

TABLE OF CONTENTS

August 23, 2019 Volume 43, Issue 34

PROPOSED RULES

JUVENILE JUSTICE, DEPARTMENT OF

School District #428

20 Ill. Adm. Code 2405.....8964

Chaplaincy Services and Religious Practices

20 Ill. Adm. Code 2425.....8977

Volunteer Services

20 Ill. Adm. Code 2435.....8992

Personal Property

20 Ill. Adm. Code 2535.....8999

REVENUE, DEPARTMENT OF

Uniform Penalty and Interest

86 Ill. Adm. Code 700.....9010

STATE POLICE, DEPARTMENT OF

Firearm Dealer License Certification Act

20 Ill. Adm. Code 1232.....9084

ADOPTED RULES

COMMERCE COMMISSION, ILLINOIS

Renewable Portfolio Standard and Clean Coal Standard for Alternative
Retail Electric Suppliers and Utilities Operating Outside Their Service
Areas

83 Ill. Adm. Code 455.....9117

HUMAN SERVICES, DEPARTMENT OF

Aid to the Aged, Blind or Disabled

89 Ill. Adm. Code 113.....9122

PUBLIC HEALTH, DEPARTMENT OF

Home Health, Home Services, and Home Nursing Agency Code

77 Ill. Adm. Code 245.....9134

NOTICE OF EXPEDITED CORRECTION

FINANCIAL AND PROFESSIONAL REGULATION, DEPARTMENT OF

Residential Mortgage License Act of 1987

38 Ill. Adm. Code 1050.....9197

SECOND NOTICES RECEIVED

JOINT COMMITTEE ON ADMINISTRATIVE RULES

Second Notices Received.....9207

EXECUTIVE ORDERS AND PROCLAMATIONS

PROCLAMATIONS

Flag Lowering - SPC Michael Nance

2019-140.....9208

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 2019

Issue#	Rules Due Date	Date of Issue
1	December 26, 2018	January 4, 2019
2	December 31, 2018	January 11, 2019
3	January 7, 2019	January 18, 2019
4	January 14, 2019	January 25, 2019
5	January 22, 2019	February 1, 2019
6	January 28, 2019	February 8, 2019
7	February 4, 2019	February 15, 2019
8	February 11, 2019	February 22, 2019
9	February 19, 2019	March 1, 2019
10	February 25, 2019	March 8, 2019
11	March 4, 2019	March 15, 2019
12	March 11, 2019	March 22, 2019
13	March 18, 2019	March 29, 2019
14	March 25, 2019	April 5, 2019
15	April 1, 2019	April 12, 2019
16	April 8, 2019	April 19, 2019
17	April 15, 2019	April 26, 2019
18	April 22, 2019	May 3, 2019
19	April 29, 2019	May 10, 2019
20	May 6, 2019	May 17, 2019
21	May 13, 2019	May 24, 2019

22	May 20, 2019	May 31, 2019
23	May 28, 2019	June 7, 2019
24	June 3, 2019	June 14, 2019
25	June 10, 2019	June 21, 2019
26	June 17, 2019	June 28, 2019
27	June 24, 2019	July 5, 2019
28	July 1, 2019	July 12, 2019
29	July 8, 2019	July 19, 2019
30	July 15, 2019	July 26, 2019
31	July 22, 2019	August 2, 2019
32	July 29, 2019	August 9, 2019
33	August 5, 2019	August 16, 2019
34	August 12, 2019	August 23, 2019
35	August 19, 2019	August 30, 2019
36	August 26, 2019	September 6, 2019
37	September 3, 2019	September 13, 2019
38	September 9, 2019	September 20, 2019
39	September 16, 2019	September 27, 2019
40	September 23, 2019	October 4, 2019
41	September 30, 2019	October 11, 2019
42	October 7, 2019	October 18, 2019
43	October 15, 2019	October 25, 2019
44	October 21, 2019	November 1, 2019
45	October 28, 2019	November 8, 2019
46	November 4, 2019	November 15, 2019
47	November 12, 2019	November 22, 2019
48	November 18, 2019	December 2, 2019
49	November 25, 2019	December 6, 2019
50	December 2, 2019	December 13, 2019
51	December 9, 2019	December 20, 2019
52	December 16, 2019	December 27, 2019

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: School District #428
- 2) Code Citation: 20 Ill. Adm. Code 2405
- 3)

<u>Section Numbers</u> :	<u>Proposed Actions</u> :
2405.10	Amendment
2405.15	Amendment
2405.17	Amendment
2405.20	Amendment
2405.30	Amendment
2405.50	Repealed
2405.60	Amendment
2405.80	Repealed
- 4) Statutory Authority: Implementing Sections 3-2.5-20, 3-6-2, 3-6-3, 3-9-1, 3-10-2, 3-10-3 and 3-12-3 of the Unified Code of Corrections [730 ILCS 5] and Sections 13-40 through 13-45 of the Illinois School Code [105 ILCS 5] and authorized by Sections 3-2.5-20 and 3-7-1 of the Unified Code of Corrections.
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking removes references to the Department of Corrections to reflect that the Department is a stand-alone agency. Additionally, changes are being made to reflect current School District #428 practices. Specifically, references to adult education are being removed as adult education and adult education programing are under the purview of the Department of Corrections. To that end, Section 2405.50 (Adult Basic Education Attendance) is being repealed. References to vocational education are being changed to career and technical education. References to committed persons are being updated to committed youth to more accurately reflect the Department's population. Section 2405.80 (Educational Reimbursement) is being repealed because the Department does not seek reimbursement. Finally, technical changes are being made to align this Part to current administrative code style.
- 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

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

- 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 proposed rulemaking does not create or enlarge a State mandate.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Written comments may be submitted within 45 days of the publication of this Notice to:
- Lindsay M. Bentivegna
Policy Staff Attorney
Department of Juvenile Justice
2715 W. Monroe St.
Springfield IL 62704
- 217/557-1030
DJJ.Rules@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) Small Business Impact Analysis: There is no adverse impact on small business.
- 15) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not summarized in a regulatory agenda because it was not anticipated.

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

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

TITLE 20: CORRECTIONS, CRIMINAL JUSTICE, AND LAW ENFORCEMENT
CHAPTER IX: DEPARTMENT OF JUVENILE JUSTICE
SUBCHAPTER c: PROGRAMS AND SERVICESPART 2405
SCHOOL DISTRICT #428

Section

2405.10	Applicability
2405.15	Responsibilities
2405.17	Definitions
2405.20	Adult and Juvenile Educational Programs
2405.30	Assistance to Aftercare Services Division
2405.50	Adult Basic Education Attendance (<u>Repealed</u>)
2405.60	Juvenile Educational Attendance
2405.70	Suspension of Programs
2405.80	Educational Reimbursement (<u>Repealed</u>)

AUTHORITY: Implementing Sections 3-2.5-20, 3-6-2, 3-6-3, 3-9-1, 3-10-2, 3-10-3 and 3-12-3 of the Unified Code of Corrections [730 ILCS 5/3-2.5-20, 3-6-2, 3-6-3, 3-9-1, 3-10-2, 3-10-3 and 3-12-3] and Sections 13-40 through 13-45 of the Illinois School Code [105 ILCS 5/13-40 through 13-45] and authorized by Sections 3-2.5-20 and 3-7-1 of the Unified Code of Corrections [730 ILCS 5/3-2.5-20 and 3-7-1].

SOURCE: Adopted at 8 Ill. Reg. 14624, effective August 1, 1984; amended at 11 Ill. Reg. 2742, effective February 1, 1987; emergency amendment at 14 Ill. Reg. 19389, effective December 1, 1990, for a maximum of 150 days; amended at 15 Ill. Reg. 5642, effective April 15, 1991; amended at 16 Ill. Reg. 10449, effective July 1, 1992; emergency amendment at 17 Ill. Reg. 16227, effective September 17, 1993, for a maximum of 150 days; amended at 18 Ill. Reg. 2970, effective February 14, 1994; emergency amendment at 21 Ill. Reg. 647, effective January 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 5916, effective May 1, 1997; the policies embodied in this Part transferred to the Department of Juvenile Justice pursuant to Section 3-2.5-50 of the Unified Code of Corrections on June 1, 2006 and codified at 38 Ill. Reg. 16430; amended at 43 Ill. Reg. _____, effective _____.

Section 2405.10 Applicability

This Part applies to all Divisions of the Department of Juvenile Justice ~~and the Department of Corrections.~~

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

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

Section 2405.15 Responsibilities

- a) Unless otherwise specified, the Director, Chief Administrative Officer, Superintendent, or ~~Principal Educational Administrator~~ may delegate responsibilities stated in this Part to another person or persons or designate another person or persons to perform the duties specified.
- b) No other individual may routinely perform duties whenever a rule in this Part specifically states the Director, Chief Administrative Officer, Superintendent, or ~~Principal Educational Administrator~~ shall personally perform the duties. However, the Director, Chief Administrative Officer, Superintendent, or ~~Principal Educational Administrator~~ may designate another person or persons to perform the duties during periods of his or her temporary absence or in an emergency.

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

Section 2405.17 Definitions

"Achievement test" means a nationally normed instrument, which has been approved by the Superintendent of School District #428, that measures an individual's educational grade level.

"Associate level courses" means academic and ~~CTE vocational~~ courses that are approved by a college or university as meeting the requirements for an award of an Associate's Degree.

"Baccalaureate level courses" means academic and ~~CTE vocational~~ courses that are approved by a college or university as meeting the requirements for an award of a Bachelor's Degree.

"Billable course work" means course work in which the committed ~~youth person~~ is enrolled, or that begins on or after January 1, 1997 while ~~in custody, incarcerated~~ that is necessary for a degree.

"Chief Administrative Officer" means the highest ranking official of a

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

~~Department youth center or Department of Corrections correctional facility.~~

"CTE" means career and technical education.

"Degree" means an academic title awarded by a college or university upon the completion of an approved course of study. Types of degrees awarded are associate's, bachelor's, etc.

"Diploma" means an academic title awarded by School District #428 upon the completion of an approved course of study. Types of diplomas awarded are eighth grade, high school, special education and the General Education Development (GED) Certificate.

"Department" means the Department of Juvenile Justice.

"Director" means the Director of the Department of Juvenile Justice.

"Educational programs" means courses of academic and ~~CTE~~vocational instruction offered to ~~persons~~ committed ~~youth to the Department~~ or persons 21 or under who have not yet earned a high school diploma or ~~General Educational Development (GED) certificate committed to the Department of Corrections~~ as approved by School District #428; or courses of academic and ~~CTE~~vocational instruction offered in the free community; or ~~CTE~~vocational work training programs offered by the Department or outside resources.

"Full-time student" means a committed ~~youth~~person who is enrolled in an educational program that has classes that are normally scheduled to meet a minimum of 15 hours a week; or a committed ~~youth~~person who is enrolled in college academics for a minimum of six credit hours per module or 12 credit hours per semester.

~~"Higher level courses" means academic courses that are approved by a college or university as meeting the requirements for an award of any degrees beyond the Bachelor's Degree.~~

"90 instructional day program" means a period of 90 days of remedial education, excluding days of absence or days in which no instruction was offered.

"Instructional day" means a day in which instruction is provided.

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

"Sexually dangerous person" means any person as defined in Section 1.01 of the Sexually Dangerous Persons Act [725 ILCS 205/1.01].

"Superintendent" means the Superintendent of the Department of Juvenile Justice School District #428.

"Technical violator" means a committed youthperson who has been returned to a youth center~~Department facility~~ due to a violation of the conditions of his or her parole, aftercare release, or mandatory supervised release, but does not include a committed youthperson who has been adjudicated~~convicted~~ of a new offense.

"Unified Code of Corrections" means 730 ILCS 5.

"Working days" means Monday through Friday, excluding State holidays.

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

Section 2405.20 ~~Adult and~~ Juvenile Educational Programs

- a) The opportunity for educational programs shall be available in the Department and ~~Department of Corrections~~ through the Department of Juvenile Justice School District #428. Nothing in this Part shall be construed to require educational opportunities for all committed persons, except as otherwise provided in Section 2405.60 or in Sections 3-6-2 and 3-9-1 of the Unified Code of Corrections ~~[730 ILCS 5/3-6-2 and 3-9-1]. 1) Department of Corrections educational programs shall include: A) Adult basic education and General Educational Development (GED) training; B) Special education; C) Vocational education and career counseling; and D) Post-secondary education, where possible. 2) Department of Juvenile Justice educational programs shall include:~~

~~1)A)~~ Basic education and GED;

~~2)B)~~ High school credits;

~~3)C)~~ Special education;

~~4)D)~~ CTE~~Vocational education~~; and

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

- ~~5)E)~~ Post-secondary education, when~~where~~ possible.
- b) Committed youth~~persons~~ shall be assessed upon being received in the Department to determine academic abilities, upon request, be considered for enrollment in an educational program for which they are eligible or placement on the waiting list for the program if one exists.
- c) In determining the most appropriate~~eligibility for enrollment in~~ educational programs, the Department shall consider, among other factors, the committed youth~~person's~~ composite scores on achievement tests, the safety and security of the facility or any person, staff recommendations, requirements for admission to specific programs, administrative concerns, and the committed youth~~person's~~ institutional behavior, disciplinary record, educational record and, projected release date, ~~and medical and mental health status.~~
- ~~d)~~ In the Department of Corrections correctional facilities, committed persons age 21 or under who have not earned a high school diploma or General Educational Development (GED) certificate may be eligible to enroll in:
- ~~1)~~ Adult Basic Education if they test below the 8.0 grade level.
 - ~~2)~~ GED training if they test at the 8.0 grade level or above and they do not have a verified GED certificate or a High School diploma.
 - ~~3)~~ Special education regardless of test scores.
 - ~~4)~~ School District #428 vocational education regardless of test scores.
 - ~~5)~~ College vocational programs if they have a verified GED certificate or High School diploma or as otherwise approved in writing by the Superintendent.
- ~~de)~~ In Department youth centers, committed youth~~persons~~ may be eligible to enroll in:
- 1) Basic Education if they test below the eighth~~8.0~~ grade level.
 - 2) GED training if they test at the eighth~~8.0~~ grade level or above and they do not have a verified GED certificate, Special Education diploma, or High

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

~~School~~ diploma.

- 3) High School credits if they test at the ~~eighth~~^{8.0} grade level or above and they do not have a verified ~~GED certificate, Special Education Diploma, or High School~~ diploma.
 - 4) Special Education regardless of test scores.
 - 5) School District #428 ~~CTE~~^{vocational education} if they test at the ~~third~~^{3.0} grade level or above.
 - 6) College ~~CTE~~^{vocational} programs if they have a verified ~~GED certificate, Special Education diploma, or High School~~ diploma or as otherwise approved in writing by the Superintendent.
 - 7) Two-year college academic programs (~~associate level courses~~) if they have a verified ~~GED certificate, Special Education diploma, or High School~~ diploma.
 - 8) Four-year college or university academic programs (Bachelor's level courses) if they have a verified diploma.
- f) Committed ~~youthpersons~~ shall be required to attend and actively participate in classes for which they are enrolled and shall be subject to discipline under 20 Ill. Adm. Code 2504 (Discipline and Grievances), unless absent due to verified illnesses, approved visits, court writs, furloughs, discipline, lockdowns, or other reasons approved by the Chief Administrative Officer. Active participation shall mean, but shall not be limited to, instances in which the committed ~~youthperson~~ is attentive, responsive, and cooperative and completes assigned work.
- g) Committed ~~youthpersons~~ shall adhere to attendance requirements of the educational program in which they are enrolled:
- 1) Committed ~~youthpersons~~ enrolled in non-college academic programs in ~~Department~~ youth centers ~~and the Department of Corrections correctional facilities~~ shall be required to attend and to actively participate in the number of instructional days specified to complete the program and shall not be absent from the program or shall not be documented as not actively participating in the program for more than 30 instructional days, not

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

including days absent due to lockdowns.

- 2) ~~YouthPersons~~ committed in the Aftercare Services Division and committed ~~youthpersons~~ enrolled in college academic courses shall attend scheduled classes and shall not be absent more than allowed under the requirements of the educational provider or the correctional facility policy. Committed ~~youthpersons~~ shall be advised of the specific requirements of the program in which they are enrolled.
- h) Committed ~~youthpersons~~ may be removed from educational programs due to:
 - 1) Disciplinary action;:-
 - 2) Failure to adhere to attendance requirements;:-
 - 3) Administrative reasons approved by the ~~PrincipalEducational Administrator~~ or the Chief Administrative Officer, including, but not limited to, disruptive behavior, lack of active participation, termination or suspension of the program, and safety and security reasons; ~~or~~:-
 - 4) The committed ~~youth'sperson's~~ transfer to another facility or program.

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

Section 2405.30 Assistance to Aftercare Services Division

Financial counseling and technical assistance in securing remedial education, ~~GED-G.E.D.~~ training, special education, ~~CTEvocational~~ training and post-secondary education may be provided by the Department of Juvenile Justice School District #428 to committed ~~youthpersons~~ of the Aftercare Services Division.

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

Section 2405.50 Adult Basic Education Attendance (Repealed)

- a) ~~All persons committed to the Department of Corrections on or after January 1, 1987 whose period of incarceration is at least two years or more or who have been committed as sexually dangerous persons shall be required to receive a composite achievement test score of 6.0 or greater in reading and mathematics or attend a~~

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

~~minimum of 90 instructional days in an Adult Basic Education program for reading and mathematics, except those person's identified in subsection (b) of this Section.~~

- b) ~~The requirements in this Section do not apply to:~~
- ~~1) Those persons serving life or death penalty sentences;~~
 - ~~2) Other persons who are specifically exempted from this requirement by the Chief Administrative Officer of the facility where the committed person is assigned and the Superintendent based on, but not limited to, security or health reasons, the facility's inability to meet the committed person's unique educational needs, or the facility's inability to provide or complete instruction in the time remaining prior to the committed person's release or discharge date;~~
 - ~~3) Those persons who, upon completion of 45 instructional days, have received the required composite achievement test score; or~~
 - ~~4) Technical violators who have previously completed the 90 instructional day program and who received the required composite achievement test score upon completion of the program.~~
- e) ~~Credit for class attendance shall only be given by the Educational Administrator for those days in which the committed person actively participates in the program in accordance with Section 2405.20(f).~~
- d) ~~Where a committed person's 90 instructional day program has been terminated due to excessive absenteeism in accordance with Section 2405.20(g) and (h), the 90 instructional day program shall recommence with no credit given for days previously attended.~~
- e) ~~When a committed person is transferred to another facility prior to completion of the program, a record of the person's attendance shall be submitted to the receiving facility. His program shall be continued at the receiving facility, whenever feasible, upon enrollment in the program or the committed person shall be placed on a waiting list if one exists, unless the committed person is no longer required to participate in the program in accordance with subsection (b) of this Section.~~

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

- f) ~~Refusal by any committed person to attend the Adult Basic Education program required by this Section shall constitute grounds for disciplinary action in accordance with 20 Ill. Adm. Code 504.Subpart A.~~
- g) ~~Upon completion of the 90 instructional day program, the committed person shall be retested, and if the required composite achievement test score is not received, the person shall be encouraged, but not required, to remain in an educational program.~~
- h) ~~Committed persons subject to the provisions of this Section who have not attained the required achievement level shall not be eligible for any job assignment pay that exceeds the level of pay received for attendance in the Adult Basic Education program, unless an exemption is granted by the Chief Administrative Officer and the Superintendent due to the committed person's educational handicap, documented by his educational records, which would preclude any reasonable expectation that the committed person could attain the required achievement level; the projected length of time the committed person may have to wait prior to enrollment in the Adult Basic Education Program; or the reasons provided in subsection (b) of this Section; or as otherwise approved by the Department.~~
- i) ~~The Department may conduct pilot programs to determine the value and feasibility of implementing increased educational requirements of committed persons. All provisions of this Section shall apply to pilot programs, except the Department may increase the educational achievement level and attendance requirements.~~
- 1) ~~Committed persons affected by the pilot program shall be informed in writing of the educational achievement level and attendance requirements of the program.~~
- 2) ~~The requirements of a pilot program shall apply to all committed persons who are assigned to a facility designated for the pilot program, except for those persons:~~
- A) ~~Specified in subsection (b) of this Section;~~
- B) ~~Who have previously completed the Adult Basic Education Program required by this Section, regardless of the educational~~

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

~~level achieved; or~~

- ~~C) Who were enrolled and attending the required Adult Basic Education program at the facility prior to commencement of the pilot program, provided they continue through completion of the program.~~

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

Section 2405.60 Juvenile Educational Attendance

- a) ~~All persons committed youth to a Department youth center who have not received a diploma their High School diploma, Special Education diploma, or GED certificate shall be required to participate in an educational program, unless specifically exempted by the Chief Administrative Officer and the Superintendent. The exemption shall be based on, but not limited to, health, safety or security reasons, and resources available.~~
- b) The extent and length of the educational program shall be based, among other factors, upon the needs and characteristics of the committed ~~youth person~~, resources available, availability of programs, administrative concerns, and safety and security of the youth center or any person.

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

Section 2405.80 Educational Reimbursement (Repealed)

- a) ~~Effective January 1, 1997, committed persons who participate in educational programs provided through the Department and who are either awarded or complete the necessary course work required to earn a degree through these programs shall be required to reimburse the Department for the cost incurred for all billable course work.~~
- b) ~~Each fiscal year, the Department shall determine the cost of courses that meet the requirements for the award of a degree. Committed persons shall be informed of the fees by posted notices, warden's bulletins, handbooks, or another similar manner.~~
- e) ~~Per credit hour fees shall be determined for associate level courses, baccalaureate~~

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

~~level courses, and vocational courses.~~

- ~~1) To determine fees for academic courses such as associate or baccalaureate level courses, divide the statewide educational contracts cost for the appropriate level courses using the latest fiscal year for which all final expenditures are known by the average number of credit hours for that fiscal year. Divide that sum by the average number of students per course.~~
- ~~2) To determine fees for vocational courses, divide the statewide vocational contracts cost using the latest fiscal year for which all final expenditures are known by the average number of vocational credit hours. Divide that sum by the average number of students per course.~~
- ~~d) Reimbursement shall be required for any billable course work either:
 - ~~1) Upon the award of a degree; or~~
 - ~~2) Upon accumulation of the course work required to be eligible for the award of a degree.~~~~
- ~~e) To reimburse the Department, the committed person may:
 - ~~1) Submit full payment for the educational cost;~~
 - ~~2) Authorize a monthly payment to be deducted from his or her trust fund account; or~~
 - ~~3) Make alternative payment arrangements.~~~~
- ~~f) Where a committed person who has an outstanding educational reimbursement balance is discharged or placed on parole, aftercare release or mandatory supervised release, interest at the rate of six percent per annum shall be assessed on any unpaid balance until the account is paid in full. No interest shall be assessed or accrued while the committed person is incarcerated.~~

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

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Chaplaincy Services and Religious Practices
- 2) Code Citation: 20 Ill. Adm. Code 2425
- 3)

<u>Section Numbers</u> :	<u>Proposed Actions</u> :
2425.12	Amendment
2425.15	Amendment
2425.20	Amendment
2425.30	Repealed
2425.40	Amendment
2425.50	Amendment
2425.60	Amendment
2425.70	Amendment
2425.80	Amendment
2425.90	Amendment
2425.100	Amendment
2425.110	Amendment
- 4) Statutory Authority: 730 ILCS 5/3-7-2 and 3-7-1
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking updates the Department's standards for chaplaincy services and religious practices. The provision allowing committed youth to attend only religious activities for his or her designated religion or non-denominational activities is being removed. This removal will allow a committed youth who is interested in exploring another faith to do so. The youth center chaplain will determine if a youth can attend a religious activity other than his or her designated faith based on factors such as security, safety, rehabilitation, institutional order, space and resources. Section 2425.30 (Religious Advisory Board) is being repealed. The Director of the Department or his or her designee will confer with religious leaders or faith representatives on the issues the Religious Advisory Board reviewed. Issues include religious grievances; requests for religious diets, non-traditional religious symbols, headgear, clothing and other religious items; requests for religious activities not currently offered at the youth center; request for relief from work assignment or institutional program for a specific religious purpose; and issues involving training, screening and reimbursement of religious volunteers. The conditions that must be satisfied for permitted religious activities when volunteers or chaplains of a particular faith are unavailable are updated to include attempts to locate services were made and were turned down or not approved. Other changes are being made to align this Part with the current Administrative Code style.

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

- 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: This proposed rulemaking does not create or enlarge a State mandate.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Written comments may be submitted within 45 days of the publication of this Notice to:

Lindsay M. Bentivegna
Policy Staff Attorney
Department of Juvenile Justice
2715 W. Monroe St.
Springfield IL 62704

217/557-1030
DJJ.Rules@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) Small Business Impact Analysis: There is no adverse impact on small business.

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

- 15) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not summarized in a regulatory agenda because it was not anticipated.

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

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

TITLE 20: CORRECTIONS, CRIMINAL JUSTICE, AND LAW ENFORCEMENT
CHAPTER IX: DEPARTMENT OF JUVENILE JUSTICE
SUBCHAPTER c: PROGRAMS AND SERVICESPART 2425
CHAPLAINCY SERVICES AND RELIGIOUS PRACTICES

Section

2425.12	Definitions
2425.15	Responsibilities
2425.20	Accommodation of Religious Beliefs
2425.30	Religious Practice Advisory Board (Repealed)
2425.40	Chaplains and Religious Program Volunteers
2425.50	Religious Activities
2425.60	Accommodation of Religious Diets
2425.70	Religious Publications and Recordings
2425.80	Religious Items
2425.90	Institutional Work and Program Assignments
2425.100	Requests for Religious Accommodations
2425.110	Religious Grievances

AUTHORITY: Implementing Section 3-7-2 and authorized by Section 3-7-1 of the Unified Code of Corrections [730 ILCS 5/3-7-2 and 3-7-1].

SOURCE: Adopted at 8 Ill. Reg. 14398, effective August 1, 1984; amended at 19 Ill. Reg. 6515, effective May 1, 1995; the policies embodied in this Part transferred to the Department of Juvenile Justice pursuant to Section 3-2.5-50 of the Unified Code of Corrections on June 1, 2006 and codified at 38 Ill. Reg. 16434; amended at 43 Ill. Reg. _____, effective _____.

Section 2425.12 Definitions

"Chaplain" means an individual who is commissioned, licensed, ordained, or endorsed as required by the individual's religious faith and with whom the facility has employed or contracted to conduct religious activities within a youth center.

"Chief Administrative Officer" means the highest ranking official of a youth center.

"Department" means the Department of Juvenile Justice.

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

"Director" means the Director of the Department of Juvenile Justice.

"Faith representative" means a religious program volunteer who is commissioned, licensed, ordained, endorsed, or otherwise accepted as a religious authority by the individual's religious faith.

"Religious activity" includes religious services, prayers, rituals, ceremonies, celebrations, study groups, and meetings.

"Religious leader" means a member of the community who is commissioned, licensed, ordained, endorsed or otherwise accepted as a religious authority by the individual's religious faith.

"Religious program volunteer" means a member of the community who is recognized by a faith group and who has been approved by the [youth center facility](#) in accordance with 20 Ill. Adm. Code 2435 ([Volunteer Services](#)) to conduct specific religious activities on a volunteer basis.

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

Section 2425.15 Responsibilities

- a) Unless otherwise specified, the Director or Chief Administrative Officer may delegate responsibilities stated in this Part to another person or persons or designate another person or persons to perform the duties specified.
- b) No other individual may routinely perform duties whenever a Section in this Part specifically states the Director or Chief Administrative Officer shall personally perform the duties. However, the Director or Chief Administrative Officer may designate another person or persons to perform the duties during periods of [his or her](#)~~their~~ temporary absence or in an emergency.

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

Section 2425.20 Accommodation of Religious Beliefs

- a) Committed youth shall be provided reasonable opportunities to pursue their religious beliefs and practices subject to concerns regarding security, safety,

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

rehabilitation, institutional order, space, and resources.

- b) Participation in or attendance at religious activities shall be voluntary.
- c) Committed youth shall not pressure or coerce other persons to join or participate in the activities of a particular religion.
- d) Committed youth shall not engage in religious activities ~~that which~~ may encourage violence against others or are likely to disrupt institutional safety or operations.
- e) Committed youth shall be requested to designate their religious affiliation during the orientation process. ~~Designation~~~~Such designation~~ of religious affiliation does not constitute endorsement or recognition of that religion by the Department.
- ~~f) Committed youth may only attend the religious activities of their designated religion or non-denominational religious activities, except as provided in subsection (g) of this Section pursuant to Section 2425.50.~~
- ~~fg) A committed youth's attendance at a religious activity other than his or her designated faith shall~~ ~~Committed youth requesting to attend a religious activity of a faith other than their designated faith shall submit their written request to the youth center chaplain who will determine whether their attendance at the activity can~~ be accommodated unless the youth center chaplain determines that the request is not operationally feasible due to~~based on~~ factors such as security, safety, rehabilitation, institutional order, space, and resources.
- ~~gh) Committed youth desiring to designate their religious affiliation after the orientation process or to change their designated religious affiliation shall submit the written request to the youth center chaplain. The youth center chaplain may refuse to change the affiliation if it is determined that the change is being requested for other than religious reasons. This determination may be based, among other matters, on the frequency of changes or a pattern of changing religious affiliation prior to a particular faith group's scheduled holiday or celebration.~~

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

Section 2425.30 Religious Practice Advisory Board (Repealed)

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

- a) ~~The Director shall appoint a multi-denominational Religious Practice Advisory Board comprised of legal, administrative, and chaplaincy staff. One of the members of the Board shall be designated as chairperson.~~
- b) ~~The Board shall, among other matters:~~
 - 1) ~~Provide guidance to the Department regarding religious activities.~~
 - 2) ~~Review and make recommendations regarding designated:~~
 - A) ~~Religious grievances filed by committed youth;~~
 - B) ~~Requests from committed youth for religious diets, non-traditional religious symbols, headgear, clothing, and other religious items;~~
 - C) ~~Requests from committed youth for religious activities not currently offered at the youth center and for religious activities permitted under Section 2425.50(f);~~
 - D) ~~Requests from committed youth for relief from a work assignment or institutional program for specific religious reasons; and~~
 - E) ~~Issues involving the training, screening, and reimbursement of religious volunteers.~~
- e) ~~The Board shall confer with religious leaders or faith representatives from various faith groups regarding the validity and legitimacy of the religious request and the sincerity of the committed youth's beliefs, as the Board determines necessary.~~

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

Section 2425.40 Chaplains and Religious Program Volunteers

- a) The Department may utilize chaplains and religious program volunteers on a full-time or part-time basis.
- b) Religious program volunteers who provide religious activities to committed youth shall not normally be reimbursed for travel expenses. However, the Chief Administrative Officer may approve reimbursement for travel expenses, not to

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

exceed the reimbursement rate applicable to State employees. In determining whether to approve reimbursement, the Chief Administrative Officer shall consider the recommendation of the ~~Director~~Religious Practice Advisory Board as well as factors such as: distance traveled, number of hours at the facility, frequency of visits, fiscal resources, availability of other volunteers of that faith, and whether religious program volunteers of religious groups of comparable size have been compensated for travel of a similar nature.

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

Section 2425.50 Religious Activities

- a) The Director or his or her designee shall confer with religious leaders or faith representatives on matters including, but not limited to, the following:
- 1) Religious grievances filed by committed youth;
 - 2) Requests from committed youth for religious diets, non-traditional religious symbols, headgear, clothing and other religious items;
 - 3) Requests from committed youth for religious activities not currently offered at the youth center and for religious activities permitted under subsection (f);
 - 4) Requests from committed youth for relief from a work assignment or institutional program for specific religious reasons; and
 - 5) Issues involving training, screening and reimbursement of religious volunteers.
- b) Religious activities approved by the Chief Administrative Officer shall be conducted or supervised by a chaplain or religious program volunteer.
- ~~c~~b) The Chief Administrative Officer, after consultation with the youth center chaplain, shall regulate the time, place, and ~~way~~manner in which religious activities are conducted. The Chief Administrative Officer may limit, restrict, discontinue, or deny a religious activity based upon concerns regarding security, safety, rehabilitation, institutional order, space, or resources.

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

- de) Nothing in this Part shall require the provision of group religious activities to committed youth in reception and classification centers, confinement areas or specialized housing units within the youth center, such as the hospital.
- ed) Nothing in this Part shall require the Department to provide each separate religious group or sects within a group with a chaplain or with separate religious activities regardless of the size of the religious group or the extent of the demand for the activities.
- fe) Committed youth shall be prohibited from assuming a position of authority or leadership over other committed youth. This does not preclude committed youth from actively participating in religious activities.
- gf) Religious activities for which religious program volunteers or chaplains of that particular faith are unavailable on a permanent or protracted basis may be permitted if the following conditions are satisfied:
- 1) Attempts to locate and secure the services of religious leaders or faith representatives from the community were made but those persons either refused or were not approved to conduct religious activities~~The committed youth submit written verification to the youth center chaplain that they attempted to locate and secure the services of religious leaders or faith representatives from the community and that such persons refused or were not approved to conduct religious activities;~~
 - 2) Security, program, or chaplaincy staff are available to attend and supervise the religious activity;
 - 3) Written verification that attendance at existing religious activities does not satisfy the recognized tenets of the committed youth's~~their~~ faith is received;
 - 4) Written agreement by a chaplain, faith representative, or recognized religious leader of that faith group to provide general oversight and guidance of the religious activity is received;
 - 5) The Director~~Religious Practice Advisory Board~~ recommends approval; and

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

- 6) The committed youth submits a copy of any proposed sermon or doctrinal interpretation to the Chief Administrative Officer or staff designated to supervise the religious activity for review and approval prior to delivery, based on safety and security concerns.
- ~~hg~~) The staff supervisor may call upon various committed youth to guide portions of the religious activity subject to safety and security concerns.
- ~~ih~~) Religious activities defined under subsection ~~(gf) of this Section~~ shall be prohibited ~~whenwhere~~ based solely on the temporary or occasional unavailability of a chaplain or a religious program volunteer.
- ~~ji~~) The Chief Administrative Officer may limit, restrict, or discontinue religious activities permitted under subsection ~~(gf) of this Section~~ based upon concerns such as security, safety, rehabilitation, institutional order, space, or resources and may require periodic rotation of committed youth permitted to guide portions of religious activities.

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

Section 2425.60 Accommodation of Religious Diets

- a) Committed youth shall be permitted to abstain from any foods the consumption of which violates their required religious tenets.
- b) Any foods ~~thatwhich~~ contain pork or pork by-products shall be identified in accordance with 20 Ill. Adm. Code 2502.20 (Menus).
- c) A committed youth may submit a written request to the facility chaplain to receive an alternative diet for specific religious reasons. The request must contain written verification that the committed youth is a member of a faith group that requires adherence to a particular diet and the specific requirements of the diet. Eligibility to receive an alternative diet for specific religious reasons shall be determined by the youth center chaplain who shall ordinarily confer with a religious leader or faith representative of the faith group at issue. The youth center chaplain and the religious leader or faith representative may interview the committed youth.
- d) A committed youth requesting a dietary modification required by a specific

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

religious holiday or ceremony must submit a written request to the youth center chaplain 45 calendar days before the holiday or ceremony. The request must contain verification that the committed youth is a member of a faith group requiring the dietary modification and the specific requirements of the dietary modification. Eligibility to receive an alternative diet for a specific religious holiday or ceremony shall be determined by the youth center chaplain who shall ordinarily confer with a religious leader or faith representative of the faith group at issue. The youth center chaplain and religious leader or faith representative may interview the committed youth.

- e) A committed youth who does not adhere to the alternative diet shall no longer receive the alternative diet, unless otherwise approved by the Chief Administrative Officer.

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

Section 2425.70 Religious Publications and Recordings

- a) Committed youth may obtain religious publications or recordings in accordance with this Part and Departmental Rules governing purchasing, incoming mail, publications, and personal property (see [20 Ill. Adm. Code 2305 \(Funds of Committed Youth\)](#)~~20 Ill. Adm. Code 2205~~, 2525 ([Rights and Privileges](#)), and 2535 ([Personal Property](#)) or through donations distributed by the chaplain.
- b) Religious publications shall be submitted to the Publication Review Committee for review pursuant to 20 Ill. Adm. Code 2525: Subpart C. The Publication Review Committee may confer with the chaplain.
- c) Committed youth shall be permitted to receive or possess commercially made religious audio [recordingseassettes](#), sealed in cellophane or similar material, that are not available through the commissary and are sent directly from a manufacturer, retailer, or distributor. Committed youth shall also be permitted to receive or possess religious audio [recordingseassettes](#) directly from religious organizations. The Chief Administrative Officer or chaplain may review and deny ~~such~~ audio [recordingseassettes](#) if they are deemed to pose a threat to the safety or security of the institution. If ~~thesuch~~ audio [recordingseassettes](#) are denied, they shall be submitted to the [DirectorReligious Praetice Advisory Board](#) for review.

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

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

Section 2425.80 Religious Items

- a) Committed youth may obtain religious symbols, clothing, and other items in accordance with this Part and Departmental ~~rules~~Rules governing purchasing, incoming mail, and personal property (see 20 Ill. Adm. Code 2305 (Funds of Committed Youth)~~20 Ill. Adm. Code 2205~~, 2525 (Rights and Privileges), and 2535 (Personal Property)) or through the chaplain.
- b) Committed youth shall be permitted to have up to two traditionally accepted religious symbols or religious symbols ~~that~~which have been authorized by the ~~Director~~Religious Practice Advisory Board and ~~that~~which represent their designated faith. These may include, but not be limited to, medals, medallions, scapulars, or prayer beads.
- c) Religious items may be limited, restricted, or denied by the Chief Administrative Officer based upon concerns such as safety, security, rehabilitation, institutional order, space, resources, or facilitation of gang identification, recruitment, or activity.
 - 1) Certain items, such as candles and incense, shall be restricted by the Chief Administrative Officer or chaplain to use for religious activities only. ~~These~~Such items shall be stored in a designated area of the youth center and shall be available upon request for use during approved religious activities held in the chapel or other designated common area.
 - 2) Religious symbols shall not exceed two inches in height or width. The chain upon which a medal or medallion is attached shall not exceed 24 inches in length. The combined value of the medal or medallion and chain shall not exceed \$50.
 - 3) The Department may restrict the color of religious items.
 - 4) Rosary beads shall be a solid color, either black, brown, or white, and shall not be permitted to be worn as jewelry.
 - 5) Medals or medallions shall not contain precious gems or stones.

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

- 6) Medals or medallions shall not be of a design that could be used as a weapon or to conceal contraband.
 - 7) Religious symbols attached to pins shall not be permitted.
 - 8) Prayer rugs may be permitted if utilized as a component of the committed youth's faith but will be limited to the immediate living area during prayer or the area of religious service.
- d) Committed youth may wear articles of religious clothing, including but not limited to robes, prayer shawls, or talits, only in their immediate sleeping areas during prayer or in the area of religious service if verification is submitted that the clothing is worn as a component of their religion.
 - e) The wearing of religious headgear, including but not limited to fezzes, kufis, and yarmulkes, shall be limited only to the committed youth's immediate sleeping area during prayer and to the area of religious service, provided that verification is submitted that the wearing of the religious headgear is required by the committed youth's designated faith.

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

Section 2425.90 Institutional Work and Program Assignments

- a) Committed youth shall be relieved from a work assignment, without pay, on a recognized religious holiday or celebration ~~that~~^{which} prohibits work or if the work assignment violates the specific requirements of the committed youth's faith, subject to concerns regarding safety, security, rehabilitation, institutional order, space, and resources. Committed youth must initiate the request to be relieved from the assignment by submitting a written request to the Chief Administrative Officer not less than ~~30~~^{thirty} calendar days prior to the holiday.
- b) The Chief Administrative Officer may relieve a committed youth from an institutional program or assignment if a religious activity is scheduled at the same time and the committed youth has designated that faith, subject to concerns regarding safety, security, rehabilitation, institutional order, space, and resources.

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

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

Section 2425.100 Requests for Religious Accommodations

- a) Committed youth requesting religious items shall submit the request in writing to the youth center chaplain and shall be required, if requested by the youth center chaplain or the ~~Director~~Religious Practice Advisory Board, to include written verification from an outside faith group or from a religious authoritative source that the religious item is necessary for the practice of the committed youth's religion or that the item is a symbol or integral part of the youth's religion.
- b) Committed youth requesting religious activities of the type not offered by the Department shall submit the request in writing to the youth center chaplain and shall be required, if requested by the youth center chaplain or the ~~Director~~Religious Practice Advisory Board, to submit the following information:
- 1) Written verification that other committed youth belong to that faith and are interested in attending ~~such~~ religious activities;
 - 2) The names, addresses, and telephone numbers of the outside leaders of the faith;
 - 3) Copies of the by-laws, charters, or articles of incorporation, to the extent available;
 - 4) Written verification of the religion's practices, requirements, historical origins, size of membership population, organization hierarchy and structure, role of religious personnel, and dietary restrictions;
 - 5) The time, place, and nature of any religious activities to be conducted and the identity of the religious program volunteer who will conduct the requested religious activities, as well as ~~the volunteer's~~their address, telephone number, and credentials; and
 - 6) The documentation required under Section 2425.50.
- c) Committed youth requesting religious accommodations not addressed in this Section may be required, if requested by the youth center chaplain or ~~Director~~Religious Practice Advisory Board, to provide some or all of the following:

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

- 1) The names, addresses, and telephone numbers of the outside leaders of the faith;
 - 2) Copies of the by-laws, charters, or articles of incorporation, to the extent available; and
 - 3) Written verification of the religion's practices, requirements, historical origins, size of membership population, organizational hierarchy and structure, role of religious personnel, and dietary restrictions.
- d) The chaplain shall inform the Chief Administrative Officer of any religious request and may, as determined necessary, submit the request and any required documentation to the [Director Religious Practice Advisory Board for review in accordance with Section 2425.30](#).

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

Section 2425.110 Religious Grievances

Any religious issue may be grieved in accordance with 20 Ill. Adm. Code 2504: Subpart C ([Grievance Procedures for Youth](#)) or D.

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

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Volunteer Services
- 2) Code Citation: 20 Ill. Adm. Code 2435
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
2435.10	Repealed
2435.12	Amendment
2435.15	Amendment
2435.20	Repealed
2435.30	Amendment
2435.40	Amendment
2435.50	Amendment
2435.60	Repealed
2435.70	Amendment
- 4) Statutory Authority: 730 ILCS 5/3-2.5-20 and 3-7-1
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking makes updates to the Department's administrative rules for volunteer Services. Sections 2435.10 (Applicability), 2435.20 (Designation of Staff Coordinator) and 2435.60 (Conduct of Volunteers) are being repealed. The Applicability Section was deemed no longer necessary. The Section regarding Designation of Staff Coordinator is being include in the definition of Volunteer Services Coordinator and Conduct of Volunteers is being added to Section 2435.50 (Placement Procedures for Approved Volunteers). Specifically, subsection 2435.50(b)(1) clarifies volunteers must be informed about and agree in writing to observe all applicable rules of the Department and the youth center. Other changes are being made to align this Part with the current Administrative Code style.
- 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 JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Written comments may be submitted within 45 days of the publication of this Notice to:

Lindsay M. Bentivegna
Policy Staff Attorney
Department of Juvenile Justice
2715 W. Monroe St.
Springfield IL 62704

217/557-1030
DJJ.Rules@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) Small Business Impact Analysis: There is no adverse impact on small business.
- 15) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not summarized in a Regulatory Agenda because it was not anticipated.

