site care and site closure.

1) In the event that the owner or operator or the third-party provider of a financial responsibility instrument is going through a bankruptcy, the owner or operator must notify the Agency of the proceeding by certified mail within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 of the United States Code that names the owner or operator as debtor.

2) The guarantor of a corporate guarantee must make the notification to the Agency required by this subsection (d)(2) if the guarantor is named as debtor, as required under the terms of the corporate guarantee.

3) An owner or operator who fulfills the requirements of subsection (a) ~~of this Section~~ by obtaining a trust fund, surety bond, letter of credit, escrow

account, or insurance policy will be deemed to be without the required financial assurance in the event of bankruptcy of the trustee or issuing institution or a suspension or revocation of the authority of the trustee institution to act as trustee of the institution issuing the pertinent financial assurance instrument. The owner or operator must establish other financial assurance within 60 days after such an event.

e) The owner or operator must provide an adjustment of the cost estimate to the Agency within 60 days after notification of an Agency determination during the annual evaluation of the qualifying financial responsibility instruments that the most recent demonstration is no longer adequate to cover the cost of corrective action (as required by Section 730.184), injection well plugging (as required by Section 730.192), post-injection site care and site closure (as required by Section 730.193), and emergency and remedial response (as required by Section 730.194).

f) The Agency must approve the use and length of pay-in-periods for trust funds or escrow accounts.

BOARD NOTE: This Section corresponds with 40 CFR 146.85 (2017)~~(2011)~~.

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

**Section 730.188 Injection Well Operating Requirements**

a) Except during injection well stimulation, the owner or operator must ensure that injection pressure does not exceed 90 percent of the fracture pressure of the injection zones, so as to ensure that the injection does not initiate new fractures or propagate existing fractures in the injection zones. In no case may injection pressure initiate fractures in the confining zones or cause the movement of injection or formation fluids that endangers a USDW. Pursuant to the requirements of Section 730.182(a)(9), all stimulation programs must be approved by the Agency as part of the permit application and incorporated into the permit.

b) Injection between the outermost casing that protects any USDW and the well bore is prohibited.

c) The owner or operator must fill the annulus between the tubing and the long-string casing with a non-corrosive fluid approved by the Agency. The owner or operator must maintain on the annulus a pressure that exceeds the operating

injection pressure, unless the Agency determines that such a requirement might harm the integrity of the well or endanger any USDW.

d) Other than during periods of well workover (maintenance) approved by the Agency in which the sealed tubing-casing annulus is disassembled for maintenance or corrective procedures, the owner or operator must maintain mechanical integrity of the injection well at all times.

e) The owner or operator must install and use the equipment indicated in subsection (e)(1) ~~of this Section~~ and the appropriate of subsection (e)(2) or (e)(3) ~~of this Section~~:

1) Continuous recording devices that monitor each of the following parameters:

A) The carbon dioxide injection pressure;

B) The rate, volume or mass, and temperature of the carbon dioxide stream;

C) The pressure on the annulus between the tubing and the long-string casing; and

D) The annulus fluid volume.

2) For onshore wells, alarms and automatic surface shut-off systems or, at the discretion of the Agency, down-hole shut-off systems (e.g., automatic shut-off valves, check valves, etc.) or other mechanical devices that provide equivalent protection.

3) For wells located offshore but within State territorial waters, alarms and automatic down-hole shut-off systems designed to alert the operator and shut-in the well when operating parameters, such as annulus pressure, injection rate, or other parameters, diverge beyond permitted ranges or gradients specified in the permit.

f) If a shutdown is triggered (down-hole or at the surface), or if a loss of mechanical integrity is discovered, the owner or operator must immediately investigate and identify the cause of the shutoff as expeditiously as possible. If, upon

investigation, or if monitoring required under subsection (e) ~~of this Section~~ otherwise indicates that the well may be lacking mechanical integrity, the well appears to be lacking mechanical integrity, the owner or operator must undertake each of the following actions:

1) The owner or operator must immediately cease injection;

2) The owner or operator must take all steps reasonably necessary to determine whether there may have been a release of the injected carbon dioxide stream or formation fluids into any unauthorized zone;

3) The owner or operator must notify the Agency of the event within 24 hours;

4) The owner or operator must restore and demonstrate the mechanical integrity of the well to the satisfaction of the Agency prior to resuming injection; and

5) The owner or operator must notify the Agency when injection can be expected to resume.

BOARD NOTE: This Section corresponds with 40 CFR 146.88 (2017)~~(2011)~~.

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

**Section 730.189 Mechanical Integrity**

a) A Class VI injection well has mechanical integrity if both of the following conditions exist:

1) There is no significant leak in the casing, tubing, or packer; and

2) There is no significant fluid movement into a USDW through channels adjacent to the injection well bore.

b) To evaluate the absence of significant leaks under subsection (a)(1) ~~of this Section~~, the owner or operator must, following an initial annulus pressure test, continuously monitor each of the following parameters:

1) The injection pressure, rate, and injected volumes;

2) The pressure on the annulus between the tubing and the long-string casing; and

3) The annulus fluid volume, as specified in Section 730.188(e);

c) At least once per year, the owner or operator must use one of the following methods to determine the absence of significant fluid movement under subsection (a)(2)~~ of this Section~~:

1) An approved tracer survey, such as an oxygen-activation log; or

2) A temperature or noise log.

d) If required by the Agency, at a frequency specified in the testing and monitoring plan required by Section 730.190, the owner or operator must run a casing inspection log to determine the presence or absence of corrosion in the long-string casing.

e) The Agency must require any requested alternative test that the Agency has determined is necessary to evaluate mechanical integrity under subsections (a)(1) or (a)(2) ~~of this Section~~ after obtaining the written approval of USEPA.

BOARD NOTE: Corresponding 40 CFR 146.89(e) provides that the Agency must submit a written request to USEPA setting forth the proposed test and all technical data supporting its use to obtain approval for a new mechanical integrity test. USEPA stated that it will approve the request if USEPA determines that the proposed test will reliably demonstrate the mechanical integrity of wells for which its use was proposed. USEPA stated that it will publish any alternative method that USEPA has approved in the Federal Register, and the Agency must approve use of the published method if the Agency has determined that the method is appropriate to evaluate mechanical integrity, unless USEPA restricts its use at the time of approval by USEPA.

f) In conducting and evaluating the tests enumerated in this Section or others that the Agency has required by permit, the owner or operator and the Agency must apply methods and standards generally accepted in the industry. When the owner or operator reports the results of mechanical integrity tests to the Agency, the

owner or operator must include a description of the tests and the methods used. In making its evaluation, the Agency must review monitoring and other test data submitted since the previous evaluation.

g) The Agency must require additional or alternative tests if the Agency determines that the results presented by the owner or operator pursuant to subsections (a) through (d) ~~of this Section~~ are not satisfactory to demonstrate that there is no significant leak in the casing, tubing, or packer or that there is no significant movement of fluid into a USDW resulting from the injection activity, as required by subsections (a)(1) and (a)(2) ~~of this Section~~.

BOARD NOTE: This Section corresponds with 40 CFR 146.89 (2017)~~(2011)~~.

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

**Section 730.190 Testing and Monitoring Requirements**

The owner or operator of a Class VI injection well must prepare, maintain, and comply with a testing and monitoring plan which will verify that the geologic sequestration project is operating as permitted, and that the project is not endangering USDWs. The requirement to maintain and implement an approved testing and monitoring plan is directly enforceable, regardless of whether the requirement is a condition of the permit. The owner or operator must submit the testing and monitoring plan to the Agency with the permit application, and the owner or operator must include a description of how it will meet the requirements of this Section, including accessing sites for all necessary monitoring and testing during the life of the project. Testing and monitoring associated with geologic sequestration projects must, at a minimum, include the following parameters and devices:

a) Analyses of the carbon dioxide stream with sufficient frequency to yield data representative of the chemical and physical characteristics of the stream;

b) Installation and use of continuous recording devices to monitor injection pressure, rate, and volume, except during well workovers, as such are defined in Section 730.188(d); the pressure on the annulus between the tubing and the long-string casing; and the annulus fluid volume added;

c) Corrosion monitoring of the well materials for loss of mass, thickness, cracking, pitting, and other signs of corrosion, which must be performed on a quarterly basis to ensure that the well components fulfill the Agency-approved minimum

standards for material strength and performance, as provided in Section 730.186(b), by performing one of the following tests:

1) Analyzing coupons of the well construction materials placed in contact with the carbon dioxide stream;

2) Routing the carbon dioxide stream through a loop constructed with the material used in the well and inspecting the materials in the loop; or

3) Using an alternative method approved by the Agency;

d) Periodic monitoring of the groundwater quality and geochemical changes above the confining zones that may be a result of carbon dioxide movement through the confining zones or additional identified zones, including the following information:

1) The location and number of monitoring wells based on specific information about the geologic sequestration project, including injection rate and volume, geology, the presence of artificial penetrations, and other factors; and

2) The monitoring frequency and spatial distribution of monitoring wells based on baseline geochemical data that has been collected pursuant to Section 730.182(a)(6) and on any modeling results in the area of review evaluation required by Section 730.184(c).

e) The annual demonstration of external mechanical integrity required by Section 730.189(c) at least once per year until the injection well is plugged; and, if required by the Agency, a casing inspection log undertaken pursuant to Section 730.189(d), at a frequency established in the testing and monitoring plan;

f) A pressure fall-off test at least once every five years, unless the Agency has required more frequent testing based on site-specific information;

g) Testing and monitoring to track the extent of the carbon dioxide plume and the presence or absence of elevated pressure (i.e., the pressure front) by using the following types of methods:

1) Direct methods in the injection zones; and

2) Indirect methods (e.g., seismic, electrical, gravity, or electromagnetic surveys or down-hole carbon dioxide detection tools), unless the Agency has determined, based on site-specific geology, that these methods are not appropriate;

h) The Agency must require surface air monitoring or soil gas monitoring if the Agency determines that this monitoring is needed to detect movement of carbon dioxide that could endanger a USDW.

1) The design of Class VI injection well surface air or soil gas monitoring must be based on potential risks to USDWs within the area of review;

2) The monitoring frequency and spatial distribution of surface air monitoring or soil gas monitoring must be decided using baseline data, and the monitoring plan must describe how the proposed monitoring will yield useful information on the area of review delineation or compliance with the prohibition against movement of fluid into a USDW set forth in 35 Ill. Adm. Code 704.122;

3) If the Agency requires surface air or soil gas monitoring, the Agency has determined that monitoring undertaken to comply with subpart RR of 40 CFR 98 accomplishes the goals of subsections (h)(1) and (h)(2) ~~of this Section~~, and the owner or operator fulfills the carbon dioxide release reporting requirements set forth in Section 730.191(c)(5), the Agency must approve the use of monitoring undertaken to comply with subpart RR of 40 CFR 98. After approval by the Agency, compliance with subpart RR of 40 CFR 98 pursuant to this subsection (h)(3) is deemed a condition of the Class VI injection well permit;

i) Any additional monitoring that the Agency has determined is necessary to support, upgrade, and improve the computational modeling of the area of review evaluation that is required by Section 730.184(c) and to determine compliance with the prohibition against movement of fluid into a USDW set forth in 35 Ill. Adm. Code 704.122;

j) The owner or operator must periodically review the testing and monitoring plan to incorporate monitoring data collected under this Subpart H, operational data collected pursuant to Section 730.188, and the most recent area of review

reevaluation performed pursuant to Section 730.184(e). The owner or operator must review the testing and monitoring plan at least once in every five-year period. Based on this review, the owner or operator must submit an amended testing and monitoring plan or demonstrate to the Agency that no amendment to the testing and monitoring plan is needed. Any amendments to the testing and monitoring plan must be approved by the Agency, must be incorporated into the permit, and are subject to the permit modification requirements set forth in 35 Ill. Adm. Code 704.261 or 704.264, as appropriate. The owner or operator must submit amended plans or demonstrations to the Agency as follows:

1) Within one year after an area of review reevaluation;

2) Following any significant changes to the facility, such as addition of monitoring wells or newly permitted injection wells within the area of review, on a schedule determined by the Agency; or

3) When required by the Agency.

k) A quality assurance and surveillance plan for all testing and monitoring requirements.

BOARD NOTE: This Section corresponds with 40 CFR 146.90 (2017)~~(2011)~~.

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

**Section 730.191 Reporting Requirements**

The owner or operator of a Class VI injection well must, at a minimum, provide the following reports to the Agency for each permitted Class VI injection well, as specified in subsection (e)~~ of this Section~~:

a) Semi-annual reports containing the following information:

1) A description of any deviations in the physical, chemical, and other relevant characteristics of the carbon dioxide stream from the proposed operating data submitted to the Agency pursuant to Sections 730.182(a)(7) and (c)(3) and 730.186(b)(1) and (c)(3);

2) The monthly average, maximum, and minimum values for injection pressure, flow rate and volume, and annular pressure;

3) A description of any event that exceeds operating parameters for the annulus pressure or injection pressure specified in the permit;

4) A description of any event that triggers a shut-off device required pursuant to Section 730.188(e) and the response undertaken by the owner or operator;

5) The monthly volume or mass of the carbon dioxide stream injected over the reporting period and the volume injected cumulatively over the life of the project;

6) The monthly annulus fluid volume added; and

7) The results of the monitoring required by Section 730.190.

b) Report the results within 30 days after completion of any of the following:

1) Any results of periodic tests of mechanical integrity;

2) Any well workover; and

3) Results of any other test of the injection well that the owner or operator has conducted as required by the Agency.

c) Report any of the following events within 24 hours after the event:

1) The owner or operator has discovered any evidence that the injected carbon dioxide stream or associated pressure front may cause an endangerment to a USDW;

2) The owner or operator has discovered any noncompliance with a permit condition, or malfunction of the injection system, which may cause fluid migration into or between USDWs;

3) The owner or operator has discovered any triggering of a shut-off system (i.e., down-hole or at the surface);

4) The owner or operator has discovered any failure to maintain mechanical integrity; or

5) The owner or operator has discovered any release of carbon dioxide to the atmosphere or biosphere through surface air or soil gas monitoring or other monitoring technologies that the Agency has required pursuant to Section 730.190(h).

d) An owner or operator must notify the Agency in writing 30 days in advance of any of the following:

1) Any planned well workover;

2) Any planned stimulation activities, other than stimulation for formation testing conducted pursuant to Section 730.182; and

3) Any other planned test of the injection well conducted by the owner or operator.

e) In corresponding 40 CFR 146.91(e), USEPA has stated that owners or operators must submit all required reports, submittals, and notifications under this Subpart H to USEPA in an electronic format approved by USEPA.

f) The owner or operator must retain records as follows:

1) The owner or operator must retain all data collected pursuant to Section 730.182 for Class VI permit applications throughout the life of the geologic sequestration project and for 10 years following site closure.

2) The owner or operator must retain data on the nature and composition of all injected fluids collected pursuant to Section 730.190(a) until 10 years after site closure. The Agency may require the owner or operator to deliver the records to the Agency at the conclusion of the retention period.

3) The owner or operator must retain monitoring data collected pursuant to Section 730.190(b) through (i) for 10 years after it is collected.

4) The owner or operator must retain well plugging reports, post-injection site care data, including, if appropriate, data and information used to develop the demonstration of the alternative post-injection site care timeframe, and the site closure report collected pursuant to requirements at Section 730.193(f) and (h) for 10 years following site closure.

5) The Agency may require the owner or operator to retain any records required by this Subpart H for a period that is longer than 10 years after site closure. Any Agency requirement that the owner or operator retain records for a longer period must be made in writing, the writing must recite a definite longer period, and the Agency must state the reasons for the determination to require the longer period. An owner or operator may appeal any Agency determination made pursuant to this subsection (f)(5) to the Board pursuant to Section 40 of the Act ~~[415 ILCS 5/40]~~.

BOARD NOTE: This Section corresponds with 40 CFR 146.91 (2017)~~(2011)~~.

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

**Section 730.193 Post-Injection Site Care and Site Closure**

a) The owner or operator of a Class VI injection well must prepare, maintain, and comply with a plan for post-injection site care and site closure that the Agency has determined meets the requirements of subsection (a)(2) ~~of this Section~~. The requirement to maintain and implement an approved plan is directly enforceable, regardless of whether the requirement is a condition of the permit.

1) The owner or operator must submit the post-injection site care and site closure plan to the Agency as a part of the permit application.

2) The post-injection site care and site closure plan must include the following information:

A) The pressure differential between pre-injection and predicted post-injection pressures in the injection zones;

B) The predicted position of the carbon dioxide plume and associated pressure front at site closure, as demonstrated in the area of review evaluation required by Section 730.184(c)(1);

C) A description of the proposed post-injection monitoring location, methods, and frequency;

D) A proposed schedule for submitting post-injection site care monitoring results to the Agency pursuant to Section 730.191(e); and

E) The duration of the post-injection site care timeframe and, if approved by the Agency, the demonstration of the alternative post-injection site care timeframe that ensures non-endangerment of USDWs.

3) Upon cessation of injection, the owner or operator of a Class VI injection well must either submit an amended post-injection site care and site closure plan or demonstrate to the Agency through monitoring data and modeling results that no amendment to the plan is needed. The Agency must approve any amendments to the post-injection site care and site closure plan and incorporate the amendments into the permit, and the incorporation of the amendments into the permit is subject to the permit modification requirements set forth in 35 Ill. Adm. Code 704.262 or 704.264, as appropriate.

4) At any time during the life of the geologic sequestration project, the owner or operator may modify and resubmit the post-injection site care and site closure plan for Agency approval. The owner or operator must resubmit the plan to the Agency within 30 days after making any modification.

b) The owner or operator must monitor the site following the cessation of injection to show the position of the carbon dioxide plume and pressure front and demonstrate that no USDW is being endangered.

1) Following the cessation of injection, the owner or operator must continue to conduct monitoring as specified in the Agency-approved post-injection site care and site closure plan for at least 50 years or for the duration of the alternative timeframe approved by the Agency pursuant to requirements in subsection (c)~~ of this Section~~, unless the owner or operator makes a demonstration under subsection (b)(2)~~ of this Section~~. The monitoring must continue until the geologic sequestration project no longer poses an

endangerment to USDWs and the demonstration under subsection (b)(2) ~~of this Section~~ is submitted and approved by the Agency.

2) If the Agency determines, based on monitoring and other site-specific data, that the geologic sequestration project no longer poses an endangerment to any USDW before 50 years or prior to the end of the approved alternative timeframe, the Agency must either approve an amendment to the post-injection site care and site closure plan to reduce the frequency of monitoring or authorize site closure before the end of the 50-year period or prior to the end of the approved alternative timeframe.

3) Prior to authorization for site closure, the owner or operator must submit to the Agency for review and approval a demonstration, based on monitoring and other site-specific data, that no additional monitoring is needed to ensure that the geologic sequestration project does not pose an endangerment to any USDW.

4) If the owner or operator cannot make the demonstration required by subsection (b)(3) ~~of this Section~~ (i.e., the Agency has determined that additional monitoring is needed to ensure that the geologic sequestration project does not pose an endangerment to any USDW or the Agency has not approved the demonstration) at the end of the 50-year period or at the end of the approved alternative timeframe, the owner or operator must submit to the Agency a plan to continue post-injection site care until the owner or operator has made a demonstration that the Agency can approve.

c) Demonstration of Alternative Post-Injection Site Care Timeframe~~alternative post-injection site care timeframe~~. If the Agency determines in consultation with USEPA during the permitting process that an alternative post-injection site care timeframe other than the 50-year default is appropriate and ensures non-endangerment of any USDW, the Agency must approve the alternative post-injection site care timeframe. The Agency must base its determination on significant, site-specific data and information, including all data and information collected pursuant to Sections 730.182 and 730.183, and the Agency must determine based on substantial evidence that the geologic sequestration project will no longer pose a risk of endangerment to any USDW at the end of the alternative post-injection site care timeframe.

1) A demonstration of an alternative post-injection site care timeframe must include consideration and documentation of the following:

A) The results of computational modeling performed pursuant to delineation of the area of review, as required by Section 730.184;

B) The predicted timeframe for pressure decline within the injection zone and any other zones, such that formation fluids may not be forced into any USDW, or the timeframe for pressure decline to pre-injection pressures;

C) The predicted rate of carbon dioxide plume migration within the injection zone and the predicted timeframe for the cessation of migration;

D) A description of the site-specific processes that will result in carbon dioxide trapping, including immobilization by capillary trapping, dissolution, and mineralization at the site;

E) The predicted rate of carbon dioxide trapping in the immobile capillary phase, dissolved phase, and mineral phase;

F) The results of laboratory analyses, research studies, or field or site-specific studies to verify the information required in subsections (c)(1)(D) and (c)(1)(E)~~ of this Section~~;

G) A characterization of the confining zones, including a demonstration that each confining zone is free of transmissive faults, fractures, and micro-fractures and is of appropriate thickness, permeability, and integrity to impede fluid movement (e.g., carbon dioxide, formation fluids, etc.);

H) The presence of potential conduits for fluid movement, including planned injection wells and project monitoring wells associated with the proposed geologic sequestration project or any other projects in proximity to the predicted or modeled final extent of the carbon dioxide plume and area of elevated pressure;

I) A description of the well construction and an assessment of the quality of plugs of all abandoned wells within the area of review;

J) The distance between the injection zone and the nearest USDWs above and below the injection zone; and

K) Any additional site-specific factors required by the Agency.

2) Information submitted to support the demonstration required by subsection (c)(1) ~~of this Section~~ must meet the following criteria:

A) All analyses and tests performed to support the demonstration must be accurate and reproducible, and they must have been performed in accordance with the established quality assurance standards;

B) Estimation techniques must be appropriate, and USEPA-certified test protocols must have been used where available;

C) Predictive models must be appropriate and tailored to the site conditions, composition of the carbon dioxide stream, and injection and site conditions over the life of the geologic sequestration project;

D) Predictive models must be calibrated using existing information (e.g., at Class I, Class II, or Class V experimental technology injection well sites) where sufficient data are available;

E) Reasonably conservative values and modeling assumptions must be used and disclosed to the Agency whenever values are estimated on the basis of known historical information instead of site-specific measurements;

F) The owner or operator must perform an analysis to identify and assess aspects of the alternative post-injection site care timeframe demonstration that contribute significantly to uncertainty. The owner or operator must conduct sensitivity analyses to determine the effect that significant uncertainty may contribute to the modeling demonstration.

G) An approved quality assurance and quality control plan must address all aspects of the demonstration; and

H) Any additional criteria required by the Agency.

d) Notice of Intent~~intent~~ for Site Closure~~site closure~~. The owner or operator must notify the Agency in writing at least 120 days before site closure. At the time of this notice, if any changes have been made to the original post-injection site care and site closure plan, the owner or operator must also provide the revised plan. The Agency may allow for a shorter notice period. The Agency must allow for a shorter notice period if the Agency determines that the shorter notice period is adequate to complete Agency review of the post-injection site care and site closure plan or that well closure must occur more promptly.

e) After the Agency has authorized site closure, the owner or operator must plug all monitoring wells in a manner that will not allow movement of injection or formation fluids which endangers a USDW.

f) The owner or operator must submit a site closure report to the Agency within 90 days after site closure, which must thereafter be retained at a location designated by the Agency for at least 10 years. The report must include the following records and documentation:

1) Documentation of the injection and monitoring well plugging as required by Section 730.192 and subsection (e)~~ of this Section~~. The owner or operator must provide a copy of a survey plat that the owner or operator has submitted to the local zoning authority designated by the Agency. The plat must indicate the location of the injection well relative to permanently surveyed benchmarks. The owner or operator must also submit a copy of the plat to USEPA Region 5;

2) Documentation of appropriate notification and information to all State and local authorities that have authority over drilling activities within the area of review, to enable those State and local authorities to impose appropriate conditions on subsequent drilling activities that may penetrate the injection and confining zones; and

BOARD NOTE: The Illinois Department of Natural Resources, Office of Mines and Minerals, Oil and Gas Division and the Illinois Department of

Public Health each have some role in regulating well drilling, depending on the type of well. Other State agencies may also have a role. Further, units of local government and agencies of a sister state may regulate well drilling if a portion of the area of review lies within their jurisdiction. The owner or operator must assure that all applicable regulatory entities receive the required notification and information.

3) Records reflecting the nature, composition, and volume of the carbon dioxide stream.

g) Each owner or operator of a Class VI injection well must record a notation on the deed to the facility property or any other document that is normally examined during title search that will in perpetuity provide the following information to any potential purchaser of the property:

1) The fact that land has been used to sequester carbon dioxide;

2) The name of the county with which the survey plat was filed, as well as the addresses of the Agency and USEPA Region 5; and

3) The volume of fluid injected, the injection zone or zones into which the fluid was injected, and the period over which injection occurred.

h) The owner or operator must retain records collected during the post-injection site care period for at least 10 years following site closure. The owner or operator must deliver the records to the Agency at the conclusion of the retention period, and the records must thereafter be retained at a location designated by the Agency for that purpose.

BOARD NOTE: This Section corresponds with 40 CFR 146.93 (2017)~~(2011)~~.

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

**Section 730.194 Emergency and Remedial Response**

a) As part of the permit application, the owner or operator must provide the Agency with an emergency and remedial response plan that describes actions the owner or operator must take to address movement of the injection or formation fluids which may cause an endangerment to a USDW during the construction, operation, and

post-injection site care periods of the injection well. The requirement to maintain and implement an approved emergency and remedial response plan is directly enforceable regardless of whether the requirement is a condition of the permit.

b) If the owner or operator obtains evidence that the injected carbon dioxide stream and associated pressure front may cause an endangerment to a USDW, the owner or operator must undertake the following actions:

1) The owner or operator must immediately cease injection;

2) The owner or operator must take all steps reasonably necessary to identify and characterize any release;

3) The owner or operator must notify the Agency within 24 hours after obtaining the evidence; and

4) The owner or operator must implement the emergency and remedial response plan approved by the Agency.

c) The Agency must allow the operator to resume injection prior to remediation if the Agency has determined that the injection operation will not endanger any USDW.

d) The owner or operator must periodically review the emergency and remedial response plan developed pursuant to subsection (a)~~ of this Section~~. The owner or operator must review the emergency and remedial response plan at least once in every five year period. Based on this review, the owner or operator must submit an amended emergency and remedial response plan or demonstrate to the Agency that no amendment to the emergency and remedial response plan is needed. The Agency must approve any amendments to the emergency and remedial response plan and incorporate the amendments into the permit, and the incorporation of the amendments into the permit is subject to the permit modification requirements set forth in 35 Ill. Adm. Code 704.262 or 704.264, as appropriate. The owner or operator must submit any amended plans or demonstrations to the Agency as follows:

1) Within one year of an area of review reevaluation;

2) Following any significant changes to the facility, such as addition of injection or monitoring wells, on a schedule determined by the Agency; or

3) When required by the Agency.

BOARD NOTE: This Section corresponds with 40 CFR 146.94 (2017)~~(2011)~~.

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

**Section 730.195 Alternative Class VI Injection Well Depth Requirements**

This Section specifies the requirements for application of alternative injection well depth requirements for Class VI injection wells that meet certain criteria. This Section sets forth information that an owner or operator seeking application of alternative Class VI injection well depth requirements must submit to the Agency; the information that the Agency must consider when determining whether any well is suitable for application of alternative injection well depth requirements; the procedure for Agency-USEPA Region 5 communication and Agency determination whether a well is suitable for application of alternative injection well depth requirements; and the additional requirements that apply to an owner or operator of a Class VI injection well that has been granted a permit that includes alternative injection well depth requirements.

a) When seeking a permit that includes alternative injection well depth requirements to the requirement to inject below the lowermost USDW, the owner or operator must submit a supplemental report concurrent with the permit application. The supplemental report must include the following information:

1) The following demonstrations with regard to the injection zones:

A) Each is laterally continuous;

B) None is a USDW;

C) None is hydraulically connected to a USDW;

D) None outcrops;

E) Each has adequate injectivity, volume, and sufficient porosity to safely contain the injected carbon dioxide and formation fluids; and

F) Each has appropriate geochemistry.

2) A demonstration that each injection zone is bounded by laterally continuous impermeable confining units above and below the injection zone that are adequate to prevent fluid movement and pressure buildup outside of the injection zone and that the confining units are free of transmissive faults and fractures. The report must further characterize the regional fracture properties and contain a demonstration that these fractures will not interfere with injection, serve as conduits, or endanger USDWs.

3) A demonstration, using computational modeling, that no fluid movement will endanger any USDW above or below the injection zone. This modeling should be conducted in conjunction with the area of review determination required by Section 730.184, and the modeling is subject to the area of review delineation and well identification requirements set forth in Section 730.184(c) and the periodic reevaluation requirements set forth in Section 730.184(e).

4) The following demonstrations with regard to well design and construction, in conjunction with the alternative injection well depth requirements:

A) Well design and construction will ensure isolation of the injectate in lieu of the prohibition against movement of fluids set forth in 730.186(a)(1); and

B) Well design and construction will meet the well construction requirements set forth in subsection (f)~~ of this Section~~.

5) A description of how the owner or operator will tailor the monitoring and testing and any additional plans to the geologic sequestration project to ensure protection of USDWs above and below each injection zone if the Agency issues a permit that includes alternative injection well depth requirements.

6) Information on the location of all the public water supplies that will be affected, or which are reasonably likely to be affected, by the carbon sequestration project, and all public water supplies that distribute water drawn from any USDW in the area of review.

7) Any other information that the Agency determines is necessary to inform the USEPA Region 5's decision to issue a waiver, as required by subsection (b)~~ of this Section~~.

b) To inform the USEPA Region 5's decision on whether to grant a waiver of the injection depth requirements pursuant to 40 CFR 146.95, which would allow the Agency to issue a permit that includes alternative injection well depth requirements, the Agency must submit the following documentation to USEPA Region 5:

1) An evaluation of the following information as it relates to siting, construction, and operation of a geologic sequestration project under a permit that includes alternative injection well depth requirements:

A) The integrity of the upper and lower confining units;

B) The suitability of the injection zones (e.g., lateral continuity, lack of transmissive faults and fractures, known current or planned artificial penetrations into the injection zones or formations below the injection zone, etc.);

C) The potential capacity of the geologic formations to sequester carbon dioxide, accounting for the availability of alternative injection sites;

D) All other site characterization data, the proposed emergency and remedial response plan, and a demonstration of financial responsibility;

E) An assessment of community needs, demands, and supply from drinking water resources;

F) An assessment of planned needs and potential or future use of USDWs and non-USDWs in the area of review;

G) An assessment of planned or permitted water, hydrocarbon, or mineral resource exploitation potential of the proposed injection formations and other formations both above and below the injection zone to determine if there are any plans to drill through the formation to access resources in or beneath the proposed injection zones or formations;

H) The proposed plan for securing alternative water resources or treating USDW formation waters in the event of contamination related to the Class VI injection well activity; and~~,~~

I) Any other applicable considerations or information that the Agency determines is necessary to aid a determination by USEPA Region 5 to grant a waiver that would allow the Agency to issue a permit that includes alternative injection well depth requirements.

2) Consultation with the Agency's Division of Public Water Supply and all agencies of a sister state that have public water system supervision authority over lands within the area of review of a well for which a waiver that would allow the Agency to issue a permit that includes alternative injection well depth requirements is sought.

3) Any written waiver-related information submitted by the Agency's Division of Public Water Supply and all agencies of a sister state that have public water system supervision authority to the Agency.

c) Pursuant to 35 Ill. Adm. Code 705.163 and concurrent with the Class VI injection well permit application notice process, the Agency must give public notice that the owner or operator has sought a permit that includes alternative injection well depth requirements. The notice must clearly state the following information:

1) The depth of the proposed injection zones;

2) The location of the injection wells;

3) The name and depth of each USDW within the area of review;

4) A map of the area of review;

5) The names of any public water supplies that will be affected, or which are reasonably likely to be affected, by the carbon sequestration project, and all public water supplies that distribute water drawn from any USDW in the area of review; and

6) The results of consultation with the Agency's Division of Public Water Supply and all agencies of a sister state that have public water system supervision authority, as required by subsection (b)(2)~~ of this Section~~.

d) Following the public notice required by subsection (c)~~ of this Section~~, the Agency must provide all information received through the waiver application process to USEPA Region 5. USEPA has stated in corresponding 40 CFR 146.95(d) that, based on this information, the USEPA Region 5 must provide written concurrence or non-concurrence regarding the Agency issuing a permit that includes alternative injection well depth requirements.

1) If USEPA Region 5 determines that additional information is required to support a decision, the Agency must provide that information. At its discretion, USEPA Region 5 may require that public notice of the new information be initiated.

2) The Agency must not issue a permit that includes alternative injection well depth requirements without having first received the written concurrence of USEPA Region 5.

e) USEPA has stated in corresponding 40 CFR 146.95(e) that if the Agency issues a permit that includes alternative injection well depth requirements, USEPA will post the following information on its Office of Water website within 30 days after permit issuance:

1) The depth of the proposed injection zones;

2) The location of the injection wells;

3) The name and depth of all USDWs within the area of review;

4) A map of the area of review;

5) The names of any public water supplies that will be affected, or which are reasonably likely to be affected, by the carbon sequestration project, and all public water supplies that distribute water drawn from any USDW in the area of review; and

6) The date of permit issuance.

f) Upon receipt of a permit that includes alternative injection well depth requirements for geologic sequestration, the owner or operator of the covered Class VI injection well must comply with the following requirements:

1) All requirements of Sections 730.184, 730.185, 730.187, 730.188, 730.189, 730.191, 730.192, and 730.194.~~;~~

2) All requirements of Section 730.186, with the following modified requirements:

A) The owner or operator must ensure that each Class VI injection well operating under the alternative injection well depth requirements is constructed and completed to prevent movement of fluids into any unauthorized zone that includes a USDW, in lieu of the requirements of Section 730.186(a)(1).

B) The casing and cementing program must be designed to prevent the movement of fluids into any unauthorized zone that includes a USDW in lieu of the requirements of Section 730.186(b)(1).

C) The surface casing must extend through the base of the nearest USDW directly above the injection zone. The surface casing must be cemented to the surface. Alternatively, the Agency must require that the casing extend through another formation above the injection zone and below the nearest USDW above the injection zone if the Agency determines that doing so is necessary to prevent movement of fluids into a USDW.

3) All requirements of Section 730.190, with the following modified requirements:

A) The owner or operator must monitor the groundwater quality, geochemical changes, and pressure in the first USDWs immediately above and below each injection zone; and in any other formation that the Agency determines is necessary to detect potential movement of fluids into a USDW.

B) The owner or operator must conduct testing and monitoring to track the extent of the carbon dioxide plume and the presence or absence of elevated pressure (i.e., the pressure front) by using direct methods to monitor for pressure changes in the injection zones. The owner or operator must use indirect methods (e.g., seismic, electrical, gravity, or electromagnetic surveys or down-hole carbon dioxide detection tools) that the Agency determines are necessary based on site-specific geology.

4) All requirements of Section 730.193, with the following, modified post-injection site care monitoring requirements:

A) The owner or operator must monitor the groundwater quality, geochemical changes, and pressure in the first USDWs immediately above and below each injection zone; and in any other formation that the Agency determines is necessary to detect potential movement of fluids into a USDW.

B) The owner or operator must conduct testing and monitoring to track the extent of the carbon dioxide plume and the presence or absence of elevated pressure (i.e., the pressure front) by using direct methods in the injection zones. The owner or operator must use indirect methods (e.g., seismic, electrical, gravity, or electromagnetic surveys or down-hole carbon dioxide detection tools) that the Agency determines are necessary to detect potential movement of fluids into a USDW.~~;~~

5) Any additional requirements that the Agency determines are necessary to ensure protection of USDWs above and below the injection zones.

BOARD NOTE: This Section corresponds with 40 CFR 146.95 (2017)~~(2011)~~. The corresponding federal rule calls the administrative permission to allow a well to inject at an alternative depth (i.e., above the lowermost USDW) a "waiver~~.~~". While the Board has retained

the use of "waiver" with regard to USEPA review of alternative depth requirements, the Board has changed this to some variant of "permit that includes alternative injection well depth requirements~~.~~". While the Agency cannot "waive" standards embodied in Board regulations, the Agency can issue a permit that applies alternative standards that are contained in the regulations. The Board believes that this rule includes standards sufficient to guide an Agency permit determination.

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED REPEALER

1) Heading of the Part: Food Service Sanitation Code

2) Code Citation: 77 Ill. Adm. Code 750

3)

| Section Numbers: | Adopted Actions: |
|---|---|
| 750.5 | Repealed |
| 750.10 | Repealed |
| 750.20 | Repealed |
| 750.110 | Repealed |
| 750.500 | Repealed |
| 750.540 | Repealed |
| 750.551 | Repealed |
| 750.555 | Repealed |
| 750.560 | Repealed |
| 750.570 | Repealed |
| 750.1600 | Repealed |
| 750.1610 | Repealed |
| 750.1620 | Repealed |
| 750.1630 | Repealed |
| 750.1640 | Repealed |
| 750.1650 | Repealed |
| 750.1660 | Repealed |
| 750.1670 | Repealed |
| 750.1680 | Repealed |
| 750.1690 | Repealed |
| 750.1700 | Repealed |
| 750.1800 | Repealed |
| 750.1810 | Repealed |
| 750.1812 | Repealed |
| 750.1814 | Repealed |
| 750.1815 | Repealed |
| 750.1820 | Repealed |
| 750.1830 | Repealed |
| 750.1831 | Repealed |
| 750.1838 | Repealed |
| 750.1840 | Repealed |
| 750.1850 | Repealed |
| 750.1860 | Repealed |
| 750.1890 | Repealed |

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED REPEALER

| | |
|---|---|
| 750.3400 | Repealed |
| 750.3410 | Repealed |
| 750.3420 | Repealed |
| 750.3430 | Repealed |
| 750.4000 | Repealed |
| 750.4300 | Repealed |
| 750.APPENDIX A | Repealed |

4) Statutory Authority: Implementing the Illinois Food, Drug and Cosmetic Act [410 ILCS 620] and the Sanitary Food Preparation Act [410 ILCS 650] and authorized by Section 21 of the Illinois Food, Drug and Cosmetic Act [410 ILCS 620/21], Section 11.1 of the Sanitary Food Preparation Act [410 ILCS 650/11.1] and the Food Handling Regulation Enforcement Act [410 ILCS 625].