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

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

TITLE 20: CORRECTIONS, CRIMINAL JUSTICE, AND LAW ENFORCEMENT
CHAPTER IX: DEPARTMENT OF JUVENILE JUSTICE
SUBCHAPTER c: PROGRAMS AND SERVICESPART 2435
VOLUNTEER SERVICES

Section

2435.10	Applicability (Repealed)
2435.12	Definitions
2435.15	Responsibilities
2435.20	Designation of Staff Coordinator (Repealed)
2435.30	Applications for Volunteer Service: Individuals
2435.40	Applications for Volunteer Service: Groups
2435.50	Placement Procedures for Approved Volunteers
2435.60	Conduct of Volunteers (Repealed)
2435.70	Termination of Volunteer Services

AUTHORITY: Implementing Section 3-2.5-20 and authorized by Section 3-7-1 of the Unified Code of Corrections [730 ILCS 5/3-2.5-20 and 3-7-1].

SOURCE: Adopted at 8 Ill. Reg. 14644, effective August 1, 1984; amended at 11 Ill. Reg. 11523, effective July 1, 1987; amended at 16 Ill. Reg. 8166, effective June 1, 1992; the policies embodied in this Part transferred to the Department of Juvenile Justice pursuant to Section 3-2.5-50 of the Unified Code of Corrections on June 1, 2006 and codified at 38 Ill. Reg. 16436; amended at 43 Ill. Reg. _____, effective _____.

Section 2435.10 Applicability [\(Repealed\)](#)

~~This Part applies to any group or individual who is seeking to provide or is providing volunteer services within the Department of Juvenile Justice.~~

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

Section 2435.12 Definitions

"Chief Administrative Officer" means the highest ranking official of a youth center or the Deputy Director of any other Department facility.

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

"Department" means the Department of Juvenile Justice.

"Director" means the Director of the Department of Juvenile Justice.

~~"Facility" means any youth center, program, or office within the Department.~~

"Volunteer Services Coordinator" means the staff member designated by each youth center's Chief Administrative Officer responsible for coordinating volunteer services for the facility.

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

Section 2435.15 Responsibilities

- a) Unless otherwise specified, the Director, Chief Administrative Officer, or Volunteer Services Coordinator may delegate responsibilities stated in this Part to another person or persons or designate another person or persons to perform the duties specified.
- b) No other individual may routinely perform duties whenever a Section in this Part specifically states the Director, Chief Administrative Officer, or Volunteer Services Coordinator shall personally perform the duties. However, the Director, Chief Administrative Officer, or Volunteer Services Coordinator may designate another person or persons to perform the duties during periods of his or her temporary absence or in an emergency.

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

Section 2435.20 Designation of Staff Coordinator (Repealed)

~~The Chief Administrative Officer of each facility which accepts volunteers shall designate a Volunteer Services Coordinator.~~

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

Section 2435.30 Applications for Volunteer Service: Individuals

- a) Applicants for volunteer service shall be required to complete an application provided by the Department and to supply references and verification of

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

qualifications. Applicants shall be subject to screening procedures, ~~including drug testing,~~ and selection criteria adopted by the youth center facility to address security concerns or program requirements.

- b) An ex-offender shall not be accepted for volunteer service except as approved by the Chief Administrative Officer and the Director. In making their decision, the Chief Administrative Officer and the Director shall consider matters such as the ex-offender's criminal history, his or her behavioral history with the Department or the Department of Corrections, and any other prior involvement with the Department or with the Department of Corrections.
- c) Applicants shall be required to notify each youth center facility for which they wish to provide volunteer service and may be required to submit separate volunteer applications to each youth center facility and to undergo screening and orientation by the respective youth centers facilities. The determination whether to require separate applications or screening shall be based, among other matters, on the type of program and safety and security of the youth center facility.
- d) Criteria for selection, rejection and retention of volunteers may vary according to program and security needs of the youth center facility.

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

Section 2435.40 Applications for Volunteer Service: Groups

- a) Citizen groups wishing to provide volunteer service to a youth center or to committed youth in the community shall submit a written statement in advance, detailing: the purpose and goals of the proposed program; the intended frequency of visits to the youth center facility or with committed youth; and if applicable, the identity of the target group of committed youth to whom the service would be directed.
 - 1) Citizen groups proposing to provide ~~such~~ services on a continuing basis shall be required to submit a completed application for each participant and any subsequently added participants. Screening of individual members of the group shall be performed as required for individual volunteer applicants (Section 2435.30).
 - 2) Citizen groups proposing to provide ~~such~~ services on an occasional or

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

one-time-only basis, such as church choirs, athletic teams or visiting entertainers, shall be required to identify participants by name and may be required to provide the date of birth and social security number of each participant. Any member of the group who is an ex-offender must be identified. Names and other required information shall be supplied in advance of each visitation in accordance with requirements of the [youth center facility](#).

- b) Citizen groups wishing to provide other volunteer services shall submit a written statement detailing the purpose and goals of the proposed service and suggested procedures for delivery of service. Screening of individual members of the group shall be performed as required for individual volunteer applicants (Section 2435.30).

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

Section 2435.50 Placement Procedures for Approved Volunteers

This Section applies to applicants who will be providing volunteer services on a continuing basis.

- a) Upon completion of the screening process, approved applicants shall be notified of their acceptance by the Volunteer Services Coordinator.
- b) Prior to placement, the volunteer [shall](#):
- 1) ~~Shall~~ be informed of, and shall agree in writing to observe, all applicable rules [of the Department and the youth center](#) and to serve as a volunteer at the sole discretion of the Department;
 - 2) ~~Shall~~ sign a waiver releasing the Department and its agents or employees from liability for injuries or damages which might result in connection with the volunteer activities, except for those claims which may arise due to the willful and wanton conduct of the Department or its authorized agents or employees;
 - 3) ~~Shall~~ sign a written volunteer job description; and
 - 4) ~~Shall~~ receive training and orientation appropriate to the volunteer

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

assignment as required by the facility. Written documentation, signed and dated by the volunteer, shall be maintained to verify training and orientation received.

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

Section 2435.60 Conduct of Volunteers (Repealed)

~~Volunteers shall conduct themselves in accordance with the rules of the Department and the facility.~~

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

Section 2435.70 Termination of Volunteer Services

- a) Volunteer services may be terminated at any time.
- b) ~~Individual volunteers~~ Volunteers or volunteer groups who have been dismissed shall surrender any form of identification issued by the Department. ~~Staff, and staff~~ shall be notified of the action taken.
- c) Any individual or volunteer group whose conduct has resulted in dismissal from one ~~youth center~~ facility shall be restricted from participation in volunteer activities at all other departmental facilities. Reinstatement of the volunteer or volunteer group shall be subject to approval of the Director.

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

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Personal Property
- 2) Code Citation: 20 Ill. Adm. Code 2535
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
2535.15	Amendment
2535.17	Amendment
2535.20	Amendment
2535.30	Amendment
2535.40	Amendment
2535.50	Amendment
2535.60	Amendment
2535.70	Amendment
2535.80	Amendment
2535.90	Amendment
2535.100	Amendment
2535.110	Amendment
2535.120	Amendment
2535.130	Amendment
2535.140	Amendment
- 4) Statutory Authority: 705 ILCS 405/1-3 and 730 ILCS 5/3-2.5-20, 3-7-1, 3-7-2, 3-8-7(a), 3-10-8 and 3-10-9
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking removes the provisions prohibiting youth on confinement status from having audio-visual equipment. Other changes will update the language of the Part to align with current Department practices and Administrative Code standards.
- 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 JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Written comments may be submitted within 45 days of the publication of this Notice to:
- Lindsay M. Bentivegna
Policy Staff Attorney
Department of Juvenile Justice
2715 W. Monroe St.
Springfield IL 62704
- 217/557-1030
DJJ.Rules@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) Small Business Impact Analysis: There is no adverse impact on small business.
- 15) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not summarized in a regulatory agenda because it was not anticipated.

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

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

TITLE 20: CORRECTIONS, CRIMINAL JUSTICE, AND LAW ENFORCEMENT
CHAPTER IX: DEPARTMENT OF JUVENILE JUSTICE
SUBCHAPTER d: OPERATIONSPART 2535
PERSONAL PROPERTY

Section	
2535.12	Definitions
2535.15	Responsibilities
2535.17	Personal Property
2535.20	Permit
2535.30	Audio-Visual Equipment
2535.40	Reading Material
2535.50	Commissary Items and Outside Vendor Purchases
2535.60	Jewelry
2535.70	Clothing and Other Property
2535.80	Procedure for New Admissions
2535.90	Procedure for Institutional Transfers
2535.100	Procedure for Temporary Absence
2535.110	Procedure for Aftercare Release or Discharge
2535.120	Disposal of Personal Property Items
2535.130	Security of Personal Property
2535.140	Unclaimed Personal Property

AUTHORITY: Implementing Section 3-4-3 and authorized by Sections 3-7-1 and 3-7-4 of the Unified Code of Corrections [730 ILCS 5/3-4-3, 3-7-1 and 3-7-4].

SOURCE: Adopted at 8 Ill. Reg. 14543, effective August 1, 1984; amended at 14 Ill. Reg. 6765, effective May 1, 1990; the policies embodied in this Part transferred to the Department of Juvenile Justice pursuant to Section 3-2.5-50 of the Unified Code of Corrections on June 1, 2006 and codified at 38 Ill. Reg. 16446; amended at 43 Ill. Reg. _____, effective _____.

Section 2535.15 Responsibilities

- a) Unless otherwise specified, the Director or Chief Administrative Officer may delegate responsibilities stated in this Part to another person or persons or designate another person or persons to perform the duties specified.

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

- b) No other individual may routinely perform duties whenever a rule in this Part specifically states the Director or Chief Administrative Officer shall personally perform the duties. However, the Director or Chief Administrative Officer may designate another person or persons to perform the duties during periods of his or her temporary absence or in an emergency.

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

Section 2535.17 Personal Property

Committed youth may only acquire personal property in accordance with provisions of this Part, 20 Ill. Adm. Code 2525 (Rights and Privileges)~~525~~, or posted rules established by the Chief Administrative Officer where the youth is assigned.

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

Section 2535.20 Permit

The Chief Administrative Officer of the assigned facility may require committed youth to obtain a permit for certain personal property items such as electronics and other audio-visual equipment. Permit requirements shall be posted.

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

Section 2535.30 Audio-Visual Equipment

- a) Each facility shall develop and post a list of authorized audio-visual equipment each committed youth assigned to the general population may be permitted to retain. Detachable speakers shall not be permitted.
- b) Use of headphones or earplugs shall be at the discretion of the Chief Administrative Officer.
- c) Misuse or abuse of audio-visual equipment may result in the temporary or permanent confiscation of these items in accordance with the provisions of 20 Ill. Adm. Code 2504 (Discipline and Grievances).
- d) Limitations of the use of audio-visual equipment may be imposed on committed youth if the usage is disruptive to others.

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

- e) Committed youth may not possess recording devices as personal property, but may use them when required in academic or career and technical education~~vocational~~ programs ~~when the~~where such use is approved by the youth center~~facility~~ and in ~~asuch~~ place and manner as is approved by the youth center~~facility~~.
- f) ~~A committed youth placed in confinement shall be denied the privilege of possessing all audio-visual equipment until he is released from confinement or has his privileges restored in accordance with 20 Ill. Adm. Code 2504. His items will be returned when he signs a receipt for them.~~
- g) ~~Any committed youth in confinement for more than 60 consecutive days on the same rule infraction may submit a written request to the Chief Administrative Officer for restoration of his audio-visual privileges. The request shall be considered only if the individual has had no disciplinary infractions in the 60-day period prior to the submission of his request.~~
- h) ~~Any committed youth in confinement who has had audio-visual privileges restored may lose them again for a subsequent disciplinary infraction.~~
- i) When audio-visual equipment is confiscated or returned, an audio-visual~~audio-visual~~ equipment inventory form shall be given to the owner and a copy placed in his or her master record file. If the committed youth does not have the proper permit, disciplinary action may be taken.

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

Section 2535.40 Reading Material

- a) Each youth center~~facility~~ shall develop and post a list of the amount of reading material each committed youth may be permitted to possess at any one time.
- b) The quantity of other reading materials may be limited by the Chief Administrative Officer consistent with reasonable safety and security concerns which may include, among other matters, impairment of visual observation or search of the living area.

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

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

Section 2535.50 Commissary Items and Outside Vendor Purchase

All personal property purchases shall be made through the commissary, ~~when~~where possible. Outside vendor purchases shall be approved by and made through the ~~youth center~~facility, and ~~those~~such purchases shall be limited to items ~~that~~which are not available through the commissary. No outside vendor purchases shall be allowed for the same or similar items available in the commissary without the approval of the Chief Administrative Officer. The quantity of ~~the~~such items ~~that~~which a committed youth may retain shall be limited by the Chief Administrative Officer and shall be posted.

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

Section 2535.60 Jewelry

A committed youth may possess jewelry and shall be required to sign a statement of responsibility for ~~the~~such jewelry. Limits on the amount, nature or value of jewelry shall be set by the Chief Administrative Officer and shall be posted.

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

Section 2535.70 Clothing and Other Property

The quantity of clothing and other property may be limited by the Chief Administrative Officer consistent with reasonable safety and security concerns ~~that~~which may include, among other matters, impairment of visual observation or search of the living area. Institutional policies regarding clothing and other property shall be posted.

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

Section 2535.80 Procedure for New Admissions

- a) All sheriffs shall be supplied with a list of approved personal property items. Only the approved items will be accepted by the Department upon admission of the committed youth.
 - 1) Non-approved items shall be receipted and returned to the sheriff prior to his ~~or her~~ departure from the ~~youth center~~facility, when possible; or

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

- 2) The committed youth shall be requested to authorize the disposition of any unapproved property, in writing, in accordance with 20 Ill. Adm. Code 2501.230.
- b) An inventory shall be conducted in the presence of the committed youth. The committed youth shall be given a copy of the inventory record and a copy shall be placed in the committed youth's master record file.
- c) The Chief Administrative Officer shall determine what personal property shall be marked to denote ownership.

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

Section 2535.90 Procedure for Institutional Transfers

- a) Intra-institutional Transfer
 - 1) When a committed youth's assignment to a room or dormitory is changed, ~~he or she~~the individual shall generally be responsible for identifying all personal property and packing it in the containers provided. Unless the committed youth is in a single room, the packing shall be done in the presence of an employee.
 - 2) If the committed youth's behavior is threatening, violent, or dangerous, the transferring officer shall cause the committed youth's personal property to be packed and inventoried in the presence of a witness.
 - A) Property of youth that is not allowed in the confinement area shall be secured until ~~such time as~~ the committed youth is released from confinement.
 - B) The inventory form shall be signed by the packing officer and the witness. A copy of the inventory form shall be placed in the personal property container, and the container shall be sealed before being transported to the new location. A copy of the inventory shall be given to the committed youth, a copy shall be placed in the committed youth's master record file, and a copy shall be maintained by the facility in the personal property files.

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

- b) Inter-institutional Transfers
- 1) It is the responsibility of the sending youth center facility to inform the committed youth of personal property items ~~that~~which are not approved at the receiving facility.
 - 2) Prior to transfer, the committed youth shall pack items acceptable to the receiving youth center facility in approved containers and non-approved items in another container, taking an inventory of the items in each. Inventory and packing shall be made in the presence of an employee. Upon completion, a copy of the inventory record for approved property shall be placed in the approved container and the container shall be sealed.
 - 3) Non-approved items shall be disposed of in accordance with the procedures established in 20 Ill. Adm. Code 2501.230 prior to the transfer, whenever possible.
 - 4) A copy of the inventory record for approved property shall be given to the committed youth; a copy shall be placed in the committed youth's master record file; and a copy shall be retained by the sending facility in the personal property files.
 - 5) At the time of repossession, the sealed container shall be opened in the presence of an employee, and the contents listed on the committed youth's inventory record shall be checked against the one sealed in the box. Any discrepancies shall be noted, and the employee and committed youth shall sign the inventory form. A copy of the inventory shall be maintained by the receiving youth center facility in the personal property files and in the committed youth's master record file.

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

Section 2535.100 Procedure for Temporary Absence

If a temporary absence is expected to be one day or less, the committed youth's personal property need not be inventoried and packed, unless the committed youth so requests. The following procedures shall be implemented when the committed youth so requests, the absence is expected to exceed one day, or it becomes known that the absence will exceed one day.

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

- a) Before a temporary absence of more than one day or when the committed youth requests, the committed youth shall, in the presence of an employee, inventory and pack personal property in the containers provided.
- 1) A copy of the inventory shall be placed in the container, and the container shall be sealed.
 - 2) A copy of the inventory form shall be given to the committed youth₂; a copy shall be filed in the committed youth's master record file₃; and a copy shall be maintained by the facility in the personal property files.
- b) In an emergency or when it becomes known that an anticipated absence will exceed one day, it shall be the responsibility of the shift supervisor to ensure that, before the end of the shift, an accurate inventory, preferably with a witness, is made of the committed youth's personal property; that it is packed in an approved container and sealed with a copy of the inventory enclosed; and that it is stored in a designated secure area.
- 1) The shift commander or designee, the person making the inventory and packing the personal property₇; and the witness, if any, shall sign the inventory form.
 - 2) A copy of the inventory form shall be placed in the committed youth's master record file₂; a copy shall be forwarded to the committed youth₂; and a copy shall be maintained by the facility in the personal property files.
- c) At the time of repossession, the sealed container must be opened in the presence of an employee, and the contents listed on the committed youth's inventory slip checked against the one sealed in the box. Any discrepancies shall be noted, and the employee and committed youth shall sign the inventory report. A copy of the inventory shall be maintained by the [youth center facility](#) in the personal property files and in the committed youth's master record file.
- d) For purposes of this Section, personal property of a committed youth assigned to a single room may be locked in the room rather than placed in a container. All other provisions of this Section shall apply.

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

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

Section 2535.110 Procedure for Aftercare Release or Discharge

- a) Prior to release on aftercare or discharge, it is the committed youth's responsibility to pack personal property in containers provided and transport them to a designated storage area, under the supervision of a Department employee.
- b) Personal property sent out prior to the release date must be inventoried; the inventory form must be signed by the witnessing Department employee and the committed youth; and the personal property must be sealed in the container provided, with a copy of the inventory enclosed. A copy of the inventory shall be given to the committed youth and a copy shall be placed in the committed youth's master record file and a copy shall be retained in the youth center's facility's personal property files.
- c) Personal property given to a third party for transport must be receipted by the person receiving it and a copy shall be placed in the committed youth's master record file and a copy shall be maintained in the youth center's facility's personal property files.

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

Section 2535.120 Disposal of Personal Property Items

- a) Committed youth shall not give, loan, sell or trade personal property items to other committed youth, except where authorized by this Part.
- b) The ownership of an allowable property item may not be transferred from one committed youth to another while the owner is assigned to a youth center facility.
- c) When a committed youth wishes to dispose of an allowable property item by sending it out of the facility, selling it, donating it, giving it to a relative or guardian with approval by the Chief Administrative Officer, or authorizing its destruction, a signed record shall be filed in the committed youth's master record file and a copy of the record shall be maintained by the youth center facility in the personal property files.

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

Section 2535.130 Security of Personal Property

DEPARTMENT OF JUVENILE JUSTICE

NOTICE OF PROPOSED AMENDMENTS

- a) Committed youth shall be responsible for their personal property which is in their possession or under their control, (i.e., on their person or in their room, living area or work area).
- b) Committed youth shall be responsible for maintaining a copy of inventories, permits and/or receipts issued for their personal property.
- c) Committed youth's personal property shall be deemed abandoned in the event of an unauthorized absence such as an escape, runaway, attempted escape or runaway, or failure to return to the facility.
- d) The Department shall not be responsible for loss of abandoned property or for any items for which the committed youth does not have an inventory record, a permit and/or receipt, or ~~that~~which would have been subject to an inventory but does not appear itemized on the inventory.

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

Section 2535.140 Unclaimed Personal Property

Money or personal property held for a committed youth who has separated from the Department by death, discharge, or unauthorized absence and ~~that~~which has not been claimed by the committed youth or his or her legal representative may be disposed of as follows:

- a) Unclaimed money held for a period of one year may be transferred to the ~~Youth Resident~~ Benefit Fund and be expended for the special benefit of committed youth.
- b) Unclaimed clothes held for 30 days may be used or disposed of as determined appropriate by the Chief Administrative Officer.
- c) Other unclaimed personal property held for a period of one year may be used for the benefit of committed youth as determined appropriate by the Chief Administrative Officer.

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

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Uniform Penalty and Interest
- 2) Code Citation: 86 Ill. Adm. Code 700
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
700.100	Amendment
700.105	New Section
700.110	Amendment
700.200	Amendment
700.210	Amendment
700.220	Amendment
700.230	Amendment
700.300	Amendment
700.305	New Section
700.310	Amendment
700.315	New Section
700.320	Amendment
700.330	Amendment
700.340	Amendment
700.350	Amendment
700.400	Amendment
700.500	Amendment
- 4) Statutory Authority: 20 ILCS 2505/2505-795
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking updates the UPIA regulations to reflect amendments to the UPIA in PAs 91-203, 93-32, 93-1068, 98-425, and 99-335.
- 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 REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Brian Fliflet
Deputy General Counsel
Illinois Department of Revenue
Legal Services Office
101 West Jefferson St. MC 5-500
Springfield IL 62794

217/782-2844
- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not-for-profit corporations affected: This rulemaking provides guidance that is helpful to small businesses on the application of the law regarding penalties, interest on underpayments and interest on overpayments.
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Small Business Impact Analysis: None
- 15) Regulatory Agenda on which this rulemaking was summarized: July 2019

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

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 700
UNIFORM PENALTY AND INTEREST ACT

SUBPART A: SCOPE AND APPLICATION OF THE ACT

Section

- 700.100 Scope of the [UPIA Act](#) and this Part ([UPIA Section 3-1A](#))
[700.105](#) [General Provisions](#)
700.110 Application of the Provisions of the [UPIA Act](#) and this Part ([UPIA Section 3-9](#))

SUBPART B: INTEREST

- 700.200 Interest Paid and Interest Charged ([UPIA Section 3-2](#))
700.210 Interest Rate Calculation ([UPIA Section 3-2](#))
700.220 Interest Charged Taxpayers ([UPIA Section 3-2](#))
700.230 Interest Paid Taxpayers on Overpayments ([UPIA Section 3-2](#))

SUBPART C: PENALTIES

- 700.300 Penalty for Late Filing or Failure to File ([UPIA Section 3-3\(a\), \(a-5\), \(a-10\) and \(a-15\)](#))~~and Penalty for Late Payment of Tax~~
[700.305](#) [Penalty for Late Payment of Tax \(UPIA Section 3-3\(b\), \(b-5\), \(b-10\), \(b-15\), and \(b-20\)\)](#)
700.310 Penalty for Failure to File Correct Information Returns ([UPIA Section 3-4](#))
[700.315](#) [Collection Penalty \(UPIA Section 3-4.5\)](#)
700.320 Penalty for Negligence ([UPIA Section 3-5](#))
700.330 Penalty for Fraud ([UPIA Section 3-6](#))
700.340 Personal Liability Penalty ([UPIA Section 3-7](#))
700.350 Bad Check Penalty ([UPIA Section 3-7.5](#))

SUBPART D: REASONABLE CAUSE

- 700.400 Reasonable Cause ([UPIA Section 3-8](#))

SUBPART E: PAYMENT APPLICATION

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

700.500 Payment Application ([UPIA Section 3-9](#))

AUTHORITY: Implementing the Uniform Penalty and Interest Act [35 ILCS 735], and authorized by Section 2505-25 of the Civil Administrative Code of Illinois [20 ILCS 2505].

SOURCE: Adopted at 18 Ill. Reg. 1561, effective January 13, 1994; amended at 19 Ill. Reg. 1909, effective February 6, 1995; amended at 20 Ill. Reg. 14632, effective October 29, 1996; amended at 25 Ill. Reg. 5038, effective March 19, 2001; amended at 27 Ill. Reg. 9622, effective June 13, 2003; amended at 30 Ill. Reg. 10486, effective May 23, 2006; amended at 43 Ill. Reg. _____, effective _____.

SUBPART A: SCOPE AND APPLICATION OF THE ACT

Section 700.100 Scope of the ~~UPIA Act~~ and this Part ([UPIA Section 3-1A](#))

The Uniform Penalty and Interest Act [35 ILCS 735] (~~"the Act" or "the UPIA"~~) and this Part apply to all taxes administered by the Illinois Department of Revenue with the exception of the Racing Privilege Tax Act [230 ILCS 5], the Revenue Act of 1939 [35 ILCS 205], the Real Estate Transfer Tax Act [35 ILCS 305] and the Coin-Operated Amusement Device Tax [35 ILCS 510]. A specific provision of a particular act contrary to the requirements of the [UPIA Uniform Penalty and Interest Act](#) will control, as will a specific provision that may impose a penalty in addition to the penalties provided for in the UPIA. ([See UPIA Section 3-1A.](#))

EXAMPLE: Section 3 of the Cigarette Tax Act [35 ILCS 130/3] requires distributors of cigarettes to purchase cigarette tax stamps and affix those stamps to packages of cigarettes before delivering the cigarettes in this State to a purchaser. Section 3 of the Cigarette Tax Act allows distributors to purchase the tax stamps from the Department with post-dated drafts. Section 3 provides that *a distributor's failure to pay any ~~post-dated~~ such draft when due, shall also make such distributor automatically liable to the Department for a penalty equal to 25% of the amount of such draft.* The 25% penalty is a penalty *otherwise provided for in a tax Act* that is in addition to the penalties imposed under the UPIA. ([See UPIA Section 3-1A](#))

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

Section 700.105 General Provisions

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

a) Definitions of Specific Terms. Except as otherwise expressly provided in the UPIA or in this Part, or as clearly appearing from the context, for purposes of this Part:

"Accelerated Tax Payment" means any deposit or payment of tax that is due prior to the unextended due date for filing of the return on which the tax liability is reported, and includes, without limitation:

payments of occupation, use and excise taxes due on the 7th, 15^h, 22nd and last day of each month under Section 3 of the Retailers' Occupation Tax Act [35 ILCS 120] (ROTA) or any similar provision;

payments of estimated tax under IITA Section 803; and

monthly and semi-weekly deposits of income tax withholding under IITA Section 704 or IITA Section 704A.

"Admitted Liability" means a tax liability reported by the taxpayer on an original or amended return.

"Claim for Refund" includes an original or amended return on which an overpayment of tax is reported and a refund or credit of the overpayment is requested.

"Date of Overpayment" means the date on which the total amounts paid by or collected from the taxpayer with respect to a tax liability exceed the liability, net of allowable credits, provided that:

in the case of an overpayment attributable to the carryback of an Illinois net loss under IITA Section 207, the date of overpayment is the date on which the total payments and collections exceed the tax liability or the last day of the taxable year in which the loss was incurred, whichever is later (see UPIA Section 3-2(d));

in the case of an overpayment attributable to the carryback of a federal net operating loss or capital loss, the date of overpayment is the date on which the total payments and collections exceed the tax liability or the due date (without regard to extensions) for filing the federal income tax return for

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

the taxable year in which the loss was incurred, whichever is later (see IRC section 6621(f)); and

in the case of an overpayment of Retailers' Occupation Tax attributable to a bad debt, the date of overpayment is the date on which the taxpayer files the original or amended federal income tax return on which the deduction for the bad debt is reported. (See 86 Ill. Adm. Code 130.1960(d)(2)(C) and (d)(5)(C).)

"Date of Underpayment" means the date on which a liability becomes both due and unpaid. (See Avon Products, Inc. v. United States, 588 F.2d 342 (2d Cir. 1978).) The due date for payment of a tax is determined without regard to any extensions of time for filing of a return. (See IITA Section 601(a).)

"Federal Change" means a change to a federal income tax item that is subject to the reporting provisions of IITA Section 506(b).

"Final Assessment" means a liability that has become final under ROTA Section 4 or any similar provision, after the conclusion of a hearing granted to a taxpayer who has protested a notice of tax liability or after the period for protesting a notice of tax liability has expired without a protest being filed. (See UPIA Section 3-3(6-9)(2).)

"Information Return" means any return required by a tax Act to be filed with the Department that does not, by law, require the payment of a tax liability. (UPIA Section 3-4(c))

"Notice and Demand" means a bill or other request for payment issued by the Department for an assessed amount of tax, penalty or interest.

"Notice of Arithmetic Error" means a notice of mathematical error issued under IITA Section 903(a)(1), ROTA Section 4, or any similar provision.

"Notice of Tax Liability" means:

a protestable notice issued by the Department that asserts an unpaid liability for tax, penalty, or interest that will become a final assessment if not protested or, if protested, after hearing, as provided in ROTA Section 4 or any similar provision; or

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

a protestable notice of deficiency issued under the IITA.

"Return" or "Tax Return" means a return required to be filed with the Department, other than an information return. The terms "return" and "tax return" refer only to an original return, and not an amended return. (See Badaracco v. Commissioner, 464 US 386 (1984) and Hillsboro National Bank v. Commissioner, 460 US 370 (1983).)

"Unprocessable Return" means any filing that purports to be a return, but is not on a form prescribed or approved by the Department for the tax liability being reported, is not signed by the person authorized by law, or does not contain all information, schedules, and support documents necessary to determine the tax due and to make allocations of tax as prescribed by law. (UPIA Section 3-2(d))

- b) Other Terms. Except as provided in subsection (a) or as clearly appearing from the context, any term used in this Part has the same meaning as when used in the act imposing the tax to which the this Part is being applied.
- c) Assessment, Protest, Collections and Refunds of Penalty and Interest. Except as otherwise expressly provided in the UPIA or in this Part, the procedures for assessments, protests, collections and refunds of any item of penalty or interest under the UPIA are the procedures for assessments, protests, collections and refunds of the tax to which the item of penalty or interest relates.

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

Section 700.110 Application of the Provisions of the UPIAAet and this Part (UPIA Section 3-9)

- a) The ~~UPIA Uniform Penalty and Interest Act~~ and this Part are effective January 1, 1994 and the provisions of the UPIAAet and this Part *apply to the rates of interest for periods on and after the effective date of the UPIAAet* and this Part. (UPIA Section 3-9(a))
- b) Interest Charged
 - 1) For periods subsequent to the effective date of the UPIAAet, the initial rate charged taxpayers by the Department for failure to remit taxes when

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

due is the interest *rate in effect at the time the liability* to the Department accrued, subject to semiannual ~~semi-annual~~ adjustment pursuant to UPIA Section 3-2(b) ~~of the UPIA.~~ (See UPIA Section 3-9(6).)

EXAMPLE 1: A taxpayer is required to file a monthly return with the Department pursuant to the Automobile Renting Occupation and Use Tax Act [35 ILCS 155/4] on March 20, 1994 for rental receipts from rentals that were received in February 1994. The taxpayer ~~did~~ does not remit the tax to the Department when due on March 20, 1994. The interest rate to be charged the taxpayer ~~is~~ will be the interest rate in effect on March 20, 1994.

EXAMPLE 2: A taxpayer is required to file an income tax withholding return for the fourth quarter of 1993 ~~IL 941~~ with remittance ~~(income tax withholding)~~. The return is filed before the due date of January 30, 1994 but tax is not fully paid until March 15, 1994. The interest rate will be the rate in effect on January 30, 1994 and will accrue through March 15, 1994, when the tax is paid.

EXAMPLE 3: A taxpayer is required to file a first quarter of 1994 quarterly withholding return on or before April 30, 1994. The taxpayer ~~had~~ has withholding during this period but ~~did~~ does not remit the withholding payment to the Department until June 15, 1994. The interest rate to be charged the Taxpayer ~~is~~ will be the interest rate in effect on April 30, 1994. This same rate ~~is~~ will be charged through June 15, 1994, the date the tax ~~was~~ is paid.

EXAMPLE 4: Assume the same fact situation as in Example 3, but payment is not received until August 15, 1994. The interest rate in effect on ~~April 30~~ May 1, 1994 ~~is~~ would be charged through June 30, 1994. A new rate ~~is~~ would be charged from July 1, 1994 through August 15, 1994, the date the tax ~~was~~ is paid.

EXAMPLE 5: ~~Corporation A~~ calendar year, corporate taxpayer filed its calendar 1993 corporate income tax return ~~(IL 1120)~~ on October 15, 1994 (the extended due date of the return under Section 100.5020(b)) with a payment for the total tax liability shown on the return attached. No estimated payments had been

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

made. The taxpayer ~~is would be~~ charged interest on the underpayment of tax from March ~~1516~~, 1994 (~~the unextended due date of the return~~) through June 30, 1994 at the rate in effect for the first semiannual period of 1994 and from July 1, 1994 through October 15, 1994 at the rate in effect for the second semiannual period of 1994.

- 2) *Interest for periods prior to the effective date of the Act shall be computed at the rates in effect prior to that date. (UPIA Section 3-9(a) ~~of the Act~~)*

EXAMPLE 1: A ~~taxpayer's Retailers' Occupation Tax return taxpayer was required to file, but did not file, a return with the Department under the Retailers' Occupation Tax Act [35 ILCS 120/1 et seq.] on or before August 31, 1981~~ for the July 1981 month liability period ~~was due August 31, 1981~~. The taxpayer was audited and ~~an additional~~ liability was assessed. The interest rate charged the taxpayer on this liability was 1% per month prior to September 17, 1981, and at the rate of 2% per month on and after September 17, 1981 and prior to January 1, 1987; and at the rate of 1.25% per month on and after January 1, 1987 and prior to January 1, 1994 (~~see ROTA Section 5, prior to amendment by P.A. 87-205~~); and at the semiannually adjusted daily interest rate imposed pursuant to the Act and ~~this Part~~ ~~these rules~~ from January 1, 1994 through the date the tax is paid.

EXAMPLE 2: A ~~taxpayer's Retailers' Occupation Tax return taxpayer was required to file a return under the Retailers' Occupation Tax Act on or before the 20th day of November 1993~~ for the October 1993 liability period ~~was due November 20, 1993~~. The return was filed and tax was paid on January 15, 1994. The interest rate charged on the liability was 1.25% per month for November 21, 1993 through December 20, 1993 and 1.25% for December 21, 1993 through December 31, 1993 (~~see ROTA Section 5, prior to amendment by P.A. 87-205~~); and at the semiannually adjusted daily interest rate imposed pursuant to the Act and ~~this Part~~ ~~these rules~~ from January 1, 1994 through January 15, 1994, the date the tax was paid.

EXAMPLE 3: A withholding tax agent has income tax

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

withholding liability for the first quarter of 1986 that was due by April 30, 1986, but was not paid until August 15, 1994. The interest rate charged the taxpayer was 10% per annum for the period May 1, 1986 through June 30, 1986, 9% per annum for the period July 1, 1986 through December 31, 1993 (see IITA Section 1003, prior to amendment by P.A. 87-205), and at the semiannually adjusted interest rate imposed pursuant to the UPIAAet and this Part these rules from January 1, 1994 through August 15, 1994, the date the tax was paid.

EXAMPLE 4: ~~Corporation~~ A calendar year, corporate taxpayer filed its calendar 1992 corporate income tax return on October 15, 1993 (the extended due date of the return under Section 100.5020(b)). No estimated payments had been made and no payment accompanied the return. The taxpayer would be charged interest at a rate of 9% per annum from March ~~15~~ 16, 1993 (the unextended due date of the return) through December 31, 1993 (see IITA Section 1003, prior to amendment by P.A. 87-205) and at the semiannual adjusted rate imposed pursuant to the UPIAAet and this Part from January 1, 1994 through the date paid.

- c) *Penalties shall be imposed at the rate and in the manner in effect at the time the tax liability became due. (UPIA Section 3-9(b) of the Act)*

EXAMPLE 1: A taxpayer's Retailers' Occupation Tax return ~~retailer is required to file returns under the Retailers' Occupation Tax Act on a monthly basis, and is required to remit payment of the tax to the Department on a monthly basis. Tax is due from the retailer~~ for sales made during the month of December 1993 was due on the twentieth day of January 20, 1994. Penalties ~~imposed~~ for late payment or non-payment of the tax due are ~~shall be the penalties~~ imposed at the rate in effect on January 20, 1994, the time the tax liability became due.

EXAMPLE 2: A taxpayer's Retailers' Occupation Tax return ~~retailer is required to file returns under the Retailers' Occupation Tax Act on a monthly basis, and is required to remit payment of the tax to the Department on a monthly basis. Tax is due from the retailer~~ for sales made during the month of November 1993 was due on the twentieth day of December 20, 1993. However, the taxpayer does not file a return or pay

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

tax for this period until January 15, 1994. Penalties ~~imposed~~ for failure to file the tax return when due and failure to pay tax when due ~~are shall be the penalties~~ imposed at the rates in effect on December 20, 1993, ~~;~~ the time the tax liability became due.

EXAMPLE 3: A corporate taxpayer has a federal tax year based on its fiscal year. Its federal income tax return (~~1120~~), and by virtue of IITA Section 505(a)(1), its Illinois income tax return (~~IL-1120~~), are both due on November 15. In 1993, the taxpayer is granted a 7 month extension of time in which to file its Illinois return. As a result, taxpayer's Illinois state return is due June 15, 1994. Taxpayer does not comply with IITA Section 602 and make payment of the amount of its properly estimated tax for the taxable year on November 15, 1993, nor does taxpayer file its Illinois income tax return by IL-1120 when due on June 15, 1994. Penalties ~~imposed~~ for failure to file the tax return when due and for failure to pay tax when due ~~are shall be the penalties~~ imposed at the rates in effect on November 15, 1993, the unextended due date for filing the return and the date on which ~~time~~ the tax liability became due.

~~EXAMPLE 4: A calendar year, corporate taxpayer files its 1993 IL-1120 on November 15, 1994 with a payment for the total amount of tax liability attached. Estimated payments were made throughout 1993 on the dates required by Section 803 of the Illinois Income Tax Act, but the taxpayer remitted only 75% of the estimated tax due for each installment. The penalties due for underpayment of estimated tax shall be imposed at the rate and in the manner in effect on March 15, 1994, because until the IL-1120 was due it was not determined that the estimated payments were in fact unpaid.~~

- d) *Interest shall not be paid on claims for refund filed after the effective date of the UPIAA and this Part except ~~such~~ interest which is paid in accordance with the UPIAA. (UPIA Section 3-9(c) ~~of the Act~~)*

EXAMPLE 1: A taxpayer files a claim for credit with the Department on January 15, 1994 for an overpayment of Use Tax. The overpayment occurred in October 1992 when the taxpayer self-assessed tax on a purchase of manufacturing machinery and equipment from an unregistered out-of-state retailer and then remitted the tax directly to the Department. The credit is issued on February 15, 1994. Interest shall be paid at the rate

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

of 1% per month for the period from October 1992 through December 31, 1993 (see Use Tax Act Section 19, prior to amendment by P.A. 87-205); and at the semiannually adjusted interest rate imposed pursuant to the Act and these rules from January 1, 1994 through February 15, 1994, the date on which the claim was issued by the Department.

EXAMPLE 2: An individual taxpayer files his IL-1040 return on April 10, 1993. On May 1, 1994 the taxpayer files a claim for refund. If the claim for refund is approved, the taxpayer ~~is~~will be entitled to interest from April 16, 1993 through December 31, 1993, at an annual rate of 9% (see IITA Section 1003, prior to amendment by P.A. 87-205), and from January 1, 1994 through the date the refund was issued at the semiannually adjusted interest rate under the UPIA.

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

SUBPART B: INTEREST

Section 700.200 Interest Paid and Interest Charged (UPIA Section 3-2)

UPIA Section 3-2~~of the Act~~ and this SubpartPart govern interest paid taxpayers and interest charged taxpayers by the Department.

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

Section 700.210 Interest Rate Calculation (UPIA Section 3-2)

- a) For periods prior to January 1, 2004, and periods after December 31, 2013, the~~The~~ rate of interest to be paid to taxpayers and to be charged taxpayers is *the underpayment rate established under IRC section 6621*~~Section 6621 of the Internal Revenue Code~~. For periods after December 31, 2003, and prior to January 1, 2014, the rate of interest to be paid to taxpayers and to be charged taxpayers is, for the one-year period beginning with the date of underpayment or overpayment, the federal short-term rate established under IRC section 6621, and, for the period beginning the day after that one-year period, the underpayment rate established under IRC section 6621. (UPIA Section 3-2(a)~~of the Act~~)
- b) This Section may be illustrated by the following examples:

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

EXAMPLE 1: Taxpayer is an individual whose taxable year is the calendar year. On April 15, 2003, Taxpayer timely filed her 2002 Illinois income tax return, but did not pay the tax shown due on the return. Under this subsection, interest on Taxpayer's underpayment for the period April 16, 2003 through December 31, 2003 is charged at the underpayment rate established under IRC section 6621. With respect to any portion of the underpayment that remains unpaid as of January 1, 2004, interest is charged at the federal short-term rate established under IRC section 6621 through April 15, 2004, one year after the April 15, 2003 date of underpayment. With respect to any portion of the underpayment that remains unpaid as of April 16, 2004, interest is charged at the underpayment rate established under IRC section 6621.

EXAMPLE 2: Corporation failed to pay its Illinois income tax liability for its calendar 2001 taxable year, due on March 15, 2002, before January 1, 2004. Under this subsection, for any portion of Corporation's underpayment that remains unpaid on and after January 1, 2004, interest is charged under this subsection at the underpayment rate established under IRC section 6621 because January 1, 2004 is more than one year after the March 15, 2002 date of underpayment.

EXAMPLE 3: Taxpayer is an individual who timely filed her calendar 2003 Illinois income tax return on the April 15, 2004 unextended due date, but did not pay the tax shown due on the return. Under this subsection, interest on the unpaid balance of Taxpayer's underpayment accrues for the period from April 16, 2004 through April 15, 2005 at the federal short-term rate established under IRC section 6621. With respect to any portion of the underpayment that remains unpaid on and after April 16, 2005, interest is charged at the underpayment rate established under IRC section 6621.

EXAMPLE 4. Taxpayer is an individual who timely filed his calendar 2004 Illinois income tax return on the April 15, 2005 unextended due date, showing an overpayment of \$400. Taxpayer requested a refund of the overpayment, which was paid on May 2, 2005. As the result of an audit by the Internal Revenue Service that was completed in 2007, Taxpayer's adjusted gross income for 2004 was increased, causing Taxpayer's Illinois income tax liability to increase by \$500. \$100 of Taxpayer's deficiency

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

was unpaid as of April 15, 2005 and accrues interest at the federal short-term rate established under IRC section 6621 for the period from the April 16, 2005 date of underpayment through April 15, 2006. The remaining \$400 of the deficiency did not become unpaid until the refund was issued on May 2, 2005 and accrues interest at the federal short-term rate established under IRC section 6621 for the period from the May 3, 2005 date of underpayment through May 2, 2006.

EXAMPLE 5: Corporation failed to timely pay its Illinois income tax liability for its calendar 2012 taxable year, due on March 15, 2013. Under this subsection, the underpayment accrues interest at the federal short-term rate through December 31, 2013. For any portion of Corporation's underpayment that remains unpaid on and after January 1, 2014, interest is charged at the underpayment rate established under IRC section 6621 because interest is not computed using the federal short-term rate established under IRC section 6621 for any period after December 31, 2013.

- cb) The underpayment rate is the sum of the ~~federal~~Federal short-term rate plus 3 percentage points. The federal short-term rate is the rate determined by the Secretary of the Treasury based upon the average market yield (during any one month period selected by the Secretary of the Treasury and ending the calendar month in which the determination is made) on outstanding marketable obligations of the United States with remaining periods of maturity of 3 years or less. (See IRC section 6621.)
- de) *The interest rate shall be adjusted on a semiannual basis, on January 1 and July 1, based upon the underpayment rate or short-term federal rate going into effect on that January 1 or July 1 under IRC section 6621~~Section 6621 of the Internal Revenue Code~~. (UPIA Section 3-2(b)~~of the Act~~)*
- ed) The Department will announce the interest rate and the semiannual adjustments of the interest rate to the public by publication on the Department's web site (www.iltax.com)~~in the Illinois Register and the State newspaper~~. Taxpayers may also contact the Department's Taxpayer Information Division for interest rate information.

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

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

Section 700.220 Interest Charged Taxpayers (UPIA Section 3-2)

- a) Interest charged to taxpayers applicable for returns due on or before December 31, 2000 (without regard to extensions). *Interest shall be simple interest calculated on a daily basis. Interest shall accrue upon tax and penalty due. If notice and demand is made for the payment of any amount of tax due and if the amount due is paid within 30 days after the date of such notice and demand, interest under UPIA Section 3-2(c)~~this Section~~ on the amount so paid shall not be imposed for the period after the date of the notice and demand. (UPIA Section 3-2(c)~~of the Act~~)*
- b) Interest charged to taxpayers applicable for returns due on and after January 1, 2001 (without regard to extensions). *Interest shall be simple interest calculated on a daily basis. Interest shall accrue upon tax due. If notice and demand is made for the payment of any amount of tax due and if the amount due is paid within 30 days after the date of the notice and demand, interest under this UPIA Section 3-2(c) on the amount so paid shall not be imposed for the period after the date of the notice and demand. (UPIA Section 3-2(c)~~of the Act~~) Under this provision, interest shall not accrue on penalties.*

EXAMPLE: A taxpayer timely filed his individual income tax return on April 15, but because of an arithmetic error the taxpayer did not pay the entire amount of tax due. If the return was due prior to January 1, 2001, interest accrues on the unpaid tax liability and on any late payment penalty. If the return was due on or after January 1, 2001, interest accrues on the unpaid tax liability, but not on any late payment penalty.~~An assessment for tax due and late payment penalty imposed will be issued and showing interest calculated at the semiannually adjusted daily rate pursuant to the Act and this Section on the tax due only.~~

- c) Interest on tax shall accrue from the date of underpayment~~due date of the tax without regard to extensions of time for filing of returns.~~
- d) For returns due on or before December 31, 2000 (without regard to extensions), interest on any penalty shall accrue from the date the penalty is imposed.

EXAMPLE 1: Taxpayer's~~A taxpayer was required to file a return under the Retailers' Occupation Tax~~ return~~Act on or before February 20, 1994 for the January 1994 liability period was due February 20, 1994.~~ The

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

return was filed and tax was paid on May 25, 1994. ~~Interest is charged. An assessment will be issued with interest calculated at the semiannually adjusted daily rate pursuant to the Act and this Part~~ on the tax due ~~and penalty assessed~~ from February 21, 1994 through May 25, 1994, the date the tax was paid, and on any penalty assessed from February 21, 1994 through the date the penalty is paid.

EXAMPLE 2: ~~Taxpayer's~~A taxpayer was required to file a return under the Retailers' Occupation Tax ~~return~~ Act on or before December 20, 1993 for the November 1993 liability period was due December 20, 1993. The return was filed and tax was paid on May 25, 1994. Interest is charged on the tax due.~~An assessment will be issued with interest calculated at the 1.25% per month or fraction of month rate from December 21, 1993 to December 31, 1993 (see ROTA Section 5, prior to amendment by P.A. 87-205) and at the semiannually adjusted daily rate imposed pursuant to the UPIA and this Part~~Act and these rules on the tax due, from January 1, 1994 through May 25, 1994, the date the tax was paid. No interest ~~is~~shall be charged or accrued on the penalty assessed since the due date of the tax was before the effective date of the UPIA Uniform Penalty and Interest Act.

EXAMPLE 3: ~~Taxpayer's~~A taxpayer was required to make accelerated payments of the Public Utilities Tax were due on the 7th, 15th, 22nd and 31st of January 1994. Each payment should have been ~~\$3,000~~\$3000. ~~Taxpayer~~The taxpayer did not make ~~the~~a payment due on the 31st day of January 31, but paid the \$3,000~~the taxpayer did pay \$3000~~ with the monthly return ~~that~~which was filed, when due, on February 15, 1994. The taxpayer will be charged a 15% late payment penalty under UPIA Section 3-3(b) because the last accelerated payment was not paid when due. Interest is charged on the \$3,000 late payment.~~An assessment will be issued with interest calculated on the tax and penalty~~ from February 1, 1994 through February 15, 1994, when the payment was received, and on the penalty from February 1, 1994 through the date the penalty is paid.

EXAMPLE 4: Corporation filed its calendar 1993 income tax return.~~A corporate calendar year taxpayer (C corporation) files a return under the HFA on March 15, 1994, the unextended due date for its 1993 taxable year.~~ The corporation was liable for, but did not make, any estimated payments for the taxable year. The tax liability reported on the return.~~H-~~

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~1120~~ was paid in full when the return was filed. ~~Upon the filing of the return the corporation will be assessed a late payment penalty for failure to make proper quarterly estimated payments. Interest on the late payment penalty for failure to make timely estimated tax payments accrues from March 15, 1994 through the date the penalty is paid will begin to accrue on the original due date of the return and will continue to accrue until the date paid.~~

EXAMPLE 5: ~~Corporation filed its calendar 1993 income tax return. A corporate, calendar-year taxpayer files a return under the HTA on March 15, 1994, the unextended due date for its 1993 taxable year. The corporation properly made all estimated payments and paid the remainder of its tax liability when the return was filed. In 1997 an audit wasis completed on the corporation's 1993 return and additional liability wasis proposed. The corporation agreed/agrees to the audit results but did/does not pay the liability until 35 days after the Notice and Demand for payment wasis issued. A late payment penalty was/will be assessed on the audit liability under UPIA Section 3-3(b) and interest will accrues/accrue on the penalty from March 15, 1994 through the date the penalty is paid/the original due date of the 1993 return until the date the penalty is paid.~~

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

Section 700.230 Interest Paid Taxpayers on Overpayments (UPIA Section 3-2)

- a) *No interest shall be paid upon any overpayment of tax if the overpayment is refunded or a credit approved within 90 days after the last date prescribed for filing the original return, or within 90 days of the receipt of the processable return, or within 90 days after the date of overpayment, whichever is latest, as determined without regard to processing time by the Comptroller or without regard to the date on which the credit is applied to the taxpayer's account. (UPIA Section 3-2(d) ~~of the Act~~)*
- 1) The reference to "credit" in UPIA Section 3-2 ~~of the UPIA~~, and throughout this Section, is to claims for credit granted under the various tax Acts ~~acts~~. ~~Under the claim for credit procedures, upon the filing of an amended return for the period at issue, if the return demonstrates overpayment of tax, a credit memorandum is issued to the taxpayer. This credit may then be applied to liabilities, or transferred with the permission~~

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~of the Department.~~

- 2) Under ROTA Section 3 ~~of the Retailers' Occupation Tax Act~~, the Department has been granted the authority to issue verified credits. A verified credit is an amount of tax overpaid in a prior period that may be rolled over and applied to a tax liability. The verified credit mechanism authorizes this procedure without the necessity of the formalities involved in the claim for credit procedures. Interest is not paid on verified credits. They appear on the Statement of Account ~~(SOA)~~.
- b) For purposes of this Section, UPIA Section 3-2(d) ~~of the UPIA~~ provides that the date of overpayment shall mean the date tax was paid, the original due date of the return or the date a processable return was received, whichever is later.
- 1) ~~When~~Where a return is unprocessable, and the Department issues a notice of that fact to the taxpayer within 90 days ~~after~~of the filing of the unprocessable return or within 90 days ~~after~~of the due date (whichever is later), interest will be allowed on any overpayment ~~only~~ from the date the return was made processable by the taxpayer, but only if the refund or claim for credit on the overpayment is not approved within 90 days ~~after~~of the date on which the return was made processable.
 - 2) ~~When~~Where a return is unprocessable and notice of that fact is not given to the taxpayer by the Department within 90 days ~~after~~of the filing of the unprocessable return, interest will be allowed from the latter of the date the tax was paid, the original due date of the return or the date the unprocessable return was originally received until the date of notice to the taxpayer by the Department that the return is unprocessable. Additional interest will be allowed from the date the return was made processable until the date the refund or claim for credit on the overpayment is approved, but only if the refund or claim for credit is not approved within 90 days ~~after~~of the date the return was made processable by the taxpayer. (See subsection (f) ~~below~~)
- c) For purposes of calculating interest on overpayments of tax, *a processable return is a return that;*
- 1) *is in the form prescribed or approved by the Department;*

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 2) *is signed by the person authorized by law; and*
- 3) *contains all information, schedules, and support documents necessary to determine the tax due and to make allocations of tax as prescribed by law. (UPIA Section 3-2-of-the-Act)*
- d) Any unprocessable return ~~that~~*which* is not corrected and made processable within the time period identified on the Department's notice will be considered a nonfiled return, subject to any and all applicable penalties. Being considered a nonfiler for any given period will also result in an extended or open time period for issuance of a Notice of Deficiency or Notice of Tax Liability.
- e) *For the purpose of computing interest, a return shall be deemed processable unless the Department notifies the taxpayer that the return is not processable within 90 days after the receipt of the return; however, interest shall not accumulate for the period following this date of notice. (UPIA Section 3-2-of-the-Act)* Notice by the Department must be in writing and is effective on the date mailed to the taxpayer at the last known address for the taxpayer according to Department records.
- f) *Interest on amounts refunded or credited pursuant to the filing of an amended return or claim for refund shall be determined from the due date of the original return or the date of overpayment, whichever is later, to the date of the payment by the Department without regard to processing time by the Comptroller or the date of credit by the Department or without regard to the date on which the credit is applied to the taxpayer's account. (UPIA Section 3-2(d)-of-the-Act)* Interest on overpayments due pursuant to the filing of an amended return or claim for credit will be allowed as specified in this ~~subsection (f)~~*Section* and subsection (b) except:
 - 1) that interest will be allowed whether or not the overpayment is approved within the 90 day period after the amended return was filed (except if the refund or credit is issued within 90 days ~~after~~ receipt of the original processable return or the date of overpayment (see subsection (a) ~~above~~); or
 - 2) *If a claim for refund relates to an overpayment attributable to a net loss carryback as provided by IITA Section 207-of-the-Illinois-Income-Tax-Act, the date of overpayment shall be the last day of the taxable year in which*

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

the loss was incurred. (UPIA Section 3-2-of the Act) In this case interest ~~accrues will be allowed~~ only from the last day of the taxable year in which the loss was incurred.

- g) If the Department notifies the taxpayer that a return is unprocessable later than 90 days from the date the return is received, the Department will ~~only~~ be required to pay interest only from the due date of the original return to the date of the Department's notice to the taxpayer that the return is unprocessable.

EXAMPLE 1: ~~A corporate income tax return An IL-1120~~ reflecting a refund of \$10,000 for the taxable year ending December 31, 1994 ~~was~~ filed on March 15, 1995. On June 1, 1995, notice ~~was~~ given that the return is not processable. The taxpayer ~~responded~~ responds on July 1, 1995 with information suitable to process the return. If a refund is approved by October 1, 1995, no interest will be allowed because notice was given within 90 days ~~after~~ the date the return was received and the refund was approved within 90 days ~~after~~ the date the return was made processable.

EXAMPLE 2: Same facts as in the preceding example except that notice was not given until June 16, 1995. In this case, interest will be allowed from March 15, 1995 through June 16, 1995.

EXAMPLE 3: Same facts as in ~~Example~~ example 2 except that the refund is not approved until November 1, 1995. In addition to the interest provided in ~~Example~~ example 2, interest will also be allowed from July 1, 1995 through November 1, 1995.

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

SUBPART C: PENALTIES

Section 700.300 Penalty for Late Filing or Failure to File (UPIA Section 3-3(a), (a-5), (a-10), and (a-15)) and Penalty for Late Payment of Tax

- a) Late ~~Filing Penalty~~ filing penalty for ~~original Returns Due~~ returns due (without regard to extensions) On or After January 1, 1994, and Prior ~~prior~~ to January 1, 1996. A penalty of 5% of the tax required to be shown due on a return shall be imposed for failure to file the tax return on or before the due date prescribed for filing determined with regard for any extension of time for filing (penalty for late

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

filing or nonfiling). (UPIA Section 3-3(a))

- 1) *If any unprocessable return is corrected and filed within 21 days after notice by the Department, the late filing or nonfiling penalty shall not apply.* (UPIA Section 3-3(a)-of the Act) This exception to the penalty applies only if theThe unprocessable return was~~must have been~~ filed on or before the due date prescribed for filing of that return, with regard for any extension of filing. In other words, a taxpayer does not~~may not attempt to~~ avoid the 5% penalty under this exception by the late filing of an unprocessable return that is then corrected within 21 days after notice by the Department.
- 2) For purposes of this subsection (a), the "tax required to be shown due on a return" means the tax as properly computed, net of credits properly allowable, but without regard to any payment of the tax or any accelerated tax payments.~~A return, for purposes of the imposition of this penalty, is any return required by a tax Act to be filed with the Department that is not an information return as that term is defined in Section 3-4(c) of the Act.~~

~~EXAMPLE 1: A withholding agent files Form IL-941 (Employer's Quarterly Illinois Withholding Tax Return) for third quarter 1994 on November 1, 1994. The total Illinois tax withheld is \$500,000. The form was due on October 31, 1994. A late payment filing penalty is imposed as follows: Total Illinois tax withheld (\$500,000) times the 5% late filing penalty equals \$25,000.~~

~~EXAMPLE 2: A withholding agent files form IL-W-3 (Reconciliation of Illinois Income Tax Withheld and Transmittal of Income and Tax Statements) for tax year 1993 on March 1, 1994. The total Illinois tax withheld is \$1,000,000. The form was due on February 28, 1994. A late filing penalty is imposed as follows: Total Illinois tax withheld (\$1,000,000) times the 5% late filing penalty is \$50,000.~~

- 3) *If a penalty for late filing or nonfiling is imposed in addition to a penalty for late payment, the total penalty due shall be the sum of the late filing penalty and the applicable late payment penalty.* (UPIA Section 3-3(a)-of the Act).

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 4) *In the case of any type of tax return for which filing is due more frequently than annually, when the failure to file the tax return on or before the date prescribed for filing (including any extensions) is shown to be nonfraudulent and no other failure to file has occurred in the two years immediately preceding the failure to file on the prescribed due date, the penalty imposed under this subsection (a) shall be abated. (UPIA Section 3-3(a))*
- b) Late Filing Penalty ~~filing penalty for original Returns Due~~ returns due (without regard to extensions) On or After ~~On or Before~~ after January 1, 1996 and On or Before ~~On or Before~~ December 31, 2000-
- 1) Tier 1 Penalty. *A penalty equal to 2% of the tax required to be shown due on a return, up to a maximum amount of \$250, determined without regard to any part of the tax that is paid on time or by any credit that was properly allowable on the date the return was required to be filed, shall be imposed for failure to file the tax return on or before the due date prescribed for filing determined with regard for any extension of time for filing. (UPIA Section 3-3(a-5) of the Act)*

EXAMPLE 1: Taxpayer's Retailers' Occupation Tax return was Your Form ST-1 is due by April 20, 1996, but Taxpayer filed you file it on May 17, 1996. The tax required to be shown due on the your return was \$10,000. Taxpayer You timely paid the full \$10,000 in accelerated tax payments. A Tier 1 late filing We notify you that you owe a penalty of \$200 (2% x \$10,000 = \$200; \$200 is less than the \$250 maximum Tier 1 penalty, and so the penalty is; therefore you owe \$200) is imposed because the return was not filed and interest because you did not file your return by the April 20 due date. If you do not pay the \$200 penalty and interest within 30 days after the date of our notice, additional interest will accrue on the \$200 penalty.

EXAMPLE 2: Individual's Illinois income tax return was Your Form IL-1040 is due by April 15, 1996, with an automatic extension of time to file until October 15 granted by 86 Ill. Adm. Code 100.5020(b), but Individual filed you file it on November 10, 1996 (after the extended due date). The tax required to be shown due on the your return was \$2,000 is \$1,500. Individual's Your

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

employer withheld \$1,200 for Illinois ~~income tax~~Income Tax, and ~~Individual~~you timely paid ~~\$500~~\$400 in estimated tax payments during the year. The remaining \$300 was paid with the return. A Tier 1 late filing penalty of \$40 ($2\% \times \$2,000$, the tax required to be shown due on the return without regard to credits or timely payments = \$40, which is less than the \$250 maximum Tier 1 penalty) is imposed because the return was not filed by the October 15 due date. ~~You have overpaid your tax by \$100 ($\$1,500 - \$1,200 - \$400 = \100). We notify you that you owe a penalty of \$30 ($2\% \times \$1,500 = \30 ; \$30 is less than \$250, therefore you owe \$30) because you did not file your return by the due date. We reduce your refund by the \$30 penalty and issue you a check for \$70.~~

EXAMPLE 3: ~~Corporation's Illinois income tax return was due by March 15, 1996, with an automatic extension of time to file until October 15 granted by 86 Ill. Adm. Code 100.5020(b), but Corporation filed it on November 10, 1996. The tax shown due on the return was \$1,500. On the return, Corporation failed to claim a research and development credit of \$700. Corporation subsequently filed an amended return, claiming the \$700 credit and showing a liability of \$800. The Tier 1 late filing penalty is \$30 ($2\% \times \$1,500$, the amount of tax required to be shown due on the return without regard to credits or timely payments = \$30, which is less than the \$250 maximum Tier 1 penalty). Your Form RHM-1 is due by September 30, but you do not file it. We send you a notice of nonfiling asking you to respond within 30 days. You file your return 25 days after our notice and pay the total tax due of \$18,500. We notify you that you owe a penalty of \$250 ($2\% \times \$18,500 = \370 ; \$370 is greater than \$250, therefore you owe \$250) and interest because you did not file your return by the September 30 due date.~~

EXAMPLE 4: ~~Your Form IL-1120 is due by March 15 but you file it on December 20 (after the extended due date). The income tax shown on the return is \$6,000 and the replacement tax shown on the return is \$3,125. An Enterprise Zone Investment Credit of \$2,000 is claimed against your income tax liability. You have timely paid \$7,500 in estimated payments. You have overpaid your tax liability by \$375 ($(\$2,000 + \$7,500) - (\$6,000 + \$3,125) =$~~

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~\$375). We notify you that you owe a penalty of \$182.50 ($\$9,125 \times 2\% = \182.50 ; \$182.50 is less than \$250, therefore you owe \$182.50) because you did not file your return by the due date. We reduce your refund by \$182.50 and issue you a check for \$192.50.~~

- 2) Tier 2 Penalty. *If any return is not filed within 30 days after notice of nonfiling mailed by the Department to the last known address of the taxpayer contained in Department records, an additional penalty amount shall be imposed equal to the greater of \$250 or 2% of the tax shown on the return. ~~The maximum amount of~~ However, the additional penalty ~~is~~ amount may not exceed \$5,000. The amount of the additional penalty ~~and~~ is determined without regard to any part of the tax that is paid on time or by any credit that was properly allowable on the date the return was required to be filed (penalty for late filing or nonfiling) (UPIA Section 3-3(a-5) of the Act).*

EXAMPLE: Taxpayer's Retailers' Occupation Tax return was due by April 20, 1996, but Taxpayer did not file it. The Department issued a notice of nonfiling asking Taxpayer to file a return or to explain why no return was required. Taxpayer filed the return 45 days after the notice. The tax shown on the return was \$18,000. Taxpayer timely paid the full \$18,000 in accelerated tax payments. A Tier 1 penalty is imposed in the amount of \$250 (2% of \$18,000 in tax required to be shown due on the return without regard to timely payments = \$360, which is greater than the \$250 maximum Tier 1 penalty). A Tier 2 penalty is imposed in the amount of \$360 (2% of \$18,000 in tax due without regard to timely payments = \$360, which is greater than the \$250 minimum Tier 2 penalty and less than the \$5,000 maximum) because Taxpayer did not file the return within 30 days after the notice of nonfiling. Your Form RHM-1 is due by September 30, but you do not file it. We send you a notice of nonfiling asking you to respond within 30 days. You file your return 45 days after our notice and pay the total tax due of \$18,500. You owe a penalty of \$250 ($2\% \times \$18,500 = \370 ; \$370 is greater than \$250, therefore you owe \$250) and interest because you did not file your return by the September 30 due date. You also owe an additional penalty of \$370 ($2\% \times \$18,500 = \370 ; \$370 is greater than \$250 and less than \$5,000, therefore you owe \$370) and interest because you did not respond

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~within 30 days after our notice. Your total penalties for late filing are \$620 (\$250 + \$370 = \$620). You will also owe a late payment penalty for not paying your tax by the due date. Interest will continue to accrue on unpaid tax and penalties until you fully pay the total amount you owe.~~

- 3) *If any unprocessable return is corrected and filed within 30 days after notice by the Department, the late filing or nonfiling penalty shall not apply. (UPIA Section 3-3(a-5)) This exception to the penalty applies only if the*~~The unprocessable return was must have been filed on or before the due date prescribed for filing of that return, with regard for any extension of filing. In other words, a taxpayer does not may not attempt to avoid the penalty under this exception by the late filing of an unprocessable return which is then corrected within 30 days after notice by the Department.~~
- 4) *In the case of any type of tax return required to be filed more frequently than annually, when the failure to file the tax return on or before the date prescribed for filing (including any extensions) is shown to be nonfraudulent and no other failure to file has occurred in the two years immediately preceding the failure to file on the prescribed due date, the penalty imposed under this subsection (b) does not apply by Section 3-3(a-5) shall be abated. (UPIA Section 3-3(a-5))~~This two year "good filing" history abatement is effective for returns due on and after August 18, 1995 (the effective date of P.A. 89-379).~~*
- c) Late Filing Penalty~~filing penalty for original Returns Due~~returns due (without regard to extensions) On~~on~~ and After~~after~~ January 1, 2001:-
- 1) Tier 1 Penalty. *A penalty equal to 2% of the tax required to be shown due on a return, up to a maximum amount of \$250, reduced by any tax that is paid on time or by any credit that was properly allowable on the date the return was required to be filed, shall be imposed for failure to file the tax return on or before the due date prescribed for filing determined with regard for any extension of time for filing. (UPIA Section 3-3(a-10)*~~of the Act)~~

EXAMPLE 1: Taxpayer's Retailers' Occupation Tax return was~~Your Form ST-1 is due by April 20, 2001, but Taxpayer filed you do not file it on May 17, 2001.~~We send you a notice of nonfiling

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~asking you to respond within 30 days. You file your return 20 days after our notice.~~ The tax required to be shown due on ~~the your~~ return ~~was \$10,000~~ ~~is \$20,000~~. ~~Taxpayer You~~ timely paid the full ~~\$10,000~~ ~~\$20,000~~ in accelerated tax payments. A penalty of 2% of the tax required to be shown due on the return is applicable for the late filing of ~~the your~~ return but no penalty is assessed because, after taking into account the tax paid on time, ~~the your~~ tax liability ~~was~~ ~~is~~ zero.

EXAMPLE 2: ~~Individual's Illinois income tax return was Your Form IL-1040~~ is due by April 15, 2001, with an automatic extension of time to file until October 15 granted by 86 Ill. Adm. Code 100.5020(b), but ~~Individual filed you file~~ it on November 10, 2001 ~~(after the extended due date)~~. The tax required to be shown due on ~~the your~~ return ~~was~~ ~~is~~ \$2,000. ~~Individual's Your~~ employer withheld ~~\$1,200~~ ~~\$1,250~~ for Illinois Income Tax, and ~~Individual you~~ timely paid ~~\$500~~ ~~us~~ ~~\$150~~ in estimated tax payments during the year. The remaining \$300 was paid with the return. A Tier 1 late filing penalty of ~~\$6~~ ~~Tax owed with the return is \$600 (\$2,000 - \$1,250 - \$150 = \$600)~~. We notify you that you owe a penalty of \$12 (2% x \$300, the tax required to be shown due on the return reduced by credits and timely payments = \$6, which ~~\$600 = \$12;~~ ~~\$12~~ is less than the \$250 maximum Tier 1 penalty) is imposed because the return was not filed by the October 15 extended due date, therefore you owe \$12) because you did not file your return on time.

EXAMPLE 3: ~~Corporation's Illinois income tax return was Your Form IL-1120~~ is due by March 15, 2001, with an automatic extension of time to file until October 15 granted by 86 Ill. Adm. Code 100.5020(b), but ~~Corporation filed you file~~ it on November 10, 2001. The tax liability shown on the return was \$1,500. On the return, Corporation failed to claim a research and development credit of \$700. Corporation subsequently filed an amended return, claiming the \$700 credit and showing a liability of \$800. The Tier 1 late filing penalty is \$16 (2% x \$800, the amount of tax required to be shown due on the return reduced by credits and timely payments = \$16, which is less than the \$250 maximum Tier 1 penalty). ~~December 20 (after the extended due date)~~. The income

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~tax required to be shown due on the return is \$20,000 and the replacement tax required to be shown due on the return is \$12,500. An Enterprise Zone Investment Credit of \$2,000 is claimed against your income tax liability. You have timely paid \$17,000 in estimated payments. Taxed owed with the return is \$13,500 $((\$20,000 + \$12,500) - (\$2,000 + \$17,000)) = \$13,500$. We notify you that you owe a penalty of \$250 $(\$13,500 \times 2\% = \$270; \$270$ is more than \$250, therefore you owe \$250) because you did not file your return on time.~~

- 2) Tier 2 Penalty. *If any return is not filed within 30 days after notice of nonfiling mailed by the Department to the last known address of the taxpayer contained in Department records, an additional penalty amount shall be imposed equal to the greater of \$250 or 2% of the tax shown on the return. However, the additional penalty amount may not exceed \$5,000 and the penalty is determined without regard to any part of the tax that is paid on time or by any credit that was properly allowable on the date the return was required to be filed (penalty for late filing or nonfiling). (UPIA Section 3-3(a-10) ~~of the Act~~)*

EXAMPLE: ~~Taxpayer's Retailers' Occupation Tax return was Your Form ST-1 is~~ due by April 20, 2001, but ~~Taxpayer did you do~~ not file it. ~~The Department issued We send you~~ a notice of nonfiling asking ~~Taxpayer to file a return or to explain why no return was due. Taxpayer filed they you to respond within 30 days. You file your~~ return 45 days after ~~the our~~ notice. The tax liability shown on ~~the your~~ return was \$18,000. ~~Taxpayer You~~ timely paid the full \$18,000 in accelerated tax payments. No Tier 1 ~~Although you did not file your return by the due date, no first tier~~ late filing penalty is assessed because, after taking into account the tax paid on time, ~~the your~~ tax liability was zero. A Tier 2 penalty is imposed in the amount You do, however, owe an additional second tier late filing penalty of \$360 (2% of \$18,000 in tax due without regard to timely payments = \$360, ~~which, \$360~~ is greater than the \$250 minimum Tier 2 Penalty and less than the \$5,000 maximum, therefore you owe \$360) because ~~Taxpayer did not file the return you did not respond~~ within 30 days after ~~the our~~ notice of nonfiling.

- 3) *If any unprocessable return is corrected and filed within 30 days after*

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

notice by the Department, the late filing or nonfiling penalty shall not apply. (UPIA Section 3-3(a-10) of the Act). This exception to the penalty applies only if the ~~The unprocessable return was must have been filed on or before the due date prescribed for filing of that return, with regard for any extension for filing. In other words, a taxpayer does not may not attempt to avoid the penalty under this exception by the late filing of an unprocessable return that is then corrected within 30 days after notice by the Department.~~

4) *In the case of any type of tax return required to be filed more frequently than annually, when the failure to file the tax return on or before the date prescribed for filing (including any extensions) is shown to be nonfraudulent and has not occurred in the 2 years immediately preceding the failure to file on the prescribed due date, the penalty imposed by this subsection (c) Section 3-3(a-10) shall be abated. (UPIA Section 3-3(a-10) of the Act). This two year “good filing” history abatement is effective for returns due on and after August 18, 1995 (the effective date of P.A. 89-379).*

d) *A penalty of \$100 shall be imposed for failure to file a transaction reporting return required by ROTA Section 3 and UTA Section 9 on or before the date the return is required to be filed; provided, however, that this penalty shall be imposed only if the return, when properly prepared and filed, would not result in the imposition of a tax. If the transaction reporting return would result in the imposition of a tax when properly prepared and filed, then that return is subject to the provisions of subsection (c). (UPIA Section 3-3(a-15)) The penalty imposed under this subsection (d) does not apply to returns due, without regard to extensions, after August 10, 2015 (the effective date of P.A. 99-335). For returns due before January 1, 1998, a penalty of 15% of the tax shown on the return or the tax required to be shown due on the return shall be imposed for failure to pay:*

1) *~~the tax shown due on the return on or before the due date prescribed for payment of that tax, an amount of underpayment of estimated tax, or an amount that is reported in an amended return other than an amended return timely filed as required by subsection (b) of Section 506 of the Illinois Income Tax Act (penalty for late payment or nonpayment of admitted liability); or~~*

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~EXAMPLE 1: Your Form IL-1120 is due by March 15. You timely file your return on March 15, but you only made your first estimated payment of \$337.50; you were required to make 4 estimated payments. The total tax shown due on your return is \$1,500. You pay the remaining \$1,162.50 you owe with your return. We notify you that you owe a penalty of \$151.88 ($\$1,500 \text{ tax} \times 90\% \text{ required to be paid timely} = \$1,350 \text{ to be made in 4 equal installments. } \$1,350 \text{ divided by 4 estimated payments} = \$337.50 \text{ per payment. } \$337.50 \times 3 \text{ unpaid quarters} = \$1,012.50 \text{ estimated tax that was due. } \$1,012.50 \times 15\% \text{ penalty} = \$151.88 \text{ late payment penalty}$) and interest because you did not pay the required amount due for each estimated payment. If you do not pay the \$151.88 penalty and interest within 30 days after our notice, additional interest will accrue on the penalty.~~

~~EXAMPLE 2: Same facts as in Example 1 above except that your return was timely filed between March 16 and October 15 and you paid the remaining \$150 tax you owed with your return. In this situation, your return was timely filed by virtue of the automatic extension for filing, but you owe a late payment penalty on the \$150 paid with the return because that amount of tax was not paid on or before the original due date of the return. There would be an additional penalty as prescribed by UPIA Section 3-3(b)(1) of \$22.50 ($\$1,500 - \$1,350 = \$150 \times 15\% = \22.50) for failure to pay the total tax by March 15.~~

- 2) ~~*the full amount of any tax required to be shown due on a return and which is not shown (penalty for late payment or nonpayment of additional liability), within 30 days after a notice of arithmetic error, notice and demand, or a final assessment is issued by the Department. In the case of a final assessment arising following a protest and hearing, the 30-day period shall not begin until all proceedings in court for review of the final assessment have terminated or the period for obtaining a review has expired without proceedings for a review having been instituted. In the case of a notice of tax liability that becomes a final assessment without a protest and hearing, the penalty provided in this Section shall be imposed at the expiration of the period provided for the filing of a protest. (Section 3-3(b) of the Act) The 30-day period for providing payment in response to Department notices and final assessments is effective for notices and*~~

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~assessments issued on or after January 1, 1996. Taxpayers must respond to notices and assessments issued prior to January 1, 1996 within 21 days.~~

~~EXAMPLE: Your Form ST-1 is due by August 20. You timely file your return but do not pay the \$10,750 tax shown due until September 27. We notify you that you owe a penalty of \$1,612.50 ($15\% \times \$10,750 = \$1,612.50$) and interest. If you do not pay the \$1,612.50 penalty and interest within 30 days after the date of our notice, additional interest will accrue on the penalty.~~

- e) ~~For returns due on and after January 1, 1998 and on or before December 31, 2000, a penalty of 20% of the tax shown on the return or the tax required to be shown due on the return shall be imposed for failure to pay:~~
- 1) ~~the tax shown due on the return on or before the due date prescribed for payment of that tax, an amount of the underpayment of estimated tax, or an amount that is reported in an amended return other than an amended return timely filed as a requirement of subsection (b) of Section 506 of the Illinois Income Tax Act (penalty for late payment or nonpayment of admitted liability); or~~

~~EXAMPLE: Your Form IL-1040 is due by April 15, but you file your return on October 15 (by the extended filing date) with tax due of \$1,000. You were required to make timely quarterly estimated income tax payments but you only made your first quarter estimated payment of \$225. You paid the remaining balance you owe of \$775 with the return. We notify you that you owe late payment penalties for late payment of estimated tax and late payment of total tax due by April 15 in the total amount of \$155.~~

~~The penalty for late payment of estimated tax is calculated as follows: \$1,000 tax x 90% required to be paid timely = \$900 to be made in 4 equal installments. \$900 divided by 4 = \$225 per quarterly payment. \$225 x 3 unpaid quarters = \$675 estimated paid late. \$675 x 20% penalty = \$135 late payment penalty for failure to pay estimated taxes.~~

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~The penalty for late payment of total tax due by April 15 is calculated as follows: \$1,000 - \$900 = \$100 tax due with the return and paid late. $\$100 \times 20\% = \20 late payment penalty for failure to pay tax due by April 15.~~

- 2) ~~the full amount of the tax required to be shown due on a return and which is not shown (penalty for late payment or nonpayment of additional liability), within 30 days after a notice of arithmetic error, notice and demand, or a final assessment is issued by the Department. In the case of a final assessment arising following a protest and hearing, the 30-day period shall not begin until all proceedings in court for review of the final assessment have terminated or the period for obtaining a review having been instituted. In the case of a notice of tax liability that becomes a final assessment without a protest and hearing, the penalty provided in this subsection (c)(2) shall be imposed at the expiration of the period provided for the filing of a protest. (Section 3-3(b-5) of the Act).~~

~~EXAMPLE: Corporate Taxpayer timely files its IL-1120 for tax year 1997 by the March 15, 1998 due date for calendar year filers. Corporate Taxpayer properly made all estimated tax payments and paid the remainder of its tax liability with the return. In 2000, the Department completes an audit of Corporate Taxpayer's 1997 return and an additional liability of \$5,000 is proposed. Corporate Taxpayer agrees to the audit findings but does not pay the additional liability until 60 days after notice and demand for payment is issued. A penalty of \$1,000 ($\$5,000 \times 20\% = \$1,000$) is assessed against Corporate Taxpayer for late payment of additional liability.~~

- f) ~~For returns due on and after January 1, 2001, a penalty shall be imposed for failure to pay:~~

- 1) ~~the tax shown due on a return on or before the due date prescribed for payment of that tax, an amount of underpayment of estimated tax, or an amount that is reported in an amended return other than an amended return timely filed as required by subsection (b) of Section 506 of the Illinois Income Tax Act (penalty for late payment or nonpayment of admitted liability). The amount of the penalty imposed shall be:~~

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- A) ~~2% of any amount that is paid no later than 30 days after the due date,~~
- B) ~~5% of any amount that is paid later than 30 days after the due date and not later than 90 days after the due date,~~
- C) ~~10% of any amount that is paid later than 90 days after the due date and not later than 180 days after the due date, and~~
- D) ~~15% of any amount that is paid later than 180 days after the due date.~~

~~Effective July 25, 2002, if notice and demand is made for the payment of any amount of tax due and if the amount due is paid within 30 days after the date of the notice and demand, then the penalty for late payment or nonpayment of admitted liability under this subsection (f)(1)(A) through (D) on the amount so paid shall not accrue for the period after the date of the notice and demand (Section 3-3(b-10)(1) of the Act).~~

~~EXAMPLE 1: Your Form IL-1040 is due by April 15, but you file your return on May 15 (within the extension for time to file) showing total tax due of \$1,000. You were required to make quarterly estimated income tax payments but you only made your first quarter estimated payment of \$225. You paid the remaining balance you owe of \$775 with the return. We notify you that you owe interest on the late tax, plus late payment penalties for late payment of estimated tax and late payment of total tax due by April 15 in the amount of \$92.~~

~~The penalty for late payment of estimated tax and late payment of tax due with the return is based on the number of days the payment is late. Your second quarter payment was made more than 180 days late, your third quarter payment was made more than 180 days late, and your fourth quarter payment was made more than 90 days but less than 180 days late. Your payment due with your return was paid 30 days late.~~

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~The late payment of estimated tax penalty is calculated as follows: \$1,000 tax x 90% required to be paid timely = \$900 to be made in 4 equal installments. \$900 divided by 4 = \$225 per quarterly payment. Second quarter penalty (\$225 x 15% = \$33.75) + Third quarter penalty (\$225 x 15% = \$33.75) + Fourth quarter penalty (\$225 x 10% = \$22.50) = \$90 late payment penalty for failure to pay estimated taxes.~~

~~The penalty for late payment of total tax due by April 15 is calculated as follows: \$1,000 - \$900 = \$100 tax due with the return and paid late. \$100 x 2% = \$2 late payment penalty for failure to pay tax due by April 15.~~

~~EXAMPLE 2: Your Form ST-1 is due on June 20th. You were required to make quarter-monthly accelerated tax payments of the Retailers' Occupation Tax on the 7th, 15th, 22nd, and 31st of May. Each payment should have been \$4,500. You did not make any accelerated payments and instead paid the total tax due when you timely filed your return on June 20th. We notify you that you owe a late payment penalty for failing to make timely accelerated tax payments.~~

~~The May 7 and May 15 payments are more than 30 days but less than 90 days late, therefore subject to the 5% penalty. The May 22 and May 31 payments are no more than 30 days late, and therefore subject to the 2% penalty. Your late payment penalty is \$630 (((\$4,500 x 5% = \$225) + (\$4,500 x 5% = \$225) + (\$4,500 x 2% = \$90) + (\$4,500 x 2% = \$90) = \$630).~~

~~EXAMPLE 3: Your ST-1 form, due on January 20, was filed but no payment was made. The Department issues you a notice and demand dated February 16. You pay the tax due on March 9. Although the payment was made more than 30 days after the due date, you incur a 2% penalty because the amount was paid within 30 days after the date~~

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~of the Department's notice and demand. See subsection (f)(1)(E), above.~~

- 2) ~~the full amount of any tax required to be shown due on a return and that is not shown (penalty for late payment or nonpayment of additional liability), within 30 days after a notice of arithmetic error, notice and demand, or a final assessment is issued by the Department. In the case of a final assessment arising following a protest and hearing, the 30-day period shall not begin until all proceedings in court for review of the final assessment have terminated or the period for obtaining a review has expired without proceedings for a review having been instituted. The amount of penalty imposed shall be 20% of any amount that is not paid within the 30-day period. In the case of a notice of tax liability that becomes a final assessment without a protest and hearing, the penalty imposed under subsection (b-10)(2) of Section 3-3 of the Act shall be imposed at the expiration of the period provided for the filing of a protest. (Section 3-3(b-10) of the Act)~~

~~EXAMPLE: Corporate Taxpayer timely files its IL-1120 for tax year 2000 by the March 15, 2001 due date for calendar year filers. Corporate Taxpayer properly made all estimated tax payments and paid the remainder of its tax liability with the return. In 2003, the Department completes an audit of Corporate Taxpayer's 2000 return and an additional liability of \$5,000 is proposed. Corporate Taxpayer agrees to the audit findings but does not pay the additional liability until 60 days after notice and demand for payment is issued. A penalty of \$1,000 ($\$5,000 \times 20\% = \$1,000$) is assessed against Corporate Taxpayer for late payment of additional liability.~~

- g) ~~*For purposes of the late payment penalties, the basis of the penalty shall be the tax shown or required to be shown on the return, whichever is applicable, reduced by any part of the tax which is paid on time and by any credit which was properly allowable on the date the return was required to be filed. (Section 3-3(c) of the Act) The amount of the late payment penalty, unlike some late payment penalties that were imposed prior to the adoption of the Uniform Penalty and Interest Act, does not change over time for returns due on or before December 31, 2000. The late payment penalty is the same whether payment is one day late or one year late. For returns due on and after January 1, 2001, however, the late payment penalty is a graduated penalty that increases as the time*~~

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~period during which the tax liability remains unpaid increases. It is only after the tax liability has remained unpaid for more than 180 days that the late payment penalty caps at 15% and remains at that such rate until the tax liability is paid.~~

- h) ~~A penalty shall be applied to the tax required to be shown even if that amount is less than the tax shown on the return. (Section 3-3(d) of the Act)~~

~~EXAMPLE: A rentor of automobiles for periods of one year or less has tax due under the Automobile Renting Occupation and Use Tax for the rental receipts received during the month of June 1994 on July 20, 1994. The tax shown on the return filed on July 20, 1994 is \$500, but the taxpayer remits no payment of the tax when the return is filed. On August 1, 1994 the taxpayer files an amended return reducing tax liability to \$400 and also remits \$400. Assuming that the \$400 amount shown on the amended return is correct, the taxpayer owes a late payment penalty on \$400, the amount required to be shown on the original return, not the \$500 amount that was shown on the original return.~~

- i) ~~If both a subsection (b)(1) or (b-5)(1) penalty and a subsection (b)(2) or (b-5)(2) penalty are assessed against the same return, the subsection (b)(2) or (b-5)(2) penalty shall be assessed against only the additional tax found to be due. (Section 3-3(e) of the Act) For returns due on and after January 1, 2001, if a subsection (b-10)(1) penalty and a subsection (b-10)(2) penalty are assessed against the same return, the subsection (b-10)(2) penalty shall be assessed against only the additional tax found to be due. (Section 3-3(e-5) of the Act)~~

~~EXAMPLE 1: A withholding tax agent has tax due for the third quarter of 1994. The return is filed timely, with tax withheld of \$20,000, but on time payments only equal \$15,000, leaving a tax balance due of \$5,000. The late payment penalty applicable on November 1, 1994 is \$750. Full payment of tax is made on March 15, 1995. On October 1, 1997, an audit is completed increasing tax to \$30,000. The withholding agent agrees to the audit finding. An additional late payment penalty of \$1,500 (\$30,000 - the original \$20,000 = \$10,000 tax due times 15% = \$1,500 late payment penalty) will be assessed if the withholding agent does not pay the additional tax liability within 30 days after notice and demand for payment of the additional liability.~~

~~EXAMPLE 2: Corporate Taxpayer timely files its IL-1120 for the 2000~~

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~tax year on March 15, 2001 showing total tax due of \$30,000. Corporate Taxpayer properly made all estimated tax payments but fails to pay the \$3,000 tax balance due with the return. Corporate Taxpayer pays the \$3,000 tax due on June 15, 2001, later than 90 days but no later than 180 days after the due date. The penalty for late payment of tax due is \$300 (\$3,000 x 10%). In 2003, the Department completes an audit of Corporate Taxpayer's 2000 return increasing the tax due to \$36,000. Corporate Taxpayer agrees to the audit finding but does not pay the additional liability until 45 days after notice and demand is issued. Corporate Taxpayer is assessed an additional late payment penalty of \$1,200 (\$36,000 - \$30,000 original liability = \$6,000 additional tax due x 20% = \$1,200).~~

- j) ~~If the taxpayer has failed to file the return, the Department shall determine the correct tax according to its best judgment and information, which amount shall be prima facie evidence of the correctness of the tax due. (Section 3-3(f) of the Act)~~
- k) ~~The time within which to file a return or pay an amount of tax due without imposition of a penalty does not extend the time within which to file a protest to a notice of tax liability or a notice of deficiency. (Section 3-3(g) of the Act)~~

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

Section 700.305 Penalty for Late Payment of Tax (UPIA Section 3-3(b), (b-5), (b-10), (b-15), and (b-20))

- a) Late Payment Penalty for Returns Due (without regard to extensions) On or After January 1, 1994 and On or Before January 1, 1998. For returns due on or after January 1, 1994, and on or before January 1, 1998, a penalty of 15% of the tax shown on the return or the tax required to be shown due on the return shall be imposed:
- 1) For failure to pay the tax shown due on the return on or before the due date prescribed for payment of that tax, an amount of underpayment of estimated tax, or an amount that is reported in an amended return other than an amended return timely filed as required by IITA Section 506(b) (penalty for late payment or nonpayment of admitted liability). (UPIA Section 3-3(b)(1))

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

EXAMPLE 1: Individual's income tax return for calendar year 1994 was due (without regard to extensions) by April 15, 1995, and his liability after credits was \$1,500. Individual owed 4 estimated tax installment payments of \$337.50 each, which were due on April 15, June 15 and September 15 of 1994 and January 15 of 1995, but made only the first payment of \$337.50 in a timely manner. Individual filed his return on April 15, and paid the remaining \$1,162.50 liability with the return. Individual owes a penalty of \$151.88 ($\337.50×3 unpaid installments = \$1,012.50 estimated tax that was due, and $\$1,012.50 \times 15\%$ penalty = \$151.88 late payment penalty) because Individual failed to pay the amounts due for each estimated tax installment.