5) Effective Date of Repealer: December 7, 2018

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

7) Does this repealer contain incorporations by reference? No

8) A copy of the adopted repealer, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.

9) Notice of Proposal published in the *Illinois Register*: 42 Ill. Reg. 9077; June 8, 2018

10) Has JCAR issued a State of Objection to this rulemaking? No

11) Differences between Proposal and Final Version: None

12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? None were made.

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

14) Are there any rulemakings pending on this Part? No.

15) Summary and Purpose of Repealer: This repeal is a companion to the new Part 750. Because significant portions of Part 750 had been repealed in previous rulemakings the Department has repealed the old Part 750 and adopted a new Part 750. Additionally, in

these rulemakings the Department is implementing PA 100-194 regarding the certification of food service sanitation managers. This rulemaking also makes modifications to the Illinois food establishment inspection report, including elimination of the current grading system in order to make the Illinois report more consistent with the Food and Drug Administration (FDA) model code and report form.

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

Erin Conley
Rules Coordinator
Division of Legal Services
Illinois Department of Public Health
535 W. Jefferson St., 5th floor
Springfield IL 62761

217/782-2043
e-mail: dph.rules@illinois.gov

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED RULES

1) Heading of the Part: Food Code

2) Code Citation: 77 Ill. Adm. Code 750

3)

| Section Numbers: | Adopted Actions: |
|---|---|
| 750.100 | New Section |
| 750.110 | New Section |
| 750.120 | New Section |
| 750.200 | New Section |
| 750.210 | New Section |
| 750.220 | New Section |
| 750.230 | New Section |
| 750.300 | New Section |
| 750.305 | New Section |
| 750.310 | New Section |
| 750.315 | New Section |
| 750.320 | New Section |
| 750.325 | New Section |
| 750.330 | New Section |
| 750.335 | New Section |
| 750.340 | New Section |
| 750.345 | New Section |
| 750.350 | New Section |
| 750.400 | New Section |
| 750.410 | New Section |
| 750.500 | New Section |

4) Statutory Authority: Implementing the Illinois Food, Drug and Cosmetic Act [410 ILCS 620] and the Sanitary Food Preparation Act [410 ILCS 650] and authorized by Section 21 of the Illinois Food, Drug and Cosmetic Act [410 ILCS 620/21], Section 11.1 of the Sanitary Food Preparation Act [410 ILCS 650/11.1] and the Food Handling Regulation Enforcement Act [410 ILCS 625].

5) Effective Date of Rules: December 7, 2018

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

7) Does this rulemaking contain incorporations by reference? No

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED RULES

8) A copy of the adopted Part, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.

9) Notice of Proposal published in the *Illinois Register*: 42 Ill. Reg. 9136; June 8, 2018

10) Has JCAR issued a State of Objection to this rulemaking? No

11) Differences between Proposal and Final Version: None

12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? None were made.

13) Will this rulemaking replace an emergency rule currently in effect? No

14) Are there any rulemakings pending on this Part? No

15) Summary and Purpose of Rulemaking: This new Part is a companion to a repeal of Part 750. Because significant portions of Part 750 had been repealed in previous rulemakings the Department repealed the old Part 750 and adopted a new Part 750. Additionally, in these rulemakings the Department is implementing PA 100-194 regarding the certification of food service sanitation managers. This rulemaking also makes modifications to the Illinois food establishment inspection report, including elimination of the current grading system in order to make the Illinois report more consistent with the Food and Drug Administration (FDA) model code and report form.

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

Erin Conley
Rules Coordinator
Division of Legal Services
Illinois Department of Public Health
535 W. Jefferson St., 5th floor
Springfield IL 62761

217/782-2043
e-mail: dph.rules@illinois.gov

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

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED RULES

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER m: FOOD, DRUGS AND COSMETICS

PART 750
FOOD CODE

SUBPART A: GENERAL PROVISIONS

Section
750.100 Definitions
750.110 Incorporated and Referenced Materials
750.120 Inspections and Inspection Report

SUBPART B: PERSONNEL

Section
750.200 General – Employee Health
750.210 Food Handlers − Course Content
750.220 Food Handlers − Course Approval
750.230 Food Handlers − Training

SUBPART C: TEMPORARY FOOD SERVICE

Section
750.300 Temporary Food Service Establishments
750.305 Restricted Operations
750.310 Ice
750.315 Equipment
750.320 Water
750.325 Wet Storage
750.330 Waste Disposal
750.335 Handwashing
750.340 Floors
750.345 Walls and Ceilings of Food Preparation Areas
750.350 Single-Service Articles

SUBPART D: FARMERS' MARKETS

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED RULES

Section
750.400 Definitions
750.410 Food Product Sampling Handler Certificate for Farmers' Markets

SUBPART E: GAME ANIMALS

Section
750.500 Special Requirements

AUTHORITY: Implementing the Illinois Food, Drug and Cosmetic Act [410 ILCS 620] and the Sanitary Food Preparation Act [410 ILCS 650] and authorized by Section 21 of the Illinois Food, Drug and Cosmetic Act [410 ILCS 620/21], Section 11.1 of the Sanitary Food Preparation Act [410 ILCS 650/11.1] and the Food Handling Regulation Enforcement Act [410 ILCS 625].

SOURCE: Adopted December 23, 1975; amended at 2 Ill. Reg. 19, p. 180, effective May 13, 1978; old rules repealed, new rules adopted and codified at 7 Ill. Reg. 1336, effective January 25, 1983; amended at 7 Ill. Reg. 16415, effective November 23, 1983; amended at 11 Ill. Reg. 2345, effective February 1, 1987; amended at 11 Ill. Reg. 18735, effective January 1, 1988; emergency amendment at 12 Ill. Reg. 14380, effective September 2, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 17918, effective December 1, 1988; amended at 13 Ill. Reg. 1819, effective January 30, 1989; amended at 13 Ill. Reg. 18888, effective December 1, 1989; amended at 14 Ill. Reg. 19975, effective January 1, 1991; amended at 14 Ill. Reg. 20535, effective January 1, 1991; amended at 16 Ill. Reg. 15995, effective October 1, 1992; amended at 17 Ill. Reg. 18588, effective October 15, 1993; amended at 20 Ill. Reg. 2171, effective January 20, 1996; amended at 20 Ill. Reg. 3210, effective February 5, 1996; amended at 22 Ill. Reg. 19009, effective October 1, 1998; amended at 32 Ill. Reg. 11980, effective July 10, 2008; amended at 37 Ill. Reg. 20365, effective December 6, 2013; amended at 38 Ill. Reg. 11775, effective May 21, 2014; amended at 38 Ill. Reg. 23109, effective November 20, 2014; amended at 39 Ill. Reg. 5006, effective March 17, 2015; amended at 39 Ill. Reg. 10619, effective July 15, 2015; amended at 40 Ill. Reg. 9532, effective June 29, 2016; former Part repealed at 42 Ill. Reg. 24242 and new Part adopted at 42 Ill. Reg. 24245, effective December 7, 2018.

SUBPART A: GENERAL PROVISIONS

**Section 750.100 Definitions**

"Assessment of Knowledge" means a written or an online evaluation of a student's achievement in a food handler training course.

"Category I Facility" means a food establishment that presents a high relative risk of causing foodborne illness, based on the large number of food handling operations typically implicated in foodborne outbreaks and/or the type of population served by the facility. The standards for regulation of a Category I facility shall be those prescribed by the Local Health Protection Grant Code (77 Ill. Adm. Code 615). Category I facilities include those where the following operations occur:

Potentially hazardous foods are cooled, as part of the food handling operation at the facility;

Potentially hazardous foods are prepared hot or cold and held hot or cold for more than 12 hours before serving;

Potentially hazardous cooked and cooled foods must be reheated;

Complex preparation of foods or extensive handling of raw ingredients with hand contact for ready-to-eat foods occurs as part of the food handling operations at the facility;

Vacuum packaging, other forms of reduced oxygen packaging, or other special processes that require an HACCP plan; or

Immunocompromised individuals, such as the elderly, young children under age four and pregnant women, are served in a facility in which these individuals compose the majority of the consuming population.

"Category II Facility" means a food establishment that presents a medium relative risk of causing foodborne illness, based upon few food handling operations typically implicated in foodborne illness outbreaks. The standards for regulation of a Category II facility shall be those prescribed by the Local Health Protection Grant Code (77 Ill. Adm. Code 615). Category II facilities include those where the following operations occur:

Hot or cold foods are held at required temperatures for no more than 12 hours and are restricted to same-day services;

Foods are prepared from raw ingredients, using only minimal assembly; and

Foods that require complex preparation (whether canned, frozen or fresh prepared) are obtained from approved food-processing plants, high-risk food service establishments, or retail food stores.

"Category III Facility" means a food establishment that presents a low relative risk of causing foodborne illness, based upon few or no food handling operations typically implicated in foodborne illness outbreaks. The standards for regulation of a Category III facility shall be those prescribed by the Local Health Protection Grant Code (77 Ill. Adm. Code 615). Category III facilities include those where the following operations occur:

Only potentially hazardous foods commercially prepackaged in an approved processing plant are available or served at the facility;

Only limited preparation of non-potentially-hazardous foods and beverages, such as snack foods and carbonated beverages, occurs at the facility; or

Only beverages (alcoholic and nonalcoholic) are served at the facility.

"Certified Food Protection Manager" or "CFPM" means a person who has shown proficiency in the required information through passing a test that is part of an accredited program defined in Section 1-201.10 of the Food Code 2017.

"Cottage Food Operation" means an operation that produces or packages non-potentially-hazardous food in compliance with Section 4 of the Food Handling Regulation Enforcement Act.

"Department" or "DPH" means the Illinois Department of Public Health.

"Entity" means a business, non-profit organization, institution or certified local health department.

"Food Employee" or "Food Handler" means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces. "Food employee" or "food handler" does not include temporary food establishments or unpaid volunteers in a food establishment, whether permanent or temporary.

"Food Establishment" means an operation that:

stores, prepares, packages, serves, vends food directly to the consumer, or otherwise provides food for human consumption, such as a restaurant, satellite or catered feeding location, catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people, market, vending location, conveyance used to transport people, institution or food pantry; and

relinquishes possession of food to a consumer directly, or indirectly, through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

Food establishment includes:

an element of the operation, such as a transportation vehicle or a central preparation facility, that supplies a vending location or satellite feeding location, unless the vending or feeding location is permitted by the regulatory authority; and

an operation that is conducted in a mobile, stationary, temporary or permanent facility or location. This inclusion applies regardless of whether consumption is on or off the premises and whether there is a charge for the food.

Food establishment does not include:

an establishment that offers only prepackaged foods that are not time/temperature controlled for safety;

a produce stand that only offers whole, uncut fresh fruits and vegetables;

a food processing plant, including those located on the premises of a food establishment;

a kitchen in a private home, such as a small family daycare provider or a bed and breakfast operation, as defined in the Bed and Breakfast Act, that prepares and offers food to guests;

a private home that receives catered or home delivered food;

a closed family function where food is prepared or served for individual family consumption; or

a cottage food operation.

"Potentially Hazardous Food" means time/temperature control for food safety.

"Regulatory Authority" means the State and/or local enforcement authority or authorities having jurisdiction over the food service establishment.

"Repeat Violation" means a violation noted on the previous inspection report that is observed again on the next routine inspection on the same piece of equipment, same area of the facility, or same practice.

*"Restaurant" means any business*, or type of food service establishment, *that is primarily engaged in the sale of ready-to-eat food for immediate consumption.* For the purpose of this definition, *"primarily engaged" means having sales of ready-to-eat food for immediate consumption comprising at least 51% of the total sales, excluding the sale of liquor.* (Section 3.06 of the Food Handling Regulation Enforcement Act)

"Voluntary Inspection" means an inspection of meat or poultry products that are not subject to the federal or State meat or poultry inspection laws, and for which the federal or State mark of inspection is requested.

**Section 750.110 Incorporated and Referenced Materials**

a) The following State statutes are referenced in this Part:

1) Bed and Breakfast Act [50 ILCS 820]

2) Food Handling Regulation Enforcement Act [410 ILCS 625]

3) Freedom of Information Act [5 ILCS 140]

4) Good Samaritan Food Donor Act [745 ILCS 50]

b) The following State administrative rules are referenced in this Part:

1) Certified Local Health Department Code (77 Ill. Adm. Code 600)

2) Control of Communicable Diseases Code (77 Ill. Adm. Code 690)

3) Local Health Protection Grant Code (77 Ill. Adm. 615)

c) The following materials are incorporated in this Part:

1) The Food Code 2017, Chapters 1 through 7 (except the terms "food employee" and "food establishment" in Sections 1-201.10), U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, College Park MD 20740, publication number IFS17 available at https://www.fda.gov/downloads/Food/GuidanceRegulation/RetailFoodProtection/FoodCode/UCM595140.pdf.

2) Conference for Food Protection – "Standards for Accreditation of Food Protection Manager Certification Programs" (2016), available at http://www.foodprotect.org/media/managercert/cfp-2016-standards-adopted.pdf.

d) All incorporations by reference of federal regulations and the standards of nationally recognized organizations refer to the regulations and standards on the date specified and do not include any amendments or editions subsequent to the date specified.

**Section 750.120 Inspections and Inspection Report**

a) All food service establishments are subject to inspection at all times.

b) The operator of the food service establishment shall receive a written or electronic report from the regulatory authority at the end of the inspection. The inspection findings shall be reported on a food establishment inspection report or an electronic reporting system that is substantially similar (i.e., includes, at a minimum, the same information). The food establishment inspection report shall capture the food establishment's compliance with this Part and shall convey

compliance information, at the conclusion of the inspection, to the permit holder or person in charge of the food establishment.

c) The food establishment inspection report shall collect the following information:

1) Name of the regulatory authority conducting the inspection;

2) Name and contact information of the food establishment subject to the inspection, including permit number and risk category (Category I, II or III, as defined in Section 750.100);

3) Purpose of inspection, including date and times of the inspection;

4) Compliance by the food establishment with foodborne illness risk factors and public heath interventions or control measures, including, but not limited to:

A) supervision, including certification;

B) employee health;

C) good hygiene practices;

D) prevention of contamination by hands;

E) approved source of food;

F) protection of food from contamination;

G) time and temperature control for safety;

H) consumer advisory;

I) highly susceptible populations;

J) food or color additives and toxic substances; and

K) conformance with approved procedures;

5) Good retail practices and preventative measures designed to control the addition of pathogens, chemicals and physical objects into foods, including, but not limited to:

A) safe water and food;

B) food temperature control;

C) food identification;

D) prevention of food contamination;

E) proper use of utensils;

F) utensils, equipment and vending;

G) physical facilities; and

H) employee training;

6) Type of water supply;

7) Type of waste water system;

8) Temperature observations;

9) Observations and corrective actions, including time frames within which any violations cited shall be corrected;

10) CFPM verification;

11) HACCP topic;

12) Food handler training;

13) Allergen awareness training;

14) Number of risk factor or intervention violations; and

15) Number of repeat risk factor or intervention violations.

d) All items on the food establishment inspection report shall be addressed in accordance with this Part. Items on the food establishment inspection report shall be marked as in compliance, out of compliance, not observed, or not applicable. Items shall also be marked as corrected on-site during the inspection or a repeat violation, as applicable. A scoring system shall not be used.

e) The regulatory authority shall implement the provisions of this Part by January 1, 2019.

SUBPART B: PERSONNEL

**Section 750.200 General – Employee Health**

Diagnosed illnesses, as stated in the FDA Food Code 2017, shall be reported to the local health authority within the reporting requirements stated in the Control of Communicable Diseases Code.

**Section 750.210 Food Handlers − Course Content**

a) Food handler training programs shall cover and assess knowledge of the following topics:

1) *The relationship between time and temperature with respect to foodborne illness, including the relationship between time and temperature and microorganisms during the various food handling preparation and serving states, and the type, calibration, and use of thermometers in monitoring food temperatures.*

2) *The relationship between personal hygiene and food safety, including the association of hand contact, personal habits and behaviors; relationship between the food handler's health and foodborne illness; and recognition of how policies, procedures and management contribute to improved food safety practices.*

3) *Methods of preventing food contamination in all stages of food handling, including terms associated with contamination and potential hazards prior to, during and after delivery.*

4) *Procedures for cleaning and sanitizing equipment and utensils.*

5) *Problems and potential solutions associated with temperature control, preventing cross-contamination,* and *housekeeping and maintenance.* (Section 3.05(b) of the Food Handling Regulation Enforcement Act)

b) All food handler training courses shall have an assessment of knowledge.

**Section 750.220 Food Handlers − Course Approval**

a) *If an entity uses an American National Standards Institute* (ANSI) *food handler training accredited program, that training program shall be automatically approved by the Department* (Section 3.06(e) of the Food Handling Regulation Enforcement Act).

b) *Certified local health departments in counties serving jurisdictions with a population of 100,000 or less, as reported by the U.S. Census Bureau in the 2010 Census of Population,* and the other six counties (Will, Kane, McHenry, Tazewell, Kendall and Macon) listed in the Act, may have a food handler training program. *The training program must meet the requirements of* Section 750.210 *and be approved by the Department.* (Section 3.06(f) of the Food Handling Regulation Enforcement Act) These certified local health departments with approved training programs can teach food handlers in restaurants and in food service establishments that are not restaurants only within the certified local health department's jurisdiction. The training program shall maintain a list of individuals trained for a minimum of five years from the date of the individuals' training.

c) Any entity can provide food handler training to employees working in a restaurant by using an ANSI accredited food handler training program, including the ANSI assessment, that meets the requirements of "Standards for Accreditation of Food Protection Manager Programs", incorporated by reference in Section 750.110. The training program shall maintain a list of individuals trained for a minimum of five years from the date of the individuals' training.

d) *If a business with an internal training program is approved in another state prior to* August 27, 2013, *then the business' training program and assessment shall be automatically approved by the Department upon the business providing proof that*

*the program is approved in* that state. (Section 3.06(c) of the Food Handling Regulation Enforcement Act) The business shall register the training program with the Department using an application provided by the Department. For the purpose of this Section, "business" means an organization that provides a food handler training program that was approved in another state prior to August 27, 2013.

e) Any entity can provide food handler training to employees working in a food service establishment that is not a restaurant by using a food handler training program that meets the training and assessment requirements listed in Section 750.210. The entity providing the training program shall apply for Department approval using an application provided by the Department.