EXAMPLE 2: Same facts as in Example 1 except that the return was filed on October 1 and the remaining \$1,162.50 tax owed by Individual was paid with the return. In this situation, the return was timely filed by virtue of the automatic extension until October 15 of the due date for filing the return granted by 86 Ill. Adm. Code 100.5020(b), but Individual owes a late payment penalty for failure to pay the unpaid \$1,012.50 in estimated tax installments and the remaining \$150 of his total liability because that amount of tax was not paid on or before the unextended due date of the return. Individual owes a late payment penalty of \$174.38. The penalty for failure to timely pay the unpaid \$1,012.50 in estimated tax installments is the \$151.88 amount computed in Example 1. Failure to timely pay the remaining \$150 that was shown due on the original return date is subject to penalty as prescribed by UPIA Section 3-3(b)(1) of \$22.50 ($\$1,500 - \$1,350 = \$150 \times 15\% = \22.50) for failure to pay the total tax by April 15.

- 2) For failure to pay the full amount of any tax required to be shown due on a return and that is not shown (penalty for late payment or nonpayment of additional liability), within 30 days after a Notice of Arithmetic Error, Notice and Demand, or Final Assessment is issued by the Department. In the case of Final Assessment arising following a protest and hearing, the 30-day period shall not begin until all proceedings in court for review of the final assessment have terminated or the period for obtaining a review has expired without proceedings for a review having been instituted. In the case of a notice of tax liability that becomes a final assessment without a

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

protest and hearing, the penalty provided in this subsection (a)(2) shall be imposed at the expiration of the period provided for the filing of a protest. (UPIA Section 3-3(b)(2)) For purposes of this subsection (a)(2):

- A) An amount of tax that was paid prior to the due date for payment is a timely payment of tax, even if some or all of that amount was refunded or credited to the taxpayer as a result of an overpayment reported on an original or amended return. (Compare UPIA Section 3-3(b-20)(2).)
- B) The 30-day period for providing payment in response to Department notices and final assessments is effective for notices and assessments issued on or after January 1, 1996. Payments in response to notices and assessments issued prior to January 1, 1996 were due within 21 days (the effective date of P.A. 89-436).

EXAMPLE 1: Corporation timely filed its income tax return for calendar year 1994 by the March 15, 1995 unextended due date for calendar year filers. Corporation properly made all estimated tax payments and paid the remainder of its tax liability with the return. In 1997, the Department completed an audit of Corporation's 1994 return and issued a notice of deficiency for an additional liability of \$5,000. Corporation protested the notice of deficiency, which was ultimately upheld by the courts. Corporation is subject to the late payment penalty of \$750 (15% of \$5,000) only if it does not pay the additional liability within 30 days after the Department has issued a Notice and Demand for Payment.

EXAMPLE 2: The facts are the same as in Example 1, except that the additional liability of \$5,000 assessed in 1997 is the result of a federal change. If Corporation timely reported the federal change liability, it is not subject to late payment penalty under subsection (a)(1) and is subject to the late payment penalty under subsection (a)(2) only if it does not pay the additional liability before the Department has issued a Notice and Demand for Payment of the liability and 30 days have passed. If Corporation files its

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

report of the federal change liability after the due date, it is immediately subject to late payment penalty under subsection (a)(1).

EXAMPLE 3: Corporation timely filed its income tax return for calendar year 1993 by the March 15, 1994 unextended due date. Corporation properly made all estimated tax payments and paid the remainder of its tax liability with the return. In 1995, the Department completed an audit of Corporation's 1994 return and issued a Notice of Deficiency for an additional liability of \$5,000. Corporation agreed to the additional liability and the Department issued a Notice and Demand for the additional liability. If the Notice and Demand was issued prior to January 1, 1996, corporation is subject to the late payment penalty under subsection (a)(2) only if it does not pay the additional liability within 21 days. If the Notice and Demand was issued on or after January 1, 1996, Corporation is subject to the late payment penalty under subsection (a)(2) only if it does not pay the additional liability within 30 days.

- b) Late payment penalty for returns due (without regard to extensions) on or after January 1, 1998 and on or before December 31, 2000. For returns due on and after January 1, 1998 and on or before December 31, 2000, a penalty of 20% of the tax shown on the return or the tax required to be shown due on the return shall be imposed:
- 1) For failure to pay the tax shown due on the return on or before the due date prescribed for payment of that tax, an amount of the underpayment of estimated tax, or an amount that is reported in an amended return other than an amended return timely filed as a requirement of IITA Section 506(b) (penalty for late payment or nonpayment of admitted liability). (UPIA Section 3-3(b-5)(1))

EXAMPLE 1: Individual's income tax return for calendar 1997 was due (without regard to extensions) by April 15, 1998, and his liability after credits was \$1,500. Individual owed 4 estimated tax installment payments of \$337.50 each, which were due on April

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

15, June 15 and September 15 of 1997 and January 15 of 1998, but made only the first payment of \$337.50 in a timely manner. Individual filed his return on April 15 and paid the remaining \$1,162.50 liability with the return. Individual owes a penalty of \$202.50 ($\337.50×3 unpaid installments = \$1,012.50 estimated tax that was due, and $\$1,012.50 \times 20\%$ penalty = \$202.50 late payment penalty) because Individual failed to pay the amounts due for each estimated tax installment.

EXAMPLE 2: Same facts as in Example 1 except that the return was filed on October 1 and the remaining \$1,162.50 tax owed by Individual was paid with the return. In this situation, the return was timely filed by virtue of the automatic extension until October 15 of the due date for filing the return granted by 86 Ill. Adm. Code 100.5020(b), but Individual owes a late payment penalty for failure to pay the unpaid \$1,012.50 in estimated tax installments and the remaining \$150 of his total liability because that amount of tax was not paid on or before the unextended due date of the return. Individual owes a late payment penalty of \$232.50. The penalty for failure to timely pay the unpaid \$1,012.50 in estimated tax installments is the \$202.50 amount computed in Example 1. Failure to timely pay the remaining \$150 that was shown due on the original return date is subject to penalty as prescribed by UPIA Section 3-3(b)(1) of \$30.00 ($\$1,500 - \$1,350 = \$150 \times 20\% = \30.00) for failure to pay the total tax by April 15.

- 2) *For failure to pay the full amount of the tax required to be shown due on a return and that is not shown (penalty for late payment or nonpayment of additional liability) within 30 days after a Notice of Arithmetic Error, Notice and Demand, or Final Assessment is issued by the Department. In the case of a Final Assessment arising following a protest and hearing, the 30-day period shall not begin until all proceedings in court for review of the final assessment have terminated or the period for obtaining a review has expired without a proceeding having been instituted. In the case of a Notice of Tax Liability that becomes a Final Assessment without a protest and hearing, the penalty provided in this subsection (b) shall be imposed at the expiration of the period provided for the filing of a protest. (UPIA Section 3-3(b-5)(2))*

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

EXAMPLE 1: Corporation timely filed its income tax return for calendar year 1997 by the March 15, 1998 unextended due date for calendar year filers. Corporation properly made all estimated tax payments and paid the remainder of its tax liability with the return. In 2000, the Department completed an audit of Corporation's 1997 return and issued a Notice of Deficiency for an additional liability of \$5,000. Corporation protested the Notice of Deficiency, which was ultimately upheld by the courts. Corporation is subject to the late payment penalty of \$1,000 (20% of \$5,000) only if it does not pay the additional liability within 30 days after the Department has issued a Notice and Demand for Payment.

EXAMPLE 2: The facts are the same as in Example 1, except that the additional liability of \$5,000 assessed for 1997 was the result of a federal change. If Corporation timely reported the federal change liability, it is not subject to late payment penalty under subsection (b)(1) and is subject to the late payment penalty under subsection (b)(2) only if it does not pay the additional liability before the Department has issued a Notice and Demand for Payment of the liability and 30 days have passed. If Corporation filed its report of the federal change liability after the due date, it is immediately subject to late payment penalty under subsection (b)(1).

- 3) For purposes of this subsection (b), an amount of tax that was paid prior to the due date for payment is a timely payment of tax, even if some or all of that amount was refunded or credited to the taxpayer as a result of an overpayment reported on an original or amended return. (Compare UPIA Section 3-3(b-20)(2).)
- c) Late Payment Penalty for Returns Due (without regard to extensions) On or After January 1, 2001 and On or Before December 31, 2003. For returns due on and after January 1, 2001 and on or before December 31, 2003, a penalty is imposed:
 - 1) For failure to pay the tax shown due on a return on or before the due date prescribed for payment of that tax, an amount of underpayment of estimated tax, or an amount that is reported in an amended return other than an amended return timely filed as required by IITA Section 506(b) (penalty for late payment or nonpayment of admitted liability).

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- A) The amount of the penalty imposed shall be:
- i) 2% of any amount that is paid no later than 30 days after the due date;
 - ii) 5% of any amount that is paid later than 30 days after the due date and not later than 90 days after the due date;
 - iii) 10% of any amount that is paid later than 90 days after the due date and not later than 180 days after the due date; and
 - iv) 15% of any amount that is paid later than 180 days after the due date.
- B) Effective July 25, 2002, if Notice and Demand is made for the payment of any amount of tax due and if the amount due is paid within 30 days after the date of the Notice and Demand, then the penalty for late payment or nonpayment of admitted liability under subsection (c)(1)(A) on the amount so paid shall not accrue for the period after the date of the Notice and Demand (UPIA Section 3-3(b-10)(1), as amended by P.A. 92-742).

EXAMPLE 1: Individual's income tax return for calendar year 2000 was due (without regard to extensions) by April 15, 2001, and his liability after credits was \$1,500. Individual owed 4 estimated tax installment payments of \$337.50 each, which were due on April 15, June 15 and September 15 of 2000 and January 15 of 2001, but made only the first payment of \$337.50 in a timely manner. Individual filed his return on April 15, 2001 and paid the remaining \$1,162.50 liability with the return. Individual owes a penalty for late payment of estimated tax of \$118.14. Because all payments, other than the first estimated tax installment, were made on April 15, the second and third installment payments were made more than 180 days late, and the fourth installment payment was made 90 days late. The late payment of estimated tax

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

penalty is calculated as follows: second installment penalty (\$337.50 x 15% = \$50.63) + third installment penalty (\$337.50 x 15% = \$50.63) + fourth installment penalty (\$337.50 x 5% = \$16.88) = \$118.14 late payment penalty for failure to pay estimated taxes.

EXAMPLE 2: Same facts as in Example 1 except that the return was filed on October 1 and the remaining \$1,162.50 tax owed by Individual was paid with the return. In this situation, the return was timely filed by virtue of the automatic extension, until October 15, 2001, of the due date for filing the return granted by 86 Ill. Adm. Code 100.5020(b), but Individual owes a late payment penalty for failure to pay the unpaid \$1,012.50 in estimated tax installments and the remaining \$150 of his total liability because that amount of tax was not paid on or before the unextended due date of the return. Individual owes penalties for late payment of estimated tax and late payment of tax due with the return totaling \$166.89. Because all the estimated tax installments, other than the first, were made on October 1, the second, third and fourth installment payments were made more than 180 days late. The remaining \$150 was due on April 15 and was paid more than 90 but not more than 180 days late. The late payment of estimated tax penalty is calculated as follows for each of the 3 late estimated tax installments: $\$337.50 \times 15\% = \50.63 , times 3 = \$151.89 late payment penalty for failure to pay estimated taxes. The penalty for late payment of the tax due with the return is calculated as follows: $\$1,500 - \$1,350$ (the amount of estimated taxes due) = \$150 tax due with the return and paid late. $\$150 \times 10\% = \15 late payment penalty for failure to pay tax due by April 15.

EXAMPLE 3: Taxpayer's Form ST-1 for May 2001 was due on June 20, 2001. Taxpayer's quarter-monthly accelerated tax payments of the Retailers' Occupation Tax were due on May 7, 15, 22 and 31. The amount of each accelerated payment due was \$4,500. Taxpayer did not make any accelerated payments and instead paid the total

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

tax due with its timely filed return on June 20. Taxpayer is subject to penalty for failing to make timely accelerated tax payments. The May 7 and May 15 payments were more than 30 days but less than 90 days late, and are therefore subject to the 5% penalty. The May 22 and May 31 payments were no more than 30 days late, and are therefore subject to the 2% penalty. The late payment penalty is \$630: the \$4,500 due on May 7 x 5%, or \$225; the \$4,500 due on May 15 x 5%, or \$225; the \$4,500 due on May 22 x 2%, or \$90; plus the \$4,500 due on May 31 x 2%, or \$90. If the amount of each accelerated payment due is subsequently increased or decreased as the result of an audit or amendment to the return, the penalty under this subsection (c)(1)(B) is computed using the corrected amount.

EXAMPLE 4: Taxpayer's Form ST-1 for July, 2002, due on August 20, 2002, was timely filed but no payment was made. The Department issued Taxpayer a Notice and Demand dated September 15, 2002. Taxpayer paid the tax due on October 9, 2002. The penalty is 2% of the tax shown due on the return. Although payment was made later than 30 days after the due date, a Notice and Demand was issued on September 15, and the penalty does not increase for the period after the date of a Notice and Demand when the tax is paid within 30 days after the Notice and Demand is issued.

- 2) For failure to pay the full amount of any tax required to be shown due on a return and that is not shown (penalty for late payment or nonpayment of additional liability) within 30 days after a Notice of Arithmetic Error, Notice and Demand, or Final Assessment is issued by the Department. In the case of Final Assessment arising following a protest and hearing, the 30-day period shall not begin until all proceedings in court for review of the Final Assessment have terminated or the period for obtaining a review has expired without proceedings for a review having been instituted. The amount of penalty imposed is 20% of any amount that is not paid within the 30-day period. In the case of a notice of tax liability that becomes a Final Assessment without a protest and hearing, the penalty imposed

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

under UPIA Section 3-3(b-10)(2) shall be imposed at the expiration of the period provided for the filing of a protest. (UPIA Section 3-3(b-10)(2))

EXAMPLE 1: Corporation timely filed its Form IL-1120 for calendar year 2000 by the March 15, 2001 unextended due date. Corporation properly made all estimated tax payments and paid the remainder of its reported tax liability with the return. In 2003, the Department completed an audit of Corporation's 2000 return and issued a notice of deficiency for an additional liability of \$5,000. Corporation protested the Notice of Deficiency, which was ultimately upheld by the courts. Corporation is subject to the late payment penalty of \$1,000 (20% of \$5,000) only if it does not pay the additional liability within 30 days after the Department has issued a Notice and Demand for Payment.

EXAMPLE 2: The facts are the same as in Example 1, except that the additional liability of \$5,000 assessed for 2000 is the result of a federal change. If Corporation timely reported the federal change liability, it is not subject to late payment penalty under subsection (c)(1) and is subject to the late payment penalty under subsection (c)(2) only if it does not pay the additional liability before the Department has issued a Notice and Demand for Payment of the liability and 30 days have passed. If Corporation files its report of the federal change liability after the deadline, it is immediately subject to late payment penalty under subsection (c)(1).

- 3) For purposes of this subsection (c), an amount of tax that was paid prior to the due date for payment is a timely payment of tax, even if some or all of that amount was refunded or credited to the taxpayer as a result of an overpayment reported on an original or amended return. (Compare UPIA Section 3-3(b-20)(2).)
- d) Late Payment Penalty for Returns Due (without regard to extensions) On or After January 1, 2004 and On or Before December 31, 2004. For returns due on or after January 1, 2004, and on or before December 31, 2004, UPIA Section 3-3(b-15) imposes a penalty for failure to pay the tax shown due on a return, or the tax required to be shown due on a return, including tax shown on an amended return, on or before the due date prescribed for payment of the tax, or imposes a penalty for an amount of underpayment of estimated tax.

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) The amount of the penalty imposed is determined according to the following schedule:
 - A) 2% of the amount paid not later than 30 days after the due date prescribed for payment of the tax;
 - B) 10% of the amount paid later than 30 days after the due date, but not later than 90 days after the due date prescribed for payment of the tax;
 - C) 15% of the amount paid later than 90 days after the due date, but not later than 180 days after the due date prescribed for payment of the tax; and
 - D) 20% of any amount that is paid later than 180 days after the due date prescribed for payment of the tax.
- 2) Notwithstanding subsection (d)(1), if an amount of tax is paid no later than 30 days after the date of a Notice and Demand issued with respect to that tax, the penalty imposed under this subsection (d) with respect to the amount so paid shall not increase over the penalty applicable as of the date of the Notice and Demand. (UPIA Section 3-3(b-15))
- 3) For purposes of this subsection (d), an amount of tax that was paid prior to the due date for payment is a timely payment of tax, even if some or all of that amount was refunded or credited to the taxpayer as a result of an overpayment reported on an original or amended return. (Compare UPIA Section 3-3(b-20)(2).)
- 4) No penalty is imposed under this subsection (d) for failure to timely pay the tax shown due on an amended federal change return timely filed pursuant to IITA Section 506(b), but only to the extent the failure relates to the federal change reported under that Section.
- 5) The provisions of this subsection (d) may be illustrated by the following examples:

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

EXAMPLE 1: Individual's income tax return for calendar year 2003 was due (without regard to extensions) by April 15, 2004, and the liability after credits was \$1,500. Individual owed 4 estimated tax installment payments of \$337.50 each, which were due on April 15, June 15 and September 15 of 2003 and January 15 of 2004, but made only the first payment of \$337.50 in a timely manner. Individual filed his return on April 15, 2004, and paid the remaining \$1,162.50 liability with the return. Individual owes a penalty for late payment of estimated tax of \$185.63. Because all payments other than the first estimated tax installment were made on April 15, the second and third installment payments were made more than 180 days late, and the fourth installment payment was made 91 days late. The late payment of estimated tax penalty is calculated as follows: second installment penalty ($\$337.50 \times 20\% = \67.50) + third installment penalty ($\$337.50 \times 20\% = \67.50) + fourth quarter penalty ($\$337.50 \times 15\% = \50.63) = \$185.63 late payment penalty for failure to pay estimated taxes.

EXAMPLE 2: Same facts as in Example 1 except that the return was filed on October 1, 2004, and the remaining \$1,162.50 tax owed by Individual was paid with the return. In this situation, the return was timely filed, by virtue of the automatic extension until October 15, 2001, on the due date for filing the return granted by 86 Ill. Adm. Code 100.5020(b), but Individual owes a late payment penalty for failure to pay the unpaid \$1,012.50 in estimated tax installments and the remaining \$150 of his total liability because that amount of tax was not paid on or before the unextended due date of the return. The penalty owed by Individual for late payment of estimated tax and late payment of tax due with the return is \$225. Because all the estimated tax installments, other than the first, were made on October 1, the second, third and fourth installment payments were made more than 180 days late. The remaining \$150 was due on April 15 and was paid more than 90 but not more than 180 days late. The late payment of estimated tax penalty is calculated as follows for each of the 3 late estimated tax installments: $\$337.50 \times 20\% = \67.50 , times 3 = \$202.50 late payment penalty for failure to pay estimated taxes. The penalty for late payment of the tax due with the return is calculated as follows: $\$1,500 - \$1,350$ (the amount of estimated taxes due) = \$150 tax

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

due with the return and paid late. $\$150 \times 15\% = \22.50 late payment penalty for failure to pay tax due by April 15.

EXAMPLE 3: Taxpayer's Form ST-1 for May 2004 was due June 20, 2004. Taxpayer's quarter-monthly accelerated tax payments of the Retailers' Occupation Tax were due on May 7, 15, 22 and 31. The amount of each accelerated payment due was \$4,500. Taxpayer did not make any accelerated payments and instead paid the total tax due with its timely filed return on June 20. Taxpayer is subject to penalty for failing to make timely accelerated tax payments. The May 7 and May 15 payments were made later than 30 days after the due date, but not later than 90 days after the due date. The May 22 and May 31 payments were made not later than 30 days after the due date. The late payment penalty is \$1,080: the \$4,500 due on May 7 times 10%, or \$450; the \$4,500 due on May 15 times 10%, or \$450; the \$4,500 due on May 22 times 2%, or \$90; plus the \$4,500 due on May 31 times 2%, or \$90. If the amount of each accelerated payment due is subsequently increased or decreased as the result of an audit or amendment to the return, the penalty under this subsection (d) is computed using the corrected amount.

EXAMPLE 4: Taxpayer's Form ST-1 for July 2004, due on August 20, 2004, was timely filed. No accelerated payments were due and none was made, and no payment was made with the return. The Department issued Taxpayer a Notice and Demand dated September 15, 2004. Taxpayer paid the tax due on October 9, 2004. The penalty is 2% of the tax shown due on the return. Although payment was made later than 30 days after the due date, a Notice and Demand was issued on September 15, and the penalty does not increase for the period after the date of a Notice and Demand when the tax is paid within 30 days after the Notice and Demand is issued.

- e) Late Payment Penalty for Returns Due (without regard to extensions) On or After January 1, 2005. For returns due on or after January 1, 2005, UPIA Section 3-3(b-20) imposes underpayment penalties as follows:

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) Failure to Make Accelerated Tax Payments. UPIA Section 3-3(b-20)(1) imposes a penalty for failure to pay, prior to the due date for payment, any amount of tax the payment of which is required to be made prior to the filing of a return or without a return (penalty for late payment or nonpayment of estimated or accelerated tax). The penalty is imposed at the rate of:
 - A) 2% of any amount that is paid no later than 30 days after the due date; and
 - B) 10% of any amount that is paid later than 30 days after the due date. (UPIA Section 3-3(6-20)(1))

- 2) Failure to Pay Tax. UPIA Section 3-3(b-20)(2) imposes a penalty for failure to pay the tax shown due or required to be shown due on a return on or before the due date prescribed for payment of that tax or an amount that is reported in an amended return (penalty for late payment or nonpayment of tax). The penalty is imposed at the rate of:
 - A) 2% of any amount that is paid no later than 30 days after the due date;
 - B) 10% of any amount that is paid later than 30 days after the due date and prior to the date the Department has initiated an audit or investigation of the taxpayer; and
 - C) 20% of any amount that is paid after the date the Department has initiated an audit or investigation of the taxpayer. (UPIA Section 3(6-20)(2))
 - i) The rate imposed under this subsection (e)(2)(C) shall be reduced to 15% if the entire amount due on an amended return (following completion of an occupation, use or excise tax audit) or a form for waiver of restrictions on assessment (following completion of an income tax audit) is paid not later than 30 days after the Department has provided the taxpayer with the amended return or form for waiver of restrictions. (UPIA Section 3-3(b-20)(2)) For purposes of this subsection (e)(2)(C), the "entire amount

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

due" on an amended return or waiver of restrictions on assessment means the tax, including any reduction in vendor's discount resulting from late payment of taxes, but does not include any interest, penalty or excess sales tax collected from customers and not refunded.

ii) The reduction of the rate to 15% is allowed for occupation, use or excise taxes only if, in addition to paying the tax, the taxpayer signs and returns the amended return not later than 30 days after it has been provided to the taxpayer by the Department.

iii) The reduction of the rate to 15% shall be rescinded if the taxpayer makes any claim for refund or credit of the tax liability, penalties or interest determined to be due upon audit, except in the case of a claim based on a carryover of a loss or credit, the availability of which was not determined in the audit. (UPIA Section 3-3(b-20)(2)) The rescission of the 15% rate applies only to the amount of the refund or credit that is claimed and that is finally disallowed.

3) Special Provisions. For purposes of imposing the penalty under subsection (e)(2):

A) Any overpayment reported on an original return that has been allowed as a refund or credit to the taxpayer shall be deemed to have not been paid on or before the due date for payment. (UPIA Section 3-3(b-20)(2)) However, an amount of tax that was paid prior to the due date for payment is a timely payment of tax, even if some or all of that amount was refunded or credited to the taxpayer as a result of an overpayment reported on an amended return.

B) Federal Change Returns Filed Under IITA Section 506(b)

i) The penalty under subsection (e)(2) is not imposed on an amount shown due on an amended federal change return timely filed pursuant to IITA Section 506(b), but only to

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

the extent that amount results from the federal change being timely reported.

- ii) The filing of a claim for refund pursuant to IITA Section 506(b) does not cause the reduction of the penalty rate to 15% to be rescinded pursuant to subsection (e)(2)(C)(iii).

C) Protest Act Payments. Any amount paid under protest pursuant to the provisions of the State Officers and Employees Money Disposition Act (Protest Act) [30 ILCS 230] shall be deemed to have been paid after the Department has initiated an audit and more than 30 days after the Department has provided the taxpayer with an amended return (following completion of an occupation, use or excise tax audit) or a form for waiver of restrictions on assessment (following completion of an income tax audit). (UPIA Section 3-3(b-20)(2)) This subsection (e)(2)(C) applies only to payments that are not timely. A payment made under the Protest Act on or before the date the payment was due is not deemed to have been paid late.

D) Initiation of an Audit or Investigation. For purposes of this subsection (e)(2)(d):

- i) An "audit" refers to actions taken by the Audit Bureau of the Department.
- ii) An "investigation" refers to actions taken by the Bureau of Criminal Investigation of the Department.
- iii) An audit or investigation is initiated on the date a representative of the Department first contacts the taxpayer, whether by telephone, mail, email or otherwise, informing the taxpayer that the Department is reviewing the taxpayer's return, failure to file a return, or identified transactions for the period at issue.
- iv) An audit or investigation is not initiated by a communication regarding a mathematical error or suspected mathematical error on the taxpayer's original or

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

amended return, or regarding the failure of the taxpayer to sign or include all necessary attachments to an original or amended return that has been filed.

v) The Department has the burden of providing evidence that an audit or investigation of a tax period was initiated prior to the date a specific payment of tax for that period was made.

vi) The initiation of an income tax audit or investigation of a partnership, Subchapter S corporation, trust or estate also serves as the initiation of an income tax audit or investigation of the partners, shareholders or beneficiaries, but only with respect to any income tax liability arising from those entities' interest in the partnership, Subchapter S corporation, trust or estate.

E) Provision of a Waiver of Restrictions on Assessment or Amended Return After Completion of an Audit or Investigation. For purposes of this subsection (e)(2)(E):

i) A waiver of restrictions on assessment or an amended return is presented to the taxpayer when mailed or, if delivered by another means, when received by the taxpayer or by an authorized representative of the taxpayer.

ii) If a taxpayer is entitled to request review of an audit by the Informal Conference Board, the audit is not completed until a waiver of restrictions on assessment or an amended return is presented to the taxpayer on a date that is after the date on which:

: the Informal Conference Board issues its final Action Decision to the taxpayer: or

: if the taxpayer fails to request review, the taxpayer's right to request review by the Informal Conference Board expires.

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- F) IITA Section 704A(c)(1), (2) and (3) provide that payments of income taxes withheld by an employer from employee compensation are due before the return reporting the withholding is due. However, IITA Section 704A(c)(4) provides that payment of any tax that was withheld or required to be withheld during the period for which the return is due, and that had not previously been paid to the Department, was due on the due date of the return. Accordingly, any amount of withholding that is not paid by the due date of the return is subject to penalty under this subsection (e)(2).
- 4) *The penalty imposed under this subsection (e)(2) shall be deemed assessed at the time the tax upon which the penalty is computed is assessed, except that, if the reduction of the penalty rate to 15% is rescinded under subsection (e)(2)(C)(iii) because a claim for refund or credit has been filed, the increase in penalty shall be deemed assessed at the time the claim for refund or credit is filed. (UPIA Section 3-3(b-20)(3))*
- 5) The provisions of this subsection (e) may be illustrated by the following additional examples.

EXAMPLE 1: Individual's income tax return for calendar year 2004 was due (without regard to extensions) by April 15, 2005, and the liability after credits was \$1,500. Individual owed 4 estimated tax installment payments of \$337.50 each, which were due on April 15, June 15 and September 15 of 2004 and January 15 of 2005, but made only the first payment of \$337.50 in a timely manner. Individual filed his return on April 15, 2005 and paid the remaining \$1,162.50 liability with the return. Individual owes penalties for late payment of estimated tax and late payment of tax due with the return of \$101.25. Because all payments, other than the first estimated tax installment, were made on April 15, the second, third and fourth installment payments were made more than 30 days late. The late payment of estimated tax penalty is calculated as follows: 3 late installments each incur a penalty of $\$337.50 \times 10\% = \33.75 , times 3 = \$101.25 late payment penalty for failure to pay estimated taxes.

EXAMPLE 2: Same facts as in Example 1 except that the return was filed on October 1, 2005, and the remaining \$1,162.50 tax

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

owed by Individual was paid with the return. In this situation, the return was timely filed, by virtue of the automatic extension, until October 15, 2005, of the due date for filing the return granted by 86 Ill. Adm. Code 100.5020(b), but Individual owes a late payment penalty for failure to pay the unpaid \$1,012.50 in estimated tax installments and the remaining \$150 of his total liability because that amount of tax was not paid on or before the unextended due date of the return. Individual owes the same \$101.25 penalty for late payment of estimated tax, and the late payment of tax due with the return is \$15. The penalty for late payment of the tax due with the return is calculated as follows: \$1,500 - \$1,350 (the amount of estimated taxes due) = \$150 tax due with the return and paid late. The payment was made more than 30 days late, but before the Department had initiated an audit or investigation, so the penalty is \$150 x 10% = \$15 for failure to pay tax due by April 15.

EXAMPLE 3: Taxpayer, a corporation, is a calendar year taxpayer. For its 2004 taxable year, Taxpayer made timely installment payments of estimated tax of \$50,000 each quarter. On March 15, 2005, Taxpayer filed its calendar 2004 Illinois income tax return, showing total tax imposed of \$180,000 (net of Article 2 credits). Taxpayer's return requested that the \$20,000 overpayment be applied against its estimated tax payment obligation for 2005. After an audit by the Department in 2006, it was determined that the taxpayer owed additional tax of \$120,000, or a total of \$300,000. Taxpayer is not subject to penalty under this subsection (e) for failure to make timely payment of estimated taxes because each of its timely payments exceeded 25% of the \$180,000 tax shown due on its return. Taxpayer is subject to penalty under this subsection (e) for failure to timely pay the tax required to be shown due on the return. The amount that was paid late was the \$300,000 owed minus the \$180,000 liability shown on the original return, or \$120,000. The \$20,000 overpayment shown on the original return was not timely paid because it was credited against the taxpayer's 2005 estimated tax payment obligation. Because the tax was paid after the initiation of an audit, the penalty is \$24,000 (\$120,000 times 20%).

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

EXAMPLE 4: The facts are the same as in Example 3 except that the additional \$120,000 in tax due was paid within 30 days after the Department issued to Taxpayer, after completion of the audit, a Form IL-870, Waiver of Restrictions, showing the \$120,000 in additional tax due. The penalty is \$18,000 (\$120,000 times 15%).

EXAMPLE 5: The facts are the same as in Example 3 except that the additional \$120,000 in tax due was reported by Taxpayer on an amended return that was timely filed pursuant to IITA Section 506(b). Taxpayer is not subject to penalty for failure to timely pay the additional tax because the tax was reported on a timely-filed federal change return.

EXAMPLE 6: Taxpayer's Form ST-1 for May 2005 is due June 20, 2005. Taxpayer's quarter-monthly accelerated tax payments of the Retailers' Occupation Tax were due on May 7, 15, 22 and 31. The amount of each accelerated payment due was \$4,500. Taxpayer did not make any accelerated payments and instead paid the total tax due upon the timely filing of its return on June 20. Taxpayer is subject to penalty under subsection (e)(1) for failure to pay accelerated payments of the tax shown on the return on or before the due dates prescribed for payment. The May 7 and May 15 payments were made later than 30 days after the due date. The May 22 and May 31 payments were made not later than 30 days after the due date. Taxpayer's late payment penalty is therefore \$1,080: the \$4,500 due on May 7 times 10%, or \$450; the \$4,500 due on May 15 times 10%, or \$450; the \$4,500 due on May 22 times 2%, or \$90; plus the \$4,500 due on May 31 times 2%, or \$90. If the amount of each accelerated payment due is subsequently increased or decreased as the result of an audit or amendment to the return, the penalty under this subsection (e)(5) is computed using the corrected amount.

EXAMPLE 7: Taxpayer's Form ST-1 for July 2005, due on August 20, 2005, was timely filed. No accelerated payments were required or made, and no payment was made with the return. The Department issued Taxpayer a Notice and Demand dated September 16, 2005, Taxpayer paid the tax due on October 9, 2005. The penalty is 10% of the tax shown due on the return

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

because the payment was made more than 30 days after the due date for payment on the Notice and Demand. Unlike the penalty imposed under subsection (d), the penalty imposed under this subsection (e) may increase after a Notice and Demand has been issued, even if the taxpayer pays the entire amount due before the date for payment indicated in the Notice and Demand. The Notice and Demand is not the initiation of an audit or an investigation, so the penalty under subsection (e)(2) does not apply.

EXAMPLE 8: Upon completion of an audit, the Department determines that Taxpayer has underpaid its 2005 income tax liability by \$10,000. At the request of Taxpayer, the Department presents Taxpayer with a Form IL-870, Waiver of Restrictions, showing an underpayment of \$8,000 and a Notice of Deficiency for the remaining \$2,000. Taxpayer immediately signs the Form IL-870 and pays the \$8,000 in tax shown due on that form. Taxpayer files a protest of the Notice of Deficiency. After an administrative hearing, the Department determines that the \$2,000 shown on the Notice of Deficiency was not due. The 15% penalty rate applies to the \$8,000 deficiency conceded by Taxpayer, because it paid that entire deficiency within 30 days after receiving the Form IL-870.

EXAMPLE 9: If, in Example 8, it is ultimately determined that Taxpayer owed \$500 of the \$2,000 deficiency it protested, the 20% rate will apply only to the \$500 liability that was not paid within 30 days after the taxpayer received the Form IL-870.

EXAMPLE 10: After the audit in Example 8, the Department presents Taxpayer with a Form IL-870 showing the entire underpayment of \$10,000. Taxpayer immediately signs the Form IL-870 and pays the tax due. Taxpayer subsequently files a refund claim for \$2,000, of which \$1,500 is allowed. The 15% penalty rate will be rescinded only with respect to the \$500 refund claim that is disallowed, and not to the \$8,000 for which no refund was claimed or to the \$1,500 for which the refund claim was allowed.

f) Unless a specific provision of the UPIA or a tax Act provides otherwise:

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) *For purposes of the late payment penalties imposed under this Section, the basis of the penalty shall be the tax shown or required to be shown on the return, whichever is applicable, reduced by any part of the tax that is paid on time and by any credit that was properly allowable on the date the return was due. (UPIA Section 3-3(c))*
- 2) *For purposes of this Section, the maximum amount of Manufacturer's Purchase Credit that is allowable on the date a return is due for a tax period is the amount actually claimed on a timely-filed return for that tax period.*
- 3) *If a penalty is imposed on the basis of the tax required to be shown on a return, the penalty shall be applied to the tax required to be shown even if that amount is less than the tax shown on the return. (UPIA Section 3-3(d))*

EXAMPLE 1: A renter of automobiles for periods of one year or less has tax due under the Automobile Renting Occupation and Use Tax for the rental receipts received during the month of June 1994 on July 20, 1994. The tax shown on the return filed on July 20, 1994 is \$500, but the taxpayer remits no payment of the tax when the return is filed. On August 1, 1994 the taxpayer files an amended return reducing its tax liability to \$400 and also remits \$400. Assuming that the \$400 amount shown on the amended return is correct, the taxpayer owes a late payment penalty on the \$400, the amount required to be shown on the original return, not the \$500 amount that was shown on the original return.

EXAMPLE 2: The penalty for failure to make timely payments of estimated tax under IITA Section 804 is imposed on the *required installment*, which is defined in IITA Section 804(c)(1)(A) as 25% of the *required annual payment*, which is defined in IITA Section 804(c)(1)(B)(i) as 90% of the tax shown on the return for the taxable year, or if no return is filed, 90% of the tax for that year. Accordingly, if a return is filed for a taxable year, and the alternative computations of the required annual payment under IITA Section 804(c)(1)(B)(ii) and (iii) do not apply, any penalty for failure to make timely payments of estimated taxes will be computed on the basis of the tax shown on the original return,

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

regardless of whether the tax required to be shown is greater or less than the tax shown.

- g) If both a penalty under subsection (a)(1) or (b)(1) and a penalty under subsection (a)(2) or (b)(2) are assessed against the same return, the penalty imposed under subsection (a)(2) or (b)(2) shall be assessed against only the additional tax found to be due. (UPIA Section 3-3(e)) If both a penalty under subsection (c)(1) and a penalty under subsection (c)(2) are assessed against the same return, the penalty under subsection (c)(2) shall be assessed against only the additional tax found to be due. (UPIA Section 3-3(e-5))

EXAMPLE 1: An employer has withholding tax due for the third quarter of 1994. The return is filed timely, reporting tax withheld of \$2,000, but timely payments total only \$1,500, leaving a tax balance due of \$500. The late payment penalty under subsection (a)(1) equal to \$75 (15% of the \$500 underpayment) is assessed. The employer does not pay the additional liability within 30 days after Notice and Demand for Payment. Although the total tax that was not paid on time was \$1,200, the penalty under subsection (a)(2) is imposed only on the \$700 additional tax due, and not the \$500 underpayment on which the penalty under subsection (a)(1) was imposed.

EXAMPLE 2: Corporation timely files its income tax return for calendar year 2000 on March 15, 2001 showing total tax due of \$30,000. Corporation timely made \$27,000 in estimated tax payments, but failed to pay the \$3,000 tax balance due with the return. Corporation pays the \$3,000 tax due on June 15, 2001, later than 90 days but not later than 180 days after the due date. The penalty for late payment of tax due under subsection (c)(1) is \$300 (\$3,000 x 10%). In 2003, the Department completes an audit of Corporation's 2000 return, increasing the tax due to \$36,000. Corporation agrees to the audit finding but does not pay the additional liability until 45 days after Notice and Demand is issued. Corporation is assessed an additional late payment penalty under subsection (c)(2) of \$1,200 (the \$6,000 in additional tax due x 20%).

- h) If the taxpayer has failed to file a return, and the Department determines the correct amount of tax according to its best judgment and information, that amount shall be prima facie evidence of the correctness of the tax due. (UPIA Section 3-3(f))

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- i) *The time within which to file a return or pay an amount of tax due without imposition of a penalty does not extend the time within which to file a protest to a Notice of Tax Liability or a Notice of Deficiency. (UPIA Section 3-3(g))*

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

Section 700.310 Penalty for Failure to File Correct Information Returns (UPIA Section 3-4)

- a) *An information return is any return required by a tax Act to be filed with the Department that does not, by law, require the payment of a tax liability. (UPIA Section 3-4(c) ~~of the Act~~)* Examples of information returns are the information returns that the Department may require of retailers pursuant to ROTA Section 3 ~~of the Retailers' Occupation Tax Act~~. An information return is not a tax return with a zero balance. For example, the filing of a Form ST-1 by a retailer who had no gross receipts for the period covered by the filing of the return is not an information return. Similarly, the filing of Form IL-941, IL-W-3 or RC-6 is not an information return as defined in UPIA Section 3-4(c) ~~of the Act~~.
- b) *Unless otherwise provided in a tax Act, in the case of a failure, described in subsection (c) ~~of this Section~~, by any person with respect to an information return, that person shall pay a penalty of \$5 for each return or statement with respect to which the failure occurs, but the total amount imposed on that person for all ~~such~~ failures under this Section during any calendar year shall not exceed \$25,000. (UPIA Section 3-4(a)(1) ~~of the Act~~)*
- c) *The following failures are subject to the \$5 penalty:*
- 1) *Any failure to file an information return with the Department on or before the due date for filing; ~~required filing date~~, or*
 - 2) *Any failure to include all of the information required to be shown on the return or the inclusion of incorrect information. (UPIA Section 3-4(a)(2) ~~of the Act~~)*
- d) *If any failure described in subsection (c) is corrected within 60 days after the due date for filing; ~~required filing date~~:*

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) *The penalty imposed by the Act, and quoted in subsection (c)-~~above~~, shall be reduced to \$2.50 for each failure~~by 50%~~; and*
 - 2) *The ~~maximum amount of penalty~~~~total amount~~ imposed on the person for all-~~such~~ failures under this Section during any calendar year ~~that~~~~which~~ are so corrected is \$12,500~~shall not exceed 50% of the maximum prescribed in subsection (b)(2)~~. (UPIA Section 3-4(b)~~of the Act~~)*
- e3) A corrected information return is a return that includes all information required to be included on the return, and on which all the information is correct.
- f4) A corrected information return will be deemed to have been filed with and received by the Department within 60 days after the due date for filing if the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing the return is dated within 60 days after~~of~~ the due date of the return, or actual receipt by the Department if deliveries are made by means other than the U.S. Postal Service.

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

Section 700.315 Collection Penalty (UPIA Section 3-4.5)

- a) Penalty Imposed. The collection penalty is imposed under UPIA Section 3-4.5 when payment of any liability subject to the provisions of the UPIA is not viewed by the Department prior to the 31st day after a Notice and Demand, Notice of Additional Tax Due, or Request for Payment of Final Liability is issued by the Department with respect to that liability. (UPIA Section 3-4.5(b)) The collection penalty only applies to liabilities with respect to returns due (without regard to extensions) on or after July 31, 2003. The collection penalty is deemed assessed upon imposition, and is considered additional tax assessed under the Act under which the tax liability giving rise to that penalty was assessed.
- b) Amount of Collection Penalty
 - 1) \$30 Penalty. If the amount of liability (including penalties and interest) that is not timely paid in accordance with this Section is less than \$1,000, the collection penalty is \$30. (See UPIA Section 3-4.5(c)(1).)

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 2) \$100 Penalty. If the amount of liability (including penalties and interest) that is not timely paid in accordance with this Section is \$1,000 or more, the collection penalty is \$100. (See UPIA Section 3-4.5(c)(2).)
- c) The collection penalty imposed under this Section is not imposed more than once with respect to the liability for a particular tax (including any related penalties and interest) for a given tax period.
- d) UPIA Section 3-8 (abatement of penalties when the taxpayer has reasonable cause for its delinquency) does not apply to the collection penalty.
- e) The provisions of this Section may be illustrated by the following examples.

EXAMPLE 1: On August 15, 2004, the Department issues Taxpayer a Notice and Demand for Payment of \$2,000 (including tax, interest and penalty) with respect to Taxpayer's 2003 Illinois income tax liability. On September 16, 2004, Taxpayer mails a check for the amount of \$2,000 in satisfaction of the Department's Notice and Demand. Taxpayer is subject to a collection penalty of \$100 because payment of the liability shown on the Notice and Demand was not received by the Department prior to the 31st day after the Notice and Demand was issued. The penalty applies even if Taxpayer had reasonable cause for the failure.

EXAMPLE 2: The facts are the same as in Example 1 except that, on September 15, 2004, Taxpayer mails a check for \$1,500 with respect to the Notice and Demand. No additional payment is made. Taxpayer is subject to a collection penalty of \$30 because the amount of the liability shown on the Notice and Demand that was not paid prior to the 31st day after the Notice and Demand was issued is only \$500.

EXAMPLE 3: If, in either Example 1 or Example 2, Taxpayer receives a subsequent Notice and Demand for the amount of penalty imposed in those examples, or for any liability for the same tax for the same taxable period, or any interest or penalty related to that liability, no additional penalty is imposed under this Section.