1) *Training may be conducted by any means available, including, but not limited to: on-line, computer, classroom, live trainers, remote trainers, and certified food service sanitation managers.* (Section 3.05(c) of the Food Handling Regulation Enforcement Act)

2) *There must be at least one commercially available approved food handler training module at a cost of no more than $15 per employee;* training may include, but is not limited to, on-line, computer, classroom, live trainers, remote trainers, and certified food service sanitation managers. *If an approved food handler training module is not available at that cost, then provisions of* this Section *shall not apply* and food handlers shall comply with Section 3.06 of the Food Handling Regulation Enforcement Act. (Section 3.05(c) of the Food Handling Regulation Enforcement Act)

f) *Any and all documents, materials, or information related to a restaurant or business food handler training module submitted to the Department is confidential and shall not be open to public inspection or dissemination and is exempt from disclosure under Section 7 of the Freedom of Information Act.* (Section 3.06(g) of the Food Handling Regulation and Enforcement Act)

**Section 750.230 Food Handlers − Training**

a) All Food Handlers

1) All food handlers, other than someone holding a certified food protection manager certificate, shall receive or obtain training in basic food handling

principles, as outlined in Section 750.210, within 30 days after employment.

2) *The regulation of food handler training is considered to be an exclusive function of the State, and local regulation is prohibited*. (Section 3.05 of the Food Handling Regulation Enforcement Act)

b) Food Handlers Employed By a Restaurant

1) *All food handlers employed by a restaurant, other than someone holding a food service sanitation manager certificate, shall receive or obtain ANSI accredited training* or Department approved training *in basic food handling principles*, as outlined in Section 750.210. (Sections 3.06(b) and (i) of the Food Handling Regulation and Enforcement Act)

2) New employees shall receive training within 30 days after employment and every three years after the initial training.

3) Training is transferable between employers, except for training obtained through an internal training program.

c) Food Handlers Employed By a Food Service Establishment That Is Not a Restaurant

1) *All food handlers* employed by a food service establishment that is not a restaurant, *other than someone holding a food service sanitation manager certificate, shall receive or obtain training in basic food handling principles*, as outlined in Section 750.210. (Sections 3.05(a) and (e) of the Food Handling Regulation and Enforcement Act)

2) New employees shall receive training within 30 days after employment.

3) *Training is not transferable between individuals or employers* (Section 3.05(a) of the Food Handling Regulation and Enforcement Act).

d) Food Handlers Employed by Certain Facilities
*All food handlers employed in nursing homes, licensed day care homes and facilities, hospitals, schools, and long-term care facilities must renew their*

*training every three years.* (Section 3.06(b) of the Food Handling Regulation and Enforcement Act)

e) Repeat Training
*There is no limit to how many times an employee may take the training.* (Sections 3.05(a) and 3.06(b) of the Food Handling Regulation and Enforcement Act)

f) Proof of Training
*Proof that a food handler has been trained* shall *be available upon reasonable request by a State or local health department inspector and may be in an electronic format.* (Sections 3.05(a) and 3.06(b) of the Food Handling Regulation and Enforcement Act)

SUBPART C: TEMPORARY FOOD SERVICE

**Section 750.300 Temporary Food Service Establishments**

A temporary food service establishment shall comply with the requirements of this Part, except as otherwise provided in this Section. The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the temporary food service establishment, may prohibit the sale of some or all potentially hazardous foods, and, when no health hazard will result, may waive or modify requirements of this Part.

**Section 750.305 Restricted Operations**

a) This Section is applicable whenever a temporary food service establishment is permitted, under the provisions of Section 750.300, to operate without complying with all the requirements of this Part.

b) Only those potentially hazardous foods requiring limited preparation, such as hamburgers and frankfurters, that require seasoning and cooking shall be prepared or served. The preparation or service of other potentially hazardous foods, including pastries filled with cream or synthetic cream, custards, and similar products, and salads or sandwiches containing meat, poultry, eggs or fish is prohibited. This prohibition does not apply, however, to any potentially hazardous food that:

1) has been prepared and packaged under conditions meeting the requirements of this Part;

2) is obtained in individual servings;

3) is stored at a temperature of 41°F or below, or at temperature of 140°F or above in facilities that meet the requirements of this Part; and

4) is served directly in the unopened container in which it was packaged.

**Section 750.310 Ice**

Ice that is consumed or that contacts food shall have been made under conditions meeting the requirements of this Part. The ice shall be obtained only in chipped, crushed or cubed form and in single-use food-grade plastic or wet-strength paper bags filled and sealed at the point of manufacture. The ice shall be held in these bags until used and, when used, shall be dispensed in a way that protects it from contamination.

**Section 750.315 Equipment**

a) Equipment shall be located and installed in a way that facilitates cleaning the establishment and that prevents food contamination.

b) Food-contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Where helpful to prevent contamination, effective shields for the equipment shall be provided.

**Section 750.320 Water**

Enough potable water shall be available in the establishment for food preparation, for cleaning and sanitizing utensils and equipment, and for handwashing. A heating facility capable of producing enough hot water for these purposes shall be provided on the premises.

**Section 750.325 Wet Storage**

The storage of packaged food in contact with water or undrained ice is prohibited, except that cans or bottles of non-potentially-hazardous beverages may be so stored when the water contains at least 50 parts per million of available chlorine and is changed often enough to keep both the water and containers clean. Wrapped sandwiches shall not be stored in direct contact with ice.

**Section 750.330 Waste Disposal**

All sewage, including liquid waste, shall be disposed of according to law.

**Section 750.335 Handwashing**

A facility shall be provided for employee handwashing. Where water under pressure is unavailable, the facility shall consist of at least a pan, warm water, soap and individual paper towels.

**Section 750.340 Floors**

Floors shall be made of concrete, tight wood, asphalt, or other similar cleanable material, except that dirt or gravel floors may be used if graded to preclude the accumulation of liquids and covered with removable, cleanable platforms or duckboards.

**Section 750.345 Walls and Ceilings of Food Preparation Areas**

a) Ceilings shall be made of wood, canvas or other material that protects the interior of the establishment from the weather. Walls and ceilings of food preparation areas shall be constructed in a way that prevents the entrance of insects. Doors to food preparation areas shall be solid or screened and shall be self-closing. Screening material used for the walls, doors or windows shall be at least 16 mesh to the inch.

b) Counter-service openings shall not be larger than necessary for the particular operation conducted. These openings shall be provided with tight-fitting solid or screened doors or windows or shall be provided with fans installed and operated to restrict the entrance of flying insects. Counter-service openings shall be kept closed, except when in actual use.

**Section 750.350 Single-Service Articles**

All temporary food service establishments shall provide only single-service articles for use by the consumer.

SUBPART D: FARMERS' MARKETS

**Section 750.400 Definitions**

"Act" means Food Handling Regulation Enforcement Act.

"Certified Local Health Department" means a local government agency that administers, and assures compliance with, health-related programs and services within its jurisdiction and is certified pursuant to 77 Ill. Adm. Code 600.210 (Certification).

*"Farmers' Market" means a common facility or area where the primary purpose is for* two or more *farmers to gather to sell a variety of fresh fruits and vegetables and other locally produced farm and food products directly to consumers.* (Section 3.3(b) of the Act)

*"Food Product Sampling" means food product samples distributed free of charge for promotional or educational purposes only.* (Section 3.4(a) of the Act)

"Food Product Sampling Handler" means any person who is engaged in performing tasks such as unpackaging, cutting, slicing, preparing or distributing food product samples to consumers at a farmers' market.

"Food Product Sample" means an individual portion of food given to a consumer without charge to allow consumers to experience a small portion of the product.

"Local Health Department" means a local governmental agency that administers, and assures compliance with, health-related programs and services within its jurisdiction.

"Point of Sale" means the physical location where food products are sold to customers.

"Sampling Certificate" means a food product sampling handlers certificate.

**Section 750.410 Food Product Sampling Handler Certificate for Farmers' Markets**

a) Food Product Sampling Handler Certificate Application Requirements

1) Individuals possessing a valid certified food protection manager certification shall submit the following:

A) An application provided by the Department; and

B) Payment of the $10 application fee.

2) Individuals who do not possess a valid certified food protection manager certification shall submit the following:

A) Evidence of successful completion of a food handler training course as outlined in Subpart B;

B) Evidence of successful completion of DPH farmers' market food sampling handler training;

C) An application provided by the Department; and

D) Payment of the $40 application fee.

b) Certificate

1) Certificates are valid 36 months from the issue date.

2) Sampling certificates are not transferable between individuals.

3) Sampling certificates are required for all persons who engage in performing tasks such as unpacking, cutting, slicing, preparing or distributing food product samples.

c) Replacement sampling certificates issued under this Subpart will have the same expiration date as the original certificate:

d) All persons possessing a valid original sampling certificate or a copy of the certificate shall display the certificate at the point of sale.

e) Suspension or Revocation of a Sampling Certificate

1) Any violation of this Subpart by the food product sampling handler that creates a potential health hazard shall result in suspension of the sampling certificate by the Department or a certified local health department, unless the violation is corrected during the inspection. The following procedures shall be followed for the suspension of a certificate:

A) The certified local health department shall notify the sampling certificate holder in writing, at the time of suspension, stating the reason for the suspension and corrective measures needed to reinstate the certificate.

B) The sampling certificate holder shall apply, in writing, to the certified local health department responsible for suspending the certificate to request reinstatement of the certificate. If the certified local health department considers the violations to be corrected, the certificate shall be reinstated.

C) The certified local health department shall, within five days after the suspension and sampling certificate reinstatement, notify the Department in writing of the suspension and certificate reinstatement. The certified local health department shall forward to the Department a copy of the inspection, including the reason for suspension and resolution of the suspension, if any.

D) If the issue is not resolved, the holder of the sampling certificate may apply to the Department for reinstatement of the certificate, in writing, to request a conference to determine whether the holder is in compliance with this Subpart.

2) If the sampling certificate holder receives two or more suspensions in a 12-month period, the Department will revoke the certificate. The Department will notify the certificate holder of the Department's intent to revoke the certificate and will provide an opportunity for a hearing in accordance with Practice and Procedure in Administrative Hearings. If the certificate holder does not file a request for a hearing with the Department within 10 days following service of the notice, the certificate will be revoked.

f) Exemption
A vendor who possesses a permit from the local health department to conduct food service is exempted from the training and permit requirements of this Subpart. A permit to conduct food service is valid only in the jurisdiction of the issuing local health department.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED RULES

SUBPART E: GAME ANIMALS

**Section 750.500 Special Requirements**

a) Game animals received for sale or service must comply with the following:

1) Game animals commercially farm-raised for food shall be raised, slaughtered and processed under either a routine or voluntary inspection program, as follows:

A) For a routine (mandatory) inspection program conducted by USDA or Illinois Department of Agriculture (DOA), the game animals shall be raised, slaughtered and processed according to applicable laws governing meat and poultry.

B) Any voluntary inspection program shall be conducted by the agency that has animal health jurisdiction (USDA, DOA or other regulatory agency).

2) Field-dressed wild game animals donated under the Good Samaritan Food Donor Act shall:

A) Receive a postmortem inspection by a veterinarian, veterinarian's designee, professional biologist or other person familiar with the conditions, parasites and diseases of the species, approved by the regulatory agency that has animal health jurisdiction;

B) Have been field dressed and transported according to requirements specified by the regulatory agency that has animal health jurisdiction; and

C) Be processed according to laws governing meat and poultry as determined by the regulatory agency that has animal health jurisdiction and conducts the inspection program.

3) Exotic species of animals, including animals raised for exhibition purposes in a zoo or circus, used for food:

A) Shall be raised, slaughtered and processed under a voluntary or

mandatory inspection program; or

B) Shall:

i) Receive antemortem and postmortem examinations; and

ii) Be slaughtered and processed according to laws governing meat and poultry, as determined by the regulatory agency that has animal health jurisdiction and conducts the inspection program.

b) Uninspected field-dressed wild game served at special events such as wild game dinners shall:

1) Have placards displayed in a conspicuous location throughout the event that identify the food served as uninspected wild game as provided for in the Good Samaritan Food Donor Act;

2) Comply with all other food sanitation requirements specified in this Part; and

3) Not be served at institutions and facilities such as nursing homes and hospitals that primarily serve highly susceptible individuals.

c) Foods packaged or repackaged by charitable or not-for-profit organizations for distribution to people in need shall bear the common and/or usual name of the product and the name of the distributing organization. A list of ingredients for any multi-ingredient product shall be posted or made available upon request. Prepared, ready-to-eat foods donated by food service establishments to charitable or not-for-profit organizations are exempt from the ingredient listing requirements of this subsection.

STATE UNIVERSITIES CIVIL SERVICE SYSTEM

NOTICE OF ADOPTED AMENDMENT

1) Heading of the Part: State Universities Civil Service System

2) Code Citation: 80 Ill. Adm. Code 250

3) Section Number: 250.119 Adopted Action: Amendment

4) Statutory Authority: State Universities Civil Service Act 110 ILCS 70

5) Effective Date of Rule: December 3, 2018

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

7) Does this rulemaking contain incorporations by reference? No

8) A copy of the adopted rule, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.

9) Notice of Proposal published in the *Illinois Register*: 41 Ill Reg. 15224; December 26, 2017

10) Has JCAR issued a Statement of Objection to this rulemaking? No

11) Differences between Proposal and Final Version: The agency made four changes to the proposed rulemaking based upon the comment received and the meetings held with university human resources and union officials. The agency added wording in section (a) that stated a furlough program is intended to mitigate the need for significant and permanent layoffs. Also a new subsection (b) was added regarding provisions. In subsection (f) a statement was added that student employees shall not be used to replace status employees who are being furloughed and in subsection (o) language was added stating “including any duty to bargain in accordance with those laws and regulations”. Also, several technical changes were made because of subsections being deleted/renumbered.

12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

13) Will this rulemaking replace any emergency rule currently in effect? No

STATE UNIVERSITIES CIVIL SERVICE SYSTEM

NOTICE OF ADOPTED AMENDMENT

14) Are there any rulemakings pending on this Part? No

15) Summary and Purpose of Rulemaking: On September 30, 2017, this Section became invalid because of a sunset clause initially put in place by the agency. The University Civil Service Merit Board believes that this Section needed to exist on a permanent basis. Because of the uncertainties of the state budget, employers within the State Universities Civil Service System are finding it necessary to implement Furlough Programs due to the continued reduction or lack of state funds. This new Section does not eliminate any bargaining rights or duties to negotiate imposed by the Illinois Educational Labor Relations Act. This Section describes the requirements for employers and information for employees regarding the impact of a Furlough Program.

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

Jeff Brownfield
Executive Director
State Universities Civil Service System
1717 Philo Road, Suite 24
Urbana, IL 61802

217/278-3150
jeffb@sucss.illinois.gov

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

STATE UNIVERSITIES CIVIL SERVICE SYSTEM

NOTICE OF ADOPTED AMENDMENT

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES
SUBTITLE A: MERIT EMPLOYMENT SYSTEMS
CHAPTER VI: STATE UNIVERSITIES CIVIL SERVICE SYSTEM

PART 250
STATE UNIVERSITIES CIVIL SERVICE SYSTEM

Section

250.5 Definitions
250.10 Purpose, Adoption, and Amendment of Rules
250.20 The State Universities Civil Service System and its Divisions
250.30 The Classification Plan
250.40 Military Service Preference, Veterans Preference
250.50 Examinations
250.60 Eligible Registers
250.70 Nonstatus Appointments
250.80 Status Appointments
250.90 Probationary Period
250.100 Reassignments and Transfers
250.110 Separations and Demotions
250.119 Furloughs
250.120 Seniority
250.130 Review Procedures
250.140 Delegation of Authority and Responsibilities
250.150 Training
250.160 Suspension of Rules

AUTHORITY: Implementing and authorized by the State Universities Civil Service Act [110 ILCS 70].

SOURCE: Rules: State Universities Civil Service System, approved January 16, 1952, effective January 1, 1952; amended at 3 Ill. Reg. 13, p. 68, effective April 1, 1979; amended at 4 Ill. Reg. 10, p. 262, effective February 25, 1980; amended at 6 Ill. Reg. 2620, effective February 22, 1982; amended at 6 Ill. Reg. 7236, effective June 3, 1982; amended at 8 Ill. Reg. 4948 and 4950, effective March 29, 1984; codified at 8 Ill. Reg. 12936; amended at 8 Ill. Reg. 24732, effective December 6, 1984; amended at 9 Ill. Reg. 17422, effective October 23, 1985; amended at 11 Ill. Reg. 8942, effective May 8, 1987; amended at 12 Ill. Reg. 3457, effective February 1, 1988; amended at 12 Ill. Reg. 17079, effective October 7, 1988; amended at 13 Ill. Reg. 7324, effective May 1, 1989; amended at 13 Ill. Reg. 19427, effective February 6, 1990; amended at 18 Ill. Reg.

1901, effective January 21, 1994; amended at 20 Ill. Reg. 4440, effective February 29, 1996; amended at 30 Ill. Reg. 17384, effective October 23, 2006; amended at 31 Ill. Reg. 15848, effective November 13, 2007; amended at 32 Ill. Reg. 17268, effective October 16, 2008; amended at 33 Ill. Reg. 11644, effective July 22, 2009; amended at 36 Ill. Reg. 6014, effective April 6, 2012; amended at 37 Ill. Reg. 419, effective December 26, 2012; amended at 39 Ill. Reg. 13504, effective December 1, 2015; amended at 40 Ill. Reg. 3105, effective January 26, 2016; emergency amendment at 40 Ill. Reg. 3772, effective March 1, 2016, for a maximum of 150 days; amended at 40 Ill. Reg. 11192, effective August 4, 2016; amended at 40 Ill. Reg. 16302, effective December 12, 2016; amended at 41 Ill. Reg. 11576, effective August 30, 2017; amended at 42 Ill. Reg. 24268, effective December 3, 2018.

**Section 250.119 Furloughs**

~~This Section is applicable through September 30, 2017.~~

a) Furlough. A furlough is the placement of an employee in a temporary nonduty, nonpay status for a continuous or noncontinuous period of time due only to a lack of funds. A furlough is not considered a layoff or a reduction in force action and, therefore, is not subject to Section 250.110(d) regarding a layoff~~layoffs~~. Any furlough program is intended to mitigate the need for significant and permanent layoffs for the prospective 9 to 12 months after the furlough program has ended.

b) Provisions. In order to invoke a furlough program, the employer must demonstrate significant fiscal distress, as verified by the employer's controlling board or commission during a meeting conducted in accordance with the Open Meetings Act. Significant fiscal distress includes:

1) A failure to receive an annual appropriation by the General Assembly;

2) Severe and significant reductions to an annual appropriation by the General Assembly; and

3) Similar budgetary reductions that could come in the form of "fund sweeps" or "fund reserves" imposed by the General Assembly or Governor, or by similar legislative actions.

c~~b~~) Furlough Program Stipulations. A furlough program shall not be used by an employer for the following reasons:

STATE UNIVERSITIES CIVIL SERVICE SYSTEM

NOTICE OF ADOPTED AMENDMENT

1) Permanent shutdown;

2) As a substitute for permanent part-time employment; or

3) As a disciplinary measure.

d~~c~~) Criteria. Uniform participation and selection criteria shall be developed by the designated place of employment and consistently applied. This Section shall only apply to employees who are designated within the employer's furlough program in accordance with subsections (d) through (p).

e~~d~~) Temporary and Extra Help Appointments~~Employee Terminations~~. Prior to the implementation of a furlough program, all employees~~An employee~~ on a temporary appointment or an extra help appointment shall be terminated~~ prior to implementation of the furlough program~~, unless an exception is permitted subject to subsection (h)~~the appointment is required based on health and welfare or public safety, or a designated grant or other funding source~~.

f~~e~~) Student Appointments. Student~~All student~~ appointments ~~shall be terminated~~ subject to Section 250.70(e) shall be placed in a furlough status for an amount of time that is generally equal to that of employees who are being furloughed, unless an exception is permitted subject to subsection (h)~~the student appointment is required for health and welfare or public safety, or the appointment is part of the student's financial aid, or if the student is receiving academic credit as part of the conditions of the student appointment~~. Student employees shall not be used to replace status employees who are being furloughed.

g~~c~~) Voluntary or Mandatory Furlough Program. A furlough can be either voluntary or mandatory. A voluntary or mandatory furlough program is not required to include all employees at a designated employer or within a division or program.

h) Exceptions. Employers may exempt positions from a furlough program under the following conditions:

1) Positions/employees who have mandated funding, such as a grant or other funding source, or whose absence would jeopardize the funding for a position/employee or department;~~, may be exempted from the furlough program.~~

STATE UNIVERSITIES CIVIL SERVICE SYSTEM

NOTICE OF ADOPTED AMENDMENT

2) Employees in positions considered essential to the critical mission of an employer, such as those related to health and welfare or public safety;~~, may also be excluded from participation in a furlough program. Uniform participation and selection criteria shall be developed by the employer and consistently applied. This Section shall only apply to employees who are designated within the employer's furlough program in accordance with subsections (c) through (m).~~

3) Employees in positions considered essential to maintain facilities during a furlough program; or

4) Students whose positions are part of their financial aid package or whose position results in the awarding of academic credit.

i~~d~~) Notification of Furlough Program to Employees. No furlough program may be implemented unless~~Once an employer plans to implement a furlough program,~~ the employer has notified~~shall notify~~ all employees affected by the furlough at least 30 days prior to a furlough program being implemented. The process by which the employer chooses to notify employees is at the employer's discretion, but must conform to the employer's policies related to contacting an employee for official business. The notice must inform the employee of the date or dates on which the employee is to be on furlough status and the end date of the furlough program.

j~~e~~) Furlough Work Status. An employee who is furloughed shall not be at work, on standby or on-call, and shall not perform any work for the furloughing employer during his/her scheduled furlough time. However, for emergency situations, employees subject to a collective bargaining agreement may be called back to work in accordance with the agreement. For those employees not subject to a collective bargaining agreement, employees may be called back to work in accordance with standard employer policies.

k~~f~~) Employee Benefits

1) Employees who are furloughed are not permitted to use vacation, sick leave, personal leave, "floating" holidays, or any other compensable time or similar benefit for the time during which he/she is being furloughed.

2) Notwithstanding any other Section in this Part, or the fact that an employee's work hours or pay is reduced by the requirement to take a

furlough, ~~:A)~~ furlough time will be credited as if the employee were in pay status for employee benefit programs such as health, life, dental and vision insurance and any similar benefits.~~; and~~

~~B) pension credit for furlough time can be purchased by an employee as provided under Section 15-113.11 of the Illinois Pension Code [40 ILCS 5] (i.e., for furlough time taken between July 1, 2015 and June 30, 2017, pension credit can be purchased; otherwise, it cannot).~~

3) A furloughed employee shall be entitled to the same benefits to which he/she was entitled on the paid workday immediately preceding the furlough day. These benefits include, but are not limited to, continued accumulation of vacation and sick leave, holiday benefits, and benefits established by the Merit Board Policy Relating to Employee Benefits as approved by the Merit Board, and other benefits approved by the Governing Boards of the universities and agencies served by the University System.

4) A furloughed employee shall continue to accrue seniority during any and all furlough work days.

l~~g~~) Maximum Number of Furlough Work Days. A furlough program shall only be instituted for a maximum of 15 work days in any fiscal year (July 1 through June 30).

m~~h~~) Employer's Tracking of Furlough Days. The~~In order for an employee to continue under the State Employees Group Insurance Act of 1971 [5 ILCS 375], the~~ employer is required to track designated furlough days for each employee.

~~i) Accumulation of Seniority during a Furlough Status. An employee shall continue to accrue seniority during any and all furlough work days.~~

n~~j~~) Military Leave during a Furlough Program. An employee on military leave shall not be scheduled for any furlough days during his/her leave and may be scheduled for furlough days that may be prorated dependent upon the date the employee returns to work, if a furlough program remains in effect.

STATE UNIVERSITIES CIVIL SERVICE SYSTEM

NOTICE OF ADOPTED AMENDMENT

~~k) Furlough Program Stipulations. A furlough program shall not be used by an employer for the following reasons:~~

~~1) Permanent shutdown;~~

~~2) As a substitute for permanent part-time employment; or~~

~~3) As a disciplinary measure.~~

o~~l~~) Collective Bargaining Agreements. Implementation of furloughs for employees covered under a collective bargaining agreement is subject to applicable State and federal labor laws and regulations. This Section does not absolve,~~is not intended to~~ circumvent or supersede other State or federal labor laws and/or regulations that apply; including any duty to bargain in accordance with those laws and regulations.

p~~m~~) Notification to the State Universities Civil Service System of a Furlough Program. An employer may institute a voluntary or mandatory furlough program upon notification to the Executive Director at least 30 calendar days prior to ~~the implementation of~~ any employee being furloughed. Notifications shall include~~The employer shall include in the notification~~ the following:

~~1) Whether the furlough program is for the entire employer or designated divisions or programs;~~

1~~2~~) What considerations have been contemplated or invoked for other employees, such as those listed in Section 36e(2) through (5) of the Act;

2~~3~~) An explanation of the facts related to the temporary nature of the event causing the furlough program;

3~~4~~) The funding deficit related to the affected work areas;

4~~5~~) The approximate number of employees affected by the furlough program; and

5~~6~~) The beginning ~~date~~ and ending dates~~date~~ of the furlough program for the employer.

STATE UNIVERSITIES CIVIL SERVICE SYSTEM

NOTICE OF ADOPTED AMENDMENT

q) Reporting Requirements for a Furlough Program. An employer shall provide specific reports to the University System office within 10 calendar days following the implementation of a furlough program. These reports shall contain the following:

1) Summary of positions affected by the furlough program:

A) Headcount of total employees impacted and their classifications;

B) Number of furlough days being implemented;

C) Approximate amount of savings for the furloughed positions/employees; and

D) Impact of furloughs invoked for other employees, such as those listed in Section 36e(2) through (5) of the Act.

2) Other related documentation as requested by the University System office.

(Source: Amended at 42 Ill. Reg. 24268, effective December 3, 2018)

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

OBJECTION TO AND SUSPENSION OF EMERGENCY RULE

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

Heading of the Part: Rules for Administration of the Compassionate Use of Medical Cannabis Pilot Program

Code Citation: 68 Ill. Adm. Code 1290

.

Section Numbers:

| | | | |
|---|---|---|---|
| 1290.10 | 1290.120 | 1290.400 | 1290.431 |
| 1290.30 | 1290.140 | 1290.405 | 1290.440 |
| 1290.40 | 1290.200 | 1290.410 | 1290.445 |
| 1290.50 | 1290.210 | 1290.415 | 1290.450 |
| 1290.70 | 1290.230 | 1290.420 | 1290.500 |
| 1290.100 | 1290.300 | 1290.425 | 1290.510 |
| 1290.110 | 1290.320 | 1290.430 | 1290.540 |
| | | | 1290.550 |

Date Related Proposed Rulemaking Published in *Illinois Register*: 12/14/18

Date Emergency Rule Published in the *Illinois Register*: 12/14/18
42 Ill. Reg. 23202

At its meeting on December 11, 2018, the Joint Committee on Administrative Rules voted to object to and suspend specific provisions of the emergency rule titled Rules for Administration of the Compassionate Use of Medical Cannabis Pilot Program (68 Ill. Adm. Code 1290; 42 Ill. Reg. 23202) and to notify the Secretary of State of the suspension of specific portions of the emergency rule. The Committee suspended all provisions of the rule that do not directly implement the Opioid Alternative Pilot Program as established by PA 100-1114. The PA explicitly authorized the use of emergency rulemaking for the creation of the Opioid Alternative Pilot Program, but not the other changes to the Medical Cannabis Pilot Program that the Department included in the emergency rule. JCAR finds that this inappropriate use of emergency rulemaking poses a threat to the public interest by changing basic tenets of the Medical Cannabis Program without public review and input, and without any justification being offered by the agency for the use of emergency rulemaking for those changes.

The suspended portions of the emergency rule may not be enforced by the Department of Financial and Professional Regulation for any reason, nor may the Department file with the Secretary of State any rule having substantially the same purpose and effect as the suspended portions of the rule for as long as the Suspension remains in effect.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received during the period of November 27, 2018 through December 10, 2018. The following rulemakings are scheduled for the December 11th meeting or the January 15, 2019 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 |
|---|---|---|---|
| 1/11/19 | Department of Financial and Professional Regulation, Illinois Credit Union Act (38 Ill. Adm. Code 190) | 10/5/18 42 Ill. Reg. 17285 | 12/11/18 |
| 1/11/19 | Capitol Development Board, Capital Development Board Procurement Practices for the Quincy Veterans' Home (44 Ill. Adm. Code 930) | 10/5/18 42 Ill. Reg. 17282 | 12/11/18 |
| 1/11/19 | Office of the State Treasurer, Illinois Public Treasurers' Investment Pool for Public Treasurers in the State of Illinois (New Part) (74 Ill. Adm. Code 740) | 9/28/18 42 Ill. Reg. 17109 | 12/11/18 |
| 1/11/19 | Department of Employment Security, Claims, Adjudication, Appeals and Hearings (56 Ill. Adm. Code 2720) | 9/28/18 42 Ill. Reg. 16965 | 12/11/18 |
| 1/11/19 | Department of Employment Security, Administrative Hearings and Appeals (56 Ill. Adm. Code 2725) | 9/28/18 42 Ill. Reg. 16978 | 12/11/18 |
| 1/11/19 | Department of Employment Security, Employment (56 Ill. Adm. Code 2732) | 9/28/18 42 Ill. Reg. 17002 | 12/11/18 |

| | | | |
|---|---|---|---|
| 1/11/19 | Department of Employment Security, Notices, Records, Reports (56 Ill. Adm. Code 2760) | 9/28/18<br>42 Ill. Reg.<br>17008 | 12/11/18 |
| 1/11/19 | Department of Employment Security, Payment of Unemployment Contributions, Interest and Penalties (56 Ill. Adm. Code 2765) | 9/28/18<br>42 Ill. Reg.<br>17028 | 12/11/18 |
| 1/11/19 | Department of Employment Security, Collection of Unemployment Contributions (56 Ill. Adm. Code 2790) | 9/28/18<br>42 Ill. Reg.<br>17048 | 12/11/18 |
| 1/11/19 | Department of Employment Security, Payment of Benefits (56 Ill. Adm. Code 2830) | 9/28/18<br>42 Ill. Reg.<br>17052 | 12/11/18 |
| 1/11/19 | Illinois Commerce Commission, Minimum Safety Standards for Transportation of Gas and for Gas Pipeline Facilities (83 Ill. Adm. Code 590) | 8/17/18<br>42 Ill. Reg.<br>15516 | 12/11/18 |
| 1/11/19 | Illinois Commerce Commission, Reports of Accidents of Incidents by Persons Engaged in the Transportation of Gas, or Who Own or Operate Gas Pipeline Facilities (83 Ill. Adm. Code 595) | 8/17/18<br>42 Ill. Reg.<br>15521 | 12/11/18 |
| 1/11/19 | Department of Healthcare and Family Services, Medical Payment (89 Ill. Adm. Code 140) | 8/31/18<br>42 Ill. Reg.<br>16364 | 12/11/18 |
| 1/11/19 | Department of Insurance, Premium Fund Trust Account (Repealer) (50 Ill. Adm. Code 3113) | 10/12/18<br>42 Ill. Reg.<br>18372 | 12/11/18 |
| 1/16/19 | Department of Labor, Minimum Wage Law (56 Ill. Adm. Code 210) | 9/28/18<br>42 Ill. Reg.<br>17091 | 1/15/19 |
| 1/16/19 | Chief Procurement Officer for Public Institutions of Higher Education, Chief Procurement Officer for Public Institutions of | 10/12/18<br>42 Ill. Reg.<br>17986 | 1/15/19 |

| | | | |
|---|---|---|---|
| | Higher Education Standard Procurement (44 Ill. Adm. Code 4) | | |
| 1/17/19 | Board of Higher Education, Tuition and Fee Waiver Guidelines (23 Ill. Adm. Code 1075) | 10/12/18 42 Ill. Reg. 17980 | 1/15/19 |
| 1/18/19 | Secretary of State, Grant Application and Award Procedures – Census Participation and Immigrant Community Assistance Grants (89 Ill. Adm. Code 1500) | 10/12/18 42 Ill. Reg. 18440 | 1/15/19 |
| 1/18/19 | Property Tax Appeal Board, Practice and Procedures for Appeals Before the Property Tax Appeal Board (86 Ill. Adm. Code 1910) | 8/24/18 42 Ill. Reg. 16136 | 1/15/19 |
| 1/18/19 | Department of Insurance, Insurance Department Consumer Complaints (50 Ill. Adm. Code 926) | 10/12/18 42 Ill. Reg. 18347 | 1/15/19 |
| 1/18/19 | Department of Insurance, Recognition of the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits (50 Ill. Adm. Code 1412) | 10/12/18 42 Ill. Reg. 18360 | 1/15/19 |
| 1/18/19 | Department of Insurance, Insurance Oversight Data Collection (50 Ill. Adm. Code 2907) | 10/12/18 42 Ill. Reg. 18367 | 1/15/19 |

BOARD OF HIGHER EDUCATION

JANUARY 2019 REGULATORY AGENDA

a) Part (Heading and Code Citation): Illinois Financial Assistance Act for Nonpublic Institutions of Higher Learning, 23 Ill. Adm. Code 1000

1) Rulemaking:

A) Description: The Board will review the existing rules for implementation of the newly adopted rule for the Grants Accountability and Transparency Act (44 Ill. Adm. Code 7000). Findings of the review may result in proposed amendments in 2019.

B) Statutory Authority: Illinois Financial Assistance Act for Nonpublic Institutions of Higher Learning [110 ILCS 210]

C) Schedule meeting/hearing dates: No meetings or hearings have been scheduled.

D) Date Agency anticipates First Notice: Undetermined

E) Effect on small businesses, small municipalities or not-for-profit corporations: None

F) Agency contact person for information:

Karen Helland, Administrative Rules Coordinator
Illinois Board of Higher Education
1 N. Old State Capitol Plaza, Suite 333
Springfield IL 62701-1377

217/557-7358
email: helland@ibhe.org
fax: 217/782-8548

G) Related rulemakings and other pertinent information: None

b) Part (Heading and Code Citation): Reverse Transfer of Credits, 23 Ill. Adm. Code 1065

1) Rulemaking:

BOARD OF HIGHER EDUCATION

JANUARY 2019 REGULATORY AGENDA

A) Description: The Board of Higher Education and the Illinois Community College Board shall adopt rules to implement new legislation regarding reverse transfer of credits, pursuant to Public Act 100-824.

B) Statutory Authority: Section 23 of the Student Transfer Achievement Reform Act [110 ILCS 150]

C) Schedule meeting/hearing dates: No meetings or hearings have been scheduled.

D) Date Agency anticipates First Notice: Undetermined

E) Effect on small businesses, small municipalities or not-for-profit corporations: None

F) Agency contact person for information:

Karen Helland, Administrative Rules Coordinator
Illinois Board of Higher Education
1 N. Old State Capitol Plaza, Suite 333
Springfield IL 62701-1377

217/557-7358
email: helland@ibhe.org
fax: 217/782-8548

G) Related rulemakings and other pertinent information: None

c) Part (Heading and Code Citation): Approval of New Units of Instruction, Research, and Public Service at Public Institutions, 23 Ill. Adm. Code 1050

1) Rulemaking:

A) Description: The Board may review this rule in 2019. Findings of the review may result in proposed amendments.

B) Statutory Authority: Sections 7 and 9.05 of the Board of Higher Education Act [110 ILCS 205]

BOARD OF HIGHER EDUCATION

JANUARY 2019 REGULATORY AGENDA

C) Schedule meeting/hearing dates: No meetings or hearings have been scheduled.

D) Date Agency anticipates First Notice: Undetermined

E) Effect on small businesses, small municipalities or not-for-profit corporations: None

F) Agency contact person for information:

Karen Helland, Administrative Rules Coordinator
Illinois Board of Higher Education
1 N. Old State Capitol Plaza, Suite 333
Springfield IL 62701-1377

217/557-7358
email: helland@ibhe.org
fax: 217/782-8548

G) Related rulemakings and other pertinent information: None

d) Part (Heading and Code Citation): Program Review (Private Colleges and Universities), 23 Ill. Adm. Code 1030

1) Rulemaking:

A) Description: The Board may review this rule in 2019. Findings of the review may result in proposed amendments.

B) Statutory Authority: Section 9.05 of the Board of Higher Education Act [110 ILCS 205], Sections 14.5 and 14.10 of the Private College Act [110 ILCS 1005, and Sections 10.5 and 10.10 of the Academic Degree Act [110 ILCS 1010]

C) Schedule meeting/hearing dates: No meetings or hearings have been scheduled.