EXAMPLE 4: The facts are the same as in Example 1 except that, on April 15, 2006, the Department receives Taxpayer's amended return for its 2003 taxable year. That amended return indicates that the tax actually due

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

on Taxpayer's 2003 return was \$0, as the result of taking into account subtraction modifications Taxpayer had failed to claim on its original return. The Department accepts Taxpayer's amended return. Taxpayer is not subject to a collection penalty with respect to the Notice and Demand issued August 15, 2004 because no liability remained unpaid by the 31st day after issuance of the Notice and Demand. If Taxpayer had paid the collection penalty prior to filing the amended return, the amended return is a claim for refund of the collection penalty previously assessed. Because the penalty did not apply, failure of the Taxpayer to timely pay an amount shown due on a subsequent Notice and Demand may be subject to penalty under this Section.

EXAMPLE 5: The facts are the same as in Example 4 except that Taxpayer's amended return relates to the carryback of a federal net operating loss incurred in the taxable year ending December 31, 2005. Taxpayer remains subject to a collection penalty of \$100 because payment of the liability shown on the Notice and Demand was not received by the Department prior to the 31st day after the Notice and Demand was issued. If a liability is reduced by a carryback, that reduction does not affect the computation of interest or penalties for any period before the carryback arises. (See Manning v. Seeley Tube & Box Co. of New Jersey, 70 S.Ct. 386 (1949).)

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

Section 700.320 Penalty for Negligence (UPIA Section 3-5)

- a) *If any return or amended return is prepared negligently, but without intent to defraud, and filed, in addition to any penalty imposed under UPIA Section 3-3 ~~of this Act~~, a penalty shall be imposed in an amount equal to 20% of any resulting deficiency. (UPIA Section 3-5(a))*
- b) *Negligence includes any failure to make a reasonable attempt to comply with the provisions of any tax Act and includes careless, reckless, or intentional disregard of the law or rules. (UPIA Section 3-5 ~~(b) of the Act~~)*
- c) *Penalty for negligence shall not apply where an assessment results from a reasonable difference of opinion as to taxability. (UPIA Section 3-5 ~~of the Act~~)*
A reasonable difference as to taxability may be established by evidence that

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

shows that the issue in dispute between the taxpayer and the Department is:

- 1) not resolved by the plain language of the statute;
 - 2) an issue about which the Department has not adopted a rule of general applicability; and
 - 3) an issue about which the Illinois Supreme Court has not ruled and there are no opinions or inconsistent opinions of the Illinois Appellate Courts.
- d) In computing the penalty under this Section for income tax purposes, the amount shown as the tax by the taxpayer upon the return is taken into account in determining the amount of the deficiency only if the return was filed on or before the last day prescribed by law for the filing of the return, including any extensions of the time for the filing. (IITA Section 1002(f))

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

Section 700.330 Penalty for Fraud (UPIA Section 3-6)

- a) *If any return or amended return is filed with intent to defraud, in addition to any penalty imposed under UPIA Section 3-3 ~~of this Act~~, a penalty is will be imposed in an amount equal to 50% of any resulting deficiency. (UPIA Section 3-6(a))*
- b) *If any claim is filed with intent to defraud, a penalty is shall be imposed in an amount equal to 50% of the amount fraudulently claimed for credit or refund. (UPIA Section 3-6 ~~of the Act~~)*
- c) By way of illustration and not by way of limitation, intent to defraud may will be inferred from conduct such as keeping a double set of books, making false entries or alterations, or false invoices of documents, destruction of books or records, concealment of assets or covering up sources of income, handling of one's affairs to avoid compiling the records usual in transactions of the like kind, or any other conduct, the likely effect of which would be to mislead or conceal.
- d) In computing the penalty under this Section for income tax purposes, the amount shown as the tax by the taxpayer upon the return shall be taken into account in determining the amount of the deficiency only if the return was filed on or before the last day prescribed by law for the filing of the return, including any extensions

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

of the time for the filing. (IITA Section 1002(f))

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

Section 700.340 Personal Liability Penalty (UPIA Section 3-7)

- a) *Any officer or employee of any taxpayer subject to the provisions of a tax Act administered by the Department who has control, supervision or responsibility of filing returns and making payment of the amount of any trust tax imposed in accordance with that Act and who willfully fails to file the return or make the payment to the Department or willfully attempts in any other manner to evade or defeat the tax shall be personally liable for a penalty equal to the total amount of tax unpaid by the taxpayer including interest and penalties thereon. (UPIA Section 3-7(a) ~~of the Act~~)*
- b) *The term willful "has generally been defined as involving intentional, knowing and voluntary acts or, alternatively, reckless disregard for obvious or known risks. [Relevant] cases specifically find that according other corporate creditors preferential treatment over governmental tax obligation constitutes wilful behavior. Further, they find that, in a civil action, wilful conduct does not require bad purpose or intent to defraud the government." (Department of Revenue v. Heartland Investments, Inc., 106 Ill. 2d 19 (1985))* means a voluntary, conscious and intentional act on the part of the officer or employee. ~~It may consist of a voluntary, conscious and intentional failure to file the required return or make the payment to the Department or a voluntary, conscious and intentional attempt to take any other action to evade or defeat the tax.~~
- c) *The Department shall issue a notice of penalty liability for the amount claimed by the Department pursuant to this Section Section 3-7 of the Act. Procedures for protest and review of a Notice of Penalty Liability issued pursuant to this Section and assessment of the penalty shall be the same as those prescribed for protest and review of a Notice of Tax Liability or a Notice of Deficiency, as the case may be, and the assessment of tax liability under the Act imposing that liability. (UPIA Section 3-7(b) ~~of the Act~~)*
- d) *The personal liability imposed by UPIA Section 3-7 of the Act shall survive the dissolution of a partnership or corporation. (UPIA Section 3-7(c))*
- e) *In addition to any other remedy provided for by the laws of this State, and*

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

provided that no hearing or proceeding for review is pending, any Section of a tax Act ~~that~~^{which} provides a means for collection of taxes shall in the same manner and to the same extent provide a means for the collection of the penalty imposed by this Section. (UPIA Section 3-7(d))

- f) *Officer or employee of any taxpayer includes a ~~partner~~^{member} of a partnership, a manager or member of a limited liability corporation, and a member of a registered limited liability partnership. (UPIA Section 3-7~~(e)~~^(e) of the Act)*
- g) *A trust tax is any tax for which an amount is collected or withheld by a taxpayer from another person, and any tax for which an amount is required to be collected or withheld by a taxpayer from another person, regardless of whether it is in fact collected or withheld. (UPIA Section 3-7(f) of the Act)*
- h) *The personal liability imposed by this Section is in addition to liability incurred by a partner of a partnership or limited liability partnership resulting from the issuance of a notice of tax liability issued to the partnership or limited liability partnership. (UPIA Section 3-7(g))*
- i) *In addition to any other basis for imposition of liability under the UPIA, including under subsection (a), any person who collects, withholds, or receives a tax, or any amount represented to be a tax, from another person holds the amount so collected or withheld in special trust for the benefit of the Department and is liable to the Department for the amount so withheld or collected plus accrued interest and penalty on that amount. For purposes of this subsection (i), "person" has the same definition as provided in ROTA Section 1. (UPIA Section 3-7(h))*
Under ROTA Section 1, "person" means any natural individual, firm, partnership, association, joint stock company, joint adventure, public or private corporation, limited liability company, or a receiver, executor, trustee, guardian or other representative appointed by order of any court.

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

Section 700.350 Bad Check Penalty (UPIA Section 3-7.5)

In addition to any other penalty provided in the ~~UPIA~~^{UPIA} Act, a penalty of \$25 ~~is~~^{shall be} imposed on any person who issues a check or other draft to the Department that is not honored upon presentment. The penalty imposed under this Section shall be deemed assessed at the time of presentment of the check or other draft and shall be treated for all purposes, including collection

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

and allocation, as part of the tax or other liability for which the check or other draft represented payment. (UPIA Section 3-7.5 ~~of the Act~~) The failure of the bank or financial institution to pay to the Department the full face amount of the instrument (for example, because of the imposition of a processing fee) is a dishonor of the check subject to penalty under this Section. The bad check penalty is applicable to any payment received in the form of a check, money order, cashier's check or other written order to pay money and that is not honored for any reason by the bank or financial institution upon which it is drawn. The bad check penalty is assessed on a per check basis, therefore, for every check or draft issued to the Department that is not honored when presented to the bank upon which it is drawn a separate \$25 penalty will be assessed against the drawer of the check or draft.

EXAMPLE: Taxpayer's ST-1 is due on April 20. Taxpayer does not file the return until May 1 and pays the tax due of \$2,000 with a check submitted with the return. Taxpayer's check is dishonored. The Department assesses Taxpayer with penalties totaling \$105. The penalties assessed include the following: a late filing penalty of \$40 ($\$2,000 \times 2\% = \40) for filing the return late, a late payment penalty of \$40 ($\$2,000 \times 2\% = \40) for failing to pay the tax by the due date, and a bad check penalty of \$25 for making payment to the Department with a bad check.

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

SUBPART D: REASONABLE CAUSE

Section 700.400 Reasonable Cause (UPIA Section 3-8)

- a) *The penalties imposed under the provisions of UPIA Sections 3-3, 3-4, 3-5 and 3-7.5 and Sections 700.300, 700.305, 700.310, 700.320 and 700.350 of this Part of the Act shall not apply if the taxpayer shows that the~~his~~ failure to file a return or pay tax at the required time was due to reasonable cause. Reasonable cause ~~is~~shall be determined in each situation in accordance with this Section. (UPIA Section 3-8 ~~of the Act~~)*
- b) The determination of whether a taxpayer acted with reasonable cause shall be made on a case by case basis taking into account all pertinent facts and circumstances. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine the~~his~~ proper tax liability and to file returns and pay the~~his~~ proper liability in a timely fashion.

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- c) A taxpayer will be considered to have made a good faith effort to determine and file and pay ~~thehis~~ proper tax liability if ~~the taxpayerhe~~ exercised ordinary business care and prudence in doing so. A determination of whether a taxpayer exercised ordinary business care and prudence is dependent upon the clarity of the law or its interpretation and the taxpayer's experience, knowledge, and education. Accordingly, reliance on the advice of a professional does not necessarily establish that a taxpayer exercised ordinary business care and prudence, nor does reliance on incorrect facts such as an erroneous information return.
- d) ~~A taxpayer's history of compliance is also a factor to be consideredThe Department will also consider a taxpayer's filing history~~ in determining whether the taxpayer acted in good faith in determining and paying ~~thehis~~ tax liability. Isolated computational or transcriptional errors will not generally indicate a lack of good faith in the preparation of a taxpayer's return.
- e) Examples of Reasonable Cause. The following ~~is a~~ non-exclusive list of situations ~~in which a taxpayer hadwill constitute~~ reasonable cause for purposes of the abatement of penalties:
- 1) Reasonable cause for abatement of penalty will exist if a liability results from amendments made by the Department to regulations or formal administrative policies or positions after the return on which the liability was computed was filed.
 - 2) Reasonable cause for abatement may also be based on the death, incapacity or serious illness of the taxpayer (or ~~the taxpayer'shis~~ tax ~~return~~ preparer) or a death or serious illness in ~~the taxpayer'shis or her~~ immediate family ~~thatwhich~~ causes a late filing ~~or lateand~~ payment of tax due. In the case of a corporation, estate, trust, etc., the death, incapacity, or serious illness ~~must have been~~ of an individual having sole authority to file the return (not the individual preparing the return) or ~~to~~ make the deposit/payment, or a member of ~~thatsueh~~ individual's immediate family, may be reasonable cause for abatement.
 - 3) An unavoidable absence of a taxpayer (or tax preparer) due to circumstances unforeseeable by a reasonable person may also constitute reasonable cause for purposes of abatement of the penalty. An unavoidable absence does not include a planned absence such as a vacation. In the case of a corporation, estate, trust, etc., the absence ~~must~~

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~have been~~ of an individual having sole authority to file the return (not the individual preparing the return) or make the deposit/payment may be reasonable cause for purposes of abatement.

- 4) Inability to timely obtain records necessary to determine the amount of tax due to reasons beyond the taxpayer's control. For example, some taxpayers, particularly those with income from banks, partnerships, trusts, estates or Subchapter S corporations, must secure information from those entities in order to properly compute the amount of tax due.
- 5) Factors beyond the taxpayer's control such as destruction by fire, other casualty or civil disturbance, of the taxpayer residence or place of business records.
- 6) Taxpayer mailed the return or payment to the Department in time to reach the Department on or before the due date, given the normal handling of the mail. However, through no fault of the taxpayer, the return or payment was not delivered within the prescribed time period. This fact situation would constitute reasonable cause for abatement of the penalty.
- 7) Reasonable cause will exist for purposes of abatement of the penalty if a taxpayer makes an honest mistake, such as inadvertently mailing a Department of Revenue check to a local government, another state's Department of Revenue, or to the Internal Revenue Service.
- 8) An Illinois appellate court decision, a U.S. appellate court decision, or an appellate court decision from another state (provided that the appellate court case in the other state is based upon substantially similar statutory or regulatory law) ~~that~~which supports the taxpayer's position will ordinarily provide a basis for a reasonable cause determination.
- 9) The Department gave erroneous information, or delayed a process under its control. In making ~~thesuch a~~ determination of whether the taxpayer had reasonable cause for purposes of abatement, the following factors are relevantthe Department will consider:
 - A) Did the taxpayer provide accurate information upon which to base the tax?

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- B) Was the information requested by the taxpayer easily available in instructions or bulletins?
 - C) Did the taxpayer rely on the advice?
 - D) Did an employee who was acting in an official capacity and was authorized to provide assistance provide the advice?
 - E) Was the taxpayer's reliance upon the advice reasonable?
- 10) Taxes withheld by an employer for the wrong state. An employee might~~A taxpayer may~~ not realize that withholding taxes are being withheld and remitted to the wrong state until the end of the taxable year when the employee~~he or she~~ receives a W-2. If the employee can~~The taxpayer will be required to produce all documentation necessary to~~ demonstrate that he or she had a reasonable belief that taxes were being withheld for the proper state, the penalty shall be abated.
- 11) Embezzlement or employee fraud not reasonably within the knowledge of the taxpayer.
- 12) The following occurrences are situations involving reasonable cause with respect to the imposition of the Tier 2 late filing penalty:
- A) Taxpayer demonstrates that he or she did not receive the penalty notice. If the taxpayer can show that he or she filed a change of address card, tax return, payment or letter with the Department and the Department still sent the notice to the wrong address, penalty abatement may be warranted.
 - B) Taxpayer was on active duty in the military. Taxpayers serving in the military may find themselves in situations in which~~where~~ it takes an extraordinary length of time to receive and respond to a notice.
- 13) Extensions of Time to File Returns or Pay Tax Granted by the Internal Revenue Service. In cases in which the Internal Revenue Service has granted the taxpayer an extension of time to file a return or pay a tax (for example, because of a natural disaster), for any equivalent Illinois return

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

or payment that is due (including any extensions) from that taxpayer under the IITA on or after the due date (without regard to extensions) for the federal filing or payment, if the taxpayer files that Illinois return or makes that payment on or before the extended due date granted by the Internal Revenue Service, the taxpayer has reasonable cause for not timely making that Illinois filing or payment.

- f) Relevant ~~Factors~~factors ~~Used~~used by the Department in ~~Determining~~determining the ~~Existence~~existence of ~~Reasonable Cause~~reasonable cause.
- 1) Could the taxpayer's federal filing status have caused confusion about his or her Illinois filing requirements? Under Illinois law, many taxpayers that are not required to file with the Internal Revenue Service are required to file with the Department.
 - 2) Does the ~~taxpayer's~~taxpayer's reason address the penalty assessed? For example, if a taxpayer was assessed both a late filing and late payment penalty for the same return, the taxpayer's explanation of the failure to file and pay may apply to one penalty, but not the other.
 - 3) Does the length of time between the reason cited and the actual violation support abatement? If the taxpayer cites a specific event or set of events (e.g., illness, unexpected absence, or natural disaster) or set of events that led to the imposition of the penalty, ~~are the Department will determine whether~~ those events ~~are~~ directly related to failure to file the return or make the payment under review?
 - 4) Could the event cited have been reasonably anticipated? Was the event one that should have been anticipated (e.g., a vacation or scheduled absence) or was it unexpected, unavoidable, or otherwise unplanned (e.g., an emergency or disaster)?
 - 5) ~~Were~~Was ordinary business care and prudence exercised? In the absence of new or unusual circumstances, most filing and payment requirements are common knowledge or are readily available to most taxpayers. If the taxpayer did all that could be reasonably expected of him or her and was still unable to file or pay on time, reasonable cause may be present.

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

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

SUBPART E: PAYMENT APPLICATION

Section 700.500 Payment Application (UPIA Section 3-9)

- a) *Payments received from a taxpayer shall be applied against the outstanding liability of the taxpayer, or to an agreed portion of the outstanding portion of the outstanding liability, in the following order: the principal amount of the tax, then penalty, and then interest. (UPIA Section 3-9(d) of the Act)*
- b) A taxpayer may direct payment to a particular liability at the time payment is made to the Department by indicating the tax type and the tax period for which the payment is made, in writing on the check or other draft by which the payment is made, in a writing accompanying that check or other draft, or, in the case of an electronic payment, in the manner prescribed for identifying the specific method of payment. If a taxpayer has multiple liabilities to the Department, either based upon multiple taxes or multiple reporting periods, the taxpayer should make separate payments of each liability and identify the liability to which payment is to be directed. The excess of any payment over the amount of the liability to which the payment is directed shall be treated as a payment for which no direction was provided.
- c) In the absence of direction from the taxpayer as to which of a taxpayer's outstanding liabilities a payment is to be applied~~made~~, the payment shall be applied~~Department will direct payments made by taxpayers to the oldest outstanding liability that became due and payable first, with payment applied~~~~directed~~ first to the principal amount of the liability and any excess then applied~~directed~~ to penalty and then to interest. If there remain funds after application of the payment to the oldest outstanding liability ~~in the manner noted above~~, the remainder shall then be applied~~will be directed~~ to the next oldest liability that next became due and payable, in the same manner. For purposes of this subsection, the determination of when a liability is due and payable shall be made without regard to due dates for accelerated payments.
- d) Application of Overpayments of Tax
- 1) Section 2505-275 of the Department of Revenue Law ~~of the Civil Administrative Code of Illinois~~ [20 ILCS 2505] provides that:

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- A) ~~In~~ *the case of overpayment of any tax liability arising from an Act administered by the Department, the Department may credit the amount of the overpayment and any interest thereon against any final tax liability arising under that or any other Act administered by the Department.*
- B) *The Department may enter into agreements with the Secretary of the Treasury of the United States (or his or her delegate) to offset all or part of an overpayment of such a tax liability against any liability arising from a tax imposed under Title 26 of the United States Code.*
- 2) *Section 2505-650 of the Department of Revenue Law provides that, upon certification of past due child support amounts from the Department of Healthcare and Family Services, the Department of Revenue may collect the delinquency in any manner authorized for the collection of any tax administered by the Department of Revenue.*
- 3) *Section 2505-655 of the Department of Revenue Law provides that, upon certification by the Clerk of the Circuit Court of the amounts of delinquent court fees, the Department of Revenue may collect the past due fees by intercepting the tax refund of any person owing the fees.*
- 4) *Section 10 of the Illinois State Collection Act of 1986 [30 ILCS 210/40] provides that the Department's Debt Collection Bureau shall serve as the primary debt collecting entity for the State and in that role shall collect debts on behalf of agencies of the State, using all legal authority available to the Department to collect debt referred to it by other agencies of this State.*
- 5) ~~IITA~~ *Section 911.2 of the Illinois Income Tax Act (IITA) [35 ILCS 5] provides that a tax officer of another state of the United States may request that the Department withhold payment of a refund claimed by a taxpayer under the IITA for application against a delinquent income tax liability owed by the taxpayer to that state.*
- e) Order of Application of Tax Overpayments. *IITA Section 911.3 provides ~~standards~~ rules for determining in which order an overpayment will be applied when more than one of ~~these~~ provisions in subsection (d) is applicable.*

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

Pursuant to these provisions:

- 1) In the case of an overpayment for which the taxpayer has requested a refund or credit, the Department may credit the overpayment against any final tax liability arising under any Act administered by the Department. ~~The Department will apply any~~ overpayment shall be applied first to the ~~oldest~~ outstanding final liability arising under the same Act as the overpayment that first became due and payable, with payment ~~applied directed~~ first to the principal amount of the liability and any excess then ~~applied directed~~ to penalty and then to interest, and ~~shall apply~~ any remaining amount of the overpayment shall then be applied to the ~~next oldest~~ final liability arising under the same Act as the overpayment that next became due and payable, in the same manner, until all ~~those such~~ liabilities are paid or the entire amount of the overpayment has been used.
- 2) Any amount of overpayment remaining after application of subsection (d)(1) shall then be applied first to the ~~oldest~~ unpaid final tax liability arising under any other Act that first became due and payable, first to the liability, then to penalty, and then to interest, and then to the ~~next oldest~~ unpaid final tax liability that next became due and payable in the same manner, until all ~~those such~~ liabilities are paid or the entire amount of the overpayment has been used. ~~For purposes of this subsection (d)(2), the determination of which liability is oldest shall be based upon the date on which payment of the liability was due without regard to due dates for accelerated or estimated payments.~~
- 3) For purposes of this subsection (e), the determination of when a liability is due and payable shall be made without regard to due dates for accelerated payments.
- 4) Any amount of overpayment remaining after application of subsections (d)(1) and (2) ~~is shall be~~ applied in the following order:
 - A) against any existing, applicable request to withhold a refund to collect certified past due child support amounts under Section 2505-650 of the Department of Revenue Law;
 - B) against any existing, applicable request to withhold a refund to collect any debt owed to the State;

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- C) against any existing, applicable request made by the Secretary of the Treasury of the United States, or his or her delegate, to withhold a refund to collect any tax liability arising from Title 26 of the United States Code;
- D) against any refund withholding request made by the Secretary of the Treasury of the United States, or his or her delegate, to collect any nontax debt owed to the United States as authorized under Section 10(i-1) of the Illinois State Collection Act of 1986;
- E) against any existing, applicable refund withholding request made pursuant to IITA Section 911.2; and
- FE) against any existing, applicable request to withhold a refund to collect certified past due fees owed to the Clerk of the Circuit Court as authorized under Section 2505-655 of the Department of Revenue Law.

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

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Firearm Dealer License Certification Act
- 2) Code Citation: 20 Ill. Adm. Code 1232
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
1232.10	New Section
1232.20	New Section
1232.30	New Section
1232.40	New Section
1232.50	New Section
1232.60	New Section
1232.70	New Section
1232.80	New Section
1232.90	New Section
1232.100	New Section
1232.110	New Section
1232.120	New Section
1232.130	New Section
1232.140	New Section
1232.150	New Section
1232.160	New Section
1232.170	New Section
1232.180	New Section
1232.190	New Section
1232.200	New Section
1232.210	New Section
1232.220	New Section
1232.230	New Section
1232.EXHIBIT A	New Section
- 4) Statutory Authority: Implementing and authorized by the Firearm Dealer License Certification Act [430 ILCS 68] and authorized by Section 2605-15 of the Department of State Police Law [20 ILCS 2605].
- 5) A Complete Description of the Subjects and Issues Involved: The proposed regulations implement the Firearm Dealer License Certification Act [430 ILCS 68] by establishing an application process for individuals and entities subject to regulation under the Act, describing enforcement mechanisms by law-enforcement agencies, and identifying licensee obligations relating to security and storage plans, record-keeping requirements,

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

and training mandates. Additionally, the proposed regulations set forth the fee schedule for license applicants and disciplinary fines and sanctions for violations of the Act. Finally, the proposed regulations create administrative processes for investigating alleged violations of the Act and establish an appeal process for licensees and applicants to formally challenge determinations of the Department.

- 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 rules will not require a local government to establish, expend, or modify its activities in such a way as to necessitate additional expenditures from local revenues.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Within 45 days after the publication of this Notice, any interested person may submit comments, data, views or argument regarding the proposed rules. The submissions must be in writing and directed to:

Mr. Matthew R. Rentschler
Chief Legal Counsel
Illinois State Police
801 South 7th Street, Suite 1000-S
Springfield IL 62703

217/782-7658
- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business or not-for-profit corporation engaging the sale of firearms may be affected.

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

- B) Reporting, bookkeeping or other procedures required for compliance: Affected entities will be required to maintain and report documentation as appropriate relating to any Federal Firearm License, sales of affected items, training records, storage records and logs, electronic monitoring information, and other necessary documentation demonstrating their compliance with the Firearm Dealers License Certification Act [430 ILCS 68].
- C) Types of professional skills necessary for compliance: None
- 14) Small Business Impact Analysis:
- A) Types of businesses subject to the proposed rules:
- 42 Wholesale Trade
44-45 Retail Trade
- B) Categories that the Agency reasonably believes the rulemaking will impact, including:
- i. hiring and additional staffing;
ii. regulatory requirements;
iii. purchasing;
iv. licensing fees;
v. equipment and material needs;
vi. training requirements;
vii. record keeping;
- 15) Regulatory Agenda on which this rulemaking was summarized: This proposed Part did not appear on a Regulatory Agenda because it was not signed into law until January 2019.

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

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

TITLE 20: CORRECTIONS, CRIMINAL JUSTICE, AND LAW ENFORCEMENT
CHAPTER II: DEPARTMENT OF STATE POLICEPART 1232
FIREARM DEALER LICENSE CERTIFICATION ACT

Section	
1232.10	Definitions
1232.20	Application Procedures
1232.30	Measuring Distances
1232.40	Exemptions
1232.50	Inspection of Certified Licensees' Places of Business
1232.60	Security System
1232.70	Alarm Monitoring System
1232.80	Safe Storage By Certified Licensees
1232.90	Training; Statewide Compliance Standards
1232.100	Electronic-based Recordkeeping
1232.110	Fees and Fines
1232.120	Term of License
1232.130	Retention of Records
1232.140	Return of Suspended or Revoked Certificate of License
1232.150	Disciplinary Sanctions; Restoration
1232.160	Complaints; Investigations; Hearings
1232.170	Order of the Director
1232.180	Filing
1232.190	Form of Documents
1232.200	Motion and Answer
1232.210	Rehearings
1232.220	Administrative Review
1232.230	Mandatory Signage

1232.EXHIBIT A Warning Signage

AUTHORITY: Implementing and authorized by the Firearm Dealer License Certification Act [430 ILCS 68] and authorized by Section 2605-15 of the Department of State Police Law [20 ILCS 2605].

SOURCE: Adopted at 43 Ill. Reg. _____, effective _____.

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

Section 1232.10 Definitions

The following additional definitions also apply to this Part unless the context clearly requires a different meaning:

"Act" means Firearm Dealer License Certification Act [430 ILCS 68].

"Applicant" means a person who has submitted an application for a certified license.

"Certified Licensee" or "CL" means a licensee who has certified its FFL under the Act and this Part.

"Department" means the Department of State Police.

"Director" means the Director of State Police.

"Engage in the Business of Dealing Firearms", as used in Section 5-5 of the Act, and "Engage in the Business of Selling, Leasing, or Otherwise Transferring Firearms" as used in Section 5-15 of the Act, mean a person or entity that devotes time, attention and labor to the selling, leasing or transferring of firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale, lease or transfer of firearms. These terms apply to any person or entity who engages in the business on a full or part-time basis. The terms shall not apply to the following:

a person or entity who only engages in gunsmithing services in which it accepts a firearm for service, services the firearm, and returns it only to the customer who gave it the firearm to service;

a person or entity who only engages in transactions that do not require the completion of a Form 4473 and background check under State or federal law; or

any activity otherwise exempt under Section 5-25 of the Act.

"Entity" means any person, firm, corporation, group of individuals, or other legal entity.

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

"FFL" means Federal Firearms License.

"FFL Holder" means a person, firm, corporation, or other entity who has been given, and is currently in possession of, a valid Federal Firearms License.

"FOID Act" means the Firearm Owners Identification Card Act [430 ILCS 65].

"Inventory" means firearms in the possession of an individual or entity for the purpose of sale or transfer.

"Law Enforcement Agency" means a federal or state government agency that:

is authorized by law to engage in or supervise the prevention, detection, investigation, prosecution or incarceration of any person for any violation of law;

has statutory powers of arrest or custodial detention; and

allows its members to carry a firearm while on duty.

"License" means a Federal Firearms License authorizing a person or entity to engage in the business of dealing firearms.

"Limited Access Area" means a room or rooms on the premises of, and under the control of, the CL to which only the CL, the CL's agents and other authorized personnel (e.g., Department or law enforcement personnel) have access. "Limited access area" includes places where weapons are stored when not on display, surveillance equipment is maintained, and other areas that are not generally accessible by the public or nonauthorized employees.

"Open to the Public" means that a certified licensee sells, leases or transfers firearms to the general public during regular business hours or by appointment only.

"Person" means any individual, corporation, company, association, firm, partnership, or any other entity, including any governmental entity.

"Retail Location" means a store open to the public from which a certified licensee engages in the business of selling, transferring, or facilitating a sale or transfer of

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

a firearm. For purposes of the Act, a gun show or similar event at which a certified licensee engages in business from time to time is not a retail location.
(Section 5-5 of the Act)

"Straw Purchase" means an illegal firearm purchase in which the actual buyer of the gun, being unable to pass the required federal background check or desiring to not have his or her name associated with the transaction, uses a proxy buyer who can pass the required background check to purchase the firearm for him or her.

"Valid" means current and not suspended, revoked, expired, canceled, invalidated, denied or disqualified.

"Valid Photo Identification Card" means a current, and not suspended, revoked, expired, canceled, invalidated, denied or disqualified, driver's license or identification card issued by the federal government or any state. It does not include a temporary visitor's driver's license (TVDL).

Section 1232.20 Application Procedures

- a) Application for a certificate of license shall be made by completing an application form provided by the Department. The application will be made available through the Department's website (www.isp.state.il.us) or in a form and manner prescribed by the Department as directed on its website.
- b) All applications and related documents shall be completed accurately and in their entirety, accompanied by the correct fee (see Section 1232.110), and submitted as indicated on the application or the Department's website.
- c) Federal Firearms License Required
 - 1) The applicant shall submit a copy of its FFL, together with a sworn affidavit indicating that the FFL presented is, in fact, its license and that the FFL is valid at the time of submission of the application.
 - 2) The Department may, in lieu of requiring an affidavit, verify the validity of an FFL via any system or website, approved by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), designed to allow an FFL holder or other authorized entity to verify or authenticate the FFL

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

submitted under subsection (c)(1). The system or website will verify the information shown on the FFL to determine if the FFL is valid.

- 3) The Department will advise applicants on its website or the application itself if an FFL affidavit is not required to be submitted.
- d) Affidavit
- 1) The applicant shall submit, with the application for certification of an initial or renewed FFP, an affidavit:
 - A) identifying the name and Firearm Owner's Identification Card number of each owner, employee, or other agent who sells or transfers firearms for the certified licensee; and
 - B) stating that each owner, employee, or other agent of the applicant who sells or transfers firearms is at least 21 years of age, has a currently valid FOID Card, and, for a renewal, has completed the training required under Section 5-30 of the Act.
 - 2) The affidavit form will be available through the Department's website.
- e) Incomplete Submissions
- 1) Any application that is not completed accurately and in its entirety, or does not include the correct fee (see Section 1232.110), will be rejected.
 - 2) The Department will provide written notice to any applicant whose application is rejected stating the reasons for the rejection. The notice will also inform the applicant that a Notice of Intent to Deny will be filed 30 days after notice of the rejection if the applicant fails to provide all required information, complete the application in its entirety, and submit the correct fee.
 - 3) If an applicant has not provided the required information or fee within 30 days after notice of the rejection, the Department will file a Notice of Intent to Deny, unless it elects to grant the applicant an extension of time to complete the application.

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

- f) The Department will, as part of the application process, ask any questions necessary to determine eligibility for a certificate of license.
- g) All certificates issued shall remain the property of the Department.

Section 1232.30 Measuring Distances

For purposes of Section 5-20(c) of the Act, the distance between a retail location and a school, pre-school, or day care facility shall be measured linearly and shall be the shortest distance between the nearest corner of the building holding the retail location to the corner of the school, pre-school, or day care facility building nearest the retail location at the time the retail location seeks licensure.

Section 1232.40 Exemptions

FFL holders are not required to obtain a certificate of license if they do not engage in the business of selling, leasing, or otherwise transferring firearms, or if they only engage in any of the transfers described in Section 5-25 of the Act. However, if an FFL holder engages in the business of selling, leasing, or otherwise transferring firearms in any manner not described in Section 5-25, a valid certificate of license issued under the Act is required.

Section 1232.50 Inspection of Certified Licensees' Places of Business

- a) *Certified licensees shall have their places of business available for inspection by the Department and law enforcement agencies during all hours of operation involving the sale, leasing or transfer of firearms, provided that the Department or law enforcement agency may conduct no more than one unannounced inspection per year without good cause.*
- b) Any certified licensee that is not open to the public, does not keep regular business hours, or operates by appointment only shall immediately advise the Department, in writing, of its hours of operation, including that it does not maintain regular business hours, when so requested by the Department.
- c) *During an inspection, certified licensees shall make all records, documents and firearms accessible for inspection, upon the request of the Department or law enforcement agency. (Section 5-35 of the Act)*
- d) Failure to fully cooperate with an inspection could result in the imposition of

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

discipline and/or a fine in accordance with the Act.

Section 1232.60 Security System

- a) *On or before January 2, 2021, a certified licensee operating a retail location shall be required to operate and maintain, on the premises, in good working order a 24 hour, seven days a week, closed-circuit television video surveillance system that complies with the following minimum standards:*
- 1) Visually records and monitors all building *entrances and exits*, all parking lot areas, and rear alley areas immediately adjacent to the building space used for the business, and covers the entire inside of the facility *where firearms in inventory are stored, displayed, handled, sold or transferred*, including all limited access areas where firearms in inventory are stored or transferred, but does not include *restrooms* or any other area specifically prohibited by law. Fixed cameras shall be installed to provide a consistently recorded image of these areas. Cameras shall be mounted so as to allow for the capture of facial recognition, clear and certain identification of any person entering or exiting the retail location, the immediate surrounding area, and license plates of vehicles in the parking lot area. The certified licensee shall instruct the company or individuals installing the surveillance cameras to maximize the quality of facial and body images and to avoid backlighting and physical obstructions.
 - 2) Cameras installed outdoors and in low-light interior areas shall be day/night cameras. The installation of additional lighting may be required to increase picture clarity and brightness. Cameras shall be calibrated and focused to maximize the quality of the recorded image.
 - 3) The recording device shall be digital and shall:
 - A) Display a date and time stamp on all recorded video. The date and time shall be set correctly and shall not significantly obstruct the picture;
 - B) Produce a digital file video. The digital file video shall be viewable on any Windows PC;
 - C) Have the ability to remain operational during a power outage with

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

a minimum four-hour battery backup; and

- D) Allow for the exporting of still images in an industry standard image format, including .jpg, .bmp and .gif. Exported video shall be able to be archived in a proprietary format that ensures authentication of the video and guarantees that no alteration of the recorded image has taken place. Exported video shall be able to be saved in an industry standard file format that can be played on a standard computer operating system. All recordings shall be erased or destroyed prior to disposal.
- 4) A display monitor shall be connected to the electronic recording security system at all times.
- 5) Electronic recording security systems shall be maintained in good working order at all times and have a failure notification system that provides notification to the certified licensee of any failure in the system. The CL shall instruct each manager, employee or other person overseeing the functioning of the video recording security system to immediately report to the CL's manager or the chief of security personnel any malfunctioning or technical problems with the system and memorialize the report in an email or written document.
- 6) Security Recording Retention
- A) Security recordings shall be retained by the certified licensee for a minimum of 90 days, except as otherwise provided in subsection (a)(6)(B) or (C). The recording system for the security cameras must be located in a locked, tamper-proof compartment within a limited access area. The recordings shall be simultaneously backed-up offsite (e.g., cloud storage, offsite server).
- B) The 90 day requirement for retaining security recordings does not apply if the certified licensee is aware of the loss or theft of any firearms in inventory, or is aware of, or has been notified by the Department under subsection (a)(6)(C) of, a pending criminal, civil or administrative investigation or of a legal proceeding for which the recording may contain relevant information. In these instances, recordings shall be retained until receipt of the written notice

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

issued pursuant to subsection (a)(6)(C) releasing the CL from this extended retention requirement.

- C) Upon notice from the Department of a pending investigation, upcoming inspection, or other need to preserve video recordings, a CL shall preserve the recordings until the CL receives written notice from the Department that the recording is no longer needed and can be recorded over or otherwise erased from temporary and/or offsite storage when the 90 days expires.
- 7) Upon request, the recording or any photo made from a recording shall be turned over to the Department. Twenty-four hour recordings from all video cameras shall be available for immediate viewing by the Department upon request.
- b) Access to limited access areas where the recording system for the security cameras is contained shall be limited to authorized personnel. A current list of authorized personnel that have access to the limited access area shall be available to the Department upon request. Limited access areas shall remain locked at all times.

Section 1232.70 Alarm Monitoring System

- a) *Beginning January 2, 2020, a certified licensee maintaining an inventory of firearms for sale or transfer must be connected to an alarm monitoring system or service that will notify its local law enforcement agency of an unauthorized intrusion into the premises of the certified licensee where firearms in inventory are maintained. (Section 5-50(c) of the Act)*
- b) Each alarm monitoring system or service shall meet the following minimum requirements:
 - 1) Coverage of the business space, including all business facility entrances, exits and rooms
 - A) with exterior windows;
 - B) with exterior walls, roof hatches, skylights, or window or wall mounted air conditioners;

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

- C) that contain safes or vault access; and
 - D) where firearms in inventory are stored.
- 2) Monitoring with cellular back-up, interior motion detection, and, where windows are present, glass breakage detection.
 - 3) A failure notification system that provides an audible, text or visual notification of any failure in the surveillance system. The failure notification system shall provide an alert to the certified licensee, within five minutes after the failure, by telephone, email or text message.
 - 4) The ability to remain operational during a power outage and ensure all access doors are not solely controlled by an electronic access panel so that locks are not released during a power outage.
 - 5) Duress alarm; i.e., a silent security alarm system signal generated by the entry of a designated code into an arming station in order to signal that the alarm user is being forced to turn off the system.
 - 6) Panic alarm; i.e., an audible security alarm system signal generated by the manual activation of a device intended to signal a life-threatening or emergency situation requiring law enforcement response.
 - 7) Holdup alarm; i.e., a silent alarm signal generated by the manual activation of a device intended to signal a robbery in progress.
 - 8) Automatic voice dialer; i.e., any electrical, electronic, mechanical or other device capable of being programmed to send a prerecorded voice message requesting dispatch, when activated, over a telephone line, radio or other communication system, to a law enforcement, public safety or emergency services agency.
- b) The system shall be:
 - 1) tested on a regular basis, but in no event less than once quarterly, to ensure it is functioning properly; and

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

- 2) inspected annually, with all devices being tested by a qualified alarm vendor.

Section 1232.80 Safe Storage By Certified Licensees

- a) *Certified licensees maintaining a retail location shall develop a written plan that addresses the safe storage of firearms and ammunition during retail hours and after closing. Safe storage plans shall address the following areas:*
 - 1) Storage of firearms and ammunition during retail hours and after closing;
 - 2) Access to firearms and ammunition during retail hours (business practices);
 - 3) Procedures for removing or replacing firearms to show to customers;
 - 4) Loss or theft reporting;
 - 5) Description of anti-theft measures and practices;
 - 6) Disaster plan;
 - 7) Structural Security;
 - 8) Inventory Security;
 - 9) Employee Screening; and
 - 10) Employee training and education regarding certified licensee's policy and procedures and loss prevention measures.
- b) *Safe storage plans shall be submitted to the Department for approval, in a form and method that shall be provided by the Department on its website. (Section 5-55 of the Act)*
- c) A certified licensee maintaining a retail location shall ensure the following practices are implemented:

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

- 1) Store all firearms in inventory in a safe, vault, secured room, or locked display and in such a manner as to prevent diversion, theft or loss;
- 2) Maintain all firearms in inventory in a limited access area or location within the retail location, accessible only to specifically authorized personnel;
- 3) Keep all approved safes, vaults, displays, or other equipment or areas used for the storage of firearms in inventory securely locked or protected from entry, except for the actual time required to remove, replace or show for sale or transfer the firearms;
- 4) Keep all locks and security equipment in good working order;
- 5) Prohibit keys from being left in the locks and do not store or place keys in a location accessible to persons other than specifically authorized personnel;
- 6) Prohibit other security measures, such as combination numbers, codes, passwords or electronic or biometric security systems, from being accessible to persons other than specifically authorized personnel;
- 7) Keep the retail location securely locked and protected from unauthorized entry at all times when closed for business or unoccupied by authorized personnel;
- 8) Keep ammunition stored separately from the firearms inventory and out of the reach of customers;
- 9) Ensure inventory records are protected by securing the records after business hours in a secured location. Only authorized or law enforcement personnel shall be permitted to view or handle the inventory records;
- 10) Complete a firearms inventory on a regular basis, but in no event less than once quarterly. Inventories shall be conducted by at least two persons and shall be memorialized in an email or other written document made available upon request of the Department or other law enforcement entity;

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

- 11) Keep current and accurate acquisition and disposition records. These records shall be made available to law enforcement entities upon request;
 - 12) Maintain a disaster plan that adequately ensures the timely securing of firearms in inventory in the event of a natural or man-made disaster. The plan shall be made available to the Department upon request; and
 - 13) Ensure employees with access to firearms in inventory, or who otherwise handle firearms in inventory, are not prohibited from possessing firearms under State or federal law.
- d) If a retail location presents special security issues, such as an extremely large inventory, exposed handling, or unusual vulnerability to diversion, theft or loss, the Department may require additional safeguards.
 - e) If a loss, theft or diversion of firearms in inventory has occurred from a retail location, the certified licensee shall notify ATF and the appropriate local law enforcement authority within 48 hours after the loss or theft is discovered, pursuant to the notification requirements of 18 USC 923(g)(6). The CL shall provide a copy of any such notification to the Department. If any firearms previously reported as lost or stolen are subsequently recovered by the CL, the CL shall notify ATF and the appropriate local law enforcement authority of the recovery.
 - f) Any CL whose certification is revoked or not current shall dispose of its inventory in a manner allowed by State law and procedures approved by ATF, and provide notice to the Department of its plan to transfer or otherwise dispose of inventory.

Section 1232.90 Training; Statewide Compliance Standards

- a) The annual training shall consist, at minimum, of the review of materials made available to certified licensees by the Department. Those materials will be made available on the Department's website or through other publicly-available means.
- b) A CL shall:
 - 1) Ensure the CL and all employees who sell or otherwise transfer firearms attend the training required by Section 5-30 of the Act. The required

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

training shall be completed before certification by the Department and yearly thereafter.

- 2) Ensure training required by Section 5-30 of the Act is completed by all newly hired employees who will be selling or otherwise transferring firearms prior to the new employee participating in the sale or transfer of any firearms or ammunition.
- 3) Verify completion of the required annual training by the CL and all applicable employees by submitting an affidavit to the Department indicating the CL and all applicable employees have completed the training required by Section 5-30 of the Act. A copy of the affidavit will be available through the Department's website. The affidavit shall be submitted with each application for certification or renewal.

Section 1232.100 Electronic-based Recordkeeping

- a) *On or before January 2, 2020, each certified licensee operating a retail location shall implement an electronic-based record system to keep track of its changing inventory by updating the make, model, caliber or gauge, and serial number of each firearm that is received or sold by the certified licensee.*
- b) *Retail sales and purchases shall be recorded within 24 hours after the transaction. Shipments of firearms from manufacturers or wholesalers shall be recorded upon the earlier of five business days or within 24 hours after the shipment is unpacked and the firearm placed in inventory. (Section 5-65 of the Act)*
- c) *A certified licensee shall make a legible copy of a buyer's or transferee's valid photo identification card whenever a firearm sale transaction takes place. The copy shall be attached to the documentation detailing the record of sale. (Section 5-20(a) of the Act)*
- d) *Each certified licensee shall maintain these records for a period of no less than the time period under 27 CFR 478.129 or any subsequent law that regulates the retention of records. (Section 5-65 of the Act)*

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

- e) Any computerized or electronic based record keeping system approved by ATF that accurately records the information required to be maintained by this Section is sufficient for satisfying the requirements of Section 5-65 of the Act.