D) Date Agency anticipates First Notice: Undetermined

E) Effect on small businesses, small municipalities or not-for-profit corporations: None

F) Agency contact person for information:

Karen Helland, Administrative Rules Coordinator
Illinois Board of Higher Education
1 N. Old State Capitol Plaza, Suite 333
Springfield IL 62701-1377

217/557-7358
email: helland@ibhe.org
fax: 217/782-8548

G) Related rulemakings and other pertinent information: None

e) Part (Heading and Code Citation): Private Business and Vocational Schools, 23 Ill. Adm. Code 1095

1) Rulemaking:

A) Description: The Board may review this rule in 2019. Findings of the review may result in proposed amendments.

B) Statutory Authority: Section 90 of the Private Business and Vocational Schools Act of 2012 [105 ILCS 426]

C) Schedule meeting/hearing dates: No meetings or hearings have been scheduled.

D) Date Agency anticipates First Notice: Undetermined

E) Effect on small businesses, small municipalities or not-for-profit corporations: None

F) Agency contact person for information:

Karen Helland, Administrative Rules Coordinator
Illinois Board of Higher Education

BOARD OF HIGHER EDUCATION

JANUARY 2019 REGULATORY AGENDA

1 N. Old State Capitol Plaza, Suite 333
Springfield IL 62701-1377

217/557-7358
email: helland@ibhe.org
fax: 217/782-8548

G) Related rulemakings and other pertinent information: None

f) Part (Heading and Code Citation): General Grant Programs, 23 Ill. Adm. Code 1001

1) Rulemaking:

A) Description: The Board will review the existing rules for implementation of the newly adopted rules for the Grants Accountability and Transparency Act (44 Ill. Adm. Code 7000). Findings of the review may result in proposed amendments in 2019.

B) Statutory Authority: Sections 9.05, 9.09, and 9.17 of the Board of Higher Education Act [110 ILCS 205]

C) Schedule meeting/hearing dates: No meetings or hearings have been scheduled.

D) Date Agency anticipates First Notice: Undetermined

E) Effect on small businesses, small municipalities or not-for-profit corporations: None

F) Agency contact person for information:

Karen Helland, Administrative Rules Coordinator
Illinois Board of Higher Education
1 N. Old State Capitol Plaza, Suite 333
Springfield IL 62701-1377

217/557-7358
email: helland@ibhe.org
fax: 217/782-8548

BOARD OF HIGHER EDUCATION

JANUARY 2019 REGULATORY AGENDA

G) Related rulemakings and other pertinent information: None

g) Part (Heading and Code Citation): Illinois Cooperative Work Study Program, 23 Ill. Adm. Code 1015

1) Rulemaking:

A) Description: The Board will review the existing rules for implementation of the newly adopted rules for the Grants Accountability and Transparency Act (44 Ill. Adm. Code 7000). Findings of the review may result in proposed amendments in 2019.

B) Statutory Authority: Section 3 of the Illinois Cooperative Work Study Program Act [110 ILCS 225]

C) Schedule meeting/hearing dates: No meetings or hearings have been scheduled.

D) Date Agency anticipates First Notice: Undetermined

E) Effect on small businesses, small municipalities or not-for-profit corporations: None

F) Agency contact person for information:

Karen Helland, Administrative Rules Coordinator
Illinois Board of Higher Education
1 N. Old State Capitol Plaza, Suite 333
Springfield IL 62701-1377

217/557-7358
email: helland@ibhe.org
fax: 217/782-8548

G) Related rulemakings and other pertinent information: None

h) Part (Heading and Code Citation): Nurse Educator Fellowship Program, 23 Ill. Adm. Code 1105

BOARD OF HIGHER EDUCATION

JANUARY 2019 REGULATORY AGENDA

1) Rulemaking:

A) Description: The Board will review the existing rules for implementation of the newly adopted rules for the Grants Accountability and Transparency Act (44 Ill. Adm. Code 7000). Findings of the review may result in proposed amendments in 2019.

B) Statutory Authority: Section 9.32 of the Board of Higher Education Act [110 ILCS 205]

C) Schedule meeting/hearing dates: No meetings or hearings have been scheduled.

D) Date Agency anticipates First Notice: Undetermined

E) Effect on small businesses, small municipalities or not-for-profit corporations: None

F) Agency contact person for information:

Karen Helland, Administrative Rules Coordinator
Illinois Board of Higher Education
1 N. Old State Capitol Plaza, Suite 333
Springfield IL 62701-1377

217/557-7358
email: helland@ibhe.org
fax: 217/782-8548

G) Related rulemakings and other pertinent information: None

i) Part (Heading and Code Citation): Postsecondary and Workforce Readiness Act, 23 Ill. Adm. Code 1034

1) Rulemaking:

BOARD OF HIGHER EDUCATION

JANUARY 2019 REGULATORY AGENDA

A) Description: The Board may adopt rules as may be necessary for the implementation of transitional mathematics and in reading and communication transitional competencies, pursuant to Public Act 99-674.

B) Statutory Authority: Section 8 of the Board of Higher Education Act [110 ILCS 205/8] and Section 1 of the Postsecondary and Workforce Readiness Act [110 ILCS 148/1]

C) Schedule meeting/hearing dates: No meetings or hearings have been scheduled.

D) Date Agency anticipates First Notice: Undetermined

E) Effect on small businesses, small municipalities or not-for-profit corporations: None

F) Agency contact person for information:

Karen Helland, Administrative Rules Coordinator
Illinois Board of Higher Education
1 N. Old State Capitol Plaza, Suite 333
Springfield IL 62701-1377

217/557-7358
email: helland@ibhe.org
fax: 217/782-8548

G) Related rulemakings and other pertinent information: None

j) Part (Heading and Code Citation): Performance Metrics for Budget Recommendations, 23 Ill. Adm. Code 900

1) Rulemaking:

A) Description: The Board proposes the adoption of new IBHE rules to provide the performance metrics for the higher education budget recommendations pursuant to Public Act 97-320.

BOARD OF HIGHER EDUCATION

JANUARY 2019 REGULATORY AGENDA

B) Statutory Authority: Section 8 of the Board of Higher Education Act [110 ILCS 205/8]

C) Schedule meeting/hearing dates: No meetings or hearings have been scheduled.

D) Date Agency anticipates First Notice: Undetermined

E) Effect on small businesses, small municipalities or not-for-profit corporations: None

F) Agency contact person for information:

Karen Helland, Administrative Rules Coordinator
Illinois Board of Higher Education
1 N. Old State Capitol Plaza, Suite 333
Springfield IL 62701-1377

217/557-7358
email: helland@ibhe.org
fax: 217/782-8548

G) Related rulemakings and other pertinent information: None

PROPERTY TAX APPEAL BOARD

JANUARY 2019 REGULATORY AGENDA

a) Part (Heading and Code Citations): Practice and Procedure for Appeals Before the Property Tax Appeal Board (86 Ill. Adm. Code 1910).

1) Rulemaking:

A) Description: The Property Tax Appeal Board anticipates amending the following rules:

Section 1910.10(m) – To provide that when an interested taxing body files an appeal it must furnish the name and address of the property owner and the name and address of the taxpayer of the property if different than the owner.

Section 1910.67 – To allow any party to attend and participate in a hearing before the Property Tax Appeal Board through an interactive video-teleconference.

B) Statutory Authority: 35 ILCS 200/Art. 7 and 35 ILCS 200/16-160 through 16-195

C) Scheduled meeting/hearing dates: None

D) Date Agency anticipates First Notice: Spring 2019

E) Effect on small businesses, small municipalities or not-for-profit corporations: None

F) Agency contact person for information:

Steven M. Waggoner
Acting Executive Director
Property Tax Appeal Board
Stratton Office Building, Room 402
401 South Spring Street
Springfield IL 62706

217/785-4459
fax: 217/785-4425
steve.waggoner@illinois.gov

PROPERTY TAX APPEAL BOARD

JANUARY 2019 REGULATORY AGENDA

G) Related rulemakings and other pertinent information: The Joint Committee on Administrative Rules filed a Statement of Objection to and Prohibition Against filing of Proposed Rulemaking associated with the rulemaking appearing at 42 Ill. Reg. 3862; March 2, 2018.

The Property Tax Appeal Board has a pending rulemaking at 42 Ill. Reg. 1636, August 24, 2018.

PROCLAMATIONS

**2018-235**
**Constitutional Offices Proclamation**

**WHEREAS**, On the 6th day of November, 2018, an election was held in the State of Illinois for the election of the following officers, to-wit:

One (1) Governor for the full term of four years.
One (1) Lieutenant Governor for the full term of four years.
One (1) Attorney General for the full term of four years.
One (1) Secretary of State for the full term of four years.
One (1) Comptroller for the full term of four years.
One (1) Treasurer for the full term of four years.

**WHEREAS**, In pursuance of Law, the State Board of Elections appointed to canvass the returns of such election and to declare the results thereof, did, on this the 3rd day of December, 2018, canvass the same, and as a result of such canvass, did declare elected the following named persons to the following named offices:

**GOVERNOR**
JB Pritzker

**LIEUTENANT GOVERNOR**
Juliana Stratton

**ATTORNEY GENERAL**
Kwame Raoul

**SECRETARY OF STATE**
Jesse White

**COMPTROLLER**
Susana A. Mendoza

**TREASURER**
Michael W. Frerichs

**NOW, THEREFORE, I, BRUCE RAUNER,** Governor of the State of Illinois, in conformity to statute in such case made and provided, do hereby make public proclamation, declaring as a result of such canvass the foregoing persons duly elected to the offices as set out above.

Issued by the Governor December 3, 2018
Filed by the Secretary of State December 4, 2018

PROCLAMATIONS

**2018-236**
**GA and US Reps Proclamation**

**WHEREAS,** On the 6th day of November, 2018, an election was held in the State of Illinois for the election of the following officers, to-wit:

Eighteen (18) Representatives in Congress, to-wit: One (1) Representative in Congress from each of the eighteen (18) Congressional Districts of the State for the full term of two years.

Thirty-nine (39) State Senators, to-wit: One (1) State Senator from the 2nd, 3rd, 5th, 6th, 8th, 9th, 11th, 12th, 14th, 15th, 17th, 18th, 20th, 21st, 23rd, 24th, 26th, 27th, 29th, 30th, 32nd, 33rd, 35th, 36th, 38th, 39th, 41st, 42nd, 44th, 45th, 47th, 48th, 50th, 51st, 53rd, 54th, 56th, 57th, and 59th Legislative Districts for the full term of four years.

One Hundred Eighteen (118) Representatives in the General Assembly, to wit: One (1) Representative from each of the one hundred eighteen (118) Representative Districts of the State for the full term of two years.

**WHEREAS,** In pursuance of Law, the State Board of Elections appointed to canvass the returns of such election and to declare the results thereof, did, on this the 3rd day of December, 2018, canvass the same, and as a result of such canvass, did declare elected the following named persons to the following named offices:

**REPRESENTATIVES TO REPRESENT THE PEOPLE OF THE STATE OF ILLINOIS IN THE 116th CONGRESS OF THE UNITED STATES**

**FIRST CONGRESSIONAL DISTRICT**
Bobby L. Rush

**SECOND CONGRESSIONAL DISTRICT**
Robin Kelly

**THIRD CONGRESSIONAL DISTRICT**
Daniel William Lipinski

**FOURTH CONGRESSIONAL DISTRICT**
Jesus "Chuy" Garcia

**FIFTH CONGRESSIONAL DISTRICT**
Mike Quigley

**SIXTH CONGRESSIONAL DISTRICT**
Sean Casten

**SEVENTH CONGRESSIONAL DISTRICT**
Danny K. Davis

**EIGHTH CONGRESSIONAL DISTRICT**
Raja Krishnamoorthi

**NINTH CONGRESSIONAL DISTRICT**
Janice D. Schakowsky

**TENTH CONGRESSIONAL DISTRICT**
Brad Schneider

**ELEVENTH CONGRESSIONAL DISTRICT**
Bill Foster

**TWELFTH CONGRESSIONAL DISTRICT**
Mike Bost

**THIRTEENTH CONGRESSIONAL DISTRICT**
Rodney Davis

**FOURTEENTH CONGRESSIONAL DISTRICT**
Lauren Underwood

**FIFTEENTH CONGRESSIONAL DISTRICT**
John M. Shimkus

**SIXTEENTH CONGRESSIONAL DISTRICT**
Adam Kinzinger

**SEVENTEENTH CONGRESSIONAL DISTRICT**
Cheri Bustos

**EIGHTEENTH CONGRESSIONAL DISTRICT**
Darin LaHood

**STATE SENATORS TO REPRESENT THE PEOPLE OF THE STATE OF ILLINOIS IN THE 101st GENERAL ASSEMBLY OF THE STATE**

**SECOND LEGISLATIVE DISTRICT**
Omar Aquino

**THIRD LEGISLATIVE DISTRICT**
Mattie Hunter

**FIFTH LEGISLATIVE DISTRICT**
Patricia Van Pelt

**SIXTH LEGISLATIVE DISTRICT**
John J. Cullerton

**EIGHTH LEGISLATIVE DISTRICT**
Ram Villivalam

**NINTH LEGISLATIVE DISTRICT**
Laura Fine

**ELEVENTH LEGISLATIVE DISTRICT**
Martin A. Sandoval

**TWELFTH LEGISLATIVE DISTRICT**
Steven Landek

**FOURTEENTH LEGISLATIVE DISTRICT**
Emil Jones, III

**FIFTEENTH LEGISLATIVE DISTRICT**
Napoleon B. Harris, III

**SEVENTEENTH LEGISLATIVE DISTRICT**
Elgie R. Sims, Jr.

**EIGHTEENTH LEGISLATIVE DISTRICT**
Bill Cunningham

**TWENTIETH LEGISLATIVE DISTRICT**
Iris Y. Martinez

**TWENTY-FIRST LEGISLATIVE DISTRICT**
Laura Ellman

**TWENTY-THIRD LEGISLATIVE DISTRICT**
Thomas Cullerton

**TWENTY-FOURTH LEGISLATIVE DISTRICT**
Suzanne "Suzy" Glowiak

**TWENTY-SIXTH LEGISLATIVE DISTRICT**
Dan McConchie

**TWENTY-SEVENTH LEGISLATIVE DISTRICT**
Ann Gillespie

**TWENTY-NINTH LEGISLATIVE DISTRICT**
Julie A. Morrison

**THIRTIETH LEGISLATIVE DISTRICT**

Terry Link

**THIRTY-SECOND LEGISLATIVE DISTRICT**
Craig Wilcox

**THIRTY-THIRD LEGISLATIVE DISTRICT**
Donald P. DeWitte

**THIRTY-FIFTH LEGISLATIVE DISTRICT**
Dave Syverson

**THIRTY-SIXTH LEGISLATIVE DISTRICT**
Neil Anderson

**THIRTY-EIGHTH LEGISLATIVE DISTRICT**
Sue Rezin

**THIRTY-NINTH LEGISLATIVE DISTRICT**
Don Harmon

**FORTY-FIRST LEGISLATIVE DISTRICT**
John Curran

**FORTY-SECOND LEGISLATIVE DISTRICT**
Linda Holmes

**FORTY-FOURTH LEGISLATIVE DISTRICT**
Bill Brady

**FORTY-FIFTH LEGISLATIVE DISTRICT**
Brian W. Stewart

**FORTY-SEVENTH LEGISLATIVE DISTRICT**
Jil Tracy

**FORTY-EIGHTH LEGISLATIVE DISTRICT**
Andy Manar

**FIFTIETH LEGISLATIVE DISTRICT**
Steve McClure

**FIFTY-FIRST LEGISLATIVE DISTRICT**
Chapin Rose

**FIFTY-THIRD LEGISLATIVE DISTRICT**
Jason Barickman

**FIFTY-FOURTH LEGISLATIVE DISTRICT**
Jason Plummer

**FIFTY-SIXTH LEGISLATIVE DISTRICT**
Rachelle Aud Crowe

**FIFTY-SEVENTH LEGISLATIVE DISTRICT**
Christopher Belt

**FIFTY-NINTH LEGISLATIVE DISTRICT**
Dale Fowler

**STATE REPRESENTATIVES TO REPRESENT THE PEOPLE OF THE STATE OF ILLINOIS IN THE 101st GENERAL ASSEMBLY OF THE STATE**

**FIRST REPRESENTATIVE DISTRICT**
Aaron M. Ortiz

**SECOND REPRESENTATIVE DISTRICT**
Theresa Mah

**THIRD REPRESENTATIVE DISTRICT**
Luis Arroyo

**FOURTH REPRESENTATIVE DISTRICT**
Delia C. Ramirez

**FIFTH REPRESENTATIVE DISTRICT**
Lamont J. Robinson, Jr.

**SIXTH REPRESENTATIVE DISTRICT**
Sonya Marie Harper

**SEVENTH REPRESENTATIVE DISTRICT**
Emanuel "Chris" Welch

**EIGHTH REPRESENTATIVE DISTRICT**
La Shawn K. Ford

**NINTH REPRESENTATIVE DISTRICT**
Arthur Turner

**TENTH REPRESENTATIVE DISTRICT**
Melissa Conyears-Ervin

**ELEVENTH REPRESENTATIVE DISTRICT**
Ann M. Williams

**TWELFTH REPRESENTATIVE DISTRICT**
Sara Feigenholtz

**THIRTEENTH REPRESENTATIVE DISTRICT**
Gregory Harris

**FOURTEENTH REPRESENTATIVE DISTRICT**
Kelly M. Cassidy

**FIFTEENTH REPRESENTATIVE DISTRICT**
John C. D'Amico

**SIXTEENTH REPRESENTATIVE DISTRICT**
Lou Lang

**SEVENTEENTH REPRESENTATIVE DISTRICT**
Jennifer Gong-Gershowitz

**EIGHTEENTH REPRESENTATIVE DISTRICT**
Robyn Gabel

**NINETEENTH REPRESENTATIVE DISTRICT**
Robert Martwick

**TWENTIETH REPRESENTATIVE DISTRICT**
Michael P. McAuliffe

**TWENTY-FIRST REPRESENTATIVE DISTRICT**
Celina Villanueva

**TWENTY-SECOND REPRESENTATIVE DISTRICT**
Michael J. Madigan

**TWENTY-THIRD REPRESENTATIVE DISTRICT**
Michael J. Zalewski

**TWENTY-FOURTH REPRESENTATIVE DISTRICT**
Elizabeth "Lisa" Hernandez

**TWENTY-FIFTH REPRESENTATIVE DISTRICT**
Curtis J. Tarver II

**TWENTY-SIXTH REPRESENTATIVE DISTRICT**
Christian L. Mitchell

**TWENTY-SEVENTH REPRESENTATIVE DISTRICT**
Justin Q. Slaughter

**TWENTY-EIGHTH REPRESENTATIVE DISTRICT**
Robert "Bob" Rita

**TWENTY-NINTH REPRESENTATIVE DISTRICT**

Thaddeus Jones

**THIRTIETH REPRESENTATIVE DISTRICT**
William "Will" Davis

**THIRTY-FIRST REPRESENTATIVE DISTRICT**
Mary E. Flowers

**THIRTY-SECOND REPRESENTATIVE DISTRICT**
André Thapedi

**THIRTY-THIRD REPRESENTATIVE DISTRICT**
Marcus C. Evans, Jr.

**THIRTY-FOURTH REPRESENTATIVE DISTRICT**
Nicholas "Nick" Smith

**THIRTY-FIFTH REPRESENTATIVE DISTRICT**
Frances Ann Hurley

**THIRTY-SIXTH REPRESENTATIVE DISTRICT**
Kelly M. Burke

**THIRTY-SEVENTH REPRESENTATIVE DISTRICT**
Margo McDermed

**THIRTY-EIGHTH REPRESENTATIVE DISTRICT**
Debbie Meyers-Martin

**THIRTY-NINTH REPRESENTATIVE DISTRICT**
Will Guzzardi

**FORTIETH REPRESENTATIVE DISTRICT**
Jaime M. Andrade, Jr.

**FORTY-FIRST REPRESENTATIVE DISTRICT**
Grant Wehrli

**FORTY-SECOND REPRESENTATIVE DISTRICT**
Amy L. Grant

**FORTY-THIRD REPRESENTATIVE DISTRICT**
Anna Moeller

**FORTY-FOURTH REPRESENTATIVE DISTRICT**
Fred Crespo

**FORTY-FIFTH REPRESENTATIVE DISTRICT**
Diane Pappas

**FORTY-SIXTH REPRESENTATIVE DISTRICT**
Deb Conroy

**FORTY-SEVENTH REPRESENTATIVE DISTRICT**
Deanne Marie Mazzochi

**FORTY-EIGHTH REPRESENTATIVE DISTRICT**
Terra Costa Howard

**FORTY-NINTH REPRESENTATIVE DISTRICT**
Karina Villa

**FIFTIETH REPRESENTATIVE DISTRICT**
Keith R. Wheeler

**FIFTY-FIRST REPRESENTATIVE DISTRICT**
Mary Edly-Allen

**FIFTY-SECOND REPRESENTATIVE DISTRICT**
David McSweeney

**FIFTY-THIRD REPRESENTATIVE DISTRICT**
Mark L. Walker

**FIFTY-FOURTH REPRESENTATIVE DISTRICT**
Tom Morrison

**FIFTY-FIFTH REPRESENTATIVE DISTRICT**
Martin J. Moylan

**FIFTY-SIXTH REPRESENTATIVE DISTRICT**
Michelle Mussman

**FIFTY-SEVENTH REPRESENTATIVE DISTRICT**
Jonathan Carroll

**FIFTY-EIGHTH REPRESENTATIVE DISTRICT**
Bob Morgan

**FIFTY-NINTH REPRESENTATIVE DISTRICT**
Daniel Didech

**SIXTIETH REPRESENTATIVE DISTRICT**
Rita Mayfield

**SIXTY-FIRST REPRESENTATIVE DISTRICT**
Joyce Mason

**SIXTY-SECOND REPRESENTATIVE DISTRICT**

Sam Yingling

**SIXTY-THIRD REPRESENTATIVE DISTRICT**
Steven Reick

**SIXTY-FOURTH REPRESENTATIVE DISTRICT**
Tom Weber

**SIXTY-FIFTH REPRESENTATIVE DISTRICT**
Dan Ugaste

**SIXTY-SIXTH REPRESENTATIVE DISTRICT**
Allen Skillicorn

**SIXTY-SEVENTH REPRESENTATIVE DISTRICT**
Maurice A. West II

**SIXTY-EIGHTH REPRESENTATIVE DISTRICT**
John M. Cabello

**SIXTY-NINTH REPRESENTATIVE DISTRICT**
Joe Sosnowski

**SEVENTIETH REPRESENTATIVE DISTRICT**
Jeff Keicher

**SEVENTY-FIRST REPRESENTATIVE DISTRICT**
Tony M. McCombie

**SEVENTY-SECOND REPRESENTATIVE DISTRICT**
Michael W. Halpin

**SEVENTY-THIRD REPRESENTATIVE DISTRICT**
Ryan Spain

**SEVENTY-FOURTH REPRESENTATIVE DISTRICT**
Dan Swanson

**SEVENTY-FIFTH REPRESENTATIVE DISTRICT**
David Allen Welter

**SEVENTY-SIXTH REPRESENTATIVE DISTRICT**
Lance Yednock

**SEVENTY-SEVENTH REPRESENTATIVE DISTRICT**
Kathleen Willis

**SEVENTY-EIGHTH REPRESENTATIVE DISTRICT**
Camille Lilly

**SEVENTY-NINTH REPRESENTATIVE DISTRICT**
Lindsay Parkhurst

**EIGHTIETH REPRESENTATIVE DISTRICT**
Anthony DeLuca

**EIGHTY-FIRST REPRESENTATIVE DISTRICT**
Anne M. Stava-Murray

**EIGHTY-SECOND REPRESENTATIVE DISTRICT**
Jim Durkin

**EIGHTY-THIRD REPRESENTATIVE DISTRICT**
Linda Chapa LaVia

**EIGHTY-FOURTH REPRESENTATIVE DISTRICT**
Stephanie A. Kifowit

**EIGHTY-FIFTH REPRESENTATIVE DISTRICT**
John Connor

**EIGHTY-SIXTH REPRESENTATIVE DISTRICT**
Lawrence "Larry" Walsh, Jr.

**EIGHTY-SEVENTH REPRESENTATIVE DISTRICT**
Tim Butler

**EIGHTY-EIGHTH REPRESENTATIVE DISTRICT**
Keith P. Sommer

**EIGHTY-NINTH REPRESENTATIVE DISTRICT**
Andrew S. Chesney

**NINETIETH REPRESENTATIVE DISTRICT**
Tom Demmer

**NINETY-FIRST REPRESENTATIVE DISTRICT**
Michael D. Unes

**NINETY-SECOND REPRESENTATIVE DISTRICT**
Jehan Gordon-Booth

**NINETY-THIRD REPRESENTATIVE DISTRICT**
Norine K. Hammond

**NINETY-FOURTH REPRESENTATIVE DISTRICT**
Randy E. Frese

**NINETY-FIFTH REPRESENTATIVE DISTRICT**

PROCLAMATIONS

Avery Bourne

**NINETY-SIXTH REPRESENTATIVE DISTRICT**
Sue Scherer

**NINETY-SEVENTH REPRESENTATIVE DISTRICT**
Mark Batinick

**NINETY-EIGHTH REPRESENTATIVE DISTRICT**
Natalie A. Manley

**NINETY-NINTH REPRESENTATIVE DISTRICT**
Mike Murphy

**ONE HUNDREDTH REPRESENTATIVE DISTRICT**
Christopher "C.D." Davidsmeyer

**ONE HUNDRED AND FIRST REPRESENTATIVE DISTRICT**
Dan Caulkins

**ONE HUNDRED AND SECOND REPRESENTATIVE DISTRICT**
Brad Halbrook

**ONE HUNDRED AND THIRD REPRESENTATIVE DISTRICT**
Carol Ammons

**ONE HUNDRED AND FOURTH REPRESENTATIVE DISTRICT**
Mike Marron

**ONE HUNDRED AND FIFTH REPRESENTATIVE DISTRICT**
Dan Brady

**ONE HUNDRED AND SIXTH REPRESENTATIVE DISTRICT**
Thomas M. Bennett

**ONE HUNDRED AND SEVENTH REPRESENTATIVE DISTRICT**
Blaine Wilhour

**ONE HUNDRED AND EIGHTH REPRESENTATIVE DISTRICT**
Charles Meier

**ONE HUNDRED AND NINTH REPRESENTATIVE DISTRICT**
Darren Bailey

**ONE HUNDRED AND TENTH REPRESENTATIVE DISTRICT**
Chris Miller

**ONE HUNDRED AND ELEVENTH REPRESENTATIVE DISTRICT**
Monica Bristow

**ONE HUNDRED AND TWELFTH REPRESENTATIVE DISTRICT**
Katie Stuart

**ONE HUNDRED AND THIRTEENTH REPRESENTATIVE DISTRICT**
Jay Hoffman

**ONE HUNDRED AND FOURTEENTH REPRESENTATIVE DISTRICT**
LaToya N. Greenwood

**ONE HUNDRED AND FIFTEENTH REPRESENTATIVE DISTRICT**
Terri Bryant

**ONE HUNDRED AND SIXTEENTH REPRESENTATIVE DISTRICT**
Jerry Costello II

**ONE HUNDRED AND SEVENTEENTH REPRESENTATIVE DISTRICT**
Dave Severin

**ONE HUNDRED AND EIGHTEENTH REPRESENTATIVE DISTRICT**
Patrick Windhorst

**NOW, THEREFORE, I, BRUCE RAUNER,** Governor of the State of Illinois, in conformity to statute in such case made and provided, do hereby make public proclamation, declaring as a result of such canvass the foregoing persons duly elected to the offices as set out above.

Issued by the Governor December 3, 2018
Filed by the Secretary of State December 4, 2018

**2018-237**
**Regional Superintendent of Schools**

**WHEREAS,** On the 6th day of November, 2018, an election was held in the State of Illinois for the election of the following officers, to-wit:

Twenty-four (24) Regional Superintendents of Schools, for a full four year term, to wit: One (1) Regional Superintendent of Schools from the Adams, Brown, Cass, Morgan, Pike and Scott Region, one (1) from the Alexander, Jackson, Perry, Pulaski and Union Region, one (1) from the Bond, Christian, Effingham, Fayette and Montgomery Region, one (1) from the Boone and Winnebago Region, one (1) from the Bureau, Henry and Stark Region, one (1) from the Calhoun, Greene, Jersey and Macoupin Region, one (1) from the Carroll, JoDaviess and Stephenson Region, one (1) from the Champaign and Ford Region, one (1) from the Clark, Coles, Cumberland, Douglas, Edgar, Moultrie and Shelby Region, one (1) from the Clay, Crawford, Jasper, Lawrence and Richland Region, one (1) from the Clinton, Jefferson, Marion

and Washington Region, one (1) from the DeWitt, Livingston, Logan and McLean Region, one (1) from the Edwards, Gallatin, Hamilton, Hardin, Pope, Saline, Wabash, Wayne and White Region, one (1) from the Franklin, Johnson, Massac and Williamson Region, one (1) from the Fulton, Hancock, McDonough and Schuyler Region, one (1) from the Grundy and Kendall Region, one (1) from the Henderson, Knox, Mercer and Warren Region, one (1) from the Iroquois and Kankakee Region, one (1) from the LaSalle, Marshall and Putnam Region, one (1) from the Lee, Ogle and Whiteside Region, one (1) from the Macon and Piatt Region, one (1) from the Mason, Tazewell and Woodford Region, one (1) from the Menard and Sangamon Region, and one (1) from the Monroe and Randolph Region.

**WHEREAS,** In pursuance of Law, the State Board of Elections appointed to canvass the returns of such election and to declare the results thereof, did, on this the 3rd day of December, 2018, canvass the same, and as a result of such canvass, did declare elected the following named persons to the following named offices:

**REGIONAL SUPERINTENDENT OF SCHOOLS**

**Adams, Brown, Cass, Morgan, Pike and Scott**
Jill Reis

**Alexander, Jackson, Perry, Pulaski and Union**
Cheryl R. Graff

**Bond, Christian, Effingham, Fayette and Montgomery**
Julie Wollerman

**Boone and Winnebago**
Scott Bloomquist

**Bureau, Henry and Stark**
Angela Zarvell

**Calhoun, Greene, Jersey and Macoupin**
Michelle Mueller

**Carroll, JoDaviess and Stephenson**
Aaron Mercier

**Champaign and Ford**
Gary Lewis

**Clark, Coles, Cumberland, Douglas, Edgar, Moultrie and Shelby**
Kyle Thompson

**Clay, Crawford, Jasper, Lawrence and Richland**
Monte A. Newlin

PROCLAMATIONS

**Clinton, Jefferson, Marion and Washington**
Ron Daniels

**DeWitt, Livingston, Logan and McLean**
Mark Eugene Jontry

**Edwards, Gallatin, Hamilton, Hardin, Pope, Saline, Wabash, Wayne and White**
Elizabeth ("Beth") Rister

**Franklin, Johnson, Massac and Williamson**
Lorie Lakso LeQuatte

**Fulton, Hancock, McDonough and Schuyler**
John Meixner

**Grundy and Kendall**
Christopher D. Mehochko

**Henderson, Knox, Mercer and Warren**
Jodi L. Scott

**Iroquois and Kankakee**
Gregg Murphy

**LaSalle, Marshall and Putnam**
Christopher B. Dvorak

**Lee, Ogle and Whiteside**
Robert Sondgeroth

**Macon and Piatt**
Matthew T. Snyder

**Mason, Tazewell and Woodford**
Patrick Durley

**Menard and Sangamon**
Jeff Vose

**Monroe and Randolph**
Kelton Davis

**NOW, THEREFORE, I, BRUCE RAUNER,** Governor of the State of Illinois, in conformity to statute in such case made and provided, do hereby make public proclamation, declaring as a result of such canvass the foregoing persons duly elected to the offices as set out above.

Issued by the Governor December 3, 2018

Filed by the Secretary of State December 4, 2018

**2018-238**
**Judicial Vacancies Proclamation**

**WHEREAS,** On the 6th day of November, 2018, an election was held in the State of Illinois for the election of the following judges, to-wit:

Appellate Court Judges to fill the Fourth Judicial District vacancies of the Honorable M. Carol Pope and Honorable Thomas R. Appleton; to fill the Fifth Judicial District vacancy of the Honorable Richard P. Goldenhersh.

Circuit Court Judges to fill:

The Cook County Judicial Circuit vacancies of the Honorable Eileen Mary Brewer, the Honorable Evelyn B. Clay, the Honorable Deborah M. Dooling, the Honorable Lynn M. Egan, the Honorable Laurence J. Dunford, the Honorable Thomas E. Flanagan, the Honorable Russell W. Hartigan, the Honorable Michelle D. Jordan, the Honorable Sheila McGinnis and the Honorable J. Prendergast Rooney;

The Cook County Judicial Circuit, First Subcircuit vacancy of the Honorable Orville E. Hambright, Jr.;

The Cook County Judicial Circuit, Second Subcircuit vacancies of the Honorable Bertina E. Lampkin, the Honorable Marjorie C. Laws, the Honorable James L. Rhodes, the Honorable John D. Turner, Jr., the Honorable Camille E. Willis, and the Honorable Valarie Turner;

The Cook County Judicial Circuit, Third Subcircuit vacancy of the Honorable Maureen F. Delehanty;

The Cook County Judicial Circuit, Fourth Subcircuit vacancies of the Honorable Thomas M. Davy, and the Honorable James G. Riley;

The Cook County Judicial Circuit, Fifth Subcircuit vacancies of the Honorable Patricia Banks, the Honorable Rickey Jones, and the Honorable Edward Washington, II;

The Cook County Judicial Circuit, Sixth Subcircuit vacancies of the Honorable Gloria Chevere, the Honorable Richard C. Cooke, and the Honorable Robert Lopez Cepero;

The Cook County Judicial Circuit, Eighth Subcircuit vacancies of the Honorable Candace J. Fabri, the Honorable Laura C. Liu, and the Honorable Sheryl A. Pethers;

The Cook County Judicial Circuit, Tenth Subcircuit vacancies of the Honorable Eileen O'Neill Burke, and the Honorable Donald J. Suriano;

The Cook County Judicial Circuit, Eleventh Subcircuit vacancy of the Honorable Kathleen G. Kennedy;

The Cook County Judicial Circuit, Twelfth Subcircuit vacancy of the Honorable William O. Maki;

The Cook County Judicial Circuit, Thirteenth Subcircuit vacancies of the Honorable Clayton J. Crane, the Honorable Jeffrey Lawrence, and the Honorable Ann O'Donnell;

The Cook County Judicial Circuit, Fourteenth Subcircuit vacancy of the Honorable Rodolfo Garcia;

The Cook County Judicial Circuit, Fifteenth Subcircuit vacancies of the Honorable George Scully, Jr. and the Honorable Frank G. Zelezinski;

The First Judicial Circuit vacancies of the Honorable James R. Moore, the Honorable Mark H. Clarke, and the First Judicial Circuit, Williamson County vacancies of the Honorable Carolyn B. Smoot and the Honorable Phillip G. Palmer, Sr. and the First Judicial Circuit, Massac County vacancy of the Honorable Joseph Jay Jackson and the First Judicial Circuit, Jackson County vacancy of the Honorable William G. Schwartz;

The Third Judicial Circuit vacancy of the Honorable Barbara Crowder and the Third Judicial Circuit, Madison County vacancy of the Honorable John B. Barberis, Jr. and the Third Judicial Circuit, Bond County vacancy of the Honorable John Knight;

The Fourth Judicial Circuit, Shelby County vacancy of the Honorable Allen F. Bennett;

The Fifth Judicial Circuit vacancy of the Honorable Claudia J. Anderson and the Fifth Judicial Circuit, Coles County vacancy of the Honorable Teresa K. Righter;

The Sixth Judicial Circuit vacancies of the Honorable Arnold F. Blockman and the Honorable Harry E. Clem and the Sixth Judicial Circuit, Moultrie County vacancy of the Honorable Dan L. Flannell;

The Eighth Judicial Circuit vacancy of the Honorable William O. Mays, Jr. and the Eighth Judicial Circuit, Brown County vacancy of the Honorable Diane M. Lagoski and the Eighth Judicial Circuit, Cass County vacancy of the Honorable Bobby G. Hardwick;

The Ninth Judicial Circuit, Fulton County vacancy of the Honorable William C. Davis;

The Tenth Judicial Circuit, Stark County vacancy of the Honorable Thomas A. Keith;

The Eleventh Judicial Circuit, McLean County vacancy of the Honorable Kevin P. Fitzgerald;

The Twelfth Judicial Circuit vacancies of the Honorable Daniel J. Rozak and the Honorable Carla Alessio Policandriotes;

The Fourteenth Judicial Circuit, Whiteside County vacancy of the Honorable John L. Hauptman;

The Fifteenth Judicial Circuit, Lee County vacancy of the Honorable Ronald M. Jacobson;

The Sixteenth Judicial Circuit vacancy of the Honorable David R. Akemann and the Sixteenth Judicial Circuit, First Subcircuit additional judgeship A and the Sixteenth Judicial Circuit, Fourth Subcircuit additional judgeship A;

The Seventeenth Judicial Circuit vacancies of the Honorable J. Edward Prochaska and the Honorable Rosemary Collins;

The Eighteenth Judicial Circuit vacancies of the Honorable Blanche Hill Fawell and the Honorable Kathryn E. Creswell;

The Nineteenth Judicial Circuit vacancies of the Honorable John T. Phillips, the Honorable Christopher C. Starck and the Nineteenth Judicial Circuit, First Subcircuit vacancy of the Honorable George Bridges and the Nineteenth Judicial Circuit, Fifth Subcircuit additional judgeship A;

The Twentieth Judicial Circuit vacancies of the Honorable Jan V. Fiss and the Honorable Vincent J. Lopinot and the Twentieth Judicial Circuit, St. Clair County vacancy of the Honorable Robert P. LeChien;

The Twenty-First Judicial Circuit vacancy of the Honorable Susan Sumner Tungate;

The Twenty-Second Judicial Circuit vacancy of the Honorable Maureen McIntyre and the Twenty-Second Judicial Circuit, First Subcircuit vacancy of the Honorable Charles P. Weech;

**WHEREAS,** In pursuance of Law, the State Board of Elections appointed to canvass the returns of such election and to declare the results thereof, did, on this the 3rd day of December, 2018, canvass the same, and as a result of such canvass, did declare elected the following named persons to the following named offices:

**JUDGE OF THE APPELLATE COURT**

**Fourth Judicial District**

*To fill the vacancy of the Honorable M. Carol Pope*
Thomas M. Harris, Jr.