Section 1232.110 Fees and Fines

- a) An applicant for license certification shall submit the following fees with each application, submitted in the form of a certified check or money order payable to the "Illinois Department of State Police", or by such other means as approved by the Department. Checks or money orders shall be delivered to the Department as provided in Section 1232.180.
- 1) The fee for initial certification of an FFL held by a person *operating without a retail location*, as defined by Section 5-5 of the Act, shall be \$300 for each application submitted.
 - 2) The fee for initial certification of an FFL held by a person *operating with a retail location* shall be \$1,500 for each application submitted.
 - 3) The fee for each certification of a renewed FFL shall be \$100 for a CL operating without a retail location and \$500 for a CL operating with a retail location.
 - 4) For new certified licensee applicants who are current FFL holders as of January 18, 2019, the fee for the initial certification shall be prorated on a monthly basis from the date of the initial application. The prorated fee shall be based on the number of months remaining on the applicant's current valid FFL.
 - 5) For CLs who submitted a full fee prior to the effective date of this Part, and who are eligible for proration of their fees under subsection (a)(4), the Department will credit any overpayment towards the cost of the CL's next renewal or, upon written request by the CL to the Department, will issue a refund of any overpayment.
- b) *The Department may not charge a certified licensee, operating under the same or different business name in this State, fees exceeding \$40,000 for the certification of multiple licenses. (Section 5-70 of the Act)*

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

- c) *The Department may impose a fine not to exceed \$10,000 for each violation of the Act (see Sections 5-15 and 5-85 of the Act and Section 1232.150). (Section 5-85 of the Act)*
- d) *All civil penalties or fines imposed under the Act shall be paid within 90 days after the effective date of the final order issued imposing the fine. (Section 5-15(g)) All civil penalties or fines shall be paid by certified check or money order payable to the "Illinois Department of State Police", or by such other means as approved by the Department. Checks or money orders shall be delivered to the Department as provided in Section 1232.180.*
- e) *All monies (fees and fines) collected under the Act shall be deposited in the Firearm Dealer License Certification Fund in the State treasury. (Section 70 of the Act)*

Section 1232.120 Term of License

- a) *Each certification shall be valid for the term of the FFL being certified. An FFL holder shall certify each new or renewed FFL. However, the Department is not required to renew a certification if a prior certification has been revoked or suspended. (Section 5-75 of the Act)*
- b) *If a CL submits an application for certification of a renewed FFL prior to the expiration of the current FFL, the current certification shall remain valid while the application is pending.*

Section 1232.130 Retention of Records

- a) *Each certified licensee shall keep, either in electronic form or hard copy, all acquisition and disposition records for a period of time no less than the time required under 27 CFR 478.129 or any subsequent law that regulates the retention of records. Electronic-based recordkeeping will be required for CLs operating a retail location on or after January 2, 2020, pursuant to Section 5-65 of the Act.*
- b) *All video surveillance records, along with any sound recordings obtained from them, shall be retained by the certified licensee for a minimum of 90 days and in accordance with Section 1232.60(a)(6). (Section 5-80 of the Act)*

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

Section 1232.140 Return of Suspended or Revoked Certificate of License

- a) *Upon the suspension or revocation of a certification of license, the certified licensee shall surrender the certificate to the Department in accordance with Section 1232.180. Upon failure to do so, the Department will seize the certificate.*
- b) *When the certification is suspended, the CL shall not operate as a CL during the period in which the certificate is suspended and, if operating during that period, shall be operating in violation of Section 5-15(a) of the Act (Section 5-100(e) of the Act).*

Section 1232.150 Disciplinary Sanctions; Restoration

- a) *For violations of the Act not penalized under Section 5-15 of the Act, the Department may refuse to renew or restore, or may reprimand, place on probation, suspend, revoke, or take other disciplinary or nondisciplinary action against any certified licensee, and may impose a fine commensurate with the severity of the violation not to exceed \$10,000 for each violation. (Section 5-85(a) of the Act)*
- b) The following factors shall be weighed by the Director or hearing officer appointed by the Director when determining the severity of the violation and the resulting fine:
 - 1) Whether the violation constitutes a criminal offense under the Criminal Code of 2012 or any federal law and, if so, whether the violation would be considered a petty or business offense, misdemeanor, or felony under Illinois law;
 - 2) Whether the CL cooperated with the Department in its investigation;
 - 3) Whether the CL refused to cooperate with the Department in its investigation, including, but not limited to, providing false or misleading information;
 - 4) Whether the violation is the first violation or a subsequent violation of the Act;

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

- 5) Whether the CL has received prior discipline for the violation in question (i.e., 1st violation, 2nd or subsequent violation);
 - 6) The number of violations committed by the CL;
 - 7) Whether the violation involves fraudulent activity, deception or misrepresentation;
 - 8) Whether the violation directly resulted in the death or injury to any person or damage to any property; and
 - 9) Whether the violation constitutes a petty, minor, or major violation as those terms are defined in subsections (c), (d) and (e).
- c) Petty violations of the Act shall be subject to a civil penalty or fine not to exceed \$200 for a 1st violation and \$500 for a 2nd or subsequent violation. For purposes of this Section, "petty violation" means any violation of the Act listed in Section 5-85 of the Act that is not a criminal offense, or that constitutes a petty or business offense or a Class B or C misdemeanor, under the Criminal Code of 2012.
- d) Minor violations of the Act shall be subject to a civil penalty or fine not to exceed \$2,500 for a 1st violation and \$5,000 for a 2nd or subsequent violation. For the purposes of this Section, "minor violation" means:
- 1) any violation of Section 5-15 of the Act that would constitute a Class A misdemeanor; and
 - 2) a violation of Section 5-85:
 - A) (a)(1), (a)(3), (a)(5) or (a)(8), if the violation would constitute a Class A misdemeanor;
 - B) (a)(2), if due to negligence or carelessness;
 - C) (a)(6)(A), if a misdemeanor;
 - D) (a)(7), if the person did not have knowledge the firearms were sold or transferred illegally, but should have known; and

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

- E) (a)(9).
- e) Major violations of the Act shall be subject to a civil penalty or fine not to exceed \$5,000 for a 1st violation and \$10,000 for a 2nd or subsequent violation. For the purposes of this Section, "major violation" means:
- 1) any violation of Section 5-15 that would constitute a Class 4 felony; and
 - 2) a violation of Section 5-85:
 - A) (a)(1), (a)(3), (a)(5), (a)(6)(A), or (a)(8), if the violation would constitute a felony;
 - B) (a)(2), if due to intentional or willful and wanton behavior;
 - C) (a)(7), if the person had knowledge the firearms were sold or transferred illegally;
 - D) (a)(10); and
 - E) (a)(11).
- f) *The civil penalties or fines shall only be assessed by the Department after a hearing is held in accordance with Sections 5-95 and 5-100 of the Act. (Section 5-15(e) of the Act)*
- g) *All civil penalties or fines imposed under the Act shall be paid within 90 days after the effective date of the final order imposing the fine. The order shall constitute a judgment and may be filed and executed in the same manner as any judgment from any court of record. (Sections 5-15(g) and 85(b) of the Act) All civil penalties or fines shall be paid via certified check or money order payable to the "Illinois Department of State Police", or by such other means as approved by the Department. Checks or money orders shall be delivered to the Department as provided in Section 1232.180.*
- h) *Any certificate of license obtained under the Act by material misstatement or fraudulent misrepresentation shall be automatically revoked.*

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

- i) *At any time after the successful completion of a term of probation, suspension or revocation of a certificate of license, the Department may restore it to the certified licensee, unless, after an investigation and a hearing, the Director determines that restoration is not in the public interest. (Section 5-105 of the Act)*

Section 1232.160 Complaints; Investigations; Hearings

- a) Notice of Intent to Deny
 - 1) A refusal to issue a certificate of license shall be initiated by the filing of a Notice of Intent to Deny and issuance of a written Notice of Hearing. A Notice of Intent to Deny shall clearly state the facts that inform the applicant of the particular acts or circumstances complained of by the Department and the statutes or rules upon which the allegations in the Notice of Intent to Deny are based.
 - 2) A Notice of Intent to Deny and Notice of Hearing shall be served upon the applicant, by certified mail to the applicant's address of record, at least 30 days prior to the date set for hearing. The Notices shall advise the applicant of the following:
 - A) a written answer to the charges must be filed under oath within 20 days after service;
 - B) failure to answer will result in a default being entered against the applicant; and
 - C) the time and place for the hearing on the charges.
 - 3) Answers to the Notice of Intent to Deny shall be filed with the Department in the form and manner as provided for in Sections 1232.180, 1232.190 and 1232.200.
- b) Complaint for Discipline
 - 1) An action for discipline shall be initiated by the filing of a written Complaint and issuance of a written Notice of Hearing. The Complaint shall clearly state the charges made and facts that inform the CL of the

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

particular acts complained of by the Department and the statutes or rules upon which the allegations in the Complaint and Notice are based.

- 2) A copy of the Complaint and Notice shall be served upon the CL, by certified mail to the CL's address of record, at least 30 days prior to the date set for hearing and shall advise the CL of the following:
 - A) a written answer to the charges must be filed under oath within 20 days after service;
 - B) failure to answer will result in a default being entered against the CL; and
 - C) the time and place for the hearing on the charges.
 - 3) Answers to the Complaint and Notice shall be filed with the Department as provided for in Sections 1232.180, 1232.190 and 1232.200.
- c) Investigations
- 1) *The Department may, as necessary, coordinate efforts with relevant State and federal law enforcement agencies to enforce the Act. (Section 5-120 of the Act)*
 - 2) Authority to Continue Operations
 - A) *Certified Licensees. A certified licensee may continue to operate during the course of an investigation or hearing unless the Director finds that the public interest, safety, or welfare requires emergency action. (Section 5-100(d) of the Act)*
 - B) *Certification Applicants. An applicant who is served with a Notice of Intent to Deny, due to a determination by the Department that the applicant does not possess a currently valid FFL, shall be prohibited from operating during the course of the investigation or hearing, or unless and until the Department determines that the applicant possesses a currently valid FFL.*

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

- 3) Each certified licensee shall respond immediately to, and in no event later than 24 hours after the receipt of, a request by the Department for information contained in the records required to be kept by the Act as may be required for determining the disposition of one or more firearms in the course of a criminal investigation. The requested information shall be provided orally or in writing as the Department may require.
- d) Issuance of Subpoenas
- 1) Upon application to a hearing officer appointed by the Director, the hearing officer *may* issue a *subpoena* requiring *any person or entity* to attend a hearing to *give written or oral testimony*. The subpoena *may include* an order to *produce books, papers, records, or any other documents* or tangible things designated in those materials that *the Department deems directly relevant or material to an investigation or hearing* and reasonably necessary to resolve the matter under consideration, *subject to the same fees and in the same manner prescribed in civil cases in the courts of this State*.
 - 2) Every subpoena shall state the title of the action and shall command each person to whom it is directed to attend and give testimony or produce documents, records or tangible things at the time and place specified in the subpoena. Notice of the request for subpoena shall be served on all parties.
 - 3) *The certified licensee may file an emergency motion with the Director or a hearing officer authorized by the Department to quash a subpoena issued by the Department.*
 - 4) *The Hearing Officer or the Director, upon timely made written motion, and, in any event, at or before the time specified in the subpoena for compliance, may quash or modify the subpoena if it is unreasonable and oppressive. (Section 5-45 of the Act)*
 - 5) Any application for subpoena must be submitted to the Hearing Office at least 10 days before the hearing.
- e) Hearings

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

- 1) The hearing officer for contested hearings shall be an attorney licensed to practice law in Illinois appointed by the Director. The hearing officer may be disqualified for bias or conflict of interest.
- 2) The procedures for the hearing shall be as described in Article 10 of the Illinois Administrative Procedure Act [5 ILCS 100], unless other procedures are specifically described in this Section or as ordered by the hearing officer.
- 3) A hearing may be postponed or continued for due cause by the hearing officer upon his or her own motion or upon motion of a party to the hearing. Notice of any postponement or continuance shall be given in writing to all parties to the hearing within a reasonable time in advance of the previously scheduled hearing date, when feasible. All parties involved in a hearing shall attempt to avoid undue delay caused by repetitive postponements or continuances so that the subject matter of the hearing may be resolved expeditiously.
- 4) Failure of a CL to appear on the date set for hearing, or failure to proceed as ordered by the hearing officer, shall constitute a default. The hearing officer shall thereupon enter such Findings, Conclusions of Law, and Recommendations as is appropriate under the pleadings and the evidence received into the record.
- 5) The hearing officer's Findings, Conclusions of Law, and Recommendations shall be in writing and shall be separately stated when possible. Findings of Fact shall be based exclusively on the evidence presented at the hearing or known to all parties, including matters officially noticed. Findings of Fact shall be accompanied by a statement of the underlying supporting facts. If a party submits proposed Findings of Fact that may control the decision or order, the decision or order shall include a ruling upon each proposed finding. Each Conclusion of Law shall be supported by authority or reasoned opinion. A hearing officer's Recommendation shall not be made except upon consideration of the record as a whole or such portion of the record as may be supported by competent material and substantial evidence.

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

- 6) The hearing officer shall submit his or her Findings, Conclusions of Law, and Recommendations to the Director within 45 days after the conclusion of the hearing.
- 7) All hearings shall be conducted at a location determined by the Director.

Section 1232.170 Order of the Director

- a) The Director shall review the hearing officer's Findings, Conclusions of Law, and Recommendations and shall issue an order either adopting or declining to adopt the hearing officer's Findings of Fact, Conclusions of Law, and Recommendations, in whole or in part, within a reasonable time. *The order shall also contain a finding of whether the accused person violated the Act or failed to comply with the conditions required in the Act.* (Section 5-100(a) of the Act)
- b) The decision in the case will become effective immediately upon the execution of a written order, or as otherwise specified by either the order or applicable statute. The order is final and subject to judicial review under Section 5-10 of the Act.
- c) A CL shall be immediately notified of the order, either personally or by certified mail, addressed to the last known address of the CL. A copy of the order shall be delivered or mailed to the CL or to his or her attorney of record.

Section 1232.180 Filing

- a) Documents and motions permitted or required to be filed with the Department in connection with a hearing or response to a subpoena issued by the Department shall be addressed to and mailed to, or filed in person with, the Department of State Police, 801 South Seventh Street, Springfield IL 62703, in duplicate or as otherwise directed by a hearing officer if one has been appointed by the Director. The offices of the Department are open for filing from 8:30 a.m. to 5:00 p.m., Monday through Friday, except on National and State legal holidays.
- b) By agreement of the parties or by order of the hearing officer, filing of these documents may also be accomplished by email to the Department and opposing party (or opposing party's counsel). Any filings by email must be received by the recipient no later than 5:00 p.m. on the date filing is due.

Section 1232.190 Form of Documents

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

- a) Documents shall clearly show the file Hearing Number and the title of the proceedings in connection with which they are filed.
- b) Except as otherwise provided, 2 copies of all documents, including notices, motions, and petitions, shall be filed with the Department.
- c) Except as otherwise provided, documents shall be typewritten or reproduced from typewritten copy on letter or legal size white paper.
- d) One copy of each document filed shall be signed by the certified licensee or by his or her authorized representative or attorney.

Section 1232.200 Motion and Answer

- a) Any CL receiving a Complaint or Notice of Intent to Deny shall file an answer within 20 calendar days after service and not later than 10 calendar days prior to the date of hearing. All answers or motions preliminary to a hearing shall be presented to the Department and to the hearing officer at least 10 calendar days prior to the date of hearing, or on such other date as the hearing officer shall designate, and shall be served personally or by certified mail.
- b) Unless made orally on the record during a hearing, or unless the hearing officer directs otherwise, an answer or motion shall be in writing and shall be accompanied by any other evidence relied upon and, as appropriate, by a proposed order. At least two copies of all such motions shall be filed with the Department (one for the Department attorney and one for the hearing officer) and at least one copy served on each additional party, if any, to the hearing.
- c) Every answer shall contain an explicit admission or denial of each allegation of the Complaint, Notice of Intent to Deny, or motion to which it relates. Every allegation not explicitly denied shall be deemed admitted unless the party states in his or her answer that he or she has no knowledge of the allegation sufficient to form a belief, and attaches an affidavit of the truth of the statement of want of knowledge, or unless the party has had no opportunity to deny. Denials must not be evasive, but must fairly answer the substance of the allegation denied.
- d) Within 10 calendar days after service of a written motion, or such other period as the hearing officer may prescribe, a party may file a response in support of or in

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

opposition to the motion, accompanied by affidavits or other evidence. If no response is filed, the parties shall be deemed to have waived objection to the granting of the motion. The moving party shall have no right to reply, except as permitted by the hearing officer.

- e) No oral argument will be heard on a motion unless the hearing officer directs otherwise. A written brief may be filed with a motion or a response to a motion, stating the arguments and authorities relied upon.
- f) The hearing officer shall rule upon all motions, except that he or she shall have no authority to dismiss or decide a hearing on the merits without granting all parties to the proceeding a right to be heard and to establish a record.
- g) A party may participate in the proceedings without forfeiting any jurisdictional objection, if that objection is raised at or before the time the party files his or her answer or motion, or, if no answer or motion is made, before the commencement of the hearing.

Section 1232.210 Rehearings

- a) Except as otherwise provided by law, and for good cause shown, the Director may, in his or her discretion, order a rehearing on written motion of the CL. The motion shall specify the particular grounds for rehearing.
- b) When the record of testimony made at the hearing is found by the Director to be inadequate for purposes of judicial review, the Director may order a reopening of the hearing.
- c) A motion for a rehearing or a motion for the reopening of a hearing shall be filed within 20 calendar days after service of the Director's order. The Department may respond to the motion for rehearing within 20 calendar days after its service on the Department. A rehearing shall be noticed and conducted in the same manner as an original hearing. The evidence received at the rehearing shall be included in the record for the director's reconsideration and for judicial review. A decision or order may be amended or vacated after rehearing.

Section 1232.220 Administrative Review

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

- a) *All final administrative decisions of the Department shall be subject to judicial review under the Administrative Review Law [735 ILCS 5/Art. III]. (Section 5-110 of the Act) The term "administrative decision" is defined in Section 3-101 of the Administrative Review Law.*
- b) If any final Department action is appealed in circuit court pursuant to this Section, the record on review shall include the following:
 - 1) The application and any other related documents submitted;
 - 2) Any written documentation considered by the Department in making its final decision with respect to the application;
 - 3) Any written correspondence between the Department and the person or entity submitting the application, provided that the correspondence played a material role in the final decision rendered by the Department, made a material argument to the Department with respect to the application or petition, or would be helpful to the circuit court in reviewing the matter because the correspondence provides helpful procedural background.
 - 4) The transcript of any administrative hearing and any documents or other evidence submitted at the hearing.

Section 1232.230 Mandatory Signage

Sections 5-20 and 5-50 of the Act specify warning language that must be posted.

- a) Signage shall be posted as required under Sections 5-20 and 5-50 of the Act.
- b) Templates for signs required pursuant to Sections 5-20 and 5-50 of the Act are provided in Appendix A and are available on the Department's website.
- c) If a larger sign is warranted, the Department's image must be incorporated into the sign, and the required warning language must still be in block letters not less than one inch in height.
- d) The required signs shall be clearly and conspicuously posted, as required by Sections 5-20 and 5-50 of the Act, on the premises where the certified licensee conducts business.

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

- 1) The sign required by Section 5-20 of the Act shall advise persons that it is unlawful:
 - A) *to store or leave an unsecured firearm in a place where a child can obtain access to it;*
 - B) *to sell or transfer a firearm to someone else without receiving an approval for the transfer from the Department; and*
 - C) *to fail to report the loss or theft of a firearm to local law enforcement within 72 hours. (Section 5-20 of the Act)*
- 2) The sign required by Section 5-50 of the Act shall provide persons entering the property notice that *the premises are under video surveillance and their image may be recorded* pursuant to Section 5-50 of the Act. (Section 5-50 of the Act)

DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

Section 1232.EXHIBIT A Warning Signage

Pursuant to Sections 5-20 and 5-50 of the Act, the warning language on the signs must be in BLOCK LETTERS at least one inch in height.

The images are available on the Department website for download. Image prints to 25" x 32".

WITH FEW EXCEPTIONS ENUMERATED IN THE FIREARM OWNERS IDENTIFICATION CARD ACT, IT IS UNLAWFUL FOR YOU TO:

- (A) STORE OR LEAVE AN UNSECURED FIREARM IN A PLACE WHERE A CHILD CAN OBTAIN ACCESS TO IT;**
- (B) SELL OR TRANSFER YOUR FIREARM TO SOMEONE ELSE WITHOUT RECEIVING APPROVAL FOR THE TRANSFER FROM THE DEPARTMENT OF STATE POLICE;
OR**
- (C) FAIL TO REPORT THE LOSS OR THEFT OF YOUR FIREARM TO LOCAL LAW ENFORCEMENT WITHIN 72 HOURS.**



DEPARTMENT OF STATE POLICE

NOTICE OF PROPOSED RULES

Image prints to 8.5" x 14".



ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED AMENDMENT

- 1) Heading of the Part: Renewable Portfolio Standard and Clean Coal Standard for Alternative Retail Electric Suppliers and Utilities Operating Outside Their Service Areas
- 2) Code Citation: 83 Ill. Adm. Code 455
- 3) Section Number: 455.210 Adopted Action: Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 16-115 and 16-115D of the Public Utilities Act [220 ILCS 5/16-115 and 16-115D].
- 5) Effective Date of Rule: August 12, 2019
- 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 Commission's Springfield office and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 42 Ill. Reg. 21566; December 7, 2018
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: No changes have been made.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreement letter issued by JCAR? JCAR did not request that any changes be made.
- 13) Does this rulemaking replace any emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: The amendment changes Section 455.210, Reporting of Compliance with Clean Coal Standard. Subsection (c) of Section 455.210 currently requires each retail electric supplier (RES) to file a report every September 1 with the Chief Clerk showing the amount of energy the RES purchased by month from "clean coal facilities" (as defined in Section 1-10 of the Illinois Power Agency Act) other

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED AMENDMENT

than the initial clean coal facility identified in Section 16-115(d)(5) of the Public Utilities Act. There are no "clean coal facilities" in operation (currently or in prior years) that fall within the scope of the definition in the Illinois Power Agency Act, however. The amendment thus changes Section 455.210(c) to clarify the reporting requirement and to provide that no report is necessary if no purchases were made during the compliance period from the type of "clean coal facility" defined in the Illinois Power Agency Act.

- 16) Questions or requests for information about this adopted rule shall be directed to:

Brian W. Allen
Office of General Counsel
Illinois Commerce Commission
527 East Capitol Avenue
Springfield IL 62701

217/558-2387

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

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED AMENDMENT

TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: ELECTRIC UTILITIES

PART 455

RENEWABLE PORTFOLIO STANDARD AND CLEAN COAL
STANDARD FOR ALTERNATIVE RETAIL ELECTRIC SUPPLIERS
AND UTILITIES OPERATING OUTSIDE THEIR SERVICE AREAS

SUBPART A: GENERAL PROVISIONS

Section	
455.10	Definitions and Incorporations
455.20	Record Retention, Additional Documentation, and Confidential Information
455.30	Waivers

SUBPART B: RENEWABLE PORTFOLIO STANDARD REQUIREMENTS

Section	
455.100	Applicability of Subpart B
455.110	Obligation to Procure Renewable Energy Resources
455.120	Annual Report of Compliance with Renewable Energy Portfolio Standard
455.125	Annual Report of Compliance with the Retail Charge Provisions of the Renewable Energy Portfolio Standard
455.130	Alternative Compliance Payment Requirements
455.140	Procedures for Section 16-115D(h) Determination Based on the Operation of Combined Heat and Power Systems
455.150	Other Commission Proceedings
455.160	ARES Self-Generation Compliance Option

SUBPART C: COMPLIANCE WITH CLEAN COAL STANDARD REQUIREMENTS

Section	
455.200	Applicability of Subpart C
455.210	Reporting of Compliance with Clean Coal Standard

AUTHORITY: Implementing and authorized by Sections 16-115 and 16-115D of the Public Utilities Act [220 ILCS 5/16-115 and 16-115D].

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED AMENDMENT

SOURCE: Emergency rules adopted at 34 Ill. Reg. 3115, effective February 19, 2010, for a maximum of 150 days; emergency expired July 18, 2010; adopted at 34 Ill. Reg. 10721, effective July 19, 2010; emergency amendment at 41 Ill. Reg. 6968, effective June 1, 2017, for a maximum of 150 days; amended at 41 Ill. Reg. 13580, effective October 26, 2017; amended at 43 Ill. Reg. 9117, effective August 12, 2019.

SUBPART C: COMPLIANCE WITH CLEAN COAL STANDARD REQUIREMENTS

Section 455.210 Reporting of Compliance with Clean Coal Standard

- a) Within 90 days after approval by the Illinois General Assembly of the initial clean coal facility, each RES shall enter into a sourcing agreement with the initial clean coal facility consistent with the provisions of Section 16-115(d)(5) of the Act. Within 30 days after entering into this sourcing agreement, each RES shall file with the Chief Clerk of the Commission a report confirming that it has entered into the sourcing agreement and attaching a signed copy of the sourcing agreement.
- b) By the earliest September 1 following commercial operation of the initial clean coal facility, and by September 1 of each succeeding year, each RES that is required under the Act or the IPA Act to enter into a sourcing agreement with the initial clean coal facility shall file with the Chief Clerk of the Commission a report showing the amount of energy purchased (or financially settled, if the sourcing agreement is executed as a contract for differences) from the initial clean coal facility by the RES, by month, during the most recent compliance year. The report shall also show how these amounts were consistent with the requirements of Section 16-115(d)(5) of the Act. Each report shall be accompanied by documentation from the initial clean coal facility verifying the amount of energy purchased.
- c) To enable the Commission to monitor progress toward the State's goal that, by January 1, 2025, 25% of the electricity used in the State shall be generated by cost-effective clean coal facilities, beginning no later than September 1, 2010, and by September 1 of each subsequent year, each RES purchasing energy from clean coal facilities other than the initial clean coal facility during the compliance year shall file with the Chief Clerk of the Commission a report showing the amount of energy purchased by the RES from clean coal facilities other than the initial clean coal facility, by month, during the most recent compliance year. Each report shall be accompanied by documentation from the clean coal facility verifying the

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED AMENDMENT

amount of energy purchased. If the RES did not purchase any energy from clean coal facilities other than the initial clean coal facility during the compliance year, a report need not be filed with the Chief Clerk for that compliance year.

- d) All reports filed or provided under this Section shall be verified by an executive officer of the RES having knowledge of the facts before either a notary public or other officer authorized to administer oaths.

(Source: Amended at 43 Ill. Reg. 9117, effective August 12, 2019)

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENT

- 1) Heading of the Part: Aid to the Aged, Blind or Disabled
- 2) Code Citation: 89 Ill. Adm. Code 113
- 3) Section Number: 113.10 Adopted Action:
Amendment
- 4) Statutory Authority: Implementing Article III and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Art. III and 12-13], 8 USCA 1253(h) prior to September 30, 1996 and 8 USCA 1231(b)(3) on or after September 30, 1996.
- 5) Effective Date of Rule: August 9, 2019
- 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, is on file in the Agency's principal office and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 43 Ill. Reg. 4054; April 5, 2019
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: Various citations were updated.
- 12) Have all changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace an emergency rule currently in effect? Yes
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: This rulemaking updates the Immigration and Nationality Act (INA) specification/classification for non-citizen under IDHS' Aid to the Aged, Blind or Disabled (AABD) program.
- 16) Information and questions regarding this adopted rule shall be directed to:

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENT

Tracie Drew, Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue East
Harris Building, 3rd Floor
Springfield IL 62762

217/785-9772

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

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENT

TITLE 89: SOCIAL SERVICES
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES
SUBCHAPTER b: ASSISTANCE PROGRAMS

PART 113
AID TO THE AGED, BLIND OR DISABLED

SUBPART A: GENERAL PROVISIONS

Section

- 113.1 Description of the Assistance Program
- 113.5 Incorporation By Reference

SUBPART B: NON-FINANCIAL FACTORS OF ELIGIBILITY

Section

- 113.9 Client Cooperation
- 113.10 Citizenship
- 113.20 Residence
- 113.30 Age
- 113.40 Blind
- 113.50 Disabled
- 113.60 Living Arrangement
- 113.70 Institutional Status
- 113.80 Social Security Number

SUBPART C: FINANCIAL FACTORS OF ELIGIBILITY

Section

- 113.100 Unearned Income
- 113.101 Budgeting Unearned Income
- 113.102 Budgeting Unearned Income of Applicants Receiving Income on Date of Application And/Or Date of Decision
- 113.103 Initial Receipt of Unearned Income
- 113.104 Termination of Unearned Income
- 113.105 Unearned Income In-Kind
- 113.106 Earmarked Income
- 113.107 Lump Sum Payments and Income Tax Refunds
- 113.108 Protected Income (Repealed)

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENT

- 113.109 Earned Income (Repealed)
- 113.110 Budgeting Earned Income (Repealed)
- 113.111 Protected Income
- 113.112 Earned Income
- 113.113 Exempt Unearned Income
- 113.114 Budgeting Earned Income of Applicants Receiving Income On Date of Application And/Or Date of Decision
- 113.115 Initial Employment
- 113.116 Budgeting Earned Income For Contractual Employees
- 113.117 Budgeting Earned Income For Non-contractual School Employees
- 113.118 Termination of Employment
- 113.120 Exempt Earned Income
- 113.125 Recognized Employment Expenses
- 113.130 Income From Work/Study/Training Programs
- 113.131 Earned Income From Self-Employment
- 113.132 Earned Income From Roomer and Boarder
- 113.133 Earned Income From Rental Property
- 113.134 Earned Income In-Kind
- 113.139 Payments from the Illinois Department of Children and Family Services
- 113.140 Assets
- 113.141 Exempt Assets
- 113.142 Asset Disregard
- 113.143 Deferral of Consideration of Assets
- 113.154 Property Transfers For Applications Filed Prior To October 1, 1989 (Repealed)
- 113.155 Property Transfers For Applications Filed On Or After October 1, 1989 (Repealed)
- 113.156 Court Ordered Child Support Payments of Parent/Step-Parent
- 113.157 Responsibility of Sponsors of Non-citizens Entering the Country Prior to 8/22/96
- 113.158 Responsibility of Sponsors of Non-citizens Entering the Country On or After 08/22/96
- 113.160 Assignment of Medical Support Rights

SUBPART D: PAYMENT AMOUNTS

- Section
- 113.245 Payment Levels for AABD
- 113.246 Personal Allowance
- 113.247 Personal Allowance Amounts
- 113.248 Shelter

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENT

113.249	Utilities and Heating Fuel
113.250	Laundry
113.251	Telephone
113.252	Transportation, Lunches, Special Fees
113.253	Allowances for Increase in SSI Benefits
113.254	Nursing Care or Personal Care in Home Not Subject to Licensing
113.255	Sheltered Care/Personal or Nursing Care in a Licensed Group Care Facility
113.256	Shopping Allowance
113.257	Special Allowances for Blind and Partially Sighted (Blind Only)
113.258	Home Delivered Meals
113.259	AABD Fuel and Utility Allowances By Area
113.260	Sheltered Care, Personal Care or Nursing Care Rates
113.261	Cases in Licensed Intermediate Care Facilities, Licensed Skilled Nursing Facilities, DMHDD Facilities and All Other Licensed Medical Facilities
113.262	Meeting the Needs of an Ineligible Dependent with Client's Income
113.263	Service Animals
113.264	Refugees Ineligible for SSI

SUBPART E: OTHER PROVISIONS

Section	
113.300	Persons Who May Be Included In the Assistance Unit
113.301	Grandfathered Cases
113.302	Interim Assistance (Repealed)
113.303	Special Needs Authorizations
113.304	Retrospective Budgeting
113.305	Budgeting Schedule
113.306	Purchase and Repair of Household Furniture (Repealed)
113.307	Property Repairs and Maintenance
113.308	Excess Shelter Allowance
113.309	Limitation on Amount of AABD Assistance to Recipients from Other States (Repealed)
113.320	Redetermination of Eligibility
113.330	Attorney's Fees for VA Appellants (Repealed)

SUBPART F: INTERIM ASSISTANCE

Section	
113.400	Description of the Interim Assistance Program

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENT

- 113.405 Pending SSI Application (Repealed)
- 113.410 More Likely Than Not Eligible for SSI (Repealed)
- 113.415 Non-Financial Factors of Eligibility (Repealed)
- 113.420 Financial Factors of Eligibility (Repealed)
- 113.425 Payment Levels for Chicago Interim Assistance Cases (Repealed)
- 113.430 Payment Levels for all Interim Assistance Cases Outside Chicago (Repealed)
- 113.435 Medical Eligibility (Repealed)
- 113.440 Attorney's Fees for SSI Applicants (Repealed)
- 113.445 Advocacy Program for Persons Receiving Interim Assistance (Repealed)
- 113.450 Limitation on Amount of Interim Assistance to Recipients from Other States (Repealed)
- 113.500 Attorney's Fees for SSI Appellants (Renumbered)

AUTHORITY: Implementing Article III and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Art. III and 12-13].

SOURCE: Filed effective December 30, 1977; peremptory amendment at 2 Ill. Reg. 17, p. 117, effective February 1, 1978; amended at 2 Ill. Reg. 31, p. 134, effective August 5, 1978; emergency amendment at 2 Ill. Reg. 37, p. 4, effective August 30, 1978, for a maximum of 150 days; emergency expired January 28, 1979; peremptory amendment at 2 Ill. Reg. 46, p. 44, effective November 1, 1978; emergency amendment at 3 Ill. Reg. 16, p. 41, effective April 9, 1979, for a maximum of 150 days; emergency amendment at 3 Ill. Reg. 28, p. 182, effective July 1, 1979, for a maximum of 150 days; amended at 3 Ill. Reg. 33, p. 399, effective August 18, 1979; amendment at 3 Ill. Reg. 33, p. 415, effective August 18, 1979; amended at 3 Ill. Reg. 38, p. 243, effective September 21, 1979; peremptory amendment at 3 Ill. Reg. 38, p. 321, effective September 7, 1979; amended at 3 Ill. Reg. 40, p. 140, effective October 6, 1979; amended at 3 Ill. Reg. 46, p. 36, effective November 2, 1979; amended at 3 Ill. Reg. 47, p. 96, effective November 13, 1979; amended at 3 Ill. Reg. 48, p. 1, effective November 15, 1979; peremptory amendment at 4 Ill. Reg. 9, p. 259, effective February 22, 1980; amended at 4 Ill. Reg. 10, p. 258, effective February 25, 1980; at 4 Ill. Reg. 12, p. 551, effective March 10, 1980; amended at 4 Ill. Reg. 27, p. 387, effective June 24, 1980; emergency amendment at 4 Ill. Reg. 29, p. 294, effective July 8, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 37, p. 797, effective September 2, 1980; amended at 4 Ill. Reg. 37, p. 800, effective September 2, 1980; amended at 4 Ill. Reg. 45, p. 134, effective October 27, 1980; amended at 5 Ill. Reg. 766, effective January 2, 1981; amended at 5 Ill. Reg. 1134, effective January 26, 1981; peremptory amendment at 5 Ill. Reg. 5722, effective June 1, 1981; amended at 5 Ill. Reg. 7071, effective June 23, 1981; amended at 5 Ill. Reg. 7104, effective June 23, 1981; amended at 5 Ill. Reg. 8041, effective July 27, 1981; amended at 5 Ill. Reg. 8052, effective July 24, 1981; peremptory amendment at 5 Ill. Reg. 8106, effective August 1, 1981; peremptory amendment at 5 Ill. Reg. 10062, effective

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENT

October 1, 1981; preemptory amendment at 5 Ill. Reg. 10079, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 10095, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 10113, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 10124, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 10131, effective October 1, 1981; amended at 5 Ill. Reg. 10730, effective October 1, 1981; amended at 5 Ill. Reg. 10733, effective October 1, 1981; amended at 5 Ill. Reg. 10760, effective October 1, 1981; amended at 5 Ill. Reg. 10767, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 11647, effective October 16, 1981; preemptory amendment at 6 Ill. Reg. 611, effective January 1, 1982; amended at 6 Ill. Reg. 1216, effective January 14, 1982; emergency amendment at 6 Ill. Reg. 2447, effective March 1, 1982, for a maximum of 150 days; preemptory amendment at 6 Ill. Reg. 2452, effective February 11, 1982; preemptory amendment at 6 Ill. Reg. 6475, effective May 18, 1982; preemptory amendment at 6 Ill. Reg. 6912, effective May 20, 1982; emergency amendment at 6 Ill. Reg. 7299, effective June 2, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 8115, effective July 1, 1982; amended at 6 Ill. Reg. 8142, effective July 1, 1982; amended at 6 Ill. Reg. 8159, effective July 1, 1982; amended at 6 Ill. Reg. 10970, effective August 26, 1982; amended at 6 Ill. Reg. 11921, effective September 21, 1982; amended at 6 Ill. Reg. 12293, effective October 1, 1982; amended at 6 Ill. Reg. 12318, effective October 1, 1982; amended at 6 Ill. Reg. 13754, effective November 1, 1982; rules repealed, new rules adopted and codified at 7 Ill. Reg. 907, effective January 10, 1983; amended (by adding Sections being codified with no substantive change) at 7 Ill. Reg. 5195; amended at 7 Ill. Reg. 9367, effective August 1, 1983; amended at 7 Ill. Reg. 17351, effective December 21, 1983; amended at 8 Ill. Reg. 537, effective December 30, 1983; amended at 8 Ill. Reg. 5225, effective April 9, 1984; amended at 8 Ill. Reg. 6746, effective April 27, 1984; amended at 8 Ill. Reg. 11414, effective June 27, 1984; amended at 8 Ill. Reg. 13273, effective July 16, 1984; amended (by Sections being codified with no substantive change) at 8 Ill. Reg. 17895; amended at 8 Ill. Reg. 18896, effective September 26, 1984; amended at 9 Ill. Reg. 5335, effective April 5, 1985; amended at 9 Ill. Reg. 8166, effective May 17, 1985; amended at 9 Ill. Reg. 8657, effective May 25, 1985; amended at 9 Ill. Reg. 11302, effective July 5, 1985; amended at 9 Ill. Reg. 11636, effective July 8, 1985; amended at 9 Ill. Reg. 11991, effective July 12, 1985; amended at 9 Ill. Reg. 12806, effective August 9, 1985; amended at 9 Ill. Reg. 15896, effective October 4, 1985; amended at 9 Ill. Reg. 16291, effective October 10, 1985; emergency amendment at 10 Ill. Reg. 364, effective January 1, 1986; amended at 10 Ill. Reg. 1183, effective January 10, 1986; amended at 10 Ill. Reg. 6956, effective April 16, 1986; amended at 10 Ill. Reg. 8794, effective May 12, 1986; amended at 10 Ill. Reg. 10628, effective June 3, 1986; amended at 10 Ill. Reg. 11920, effective July 3, 1986; amended at 10 Ill. Reg. 15110, effective September 5, 1986; amended at 10 Ill. Reg. 15631, effective September 19, 1986; amended at 11 Ill. Reg. 3150, effective February 6, 1987; amended at 11 Ill. Reg. 8712, effective April 20, 1987; amended at 11 Ill. Reg. 9919, effective May 15, 1987; emergency amendment at 11 Ill. Reg. 12441, effective July 10, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 20880, effective December 14, 1987; amended at 12 Ill. Reg. 867,

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENT

effective January 1, 1988; amended at 12 Ill. Reg. 2137, effective January 11, 1988; amended at 12 Ill. Reg. 3497, effective January 22, 1988; amended at 12 Ill. Reg. 5642, effective March 15, 1988; amended at 12 Ill. Reg. 6151, effective March 22, 1988; amended at 12 Ill. Reg. 7687, effective April 22, 1988; amended at 12 Ill. Reg. 8662, effective May 13, 1988; amended at 12 Ill. Reg. 9023, effective May 20, 1988; amended at 12 Ill. Reg. 9669, effective May 24, 1988; emergency amendment at 12 Ill. Reg. 11828, effective July 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 14162, effective August 30, 1988; amended at 12 Ill. Reg. 17849, effective October 25, 1988; amended at 13 Ill. Reg. 63, effective January 1, 1989; emergency amendment at 13 Ill. Reg. 3402, effective March 3, 1989, for a maximum of 150 days; amended at 13 Ill. Reg. 6007, effective April 14, 1989; amended at 13 Ill. Reg. 12553, effective July 12, 1989; amended at 13 Ill. Reg. 13609, effective August 11, 1989; emergency amendment at 13 Ill. Reg. 14467, effective September 1, 1989, for a maximum of 150 days; emergency amendment at 13 Ill. Reg. 16154, effective October 2, 1989, for a maximum of 150 days; emergency expired March 1, 1990; amended at 14 Ill. Reg. 720, effective January 1, 1990; amended at 14 Ill. Reg. 6321, effective April 16, 1990; amended at 14 Ill. Reg. 13187, effective August 6, 1990; amended at 14 Ill. Reg. 14806, effective September 3, 1990; amended at 14 Ill. Reg. 16957, effective September 30, 1990; amended at 15 Ill. Reg. 277, effective January 1, 1991; emergency amendment at 15 Ill. Reg. 1111, effective January 10, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 5291, effective April 1, 1991; amended at 15 Ill. Reg. 5698, effective April 10, 1991; amended at 15 Ill. Reg. 7104, effective April 30, 1991; amended at 15 Ill. Reg. 11142, effective July 22, 1991; amended at 15 Ill. Reg. 11948, effective August 12, 1991; amended at 15 Ill. Reg. 14073, effective September 11, 1991; emergency amendment at 15 Ill. Reg. 15119, effective October 7, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 16709, effective November 1, 1991; amended at 16 Ill. Reg. 3468, effective February 20, 1992; amended at 16 Ill. Reg. 9986, effective June 15, 1992; amended at 16 Ill. Reg. 11565, effective July 15, 1992; emergency amendment at 16 Ill. Reg. 13641, effective September 1, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 14722, effective September 15, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 17154, effective November 1, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 17764, effective November 13, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 827, effective January 15, 1993; amended at 17 Ill. Reg. 2263, effective February 15, 1993; amended at 17 Ill. Reg. 3202, effective February 26, 1993; amended at 17 Ill. Reg. 4322, effective March 22, 1993; amended at 17 Ill. Reg. 6804, effective April 21, 1993; amended at 17 Ill. Reg. 14612, effective August 26, 1993; amended at 18 Ill. Reg. 2018, effective January 21, 1994; amended at 18 Ill. Reg. 7759, effective May 5, 1994; amended at 18 Ill. Reg. 12818, effective August 5, 1994; amended at 19 Ill. Reg. 1052, effective January 26, 1995; amended at 19 Ill. Reg. 2875, effective February 24, 1995; amended at 19 Ill. Reg. 6639, effective May 5, 1995; emergency amendment at 19 Ill. Reg. 8409, effective June 9, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 15034, effective October 17, 1995; amended at 20 Ill. Reg. 858, effective December 29, 1995;

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENT

emergency amendment at 21 Ill. Reg. 673, effective January 1, 1997, for a maximum of a 150 days; amended at 21 Ill. Reg. 7404, effective May 31, 1997; recodified from the Department of Public Aid to the Department of Human Services at 21 Ill. Reg. 9322; amended at 22 Ill. Reg. 13642, effective July 15, 1998; emergency amendment at 22 Ill. Reg. 16348, effective September 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 18931, effective October 1, 1998; emergency amendment at 22 Ill. Reg. 21750, effective November 24, 1998, for a maximum of 150 days; emergency amendment at 23 Ill. Reg. 579, effective January 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 1607, effective January 20, 1999; amended at 23 Ill. Reg. 5548, effective April 23, 1999; amended at 23 Ill. Reg. 6052, effective May 4, 1999; amended at 23 Ill. Reg. 6425, effective May 15, 1999; amended at 23 Ill. Reg. 6935, effective May 30, 1999; amended at 23 Ill. Reg. 7887, effective June 30, 1999; emergency amendment at 23 Ill. Reg. 8650, effective July 13, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 10161, effective August 3, 1999; amended at 23 Ill. Reg. 13852, effective November 19, 1999; amended at 24 Ill. Reg. 2328, effective February 1, 2000; amended at 24 Ill. Reg. 11622, effective July 18, 2000; amended at 24 Ill. Reg. 13394, effective August 18, 2000; amended at 25 Ill. Reg. 5326, effective March 30, 2001; amended at 26 Ill. Reg. 179, effective January 1, 2002; amended at 26 Ill. Reg. 8532, effective May 31, 2002; amended at 26 Ill. Reg. 13521, effective September 3, 2002; amended at 27 Ill. Reg. 7252, effective April 7, 2003; amended at 28 Ill. Reg. 11139, effective July 21, 2004; emergency amendment at 28 Ill. Reg. 11366, effective July 21, 2004, for a maximum of 150 days; emergency amendment at 28 Ill. Reg. 12469, effective August 20, 2004, for a maximum of 150 days; emergency expired January 16, 2005; amended at 29 Ill. Reg. 648, effective December 16, 2004; amended at 29 Ill. Reg. 5703, effective April 11, 2005; amended at 29 Ill. Reg. 10176, effective July 5, 2005; amended at 30 Ill. Reg. 16065, effective September 21, 2006; amended at 31 Ill. Reg. 6981, effective April 30, 2007; amended at 31 Ill. Reg. 11306, effective July 19, 2007; amended at 32 Ill. Reg. 17187, effective October 16, 2008; peremptory amendment at 32 Ill. Reg. 18065, effective November 15, 2008; emergency amendment at 33 Ill. Reg. 4993, effective March 19, 2009, for a maximum of 150 days; emergency expired August 15, 2009; emergency amendment at 33 Ill. Reg. 7337, effective May 21, 2009, for a maximum of 150 days; emergency expired October 17, 2009; amended at 33 Ill. Reg. 12775, effective September 8, 2009; emergency amendment at 33 Ill. Reg. 12850, effective September 4, 2009, for a maximum of 150 days; emergency expired January 31, 2010; amended at 33 Ill. Reg. 13846, effective September 17, 2009; amended at 33 Ill. Reg. 15033, effective October 22, 2009; amended at 33 Ill. Reg. 16845, effective November 30, 2009; emergency amendment at 34 Ill. Reg. 6944, effective May 1, 2010, for a maximum of 150 days; emergency expired September 27, 2010; amended at 34 Ill. Reg. 7255, effective May 10, 2010; amended at 35 Ill. Reg. 1012, effective December 28, 2010; emergency amendment at 35 Ill. Reg. 6951, effective April 6, 2011, for a maximum of 150 days; emergency expired September 2, 2011; amended at 35 Ill. Reg. 17096, effective October 5, 2011; amended at 35 Ill. Reg. 18756, effective October 28, 2011; amended at 36 Ill. Reg. 15195, effective October 5, 2012; emergency

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENT

amendment at 36 Ill. Reg. 17567, effective December 1, 2012 through June 30, 2013; amended at 37 Ill. Reg. 8728, effective June 11, 2013; amended at 37 Ill. Reg. 14876, effective August 27, 2013; amended at 38 Ill. Reg. 16229, effective July 18, 2014; emergency amendment at 38 Ill. Reg. 17470, effective July 30, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. 22654, effective November 20, 2014; amended at 39 Ill. Reg. 13260, effective September 21, 2015; amended at 41 Ill. Reg. 10331, effective July 21, 2017; amended at 42 Ill. Reg. 16195, effective August 7, 2018; amended at 43 Ill. Reg. 343, effective December 20, 2018; emergency amendment at 43 Ill. Reg. 4346, effective March 20, 2019, for a maximum of 150 days; amended at 43 Ill. Reg. 6992, effective May 31, 2019; amended at 43 Ill. Reg. 9122, effective August 9, 2019.

SUBPART B: NON-FINANCIAL FACTORS OF ELIGIBILITY

Section 113.10 Citizenship

To be eligible for assistance, an individual shall be either a U.S. citizen or a non-citizen within specific categories and subject to specific restrictions as set forth in this Section.:

- a) Citizenship status – Persons born in the U.S., or in its possessions, are U.S. citizens. Citizenship can also be acquired by naturalization through court proceedings, or by certain persons born in a foreign country of U.S. citizen parents.
- b) Non-citizens
 - 1) The following categories of non-citizens may receive assistance, if otherwise eligible:
 - A) A United States veteran honorably discharged and a person on active military duty, and the spouse and unmarried dependent children of such a person;
 - B) Refugees under section 207 of the Immigration and Nationality Act (INA) ([8 USC 1157](#));
 - C) Asylees under section 208 ([8 USC 1158](#)) of ~~the~~ INA;
 - D) Persons for whom deportation has been withheld under section 243(h) [of INA \(8 USC 1253\(h\)\)](#) prior to [September 30, 1996, or](#)

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENT

section 241(b)(3) of INA (8 USC 1231(b)(3)) of the INA on or after September 30, 1996;

- E) Persons granted conditional entry under section 203(a)(7) of ~~the~~ INA (8 USC 1153), as in effect prior to April 1, 1980;
 - F) Persons lawfully admitted for permanent residence under the INA including:
 - i) Afghani immigrants with special immigrant status under section 101(a)(27) of ~~the~~ INA (8 USC 1101). The five-year residency requirement set forth in subsection (b)(2) of this Section does not apply to this sub-group.
 - ii) Iraqi immigrants with special immigrant status under section 101(a)(27) of ~~the~~ INA. The five-year residency requirement set forth in subsection (b)(2) of this Section does not apply to this sub-group;
 - G) Parolees, for at least one year, under section 212(d)(5) of ~~the~~ INA (8 USC 1182);
 - H) Persons who are a spouse, widow or child of a U.S. citizen or a spouse or child of a legal permanent resident (LPR) who have been battered or subjected to extreme cruelty by the U.S. citizen or LPR or a member of that relative's family who lived with them, who no longer live with the abuser or plans to live separately within one month after receipt of assistance and whose need for assistance is due, at least in part, to the abuse; and
 - I) Victims of trafficking, or the minor child, spouse, parent or sibling of the trafficking victim, who have been certified by or whose status has been verified by the federal Office of Refugee Resettlement (ORR).
- 2) Those persons who are in the categories set forth in subsections (b)(1)(F) and (b)(1)(G) ~~and of this Section~~, who enter the United States on or after August 22, 1996, shall not be eligible for five years beginning on the date the person entered the United States.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENT

(Source: Amended at 43 Ill. Reg. 9122, effective August 9, 2019)

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Home Health, Home Services, and Home Nursing Agency Code
- 2) Code Citation: 77 Ill. Adm. Code 245
- 3)

<u>Section Numbers</u> :	<u>Adopted Actions</u> :
245.20	Amendment
245.25	Amendment
245.30	Amendment
245.40	Amendment
245.70	Amendment
245.71	Amendment
245.75	Amendment
245.90	Amendment
245.130	Amendment
245.200	Amendment
245.211	New Section
245.240	Amendment
- 4) Statutory Authority: Home Health, Home Services, and Home Nursing Agency Licensing Act [210 ILCS 55]
- 5) Effective Date of Rules: August 12, 2019
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? Yes
- 8) A copy of the adopted rules, including any material incorporated 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*: 43 Ill. Reg. 3321; March 15, 2019
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: In response to comments submitted during Second Notice, the Department struck 245.200(h)(1)(K), which required written summary reports to be submitted to a patient's physician or podiatrist every 60 days. Striking this subsection aligns the rulemaking with current federal Conditions of Participation and current clinical operations.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

In addition, various typographical, grammatical, and format changes were made in response to the comments from JCAR.

- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this 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 rulemaking implements federal regulations for home health, home services, and home nursing agencies and makes language consistent with the statutory language of the Alzheimer's Disease and Related Dementias Act; and implements PA 100-536 language of a final determination including exhaustion of available appeal and administrative review rights for the Department to consider for adverse licensure actions. This rulemaking also adds a new Section, removes redundant and obsolete requirements, adds relevant Acts to the list of referenced State statutes, and cleans up some of the language throughout the current rules.
- 16) Information and questions regarding these adopted rules shall be directed to:

Erin Conley
Rules Coordinator
Illinois Department of Public Health
Division of Legal Services
535 W. Jefferson St., 5th Floor
Springfield IL 62761

217/782-2043
e-mail: dph.rules@illinois.gov

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

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER b: HOSPITALS AND AMBULATORY CARE FACILITIESPART 245
HOME HEALTH, HOME SERVICES,
AND HOME NURSING AGENCY CODE

SUBPART A: GENERAL PROVISIONS

Section	Purpose
245.10	Purpose
245.20	Definitions
245.25	Incorporated and Referenced Materials

SUBPART B: OPERATIONAL REQUIREMENTS

Section	Purpose
245.30	Organization and Administration
245.40	Staffing and Staff Responsibilities
245.50	Services (Repealed)
245.55	Vaccinations
245.60	Annual Financial Statement
245.70	Home Health Aide Training
245.71	Qualifications and Requirements for Home Services Workers
245.72	Health Care Worker Background Check
245.75	Infection Control

SUBPART C: LICENSURE PROCEDURES

Section	Purpose
245.80	Licensure Required
245.90	License Application
245.95	License Application Fee, Single or Multiple Licenses
245.100	Provisional License
245.110	Inspections and Investigations
245.115	Complaints
245.120	Violations
245.130	Adverse Licensure Actions

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- 245.140 Penalties and Fines
245.150 Hearings

SUBPART D: CLIENT/PATIENT SERVICES

- Section
245.200 Services – Home Health
245.205 Services – Home Nursing Agencies
245.210 Services – Home Services Agencies
[245.211 Services – Alzheimer's Disease and Related Dementias](#)
245.212 Services – Home Nursing Placement Agency
245.214 Services – Home Services Placement Agency
245.220 Client Service Contracts – Home Nursing and Home Services Agencies
245.225 Client Service Contracts – Home Nursing Placement Agency and Home Services Placement Agency
245.240 Quality Improvement Program
245.250 Abuse, Neglect, and Financial Exploitation Prevention and Reporting

AUTHORITY: Implementing and authorized by the Home Health, Home Services, and Home Nursing Agency Licensing Act [210 ILCS 55].

SOURCE: Adopted at 2 Ill. Reg. 31, p. 77, effective August 2, 1978; emergency amendment at 3 Ill. Reg. 38, p. 314, effective September 7, 1979, for a maximum of 150 days; amended at 3 Ill. Reg. 40, p. 153, effective October 6, 1979; emergency amendment at 4 Ill. Reg. 18, p. 129, effective April 21, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 40, p. 56, effective September 23, 1980; emergency amendment at 6 Ill. Reg. 5855, effective April 28, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 11006, effective August 30, 1982; amended at 7 Ill. Reg. 13665, effective October 4, 1983; codified at 8 Ill. Reg. 16829; amended at 9 Ill. Reg. 4836, effective April 1, 1985; amended at 14 Ill. Reg. 2382, effective February 15, 1990; amended at 15 Ill. Reg. 5376, effective May 1, 1991; amended at 18 Ill. Reg. 2414, effective January 22, 1994; emergency amendments at 20 Ill. Reg. 488, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 3273, effective February 15, 1996; amended at 20 Ill. Reg. 10033, effective July 15, 1996; amended at 22 Ill. Reg. 3948, effective February 13, 1998; amended at 22 Ill. Reg. 22050, effective December 10, 1998; amended at 23 Ill. Reg. 1028, effective January 15, 1999; amended at 24 Ill. Reg. 17213, effective November 1, 2000; amended at 25 Ill. Reg. 6379, effective May 1, 2001; amended at 26 Ill. Reg. 11241, effective July 15, 2002; amended at 28 Ill. Reg. 3487, effective February 9, 2004; amended at 28 Ill. Reg. 8094, effective May 26, 2004; amended at 29 Ill. Reg. 20003, effective November 28, 2005; amended at 31 Ill. Reg. 9453, effective June 25, 2007;

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

amended at 32 Ill. Reg. 8949, effective June 5, 2008; amended at 34 Ill. Reg. 5711, effective April 5, 2010; amended at 39 Ill. Reg. 16406, effective December 10, 2015; amended at 43 Ill. Reg. 9134, effective August 12, 2019.

SUBPART A: GENERAL PROVISIONS

Section 245.20 Definitions

Act – the Home Health, Home Services and Home Nursing Agency Licensing Act.

Activities of Daily Living – include, but are not limited to, eating, dressing, bathing, toileting, transferring, or personal hygiene.

Advocate – a person who represents the rights and interests of an individual as though they were the person's own, to realize the rights to which the individual is entitled, obtain needed services, and remove barriers to meeting the individual's needs.

Agency – a home health agency, home nursing agency, or home services agency, unless specifically stated otherwise. (Section 2.03a of the Act)

Agency Manager – the individual designated by the governing body or the entity legally responsible for the agency, who has overall responsibility for the organization and day-to-day operation of the home services or home nursing agency.

Applicant – a firm, partnership, or association, or any of their members, or, if the applicant is a corporation, any of its officers or directors, or the person designated to manage or supervise the agency.

Audiologist – a person who has received a license to practice audiology pursuant to the Illinois Speech-Language Pathology and Audiology Practice Act.

Branch Office – a location or site from which an agency provides services within a portion of the total geographic area served by the parent agency. The branch office is part of the agency and is located sufficiently close to share administration, supervision and services in a manner that renders it unnecessary for the branch to be independently licensed.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

Bylaws or Equivalent – a set of rules adopted by an agency for governing the agency's operation.

Client – an individual receiving services from a home nursing agency, a home services agency or a placement agency. This term includes the service recipient's advocate or designee.

Client Record – a written or electronic record that includes, but is not limited to, personal information, emergency notification information, plans of service agreed to between the client and the home services agency, a copy of the home services contract or agreement, and documentation of the services provided at each visit.

Clinical Note – a dated, written notation or electronic entry by a member of the health team of a contact with a patient, containing a description of signs and symptoms, treatment and ~~any/or~~ drug given, the patient's reaction, and any changes in physical or emotional condition.

Clinical Record – an accurate account of services and care provided for each patient ~~that is and~~ maintained by a home health or home nursing agency in accordance with accepted professional standards.

Companionship – services that provide fellowship, care and protection for a client who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs. Services requested may include, but are not limited to: household work related to the care of the client, such as meal preparation, bed making, or laundry; shopping or errands; or other similar services.

"Data Driven" – an agency uses quality indicator data, including patient care, and other relevant data, in the design of its program. The data collected is used to monitor the effectiveness and safety of services and quality of care and to identify opportunities and priorities for improvement. The frequency and detail of the data collection is approved by the governing body of the agency.

Department or IDPH – the Department of Public Health of the State of Illinois.
(Section 2.01 of the Act)

Director – the Director of Public Health of the State of Illinois, or his or her designee. (Section 2.02 of the Act)

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

Discharge Summary – the written report of services rendered, goals achieved, and final disposition at the time of discharge from service of a home health or home nursing agency.

Documentary Evidence – evidence that an agency covered under this Part maintains as documentation of its quality assessment and performance improvement program. Documentary evidence used to demonstrate the agency's operation to Centers for Medicare and Medicaid Services includes program scope, program data, program activities, performance improvement projects, and executive responsibilities.

Employee – a person who works in the service of another person, or company, under an express or implied contract for hire, under which the employer has the right to control the details of work performance for wages, salary, fee or payment.

Employee Prospect – a person or persons to whom an agency expects to extend an offer of employment.

Geographic Service Area – the area from which home health agency patients are drawn. This area is to be clearly defined by readily recognizable boundaries.

Health Care Professional – a physician licensed to practice medicine in all of its branches, a podiatrist, an advanced practice registered nurse (APRN) who has a written collaborative agreement with a collaborating physician that authorizes services under the Act, or a physician assistant who has been delegated the authority to perform services under the Act by his or her supervising physician.

Home Health Agency – a public agency or private organization that provides skilled nursing services and at least one other home health service as defined in this Part. (Section 2.04 of the Act)

Home Health Agency Administrator – an employee of the home health agency who is any one of the following:

Aa physician who has experience in health service administration, with at least one year of supervisory or administrative experience in home health care or in related health provider programs;

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

~~An~~ registered professional nurse (RN) who has experience in health service administration, with at least one year of supervisory or administrative experience in home health care or in related health provider programs;

~~An~~ individual with an undergraduate degree with experience in health service administration, with at least one year of supervisory or administrative experience in home health care or in related health provider programs; or

~~An~~ individual who meets the requirements for Public Health Administrator as contained in Section 600.300 of the Certified Local Health Department Code who has experience in health service administration, with at least one year of supervisory or administrative experience in home health care or in related health provider programs.

Home Health Aide – a person who provides nursing, medical, or personal care and emotional comfort to assist the patient toward independent living in a safe environment. A person may not be employed as a home health aide unless he/she meets the requirements of Section 245.70.

Home Health Services – services provided to a person at his or her residence according to a plan of treatment for illness or infirmity prescribed by a physician or podiatrist. Such services include part-time and intermittent nursing services and other therapeutic services such as physical therapy, occupational therapy, speech therapy, medical social services or services provided by a home health aide. (Section 2.05 of the Act)

Home Nursing Agency – an agency that provides services directly, or acts as a placement agency, in order to deliver skilled nursing and home health aide services to persons in their personal residences. A home nursing agency provides services that would be required to be performed by an individual licensed under the Nurse Practice Act. Home health aide services are provided under the direction of a registered professional nurse or advanced practice registered nurse. A home nursing agency does not require licensure as a home health agency under the Act. "Home nursing agency" does not include an individually licensed nurse acting as a private contractor or a person that provides or procures temporary employment in health care facilities, as defined in the Nurse Agency Licensing Act. (Section 2.11 of the Act)

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

Home Nursing Services – services that would be required to be performed by an individual licensed under the Nurse Practice Act on a shift schedule, one-time, full-time or part-time, and/or intermittent basis.

Home Services Agency – an agency that provides services directly, or acts as a placement agency, for the purpose of placing individuals as workers providing home services for consumers primarily in their personal residences. Home services agency does not include agencies licensed under the Nurse Agency Licensing Act, the Hospital Licensing Act, the Nursing Home Care Act, [the ID/DD Community Care Act](#), [the MC/DD Act](#), [the Specialized Mental Health Rehabilitation Act of 2013](#), or the Assisted Living and Shared Housing Act and does not include an agency that limits its business exclusively to providing housecleaning services. Programs providing services exclusively through the Community Care Program of the Illinois Department on Aging, ~~or the~~ Department of Human Services Office of Rehabilitation Services, or the United States Department of Veterans Affairs are not considered to be a home services agency under the Act. (Section 2.08 of the Act)

Home Services or In-Home Services or In-Home Support Services – assistance with activities of daily living, housekeeping, personal laundry, and companionship provided to an individual in his or her personal residence, which are intended to enable that individual to remain safely and comfortably in his or her own personal residence. "Home services" or "in-home services" does not include services that would be required to be performed by an individual licensed under the Nurse Practice Act. (Section 2.09 of the Act) Home care services are focused on providing assistance that is not medical in nature, but is based upon assisting the client in meeting the demands of living independently and maintaining a personal residence, such as companionship, cleaning, laundry, shopping, meal preparation, dressing, and bathing.

Home Services Worker or In-Home Services Worker – an individual who provides home care services to a consumer in the consumer's personal residence. (Section 2.10 of the Act) The terms homemaker and companion are commonly used to refer to this type of worker.

Licensed Practical Nurse – a person [who is currently](#) licensed as a licensed practical nurse under the Nurse Practice Act.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

Medical Social Worker – a person who is a licensed social worker or a licensed clinical social worker under the Clinical Social Work and Social Work Practice Act.

Occupational Therapist – a person who is licensed as an occupational therapist under the Illinois Occupational Therapy Practice Act and meets either or both of the following requirements:

Is a graduate of an occupational therapy curriculum accredited jointly by the Council on Medical Education of the American Medical Association and the American Occupational Therapy Association; or

Is eligible for the National Registration Examination of the American Occupational Therapy Association.

Occupational Therapy Assistant – a person who is licensed as an occupational therapy assistant under the Illinois Occupational Therapy Practice Act and meets the requirements for certification as an occupational therapy assistant established by the American Occupational Therapy Association.

Part Time or Intermittent Care – home health services given to a patient at least once every 60 days or as frequently as a few hours a day, several times per week.

Patient – a person who is under treatment or care for illness, disease, injury or conditions appropriately responsive to home health or home nursing services to maintain health or prevent illness.

Patient Care Plan – a coordinated and combined care plan prepared by and in collaboration with each discipline providing service to the patient, to the patient's family, or, for home health agencies, to both.

Person – any individual, firm, partnership, corporation, company, association or any other legal entity. (Section 2.03 of the Act)

Personal Care Services – services that are furnished to a client in the client's personal residence to meet the client's physical, maintenance, and supportive needs, when those services are not considered skilled personal care, as described in this Section and Part, and do not require a physician's orders or the supervision of a nurse.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

Physical Therapist – a person who is licensed as a physical therapist under the Illinois Physical Therapy Act and who meets the qualifications for a physical therapist under the Federal Conditions of Participation for Home Health Agencies established by the Centers for Medicare and Medicaid Services (42 CFR 484.1 through 484.40).

Physical Therapist Assistant – a person who is licensed as a physical therapist assistant under the Illinois Physical Therapy Act and who meets the qualifications for a physical therapist assistant under the Federal Conditions of Participation for Home Health Agencies established by the Centers for Medicare and Medicaid Services (42 CFR 484.1 through 484.40).

Physician – Any person licensed to practice medicine in all of its branches under the Medical Practice Act of 1987. For a patient who has received medical care in another state, or has moved from another state, and who has not secured the services of a physician licensed in Illinois, an individual who holds an active license to practice medicine in another state will be considered the physician for the patient during this emergency (as determined by the physician) as provided in Section 3 of the Medical Practice Act of 1987. An emergency may not extend more than six months in any case.

Placement Agency – any person engaged for gain or profit, regardless of the agency tax status, in the business of securing or attempting to secure work for hire for persons seeking work or workers for employers. The term includes a private employment agency and any other entity that places a worker for private hire by a consumer in that consumer's residence for purposes of providing home services. The term does not include a person that provides or procures temporary employment in health care facilities, as defined in the Nurse Agency Licensing Act. (Section 2.12 of the Act) For the purposes of this Part, there are two types of placement agencies: Home Nursing Placement Agencies (see Section 245.212) and Home Services Placement Agencies (see Section 245.214). A placement agency does not provide ongoing, continuous client support and management of services.

Plan of Treatment – a plan based on the patient's diagnosis and the assessment of the patient's immediate and long-range needs and resources. The plan of treatment is established in consultation with, in the case of a home health agency, the home health services team, which includes the attending physician or

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

podiatrist, pertinent members of the agency staff, the patient, and members of the family.

Podiatrist – a person who is licensed to practice under the Podiatric Medical Practice Act of 1987.

~~Professional Advisory Group—a group composed of at least one practicing physician, one registered nurse (preferably a public health nurse), and with appropriate representation from other professional disciplines that are participating in the provision of home health services. It is highly recommended that a consumer be a member of the group. At least one member of the group is neither an owner nor an employee of the home health agency.~~

Progress Notes – a dated, written notation by a member of the health team, summarizing facts about care and the patient's response during a given period of time.

Purchase of ~~Services or Contractual~~ Services/Contractual – the provision of services through a written agreement with other providers of services.

Quality Assessment and Performance Improvement or QAPI – the coordinated application of two mutually-reinforcing aspects of a quality management system. QAPI takes a systematic, comprehensive, and data-driven approach to maintaining and improving safety and quality in home health agencies while involving all home health caregivers in practical and creative problem solving. Quality assessment is the specification of standards for quality of service and outcomes, and is a process used throughout the organization to ensure care is maintained at acceptable levels in relation to those standards. Performance improvement is the continuous study and improvement of processes with the intent to better services or outcomes, and to decrease the likelihood of problems, by identifying areas of opportunity.

Registered Professional Nurse or RN – a person who is ~~currently~~ licensed as a registered professional nurse under the Nurse Practice Act.

Skilled Nursing Services – those services that, due to their nature and scope, would require the performing individual to be licensed under the Nurse Practice Act. These services are acts requiring the basic nursing knowledge, judgment and skills acquired by means of completion of an approved nursing education program

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

and include, but are not limited to: assessment of healthcare needs; nursing diagnosis; planning, implementation and nursing evaluation; counseling; patient education; health education; the administration of medications and treatments; and the coordination ~~and~~/or management of a nursing or medical plan of care.

Skilled Personal Care – personal care that may be provided only by a home health aide, as defined in this Section, or an individual who is a certified or licensed health care professional under the laws of the State of Illinois.

Social Work Assistant – a person who has a baccalaureate degree in social work, psychology, sociology, or other field related to social work and has ~~had~~ at least one year of social work experience in a health care setting.

Speech-Language Pathologist – a person who is licensed as a speech-language pathologist under the Illinois Speech-Language Pathology and Audiology Practice Act.

Student – an individual who is enrolled in an educational institution and who is receiving training in a health-related profession.

Subdivision – a component of a multi-function health agency, such as the home care department of a hospital or the nursing division of a health department, which independently meets the federal conditions of participation for home health agencies. A subdivision that has branches is regarded as a parent agency.

Substantial Compliance or Substantially Meets – meeting requirements except for variance from the strict and literal performance, which results in unimportant omissions or defects given the particular circumstances involved.

~~Subunit – a semi-autonomous organization that serves patients in a geographic area different from that of the parent agency. Because of the distance between the subunit and the agency, the subunit is considered to be incapable of sharing administration, supervision and services.~~

Summary Report – a compilation of ~~the~~ pertinent factors from the clinical ~~notes~~ and progress notes regarding a patient ~~that is, which~~ submitted to the patient's physician or podiatrist.

Supervision – authoritative procedural guidance by a qualified person of the

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

appropriate discipline.

(Source: Amended at 43 Ill. Reg. 9134, effective August 12, 2019)

Section 245.25 Incorporated and Referenced Materials

a) The following federal statutes are referenced in this Part:

Civil Rights Act of 1964 (42 USC 1981 et seq.)

ba) The following federal regulations are incorporated by reference in this Part and apply only to Medicare certified agencies:

Department of Health and Human Services, Centers for Medicare and Medicaid Services, Home Health Services Medicare Program Conditions of Participation for Home Health Agencies (42 CFR 484, October 1, 2018~~October 1, 2006~~).

cb) The following guidelines of a federal agency are incorporated by reference in this Part:

Department of Health and Human Services, Centers for Disease Control and Prevention, 1600 Clifton Road, Atlanta, Georgia 30333:

- 1) General Recommendations on Immunization, Morbidity and Mortality Weekly Report (MMWR) (February 8, 2002)
- 2) Guidelines for Hand Hygiene in Health-Care Settings (October 2002)~~Hand Hygiene in Healthcare Settings (2002)~~
- 3) Guidelines for Infection Control in Health Care Personnel (June 1998)~~Infection Control in Healthcare Personnel (1998)~~

de) All incorporations by reference of federal regulations and guidelines in this Part refer to the regulations and guidelines on the date specified and do not include any amendments or editions subsequent to the date specified.

ed) The following State statutes are referenced in this Part:

- 1) Administrative Review Law [735 ILCS 5/Art. III]

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- 2) Business Corporation Act of 1983 [805 ILCS 5]
- 3) Illinois Administrative Procedure Act [5 ILCS 100]
- 4) Nurse Practice Act [225 ILCS 65]
- 5) Illinois Occupational Therapy Practice Act [225 ILCS 75]
- 6) Illinois Physical Therapy Act [225 ILCS 90]
- 7) Illinois Speech-Language Pathology and Audiology Practice Act [225 ILCS 110]
- 8) Local Records Act [50 ILCS 205]
- 9) Medical Practice Act of 1987 [225 ILCS 60]
- 10) Health Care Worker Background Check Act [225 ILCS 46]
- 11) Nurse Agency Licensing Act [225 ILCS 510]
- 12) Clinical Social Worker and Social Work Practice Act [225 ILCS 20]
- 13) Podiatric Medical Practice Act of 1987 [225 ILCS 100]
- 14) Assisted Living and Shared Housing Act [210 ILCS 9]
- 15) Code of Civil Procedure, Article VIII, Part 21 (Medical Studies) [735 ILCS 5/Art. VIII, Part 21]
- 16) Private Employment Agency Act [225 ILCS 515]
- 17) [Unemployment Insurance Act \[820 ILCS 405\]](#)
- 18) [Workers' Compensation Act \[820 ILCS 305\]](#)
- 19) [Hospital Licensing Act \[210 ILCS 85\]](#)

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- 20) [Nursing Home Care Act \[210 ILCS 45\]](#)
- 21) [Alzheimer's Disease and Related Dementias Services Act \[410 ILCS 406\]](#)
- 22) [ID/DD Community Care Act \[210 ILCS 47\]](#)
- 23) [MC/DD Act \[210 ILCS 46\]](#)
- 24) [Specialized Mental Health Rehabilitation Act of 2013 \[210 ILCS 49\]](#)

f) The following State rules are referenced in this Part:

- 1) Department of Public Health, Certified Local Health Department Code (77 Ill. Adm. Code 600)
- 2) Department of Public Health, ~~Rules of~~ Practice and Procedure in Administrative Hearings (77 Ill. Adm. Code 100)
- 3) Department of Public Health, Long-Term Care Assistants and Aides Training Programs Code (77 Ill. Adm. Code 395).
- 4) Department of Public Health, Health Care Worker Background Check Code (77 Ill. Adm. Code 955)
- 5) Department of Public Health, Central Complaint Registry (77 Ill. Adm. Code 400)

(Source: Amended at 43 Ill. Reg. 9134, effective August 12, 2019)

SUBPART B: OPERATIONAL REQUIREMENTS

Section 245.30 Organization and Administration

- a) Governing Body – All Agencies
The agency shall have a governing body or a clearly defined body ~~with having~~ legal authority and responsibility for the conduct of the agency. ~~When~~Where the governing body of a large organization is functionally remote from the operation of the agency, the Department may approve the designation of an intermediate level "governing body". For the purposes of this Section, the governing body

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

shall:

- 1) Have bylaws or the equivalent, which shall be reviewed annually and be revised as needed. They shall be made available to all members of the governing body ~~and, for home health agencies, to the professional advisory group~~. The bylaws or the equivalent shall specify the objectives of the agency;
 - 2) Employ a qualified administrator for home health agencies;
 - 3) Adopt and revise, as needed, policies and procedures for the operation and administration of the agency;
 - 4) Meet to review the operation of the agency;
 - 5) Keep minutes of all meetings; and
 - 6) Provide and maintain an office facility adequately equipped for efficient work, and confidentiality of patient ~~and/or~~ client records, and that provides a safe working environment in compliance with local ordinances and fire regulations.
- b) Administration – All Agencies
- 1) The agency shall have written administrative policies and procedures to ensure that the patient or client is provided safe and adequate care.
 - 2) The agency shall show evidence of liability insurance in accordance with Section 245.90(a).
 - 3) The agency shall develop and implement written policies for complaint resolution between the agency and its patients or clients and patient or client~~patients/clients and/or patient/client~~ advocates in regard to services being provided to the patient or client~~patient/client~~.
- c) Personnel Policies – All Agencies (Placement agencies shall meet the requirements of subsections (c)(1)(B), (2), (3) and (4).)
- 1) Personnel policies applicable and available to all full- and part-time

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

employees shall include, but not be limited to, the following:

- A) Wage scales, benefits, hours of work and leave time;
 - B) Requirements for an initial health evaluation of each new employee or the placed home services ~~worker or placed worker/placed~~ nurse who has contact with ~~clients or patients~~~~clients/patients~~, as specified by the governing body;
 - C) Orientation to the agency and appropriate continuing education;
 - D) Job descriptions for all positions used by the agency;
 - E) Annual performance evaluation for all employees;
 - F) Compliance with all applicable requirements of the Civil Rights Act of 1964;
 - G) Confidentiality of personnel records;
 - H) Employee health policies that require employees to report health symptoms and exposure to any communicable or infectious disease, and that specify conditions under which employees are to be removed from patient or client contact and conditions under which employees may resume ~~patient or client~~~~patient/client~~ contact; and
 - I) Agency procedures for identifying potential dangers to the health and safety of agency personnel providing services in the home and procedures for protecting agency personnel from identified dangers.
- 2) Prior to employing or placing any individual in a position that requires a State professional license, the agency shall contact the Illinois Department of Financial and Professional Regulation to verify that the individual's license is active. A copy of the verification of the individual's license shall be placed in the individual's personnel file.
- 3) ~~The agency shall, prior to hiring, check the status of employee or~~

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

~~placement prospects who have direct patient/client care responsibilities with the Department's Health Care Worker Registry concerning findings of abuse, neglect or misappropriation of property.~~

- 34) Personnel records for all employees or placement agency registry files for placement workers shall include the name and address of the employee or placement worker, Social Security number, date of birth, name and address of next of kin, evidence of qualifications (including any current licensure, registration, or certification that is required by State or federal law for the functions performed), and dates of employment or placement and separation from the agency and the reason for separation.
- 45) Home health agencies that provide other home health services under arrangement through a contractual purchase of services shall ensure that these services are provided by qualified personnel, who hold any current licensure, registration, or certification that is required by State or federal law for the functions performed, under the supervision of the agency.
- 56) Home services and home nursing agencies that use some contractual services shall ensure that these services are provided by qualified personnel who hold any current licensure, registration or certification that is required by State or federal law for the functions performed under the supervision of the agency.
- d) ~~Professional Advisory Group—Home Health Agencies~~
- 1) ~~The professional advisory group shall be appointed by the governing body and shall assist in developing and recommending policies and procedures for administration and home health services provided by the agency. Policies and procedures shall be in accordance with the scope of services offered by the agency and based on the home health needs of the patient and the area being served. Policies and procedures shall be reviewed annually or more frequently as needed to determine their adequacy and suitability. Recommendations for any improvements are made to the governing body. Policies and procedures shall include, but are not limited to:~~
- A) ~~Administration and supervision of the home health agency and the home health services it provides;~~

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- ~~B) Criteria for the acceptance, non-acceptance, and discharge of patients;~~
- ~~C) Home health services;~~
- ~~D) Medical supervision and plans of treatment;~~
- ~~E) Patient care plans;~~
- ~~F) Clinical records;~~
- ~~G) Personnel data;~~
- ~~H) Evaluation; and~~
- ~~I) Coordination of services.~~

- ~~2) The group shall keep minutes of its meetings and meet as often as necessary to carry out its purposes.~~

de) Agency Supervision – Home Health Agencies

- 1) The governing body shall appoint a home health administrator~~Home Health Administrator~~ with the duties prescribed in Section 245.40.
- 2) The home health agency shall designate an agency supervisor with one of the following sets of qualifications to supervise the provision of home health services:
 - A) An RN~~A registered nurse~~ who:
 - i) Has completed a baccalaureate degree program approved by the National League for Nursing; and
 - ii) Has at least one year of nursing experience;

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- B) ~~An RN~~ ~~A registered nurse~~ who does not have a baccalaureate degree, but who has at least three years of nursing experience that meets the following requirements:
- i) At least two years of the nursing experience ~~shall~~~~must~~ have been in: a home health agency; a community health program that included care of the sick; or a generalized family-centered nursing program in a community health agency.
 - ii) At least two years of the three years of nursing experience ~~shall~~~~must~~ have been obtained within five years prior to current employment with the home health agency.
- 3) The agency supervisor shall be a full-time ~~RN~~ ~~registered nurse~~ who is available at all times during operating hours of the agency and who participates in all activities related to providing home health services. The agency supervisor shall designate a qualified staff member to act in his or her absence.
- 4) Any person employed as an agency supervisor prior to July 1, 1983, who does not meet the qualifications for agency supervisor that were in effect prior to October 1, 1983, may continue to serve in that capacity only at that agency.
- 5) No one person may hold the positions of both home health agency administrator and agency supervisor.
- 6) If the licensed home health agency ~~is also~~~~is~~ licensed as a home nursing agency, the agency supervisor may supervise the provision of skilled nursing services in the home nursing agency only if there are equally qualified individuals available in each licensed component of the organization to act in his or her absence.
- ~~e~~f) Agency Supervisor Responsibilities – Home Health Agency
- 1) The entire clinical program shall be under the direction of the agency supervisor. The agency shall organize the personnel and clinical activities

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

of the home health agency so that safe and adequate care will be provided to the patient.

- 2) The skilled nursing service of a home health agency shall be under the direction of the agency supervisor.
- 3) The agency supervisor shall be responsible for:
 - A) Supervising all ~~RNs~~registered nurses, licensed practical nurses, home health aides, therapists, social workers and other clinical personnel employed by the agency or with whom the agency contracts for services;
 - B) Assuring that all staff providing patient care maintain the professional standards of community nursing practice;
 - C) Maintaining and adhering to agency procedure and patient care policy manuals;
 - D) Participating in establishing service policies and procedures;
 - E) Participating in selecting and evaluating nursing personnel and other staff providing patient care;
 - F) Coordinating patient care services;
 - G) Keeping and maintaining records of case assignments and case management;
 - H) Preparing and maintaining the schedule of cases to be brought to the clinical record review committee; and
 - I) Conducting selective program evaluations to improve deficient services and developing and implementing plans of correction.

fg) Agency Manager – Home Services and Home Nursing Agencies

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- 1) A home services agency shall designate a person to supervise the provision of services or to oversee the placement of workers through the licensed home services agency.
- 2) If the home nursing agency has appointed an agency manager who is not ~~an a registered nurse (RN)~~ or an ~~APRN advanced practice nurse~~, the home nursing agency shall identify ~~an RN a registered nurse~~ or ~~APRN advanced practice nurse~~ to supervise the provision of skilled nursing services as required by Section 2.11 of the Act. The supervisor shall be ~~an RN or APRN a registered nurse~~ who is available at all times during the operating hours of the agency and who participates in all activities related to the provision of home nursing services. If the agency has both a home health and a home nursing agency license, one person may fulfill this requirement, but he or she shall be full-time.

(Source: Amended at 43 Ill. Reg. 9134, effective August 12, 2019)

Section 245.40 Staffing and Staff Responsibilities

- a) Home Health ~~Administrator or Agency Administrator/Agency~~ Manager. The administrator or agency manager shall have the following responsibilities:
 - 1) Ensure that the agency is in compliance with all applicable federal, State and local laws;
 - 2) Be familiar with the applicable rules of the Department and maintain them within the agency;
 - 3) Familiarize all employees as well as providers through contractual purchase of services with the Act and the rules of the Department and make copies available for their use;
 - 4) Ensure that reports and records as required by the Department are completed, maintained and submitted;
 - 5) Maintain ongoing liaison with the governing body, ~~professional advisory group~~, staff members and the community;
 - 6) Maintain a current organizational chart to show lines of authority down to

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

the patient or client level;

- 7) Manage business affairs and the overall operation of the agency;
 - 8) Maintain personnel records, administrative records and all policies and procedures of the agency;
 - 9) Employ qualified personnel in accordance with job descriptions;
 - 10) Provide orientation of new staff, regularly scheduled in-service education programs and opportunities for continuing education for the staff; and
 - 11) Designate in writing the qualified staff member to act in the absence of the administrator.
- b) Home Health Aide
- 1) When home health aide services are offered, the services shall be under the supervision of an RN ~~a registered nurse~~ in accordance with the plan of treatment. The RN ~~registered nurse~~ shall assign the home health aide to a particular patient. The RN ~~registered nurse~~ or the appropriate therapist shall prepare written instructions for patient care.
 - 2) Duties of the home health aide may include:
 - A) Performing simple procedures as an extension of therapeutic services;
 - B) Skilled personal care and personal care, as defined in this Part;
 - C) Patient ambulation and exercise;
 - D) Household services essential to health care at home;
 - E) Assisting with medications that are ordinarily self-administered;
 - F) Reporting changes in the patient's or client's condition and needs to the RN ~~registered nurse~~ or the appropriate therapist; and

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- G) Completing appropriate records.
- 3) For home health agencies, the ~~RN registered nurse~~ or appropriate therapist shall make a supervisory visit to the patient's residence at least every two weeks either when the home health aide is present to observe and assist, or when the home health aide is absent. ~~The purpose of the advisory visits is to assess relationships and determine whether goals are being met.~~
- A) If an area of concern in aide services is noted by the supervising RN or other appropriately skilled professional, then the supervising individual shall make an on-site visit to the location where the patient is receiving care in order to observe and assess the aide while he or she is performing care no later than the next supervisory visit.
- B) An RN or other appropriately skilled professional shall make an annual on-site visit to the location where a patient is receiving care in order to observe and assess each aide while he or she is performing care.
- C) The purpose of the supervisory visits is to assess relationships and determine that the aide furnishes care in a safe and effective manner by following the patient's plan, demonstrating competency with assigned tasks, complying with infection prevention and control policies and procedures, reporting changes in the patient's condition, honoring the patient's rights, and maintaining open communication.
- 4) For home nursing agencies, the ~~RN registered nurse~~ shall make a supervisory visit to the patient's/client's residence at least every 60 days when the home health aide is present to observe and assist, or when the home health aide is absent. ~~The purpose of the advisory visits is to assess relationships and determine whether the goals of the treatment plan are being met.~~
- A) If an area of concern in aide services is noted by the supervising RN, then the supervising individual shall make an on-site visit to the location where the patient is receiving care in order to observe and assess the aide while he or she is performing care no later than

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

the next supervisory visit.

- B) An RN shall make an annual on-site visit to the location where a patient is receiving care in order to observe and assess each aide while he or she is performing care.
- C) The purpose of the supervisory visits is to assess relationships and determine that the aide furnishes care in a safe and effective manner by following the patient's plan, demonstrating competency with assigned tasks, complying with infection prevention and control policies and procedures, reporting changes in the patient's condition, honoring patient's rights, and maintaining open communication.

c) Home Services or In-Home Services Worker

- 1) As defined in this Part and under the Act, *home services* ~~Home Services~~ or *in-home services* means assistance with activities of daily living, housekeeping, personal laundry, and companionship provided to an individual in his or her personal residence, which are intended to enable that individual to remain safely and comfortably in his or her own personal residence. ~~Home services~~ ~~Services~~ or ~~in-home~~ ~~in-home~~ services does not include services that would be required to be performed by an individual licensed under the Nurse Practice Act. (Section 2.09 of the Act) Home services are focused on providing assistance that is not medical in nature, but is based upon assisting the client in meeting the demands of living independently and maintaining a personal residence, such as companionship, cleaning, laundry, shopping, meal preparation, dressing, and bathing.
- 2) Home services or in-home services workers shall provide services only in accordance with this Part.
- 3) Duties of home services or in-home services workers may include the following:
- A) Observation of client functioning and reporting changes to his or her supervisor or employer or to a person designated by the client;

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- B) Assistance with household chores, including cooking and meal preparation, cleaning and laundry;
 - C) Assistance in completing activities such as shopping and appointments outside of the home;
 - D) Companionship;
 - E) Completion of appropriate records documenting service provision; and
 - F) Assistance with activities of daily living and personal care.
- 4) To delineate the types of services that can be provided by a home services worker, the following are examples of acceptable tasks and also limitations when a more medical model of assistance would be needed to meet the higher needs of the client.
- A) **Skin Care.** A home services worker may perform general skin care assistance. Skin care may be performed by a home services worker only when skin is unbroken, and when any chronic skin problems are not active. The skin care provided by a home services worker ~~shall~~**must** be preventative rather than therapeutic in nature, and may include the application of non-medicated lotions and solutions, or of lotions and solutions not requiring a physician's prescription. Skilled skin care ~~shall~~**must** be provided only by an agency licensed as a home health or home nursing services agency. Skilled skin care includes wound care, dressing changes, application of prescription medications, skilled observation and reporting.
 - B) **Ambulation.** A home services worker may assist clients with ambulation. Clients in the process of being trained to use adaptive equipment for ambulation, such as walkers, canes or wheelchairs, require supervision by an agency licensed to provide home health or home nursing services during the period of training. Once the prescribing individual or the health care provider responsible for training the client is comfortable with releasing the client to work

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

on his or her own with the adaptive equipment, a home services worker may assist with ambulation.