*To fill the vacancy of the Honorable Thomas R. Appleton*
Pete Cavanagh

**Fifth Judicial District**

*To fill the vacancy of the Honorable Richard P. Goldenhersh*
David K. Overstreet

**JUDGE OF THE CIRCUIT COURT**

**Cook County Judicial Circuit**

*To fill the vacancy of the Honorable Eileen Mary Brewer*
Kathryn Maloney Vahey

*To fill the vacancy of the Honorable Evelyn B. Clay*
Kathaleen Theresa Lanahan

*To fill the vacancy of the Honorable Deborah M. Dooling*
Tom Sam Sianis

*To fill the vacancy of the Honorable Lynn M. Egan*
Rosa Maria Silva

*To fill the vacancy of the Honorable Laurence J. Dunford*
Thomas F. McGuire

*To fill the vacancy of the Honorable Thomas E. Flanagan*
Preston Jones, Jr.

*To fill the vacancy of the Honorable Russell W. Hartigan*
Cecilia Anne Horan

*To fill the vacancy of the Honorable Michelle D. Jordan*
Clare Joyce Quish

PROCLAMATIONS

*To fill the vacancy of the Honorable Sheila McGinnis*
Peter Michael Gonzalez

*To fill the vacancy of the Honorable J. Prendergast Rooney*
Jack Hagerty

**Cook County Judicial Circuit – First Subcircuit**

*To fill the vacancy of the Honorable Orville E. Hambright, Jr.*
Erika Orr

**Cook County Judicial Circuit – Second Subcircuit**

*To fill the vacancy of the Honorable Bertina E. Lampkin*
Tiana Ellis Blakely

*To fill the vacancy of the Honorable Marjorie C. Laws*
Adrienne Elaine Davis

*To fill the vacancy of the Honorable James L. Rhodes*
Toya T. Harvey

*To fill the vacancy of the Honorable John D. Turner, Jr.*
Ieshia Gray

*To fill the vacancy of the Honorable Camille E. Willis*
Debra A. Seaton

*To fill the vacancy of the Honorable Valarie Turner*
Arthur Wesley Willis

**Cook County Judicial Circuit – Third Subcircuit**

*To fill the vacancy of the Honorable Maureen F. Delehanty*
Kevin Patrick Cunningham

**Cook County Judicial Circuit – Fourth Subcircuit**

*To fill the vacancy of the Honorable Thomas M. Davy*
David R. Navarro

*To fill the vacancy of the Honorable James G. Riley*
Elizabeth Ciaccia-Lezza

**Cook County Judicial Circuit – Fifth Subcircuit**

*To fill the vacancy of the Honorable Patricia Banks*
H. Yvonne Coleman

*To fill the vacancy of the Honorable Rickey Jones*

PROCLAMATIONS

Marian Emily Perkins

*To fill the vacancy of the Honorable Edward Washington, II*
Robert Harris

**Cook County Judicial Circuit – Sixth Subcircuit**

*To fill the vacancy of the Honorable Gloria Chevere*
Kent Delgado

*To fill the vacancy of the Honorable Richard C. Cooke*
Andrea Michelle Webber

*To fill the vacancy of the Honorable Robert Lopez Cepero*
Linda Perez

**Cook County Judicial Circuit – Eighth Subcircuit**

*To fill the vacancy of the Honorable Candace J. Fabri*
James "Jamie" Shapiro

*To fill the vacancy of the Honorable Laura C. Liu*
Lindsay Huge

*To fill the vacancy of the Honorable Sheryl A. Pethers*
Jeanne Marie Wrenn

**Cook County Judicial Circuit – Tenth Subcircuit**

*To fill the vacancy of the Honorable Eileen O'Neill Burke*
Stephanie Saltouros

*To fill the vacancy of the Honorable Donald J. Suriano*
Colleen Reardon Daly

**Cook County Judicial Circuit – Eleventh Subcircuit**

*To fill the vacancy of the Honorable Kathleen G. Kennedy*
Joanne F. Rosado

**Cook County Judicial Circuit – Twelfth Subcircuit**

*To fill the vacancy of the Honorable William O. Maki*
Joel Chupack

**Cook County Judicial Circuit – Thirteenth Subcircuit**

*To fill the vacancy of the Honorable Clayton J. Crane*
Ketki "Kay" Steffen

*To fill the vacancy of the Honorable Jeffrey Lawrence*

PROCLAMATIONS

Shannon P. O'Malley

*To fill the vacancy of the Honorable Ann O'Donnell*
Samuel J. Betar III

**Cook County Judicial Circuit – Fourteenth Subcircuit**

*To fill the vacancy of the Honorable Rodolfo Garcia*
Beatriz A. Frausto-Sandoval

**Cook County Judicial Circuit – Fifteenth Subcircuit**

*To fill the vacancy of the Honorable George Scully, Jr.*
Michael B. Barrett

*To fill the vacancy of the Honorable Frank G. Zelezinski*
Scott McKenna

**First Judicial Circuit**

*To fill the vacancy of the Honorable James R. Moore*
Carey C. Gill

*To fill the vacancy of the Honorable Mark H. Clarke*
Amanda Byassee Gott

**First Judicial Circuit – Williamson County**

*To fill the vacancy of the Honorable Carolyn B. Smoot*
John W. Sanders

*To fill the vacancy of the Honorable Phillip G. Palmer, Sr.*
Stephen R. Green

**First Judicial Circuit – Massac County**

*To fill the vacancy of the Joseph Jay Jackson*
Cord Zachary Wittig

**First Judicial Circuit – Jackson County**

*To fill the vacancy of the Honorable William G. Schwartz*
Christy W. Solverson

**Third Judicial Circuit**

*To fill the vacancy of the Honorable Barbara Crowder*
Sarah Smith

**Third Judicial Circuit – Madison County**

PROCLAMATIONS

*To fill the vacancy of the Honorable John B. Barberis, Jr.*
David W. Dugan

**Third Judicial Circuit – Bond County**

*To fill the vacancy of the Honorable John Knight*
Chris Bauer

**Fourth Judicial Circuit – Shelby County**

*To fill the vacancy of the Honorable Allen F. Bennett*
Amanda S. Ade-Harlow

**Fifth Judicial Circuit**

*To fill the vacancy of the Honorable Claudia J. Anderson*
Charles "Charlie" Hall

**Fifth Judicial Circuit – Coles County**

*To fill the vacancy of the Honorable Teresa K. Righter*
Mark E. Bovard

**Sixth Judicial Circuit**

*To fill the vacancy of the Honorable Arnold F. Blockman*
Roger B. Webber

*To fill the vacancy of the Honorable Harry E. Clem*
Randy Rosenbaum

**Sixth Judicial Circuit – Moultrie County**

*To fill the vacancy of the Honorable Dan L. Flannell*
Jeremy Richey

**Eighth Judicial Circuit**

*To fill the vacancy of the Honorable William O. Mays, Jr.*
Amy Lannerd

**Eighth Judicial Circuit – Brown County**

*To fill the vacancy of the Honorable Diane M. Lagoski*
Jerry J. Hooker

**Eighth Judicial Circuit – Cass County**

*To fill the vacancy of the Honorable Bobby G. Hardwick*
Timothy J. "T.J." Wessel

PROCLAMATIONS

**Ninth Judicial Circuit- Fulton County**

*To fill the vacancy of the Honorable William C. Davis*
Bruce C. Beal

**Tenth Judicial Circuit – Stark County**

*To fill the vacancy of the Honorable Thomas A. Keith*
Bruce Fehrenbacher

**Eleventh Judicial Circuit – McLean County**

*To fill the vacancy of the Honorable Kevin P. Fitzgerald*
William A. Yoder

**Twelfth Judicial Circuit**

*To fill the vacancy of the Honorable Daniel J. Rozak*
David Garcia

*To fill the vacancy of the Honorable Carla Alessio Policandriotes*
Vincent F. Cornelius

**Fourteenth Judicial Circuit – Whiteside County**

*To fill the vacancy of the Honorable John L. Hauptman*
Trish Joyce

**Fifteenth Judicial Circuit – Lee County**

*To fill the vacancy of the Honorable Ronald M. Jacobson*
Jacquelyn D. Ackert

**Sixteenth Judicial Circuit**

*To fill the vacancy of the Honorable David R. Akemann*
Michael J. Noland

**Sixteenth Judicial Circuit – First Subcircuit**

*To fill additional judgeship A*
Rene Cruz

**Sixteenth Judicial Circuit – Fourth Subcircuit**

*To fill additional judgeship A*
Clint Hull

**Seventeenth Judicial Circuit**

*To fill the vacancy of the Honorable J. Edward Prochaska*

PROCLAMATIONS

John Lowry

*To fill the vacancy of the Honorable Rosemary Collins*
Joseph P. "Joe" Bruscato

**Eighteenth Judicial Circuit**

*To fill the vacancy of the Honorable Blanche Hill Fawell*
Karen M. Wilson

*To fill the vacancy of the Honorable Kathryn E. Creswell*
Linda E. Davenport

**Nineteenth Judicial Circuit**

*To fill the vacancy of the Honorable John T. Phillips*
Christopher R. Stride

*To fill the vacancy of the Honorable Christopher C. Starck*
Christen L. Bishop

**Nineteenth Judicial Circuit – First Subcircuit**

*To fill the vacancy of the Honorable George Bridges*
Charles "Chuck" Smith

**Nineteenth Judicial Circuit – Fifth Subcircuit**

*To fill additional judgeship A*
Joseph V. Salvi

**Twentieth Judicial Circuit**

*To fill the vacancy of the Honorable Jan V. Fiss*
Heinz Rudolf

*To fill the vacancy of the Honorable Vincent J. Lopinot*
John J. O'Gara

**Twentieth Judicial Circuit – St. Clair County**

*To fill the vacancy of the Honorable Robert P. LeChien*
Chris Kolker

**Twenty-First Judicial Circuit**

*To fill the vacancy of the Honorable Susan Sumner Tungate*
Thomas W. Cunnington

**Twenty-Second Judicial Circuit**

PROCLAMATIONS

*To fill the vacancy of the Honorable Maureen McIntyre*
Robert Wilbrandt

**Twenty-Second Judicial Circuit – First Subcircuit**

*To fill the vacancy of the Honorable Charles P. Weech*
Tiffany Davis

**NOW, THEREFORE, I, BRUCE RAUNER,** Governor of the State of Illinois, in conformity to statute in such case made and provided, do hereby make public proclamation, declaring as a result of such canvass the foregoing persons duly elected to the offices as set out above.

Issued by the Governor December 3, 2018
Filed by the Secretary of State December 4, 2018

**2018-239**
**Judicial Retention Proclamation**

**WHEREAS,** On the 6th day of November, 2018, an election was held in the State of Illinois for the retention of the following judges, to-wit:

Supreme Court Judges from the First Judicial District;

Appellate Court Judges from the First and Second Judicial Districts;

Circuit Court Judges from the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-second, Twenty-third and Cook County Judicial Circuits.

**WHEREAS,** In pursuance of Law, the State Board of Elections appointed to canvass the returns of such election and to declare the results thereof, did, on this the 3rd day of December, 2018, canvass the same, and as a result of such canvass, did declare retained the following named persons to the following named offices:

**RETENTION**

**Judge of the Supreme Court**

*First Judicial District*
Anne M. Burke

**Judge of the Appellate Court**

PROCLAMATIONS

*First Judicial District*
Margaret Stanton McBride

*Second Judicial District*
Robert D. McLaren

**Judge of the Circuit Court**

*First Judicial Circuit*
Mark M. Boie
Brad K. Bleyer

*Second Judicial Circuit*
Melissa Morgan
Christopher L. Weber
T. Scott Webb
Jo Beth Weber
Eric J. Dirnbeck

*Third Judicial Circuit*
Dave Hylla
Kyle Anne Napp

*Fourth Judicial Circuit*
Daniel E. Hartigan
Kimberly G. Koester

*Fifth Judicial Circuit*
Craig H. DeArmond
Nancy S. Fahey
Brien J. O'Brien

*Sixth Judicial Circuit*
Jeffrey B. "Jeff" Ford
Thomas E. Griffith

*Seventh Judicial Circuit*
John Belz
Eric S. Pistorius
Kenneth R. Deihl
David R. Cherry

*Eighth Judicial Circuit*
J. Frank McCartney

*Ninth Judicial Circuit*
Scott Shipplett

PROCLAMATIONS

Rodney G. Clark
James Standard

*Tenth Judicial Circuit*
Paul Gilfillan
Kevin W. Lyons
Kate Gorman

*Eleventh Judicial Circuit*
Paul Lawrence
Rebecca Simmons Foley

*Thirteenth Judicial Circuit*
Cynthia M. Raccuglia
Troy Holland

*Fourteenth Judicial Circuit*
Jeffrey W. O'Connor
Mark A. Vandewiele
Stanley B. Steines

*Fifteenth Judicial Circuit*
Michael P. Bald
Robert T. Hanson

*Sixteenth Judicial Circuit*
Donald C. Hudson
John A. Barsanti
John G. Dalton

*Seventeenth Judicial Circuit*
Brendan Maher

*Eighteenth Judicial Circuit*
Patrick J. O'Shea

*Nineteenth Judicial Circuit*
Daniel B. Shanes
Patricia S. Fix
Thomas Schippers

*Twentieth Judicial Circuit*
Zina R. Cruse
Daniel J. Emge
Andrew J. Gleeson

*Twenty-second Judicial Circuit*

PROCLAMATIONS

Michael J. Chmiel

*Twenty-third Judicial Circuit*
Melissa S. Barnhart
Ronald G. Matekaitis

*Cook County Judicial Circuit*
Kathy M. Flanagan
Moshe Jacobius
Stuart F. Lubin
Martin S. Agran
Ronald F. Bartkowicz
E. Kenneth Wright, Jr.
Catherine Marie Haberkorn
James M. Varga
Marcia Maras
Peter Flynn
Paul A. Karkula
Maura Slattery Boyle
Mary Margaret Brosnahan
Joyce Marie Murphy Gorman
Joan Margaret O'Brien
Thomas David Roti
Colleen F. Sheehan
Carl Anthony Walker
Daniel Patrick Brennan
Grace G. Dickler
Ellen L. Flannigan
Carol M. Howard
Jill C. Marisie
James Michael McGing
Mike McHale
James Patrick Murphy
Thomas W. Murphy
Ramon Ocasio, III
Mary Colleen Roberts
Diane M. Shelley
Celia Louise Gamrath
Lorna Ellen Propes
Tommy Brewer
Andrea M. Schleifer
Thomas R. Allen

PROCLAMATIONS

Erica L. Reddick
Aicha Marie MacCarthy
Lionel Jean-Baptiste
Michael R. Clancy
Regina Ann Scannicchio
Diann Karen Marsalek
Pamela M. Leeming
Larry G. Axelrood
Carl B. Boyd
Daniel R. Degnan
John H. Ehrlich
Terry Gallagher
William G. Gamboney
Elizabeth Mary Hayes
Martin C. Kelley
Kimberly D. Lewis
Edward M. Maloney
Lisa Ann Marino
Michael Tully Mullen
Karen Lynn O'Malley
Paul S. Pavlus
Cynthia Ramirez
Beatriz Santiago

**NOW, THEREFORE, I, BRUCE RAUNER,** Governor of the State of Illinois, in conformity to statute in such case made and provided, do hereby make public proclamation, declaring as a result of such canvass the foregoing persons duly retained to the offices as set out above.

Issued by the Governor December 3, 2018
Filed by the Secretary of State December 4, 2018

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

Rules acted upon in Volume 42, Issue 51 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.

**PROPOSED RULES**


56 - 2712 ..... 23311
56 - 2714 ..... 23318
56 - 2720 ..... 23324
56 - 2725 ..... 23370
56 - 2730 ..... 23379
56 - 2732 ..... 23386
56 - 2760 ..... 23408
56 - 2765 ..... 23419
56 - 2770 ..... 23443
56 - 2835 ..... 23452
56 - 2840 ..... 23457
56 - 2865 ..... 23462
56 - 2905 ..... 23491
56 - 2915 ..... 23496
56 - 2920 ..... 23504
56 - 2960 ..... 23525
59 - 50 ..... 23535
62 - 240 ..... 23546
62 - 1701 ..... 23587
62 - 1703 ..... 23620
62 - 1773 ..... 23624
62 - 1774 ..... 23636
62 - 1778 ..... 23643
11 - 210 ..... 23656
11 - 403 ..... 23677
11 - 411 ..... 23703
11 - 423 ..... 23707
11 - 450 ..... 23711


**ADOPTED RULES**


14 - 511 12/4/2018 ..... 23717
14 - 530 12/4/2018 ..... 23719
14 - 1230 12/4/2018 ..... 23721
56 - 2630 12/4/2018 ..... 23723
35 - 725 11/19/2018 ..... 23725
35 - 727 11/19/2018 ..... 24055
35 - 730 11/19/2018 ..... 24145
77 - 750 12/7/2018 ..... 24242
77 - 750 12/7/2018 ..... 24245
80 - 250 12/3/2018 ..... 24268


**JOINT COMMITTEE ON ADMINISTRATIVE RULES**

**STATEMENTS OF SUSPENSION**

68 - 1290 ..... 24277

**EXECUTIVE ORDERS AND PROCLAMATIONS**

18 - 235 12/3/2018 ..... 24293
18 - 236 12/3/2018 ..... 24294
18 - 237 12/3/2018 ..... 24305
18 - 238 12/3/2018 ..... 24308
18 - 239 12/3/2018 ..... 24318

**REGULATORY AGENDA**

23 - 1000 ..... 24282
86 - 1910 ..... 24291