- C) Bathing. A home services worker may assist clients with bathing. When a client has skilled skin care needs or skilled dressings that will need attention before, during, or after bathing, the client shall be in the care of an agency licensed as a home health agency or a home nursing agency to meet those specific needs. Home services workers may assist individuals who are unable to be bathed in a tub or shower only when the following requirements are met:
- i) The home services worker shall have been trained in the particular methods required to perform a bed bath;
 - ii) The client or client's representative shall be able to participate in or direct the bathing process and provide ongoing feedback to the home services worker; and
 - iii) The agency shall have conducted a competency evaluation of the home services worker's ability to employ the methods required to perform a bed bath.
- D) Dressing. A home services worker may assist a client with dressing. This may include assistance with ordinary clothing and application of support stockings of the type that can be purchased without a physician's prescription. A home services worker may not assist with applying an elastic bandage that can be purchased only with a physician's prescription (the application of which involves wrapping a part of the client's body) or with applying a sequential compression device that can be purchased only with a physician's prescription.
- E) Exercise. A home services worker may assist a client with exercise. Passive assistance with exercise that can be performed by a home services worker is limited to encouraging normal bodily movement, as tolerated, on the part of the client, and ~~to~~ encouragement with a prescribed exercise program. A home services worker shall not perform Passive Range of Motion.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- F) Feeding. A home services worker may provide assistance with feeding. Home services workers can assist clients with feeding when the client can independently swallow and be positioned upright. Assistance by a home services worker does not include syringe, tube feedings, and intravenous nutrition. Whenever there is a high risk that the client may choke as a result of the feeding, the client shall be in the care of an agency licensed as a home health or home nursing agency to fulfill this function.
- G) Hair Care. As a part of the broader set of services provided to clients who are receiving home services, home services workers may assist clients with the maintenance and appearance of their hair. Hair care within these limitations may include shampooing with non-medicated shampoo or shampoo that does not require a physician's prescription, drying, combing and styling hair.
- H) Mouth Care. A home services worker may assist in and perform mouth care. This may include denture care and basic oral hygiene, including oral suctioning for mouth care. Mouth care for clients who are unconscious shall be performed by an agency licensed as a home health agency or home nursing agency.
- I) Nail Care. A home services worker may assist with nail care. This assistance may include soaking of nails, pushing back cuticles without utensils, and filing nails. Assistance by a home services worker shall not include nail trimming. Clients with a medical condition that might involve peripheral circulatory problems or loss of sensation shall be under the care of an agency licensed as a home health agency or home nursing agency to meet this need.
- J) Positioning. A home services worker may assist a client with positioning when the client is able to identify to the personal care staff, either verbally, non-verbally or through others, when the position needs to be changed, only when skilled skin care, as previously described, is not required in conjunction with the positioning. Positioning may include simple alignment in a bed, wheelchair, or other furniture.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- K) Shaving. A home services worker may assist a client with shaving only with an electric or a safety razor.
- L) Toileting. A home services worker may assist a client to and from the bathroom; provide assistance with bed pans, urinals, and commodes; provide pericare; or change clothing and pads of any kind used for the care of incontinence.
- i) A home services worker may empty or change external urine collection devices, such as catheter bags or suprapubic catheter bags. In all cases, the insertion and removal of catheters and care of external catheters is considered skilled care and shall not be performed by a home services worker.
 - ii) A home services worker may empty ostomy bags and provide assistance with other client-directed ostomy care only when there is no need for skilled skin care or for observation or reporting to a nurse. A home services worker shall not perform digital stimulation, insert suppositories, or give an enema.
- M) Transfers. A home services worker may assist with transfers only when the client has sufficient balance and strength to reliably stand and pivot and assist with the transfer to some extent. Adaptive and safety equipment may be used in transfers, provided that the client is fully trained in the use of the equipment and can direct the transfer step by step. Adaptive equipment may include, but is not limited to, wheelchairs, tub seats, and grab bars. Gait belts may be used as a safety device for the home services worker as long as the worker has been properly trained in their use. A home services worker shall not assist with transfers when the client is unable to assist with the transfer. Home services workers may assist clients in the use of a mechanical or electrical transfer device only when the following conditions are met:
- i) The home services worker ~~shall~~must have been trained in the use of the mechanical or electrical transfer device by the licensed agency;

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- ii) The client or client representative ~~shall~~must be able to direct the transfer step by step; and
 - iii) The agency ~~shall~~must have conducted a competency evaluation of the worker using the type of device that is available in the home.
- N) Medication Reminding. A home services worker may assist a client with medication reminding only when medications have been pre-selected by the client, a family member, a nurse, or a pharmacist and are stored in containers other than the prescription bottles, such as medication minders. Medication minder containers shall be clearly marked as to day and time of dosage. Medication reminding includes: inquiries as to whether medications were taken; verbal prompting to take medications; handing the appropriately marked medication minder container to the client; and opening the appropriately marked medication minder container for the client if the client is physically unable to open the container. These limitations apply to all prescription and all over-the-counter medications. The home services worker shall immediately report to the supervisor, or, in the case of a placement worker, to the client or the client's advocate or designee, any irregularities noted in the pre-selected medications, such as medications taken too often or not often enough, or not at the correct time as identified in the written instructions.
- O) A home services worker shall not provide respiratory care. Respiratory care is skilled and includes postural drainage; cupping; adjusting oxygen flow within established parameters; nasal, endotracheal and tracheal suctioning; and turning off or changing tanks. However, home services workers may temporarily remove and replace a cannula or mask from the client's face for the purposes of shaving or washing a client's face and may provide oral suctioning.
- P) A home services worker may remind a client to perform client monitoring, including monitoring of heart rate, blood pressure, oxygen saturation, and temperature and weight. The home service

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

agency shall not provide the client and/or family any service to interpret the data or to take clinical action of the monitoring results. The home services worker may assist the client with the application of the heart rate, blood pressure, and oxygen saturation device and assist the client with recording the device reading.

- 5) In addition to the exclusions prescribed in subsection (c)(4), home services workers shall not act in the following capacities:
 - A) Provide skilled personal care services as defined in Section 245.20;
 - B) Become or act as a power of attorney;
 - C) Be involved in any financial transactions of the client outside of contracted services. In these cases, the home services worker shall follow agency policies in regard to securing receipts for items purchased and ensuring both client and worker signatures documenting those expenditures;
 - D) Perform or provide medication setup for a client; and
 - E) Other actions specifically prohibited by agency policy or other State laws.
- 6) Supervision of a home services worker shall include the following (these provisions do not apply to placement agencies):
 - A) An individual who is in a supervisory capacity shall be designated and available to the worker for responses to questions at all times.
 - B) On-site supervision shall take place at a minimum of every 90 days or more often if the plan of service requires it. The supervisory visits may be made when the home services worker is present so that the supervisor may observe, or when the home services worker is absent so that the supervisor may assess relationships and determine whether the service plan is being met.
 - i) If an area of concern in the performance of a home service worker is noted by the supervisor, then the supervising

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

individual shall make an on-site visit to the location where the client is receiving services in order to observe and assess the home service worker while he or she is performing care no later than the next supervisory visit.

ii) The supervisor shall make an annual on-site visit to the location where a client is receiving care in order to observe and assess each home service worker while he or she is performing care.

iii) The purpose of the supervisory visits is to assess relationships and determine that the home service worker furnishes care in a safe and effective manner by following the client's service plan, demonstrating competency with assigned tasks, complying with infection prevention and control policies and procedures, reporting changes in the patient's condition, honoring patient's rights, and maintaining open communication.

C) Supervision does not constitute time or an activity that can be billed as a service to the client or consumer~~client/consumer~~.

d) Licensed Practical Nurse

1) The licensed practical nurse may perform selected acts in accordance with the Nurse Practice Act and under the direction of an RN~~a registered nurse~~, including administering treatments and medications in the care of the ill, injured or infirm; health maintenance; and illness prevention.

2) The licensed practical nurse shall report changes in the patient's condition to the RN~~registered nurse~~, and these reports shall be documented in the clinical notes.

3) The licensed practical nurse shall prepare clinical notes for the clinical record.

e) Medical Social Worker. When medical social services are provided, the social worker or social work assistant under the supervision of a social worker shall provide the services in accordance with the plan of treatment. These services

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

shall include the following:

- 1) Assist the physician or podiatrist and other members of the health team in understanding significant social and emotional factors related to the patient's health problems.
- 2) Assess the social and emotional factors to estimate the patient's capacity and potential to cope with the problems of daily living.
- 3) Help the patient and family to understand, accept, and follow medical recommendations and provide services planned to restore the patient to the optimum social and health adjustment within the patient's capacity.
- 4) Assist the patient and family with personal and environmental difficulties that predispose toward illness or interfere with obtaining maximum benefits from medical care.
- 5) Use all available resources, such as family and community agencies, to assist the patient to resume life in the community or to live within the disability.
- 6) Observe, record and report social and emotional changes.
- 7) Prepare clinical and progress notes for the clinical record.
- 8) Supervise the social work assistant, which shall include the following:
 - A) A licensed social worker shall be accessible by telephone to the social work assistant at all times while the social work assistant is treating patients.
 - B) On-site supervision shall take place every four to six visits. The supervisory visits may be made either when the social work assistant is present so that the supervisor may observe and assist, or when the social work assistant is absent so that the supervisor may assess relationships and determine whether goals are being met.
 - C) Supervision does not constitute treatment.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- D) The supervisory visit shall include a complete on-site assessment, an on-site review of activities with appropriate revision of treatment plan, and an assessment of the use of outside resources.
- f) Occupational Therapist and Occupational Therapy Assistant. When occupational therapy services are required, an occupational therapist or an occupational therapy assistant under the supervision of an occupational therapist shall provide the services in accordance with the plan of treatment and within the licensee's scope of practice as established by the Illinois Occupational Therapy Practice Act. These services shall include the following:
- 1) Instruct other health team personnel, including, when appropriate, home health aides and family members in certain phases of occupational therapy in which they may work with the patient.
 - 2) Prepare clinical and progress notes for the clinical record.
 - 3) Supervise the occupational therapy assistant, which shall include the following:
 - A) A licensed occupational therapist shall be accessible by telephone to the occupational therapy assistant at all times while the occupational therapy assistant is treating patients.
 - B) On-site supervision shall take place every four to six visits. The supervisory visits may be made either when the occupational therapy assistant is present so that the supervisor may observe and assist, or when the occupational therapy assistant is absent so that the supervisor may assess relationships and determine whether goals are being met.
 - C) Supervision does not constitute treatment.
 - D) The supervisory visit shall include a complete on-site functional assessment, an on-site review of activities with appropriate revision of treatment plan, and an assessment of the use of outside resources.
- g) Physical Therapist and Physical Therapist Assistant

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- 1) When physical therapy services are provided, a physical therapist or a physical therapist assistant under the supervision of a physical therapist shall provide the services in accordance with the plan of treatment and within the licensee's scope of practice as established by the Illinois Physical Therapy Act. These services shall include the following:
 - A) Instruct other health team personnel, including, when appropriate, home health aides and family members, in certain phases of physical therapy with which they may work with the patient.
 - B) Instruct the patient and family in the total physical therapy program.
 - C) Prepare clinical and progress notes for the clinical record.
- 2) Supervision of the physical therapist assistant shall include the following:
 - A) A licensed physical therapist shall be accessible by telephone to the physical therapist assistant at all times while the physical therapist assistant is treating patients.
 - B) On-site supervision shall take place every four to six visits. The supervisory visits may be made either when the physical therapist assistant is present so that the supervisor may observe and assist, or when the physical therapist assistant is absent so that the supervisor may assess relationships and determine whether goals are being met.
 - C) Supervision does not constitute treatment.
 - D) The supervisory visit shall include a complete on-site functional assessment, an on-site review of activities with appropriate revision of treatment plan, and an assessment of the utilization of outside resources.
- 3) The physical therapist assistant shall:
 - A) Be directed by and under the supervision of a licensed physical

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

therapist and within the licensee's scope of practice as established by the Illinois Physical Therapy Act;

- B) Administer the physical therapy program as established by the physical therapist;
 - C) Observe patient's progress and response to treatment, and report to the physical therapist; and
 - D) Confer with members of the health care team for planning, modifying and coordinating treatment programs.
- h) Registered Professional Nurse ~~(RN)~~. The RN ~~registered nurse~~ may perform selected acts in accordance with the Nurse Practice Act. Skilled nursing services shall be provided by an RN ~~a registered nurse~~ in accordance with the plan of treatment. The RN ~~registered nurse~~ shall:
- 1) Be responsible for the observation, assessment, nursing diagnosis, counsel, care and health teaching for patients, and health maintenance and illness prevention for others;
 - 2) Maintain a clinical record for each patient receiving care;
 - 3) Provide progress notes to the patient's physician or podiatrist about patients under care when the patient's conditions change or there are deviations from the plan of care, or at least every 60 days for a home health agency and every 90 days for a home nursing agency;
 - 4) In the case of an RN working as a part of a home health or home nursing agency, make home health aide assignments, prepare written instructions for the aide, and supervise the aide in the home;
 - 5) Direct the activities of the licensed practical nurse;
 - 6) Administer medications and treatments as prescribed by the patient's physician or podiatrist; and
 - 7) Act as the coordinator of the health care team in order to maintain the proper linkages within a continuum of care.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- i) Speech-Language Pathologist. The speech-language pathologist may perform selected acts in accordance with the Illinois Speech-Language Pathology and Audiology Practice Act. When required, speech therapy services shall be provided by a speech-language pathologist in accordance with the plan of treatment. The speech-language pathologist shall:
- 1) Assist the physician in determining and recommending appropriate speech and hearing services;
 - 2) Evaluate the patient's speech and language abilities and establish a plan of care;
 - 3) Provide rehabilitation services for speech and language disorders;
 - 4) Record and report to the patient's physician the patient's progress in treatment and any changes in the patient's condition and plan of care;
 - 5) Instruct other health team personnel and family members in methods of assisting the patient in improving communication skills; and
 - 6) Prepare clinical and progress notes for the clinical record.
- j) Audiologist. The audiologist may perform selected acts in accordance with the Illinois Speech-Language Pathology and Audiology Practice Act. When audiology services are required, an audiologist shall provide the services in accordance with the plan of treatment. The audiologist shall:
- 1) Administer diagnostic hearing tests to evaluate the patient's audiological abilities;
 - 2) Assess the patient's need for amplification;
 - 3) Provide rehabilitative services for hearing disorders;
 - 4) Instruct other health team personnel and family members in methods of assisting the patient in improving communication skills; and
 - 5) Record and report to the patient's physician the patient's response to

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

rehabilitative intervention.

- k) Student Training Program. When an agency elects to participate with an educational institution to provide clinical experience for students as part of their health-related professional training, a written agreement between the agency and each educational institution shall specify the responsibilities of the agency and the educational institution. The agreement shall include, at a minimum, the following provisions:
- 1) The agency retains the responsibility for client care;
 - 2) The educational institution retains the responsibility for student education;
 - 3) Student and faculty performance expectations;
 - 4) Faculty supervision of undergraduate students in the clinic and the field;
 - 5) Ratio of faculty to students;
 - 6) Confidentiality regarding patient information;
 - 7) Required insurance coverage; and
 - 8) Provisions for the agency and faculty to jointly evaluate the students' performance and the training program.

(Source: Amended at 43 Ill. Reg. 9134, effective August 12, 2019)

Section 245.70 Home Health Aide Training

- a) Each home health agency and home nursing agency shall ensure that all persons employed as home health aides or under any other title, whose duties are to assist with the personal, nursing or medical care and emotional comfort of the patients, and who are not otherwise licensed, certified or registered in accordance with Illinois law to render such care, comply with one of the following conditions:
- 1) Is approved on the Department's Health Care Worker Registry.
~~"Approved" means that the home health aide has met the training or equivalency requirements of this Section and does not have a disqualifying~~

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

~~background check without a waiver~~ (see Section 245.72);

- 2) Meets training requirements by completion of a training program approved under the Long-Term Care Assistants and Aides Training Programs Code (see 77 Ill. Adm. Code 395); or
 - 3) Meets equivalencies established in subsection (b) ~~of this Section~~.
- b) Equivalency may be established by any one of the following:
- 1) Documentation of current registration from another state.
 - 2) Documentation of successful completion of a nursing arts course, ~~that includes which included~~ at least 40 hours of supervised clinical experience, in an accredited nurse training program as evidenced by diploma, certificate or other written verification from the school, and successful completion of the written portion of the Department-established nursing assistant competency test.
 - 3) Documentation of successful completion of a United States military training program that includes the content of the Basic Nursing Assistant Training Program (see 77 Ill. Adm. Code 395), as evidenced by a diploma, certification DD-214, or other written verification, and successful completion of the written portion of the Department-established nursing assistant competency evaluation.
 - 4) Documentation of completion of a nursing program in a foreign country, including the following, and successful completion of the written portion of the Department-established competency test:
 - A) A copy of the license, diploma, registration or other proof of completion of the program;
 - B) A copy of the Social Security card; and
 - C) Visa or proof of citizenship.
- c) Requests to establish equivalency shall be submitted to the Department with accompanying documentation.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- d) To maintain an active Certified Nursing Assistant (CNA) certification, a CNA must work at least one 8-hour shift within a 24-month period, performing nursing or nursing-related services for pay under the supervision of a licensed nurse.
- e) The home health or home nursing agency is responsible for ~~ensuring~~assuring that the individuals who furnish home health aide services on its behalf are competent to carry out assigned tasks in the patient's place of residence. The competency evaluation conducted by ~~an RN a registered nurse~~ in the home health or home nursing agency shall address each of the following subjects:
- 1) Communication skills relating to persons who are hard of hearing, have dementia, or have other special needs;
 - 2) Observation, reporting, and documentation of patient status and the care or service furnished;
 - 3) Reading and recording temperature, pulse and respiration;
 - 4) Basic infection prevention and control procedures;
 - 5) Basic elements of body functioning and changes in body function that shall~~must~~ be reported to an aide's supervisor;
 - 6) Maintenance of a clean, safe and healthy environment;
 - 7) Recognizing emergencies and initiating ~~knowledge of~~ emergency procedures;
 - 8) The physical, emotional and developmental needs of and ways to work with the populations served by the home health agency, including the need for respect for the patient, his or her privacy, and his or her property;
 - 9) Appropriate and safe techniques in personal hygiene and grooming that include:
 - A) Bed bath;
 - B) Sponge, tub or shower bath;

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- C) Hair shampooing in~~Shampoo~~ = sink, tub and~~or~~ bed;
 - D) Nail and skin care;
 - E) Oral hygiene; and
 - F) Toileting and elimination;
 - 10) Safe transfer techniques and ambulation;
 - 11) Normal range of motion and positioning;
 - 12) Adequate nutrition and fluid intake; ~~and~~
 - 13) Problem solving with individuals with dementia who exhibit challenging behavior;
 - 14) Understanding dementia;
 - 15) Recognizing and reporting changes in skin condition; and
 - 1613) Any other task that the agency may choose to have the home health aide perform, as permitted by statute.
- fe) A home health or home nursing agency shall not employ an individual as a home health aide unless the agency~~Agency~~ has inquired of the Department as to information in the Health Care Worker Registry concerning findings of abuse, neglect or misappropriation of property.

(Source: Amended at 43 Ill. Reg. 9134, effective August 12, 2019)

Section 245.71 Qualifications and Requirements for Home Services Workers

- a) Each agency shall ensure and shall maintain documentation in the home services worker's employee file that all persons employed or providing services as an in-home services worker, and who are not otherwise licensed, certified or registered in accordance with Illinois law to render this care, comply with the following conditions:

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- 1) Does not have a disqualifying background check under the requirements of the Health Care Worker Background Check Act without a waiver;
 - 2) Has a copy of his or her Social Security card; and
 - 3) Has a visa or proof of citizenship in compliance with federal requirements for employment.
- b) Each placement agency shall require proof that the home service worker has completed a minimum of eight hours of training prior to his or her first assignment. The training shall include all of the items noted in subsection (d).
- c) Each home services agency shall provide or arrange for a minimum of eight hours of training for each home services worker. Four hours of training shall be provided prior to the home services worker's first assignment, and the remaining four hours shall be provided within the worker's first 30 days after employment. The training shall include the components of ~~subsections (d)(1) through (12)~~ subsections (d)(1) through (12). The home services agency may accept proof that the worker has successfully completed a training program at or through another licensed home services agency within the prior year (previous 365 days) in lieu of providing or arranging for training, including a ~~CNA home health aide~~ CNA home health aide who is approved on the Health Care Worker Registry. The agency shall give the home service worker, with proof of prior training within the prior year, and the CNA home health aide a competency evaluation prior to his or her first assignment. The home services agency shall not give a worker an assignment until the worker has first passed a competency evaluation given by the agency of the topics included in the first four hours of training. The competency evaluation shall ensure that the home services worker is competent to provide the services required in his or her first assignment. The worker shall be similarly tested following the remaining four hours of training.
- d) The placement agency may accept proof that the worker has successfully completed a training program at or through another licensed home services agency within the prior year (previous 365 days). The home services placement agency shall not give a worker an assignment until the worker has first passed a competency evaluation given by the agency. The competency evaluation shall ensure that the home services worker is competent to provide the services required in his or her assignment. The competency evaluation or proof of prior

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

training at a licensed home services agency within the prior year shall address each of the following subjects:

- 1) The employee's job responsibilities and limitations;
- 2) Communication skills ~~relating to~~~~in areas such as with~~ persons who are hard of hearing, have dementia, or have other special needs;
- 3) Observing, reporting and documenting client status and the ~~care or~~ service ~~provided~~~~furnished~~, including changes in functional ability and mental status demonstrated by the client;
- 4) Performing personal care tasks for clients, including: bathing; skin care; hair care; nail care; mouth care; shaving; dressing; feeding; assistance with ambulation; exercise and transfers; positioning; toileting; and medication reminding;
- 5) Assisting in the use of specific adaptive equipment, such as a mechanical lifting device, if the worker will be working with clients who use the device;
- 6) Basic hygiene and basic infection ~~prevention and~~ control practices;
- 7) Maintaining a clean, safe and healthy environment;
- 8) Basic personal and environmental safety precautions;
- 9) Recognizing emergencies and ~~initiating~~~~knowledge of~~ emergency procedures, including basic first aid and implementation of a client's emergency preparedness plan;
- 10) Confidentiality of client's personal, financial and health information;
- 11) Understanding dementia;
- 12) Problem solving skills to care for patients with dementia who exhibit challenging behavior;

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- ~~1311~~) Behaviors that would constitute abuse or neglect and the legal prohibitions against these behaviors, as well as knowledge and understanding of abuse and neglect prevention and reporting requirements; and
- ~~1412~~) Any other task that the agency may choose to have the worker perform.
- e) All home services workers shall complete a minimum of eight hours of training during each year of employment to maintain placement availability, based on either a calendar year or an anniversary date basis, whichever is selected by the agency. The initial eight hours of training required in subsection (c) shall satisfy the annual training requirement for the home services worker's first year of employment. The annual training can include self-study courses with demonstration of learned concepts that are applicable to the employee's responsibilities. Training shall include:
- 1) Promoting client dignity, independence, self-determination, privacy, choice and rights;
 - 2) Disaster procedures;
 - 3) Hygiene and infection control; and
 - 4) Abuse and neglect prevention and reporting requirements.
- f) All training shall be documented with the date of the training; the length of time spent on each training topic; instructors and their qualifications; short description of content; and staff member's signature.

(Source: Amended at 43 Ill. Reg. 9134, effective August 12, 2019)

Section 245.75 Infection Control

- a) Each agency shall develop and implement policies and procedures for investigating, controlling and preventing infections. Placement agencies shall provide to in-home services workers the Centers for Disease Control and Prevention ([CDC](#)) publication "Guidelines for Hand Hygiene in Health-Care Settings".

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- b) Each agency shall adhere, at a minimum and as appropriate, to the guidelines of the CDC Centers for Disease Control and Prevention, United States Public Health Service, Department of Health and Human Services, as incorporated in Section 245.25(c**b**).
- c) The home health agency shall maintain and document an infection control program to prevent and control infections and communicable diseases. Under that program, the agency shall:
- 1) Follow accepted standards of practice, including the use of standard precautions, to prevent the transmission of infections and communicable diseases;
 - 2) Maintain a coordinated agency-wide program for the surveillance, identification, prevention, control and investigation of infectious and communicable disease that is an integral part of the agency's QAPI program; and
 - 3) Provide infection control education to staff, patients and caregivers.

(Source: Amended at 43 Ill. Reg. 9134, effective August 12, 2019)

SUBPART C: LICENSURE PROCEDURES

Section 245.90 License Application

- a) Initial Application – All Agencies
- 1) Any person who desires to obtain a license to operate a home health, home nursing, home services, home nursing placement, or home service placement agency shall file a licensure application with the Department. Any person in interest, different from the licensee, who desires to conduct, maintain, or operate a home health, home nursing, home services, home nursing placement or home services placement agency shall also file an application for licensure with the Department.
 - 2) The application shall be accompanied by a Certificate of Insurance documenting minimum liability coverage of \$1 million per occurrence and \$3 million in the aggregate.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- 3) Each initial application for licensure shall be on forms provided by the Department, and shall contain, at a minimum, the following information:
- A) *Name, address, and location of the agency;*
 - B) *Ownership, organization and governing structure of the agency;*
 - C) The names and addresses of all persons who own at least 5% of the agency and the type of ownership of the agency (for example individual, partnership or corporation). In addition, corporation shall submit:
 - i) A list of the title, name and address of each of its corporate officers;
 - ii) A list of the name and address of each of its shareholders holding more than 5% of the shares; and
 - iii) Information for the applicant and its officers regarding any conviction of, or plea of guilty to, a felony, or two or more misdemeanors involving moral turpitude during the previous year;
 - ~~D~~E) A description of the services to be provided;
 - ~~E~~D) A list of the staff of the agency or a list of placement agency registry, including any applicable licensure, registration, or certification and any other *qualifications of the staff* of the agency;
 - ~~F~~E) *Sources of financing of services* and any other sources of income of the agency;
 - ~~G~~F) A description or map of the geographic *service area* in which services are provided by the agency;
 - ~~H~~G) *Charges for services* by types of services provided by the agency; and

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

H) For home health agencies, copies of any *affiliation agreements with other health care providers*. (Section 5(a) of the Act)

b) Renewal Application – All Agencies

- 1) Each licensee shall file a renewal application with the Department not less than 60 days, or more than 90 days, prior to the expiration date of the licensee's current license.
- 2) Each renewal application shall be on forms provided by the Department and shall contain the information specified in subsection (a)(3).
- 3) Each licensee shall submit information for the licensee and its officers regarding any conviction of, or plea of guilty to, a felony, or two or more misdemeanors involving moral turpitude, during the previous year for the licensee and its officers.

c) Renewal Application – Home Health Agencies

Applications for renewal of home health agency licenses shall additionally contain the following information:

- 1) *Patient load* data for the preceding year, including the number of patients discharged, the total number of patients who received services, the number of patients over 65 years of age who received services, and the number of patients being served at the end of the year; and
- 2) *Agency utilization* data, including the number of patients receiving specific types of services and the number of visits by types of services provided. (Section 5(a) of the Act)

d) Renewal Application – Home Services, Home Nursing, Home Services Placement and Home Nursing Placement Agencies

Applications for renewal shall additionally contain the following information:

- 1) Client load data for home services and home nursing for the preceding year, including the number of clients admitted, the number of clients discharged, the number of patients over 65 years of age who received services, and the number of clients being served at the end of the year, with the exception of those clients being served through the Community

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

Care Program of the Illinois Department on Aging, the Department of Human Services Office of Rehabilitation Services, or the United States Department of Veterans Affairs; and

- 2) Client data for ~~home services placement~~Home Services Placement and ~~home nursing placement~~Home Nursing Placement for the preceding year, including the number of placements, the number of placements for clients 65 or older, and the number of clients in process on the last day of the most recent fiscal period.
- e) A home health agency shall be in operation and be able to demonstrate client activity prior to the second renewal of the agency's license to verify compliance for a renewal of the agency's license. A home services, home nursing, home services placement and home nursing placement agency shall be in operation and be able to demonstrate client activity prior to the second renewal of the agency's license to verify compliance for a renewal of the agency's license.
- f) *An entity that meets the requirements for licensure under the Act and this Part may obtain licensure singly or in any combination for the categories authorized under the Act and this Part. (Section 4(d) of the Act)*
- g) *One application for licensure shall be used even if a combination of licenses authorized under the Act and this Part is sought. Applicants for multiple licenses shall pay the higher of the licensure fees applicable. (Section 4(d) of the Act)* The non-refundable licensure fee under the multiple category shall not exceed \$1500 annually.
- h) The Department will review each application. The Department will approve the application and issue an initial or renewal license to the applicant for operation of an agency when it finds that the applicant meets all of the *requirements of ~~the~~the Act and ~~the standards established by the Department in~~* this Part. The Department may also issue a provisional license, as provided in Section 4 of the Act and Section 245.100, or deny an application, as provided in Sections 8 and 9 of the Act and Section 245.130. (Section 4(c) of the Act)

(Source: Amended at 43 Ill. Reg. 9134, effective August 12, 2019)

Section 245.130 Adverse Licensure Actions

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- a) Adverse licensure actions include the denial of an initial license application, denial of an application for license renewal, revocation of a license, suspension of a license, and the imposition of a penalty or fine.
- b) Adverse licensure action shall be considered by the Department under the following conditions:
 - 1) Failure of the agency to meet the standards prescribed by the Department in this Part.
 - 2) *Satisfactory evidence that the moral character of the applicant or supervisor of the agency is not reputable. In determining moral character, the Department may take into consideration any convictions of the applicant or supervisor for criminal offenses, but such convictions shall not operate as a bar to licensing. (Section 8(b) of the Act)*
 - 3) *Lack of personnel qualified by training and experience to properly perform the function of an agency. This determination shall be based on the personnel requirements established in this Part. (Section 8(c) of the Act)*
 - 4) *Insufficient financial or other resources to operate and conduct a home health, home services or home nursing agency in accordance with the requirements of the Act and this Part. (Section 8(d) of the Act)*
 - 5) *Refusal to make books, records, policies and procedures, or any other materials requested during the course of an investigation or inspection available to the Department. (Section 9.01 of the Act)*
 - 6) *Violation of any provision of the Act or this Part. (Section 9(a) of the Act)*
 - 7) Conduct or practice found by the Department to be detrimental to the health, safety or welfare of a patient or client.
 - 8) *A final determination, that includes exhaustion of all available appeal and administrative review rights, of a violation of Section 1400 or 1400.2 of the Unemployment Insurance Act or Section 4(d) of the Workers' Compensation Act. (Section 8(e) of the Act)*

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- c) In determining whether to take adverse licensure action, the Department shall consider the following factors:
- 1) *The gravity of the violation, including the probability that death or serious physical or mental harm to a patient or ~~consumer/tenant~~ will result or has resulted ~~and~~ the severity of the actual or potential harm.*
 - 2) *The extent to which the provisions of the ~~Act/Act~~ or this Part were violated.*
 - 3) *The reasonable diligence exercised by the licensee and ~~any~~ efforts ~~by the licensee~~ to correct the violations.*
 - 4) *Any previous violations committed by the licensee.*
 - 5) *The financial benefit to the agency of committing or continuing the violation. (Section 9.04(c) of the Act)*
- d) The Department shall deny an application for license renewal when the licensee *refuses to make payment at the time of the application for renewal of the license for penalties or fines that have been imposed and added to the license fee. (Section 10.01(c) of the Act)*
- e) The Director will order an emergency suspension of a license when the Director finds that continued operation of the agency poses an immediate and serious danger to the public health, safety or welfare. The suspension shall take effect upon the issuance of an order of emergency suspension by the Director and shall remain in effect during any administrative proceeding contesting the action. Promptly following any emergency suspension of a license, the Department shall take action to revoke the license.
- f) Notice of Adverse Licensure Action
- 1) *The Department shall notify the applicant or licensee in writing before denying an application refusing to renew a license, or revoking a license. (Section 10(a) of the Act)*
 - 2) *The notice shall be ~~served on the applicant or licensee either~~ served on the applicant or licensee either by personal service or by ~~certified~~ registered mail. The notice shall contain the following information:*

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- A) A description of the *particular reasons for the proposed action*, including citations of the specific provisions of the Act and this Part under which the proposed action is being taken.
- B) The date, not less than 15 days from the date of the mailing or service of the notice, on which the action will take effect, unless appealed by the applicant or licensee.
- C) A description of the manner in which the applicant or licensee may appeal the proposed action and the right of the applicant or licensee to a hearing under Section 10 of the Act and Section 245.150 of this Part. (Section 10(b) of the Act)

(Source: Amended at 43 Ill. Reg. 9134, effective August 12, 2019)

SUBPART D: CLIENT/PATIENT SERVICES

Section 245.200 Services – Home Health

- a) Each home health agency shall provide skilled nursing service and at least one other home health service on a part-time or intermittent basis. The agency staff shall directly provide basic skilled nursing service. The agency staff may provide other home health services directly or through a contractual purchase of services. Additional skilled specialty nursing services and use of additional nursing staff to meet changes in caseload may be provided by contract. All services shall be provided in accordance with the orders of the patient's physician or podiatrist, under a plan of treatment established by the physician or podiatrist, and under the supervision of agency staff.
- b) The agency shall state in writing what services will be provided directly and what services will be provided under contractual arrangements.
- c) Services provided under contractual arrangements shall be through a written agreement that includes, but is not limited to, the following:
 - 1) A detailed description of the services to be provided;

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- 2) Provision for adherence to all applicable agency policies and personnel requirements, including requirements for initial health evaluations and employee health policies;
 - 3) Designation of full responsibility for agency control over contracted services;
 - 4) Procedures for submitting clinical and progress notes;
 - 5) Charges for contracted services;
 - 6) Statement of responsibility of liability and insurance coverage;
 - 7) Period of time in effect;
 - 8) Date and signatures of appropriate authorities; and
 - 9) Provision for termination of services.
- d) Acceptance of Patients. Patient acceptance and discharge policies shall include, but not be limited to, the following:
- 1) Persons shall be accepted for health services on a part-time or intermittent basis in accordance with a plan of treatment established by the patient's physician or podiatrist. This plan shall be promulgated in writing within 14 days after acceptance and signed by the physician within 30 days after the start of the care date.
 - 2) Prior to acceptance of a patient, the agency shall inform the person of the agency's charges for the various services that it offers.
 - 3) No person shall be refused service because of age, race, color, sex, marital status, national origin or source of payment. An agency is not required to accept a patient whose source of payment is less than the cost of services.
 - 4) Patients are accepted for treatment on the basis of a reasonable expectation that the patient's medical, nursing and social needs can be met adequately by the agency in the patient's place of residence.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- 5) When services are to be terminated by the home health agency, the patient is to be notified three working days in advance of the date of termination, stating the reason for termination. This information shall be documented in the clinical record. When any continuing care is indicated, a plan shall be developed or a referral made.
 - 6) Services shall not be terminated until the ~~RN~~registered nurse, or the appropriate therapist, or both, in consultation with the patient's physician or podiatrist, consider termination appropriate or arrangements are made for continuing care.
- e) Plan of Treatment
- Skilled nursing and other home health services shall be in accordance with a plan based on the patient's diagnosis and an assessment of the patient's immediate and long-range needs and resources. The plan of treatment is established in consultation with the home health services team, which includes the patient's physician or podiatrist, pertinent members of the agency staff, the patient, and members of the patient's family. The plan of treatment shall include:
- 1) Diagnoses;
 - 2) Functional limitations and rehabilitation potential;
 - 3) Expected outcomes for the patient;
 - 4) The patient's physician's or podiatrist's regimen of:
 - A) Medications;
 - B) Treatments;
 - C) Activity;
 - D) Diet;
 - E) Specific procedures considered essential for the health and safety of the patient;
 - F) Mental status;

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- G) Frequency of visits;
 - H) Equipment required;
 - I) Instructions for timely discharge or referral; and
 - J) Assessed need for influenza and pneumococcal vaccination;
- 5) The patient's physician's or podiatrist's signature and date.
- f) Consultation with the patient's physician or podiatrist on any modifications in the plan of treatment deemed necessary shall be documented, and the patient's physician's or podiatrist's signature shall be obtained within 30 days after any modification of the medical plan of treatment.
- 1) The home health services team shall review the plan every ~~60~~ days, or more often if the patient's condition warrants.
 - 2) An updated plan of treatment shall be given to the patient's physician or podiatrist for review, for any necessary revisions, and for signature every ~~60~~ days, or more often as indicated.
- g) Patient Care Plan
- 1) Home health services from members of the agency staff, as well as those under contractual arrangements, shall be provided in accordance with the plan of treatment and the patient care plan. The patient care plan shall be written by appropriate members of the home health services team based upon the plan of treatment and an assessment of the patient's needs, resources, family and environment. ~~An RN~~ ~~A registered nurse~~ shall make the initial assessment. ~~An assessment~~ ~~Assessment~~ by other members of the health services team shall be made on orders of the patient's physician, or podiatrist or by request of ~~an RN~~ ~~a registered nurse~~. If the patient's physician has ordered only therapy services, the appropriate therapist (physical therapist, speech-language pathologist or occupational therapist) may perform the initial assessment.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- 2) The patient care plan shall be updated as often as the patient's condition indicates. The plan shall be maintained as a permanent part of the patient's record. The patient care plan shall indicate:
 - A) Patient problems;
 - B) Patient's goals, family's goals, and service goals;
 - C) Service approaches to modify or eliminate problems;
 - D) The staff responsible for each element of service;
 - E) Anticipated outcome of the service approach with an estimated time frame for completion; and
 - F) Potential for discharge from service.

- h) Clinical Records
 - 1) Each patient shall have a clinical record, identifiable for home health services and maintained by the agency in accordance with accepted professional standards. Clinical records shall contain:
 - A) Appropriate identifying information for the patient, household members and caretakers, medical history, and current findings;
 - B) A plan of treatment signed by the patient's physician or podiatrist;
 - C) A patient care plan developed by the home health services team in accordance with the patient's physician's or podiatrist's plan of treatment;
 - D) A noted medication list with dates reviewed and revised and date sent to the patient's physician or podiatrist;
 - E) Initial and periodic patient assessments by the ~~RN registered nurse~~ that include documentation of the patient's functional status and eligibility for service;

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- F) Assessments made by other members of the home health services team;
- G) Signed and dated clinical notes for each contact that are written the day of service and incorporated into the patient's clinical record at least weekly;
- H) Reports on all patient home health care conferences;
- I) Reports of contacts with the patient's physician or podiatrist by patient and staff;
- J) Indication of supervision of home health services by the supervising nurse, an RNa-registered nurse, or other members of the home health services team;
- ~~K) Written summary reports sent to the patient's physician or podiatrist every 62 days, containing home health services provided, the patient's status, recommendations for revision of the plan of treatment, and the need for continuation or termination of services;~~
- ~~KL) Written and signed confirmation of the patient's physician's or podiatrist's interim verbal orders;~~
- ~~LM) A discharge summary giving a brief review of service, patient status, reason for discharge, and plans for post-discharge needs of the patient. A discharge summary may suffice as documentation to close the patient record for one-time visits and short-term or event-focused or diagnoses-focused interventions. A completed discharge summary shall be sent to the primary care physician or other health care professional who will be responsible for providing care and services to the patient after discharge from the home health agency (if any) within five business days after the patient's discharge. ~~The discharge summary need not be a separate piece of paper and may be incorporated into the routine summary of reports already furnished to the physician;~~ and~~
- ~~MN) A copy of appropriate patient transfer information. When a, ~~when requested, if the~~ patient is transferred to another health facility or~~

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

health agency for continued health services, the patient transfer records must be sent to the new health facility or health agency within two business days after a planned transfer, if the patient's care will be immediately continued in a health care facility. In the event of an unplanned patient transfer, the transfer information must be sent within two business days from when the home health agency became aware of the unplanned transfer, if the patient is still receiving care in a health care facility.

- 2) For record keeping, the agency may utilize hard copies or an electronic format. Each agency shall have written policies and procedures for records maintenance and shall retain records for a minimum of five years beyond the last date of service provided. These procedures may include that the agency will use and maintain faxed or electronic copies of records from licensed professionals, rather than original records, provided that ~~the faxed copies shall be maintained on non-thermal paper and that~~ the original records are~~shall be~~ maintained for a period of five years by the professional who originated the records. If the professional is providing services through a contract with the agency, then the contract shall include that the professional shall maintain the original records for a period of five years.
- 3) Agencies that are subject to the Local Records Act should note that, *except as otherwise provided by law, no public record shall be disposed of by any officer or agency unless the written approval of the appropriate Local Records Commission is first obtained.* (Section 7 of the Local Records Act)
- 4) Each agency shall have a written policy and procedure for protecting the confidentiality of patient records that explains the use of records, removal of records and release of information.
- 5) Agencies that maintain client records electronically~~by computer~~ rather than hard copy may use electronic signatures. The agency shall develop policies and procedures governing these entries and the appropriate authentication and dating of electronic records. Authentication may include signatures, written initials, or computer-secure entry by a unique identifier or primary author who has received and approved the entry. The agency shall enact safeguards to prevent unauthorized access to the

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

records and shall draft a process for reconstruction of the records if the system fails or breaks down.

- i) **Drugs and Biologicals.** The agency shall have written policies governing the supervision and administration of drugs and biologicals that shall include, but not be limited to, the following:
- 1) All orders for medications to be given shall be dated and signed by the patient's physician or podiatrist.
 - 2) Drugs and treatments shall be administered by agency staff only as ordered by the physician, with the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per agency policy developed in consultation with a physician, and after an assessment of the patient.
 - 3) All orders for medications shall contain the name of the drug, dosage, frequency, method or site of injection, and permission from the patient's physician or podiatrist if the patient, the patient's family, or both are to be taught to give medications.
 - 4) The agency's physician or podiatrist or ~~RN registered nurse~~ shall check all medicines that a patient may be taking to identify possible ineffective drug therapy or adverse reactions, significant side effects, drug allergies, and contraindicated medications, and shall promptly report any problem to the patient's physician or podiatrist.
 - 5) All verbal orders for medication or change in medication orders shall be taken by the nurse, written, and signed by the patient's physician or podiatrist within 30 days after the verbal order.
 - 6) When any ~~compound experimental drug~~, sera, allergenic desensitizing agent, ~~penicillin~~ or other potentially hazardous ~~compound~~ drug is administered, the ~~RN registered nurse administering the drugs~~ shall have an emergency plan and any drugs and devices that may be necessary if ~~an adverse drug~~ reaction occurs.
- j) QAPI. The home health agency shall develop, implement, evaluate and maintain an effective ongoing, agency-wide, data-driven QAPI program. The agency's

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

governing body shall ensure that the program reflects the complexity of its organization and services; involves all home health agency services (including those services provided under contract or arrangement); focuses on indicators related to improved outcomes, including the use of emergent care services, hospital admissions and re-admissions; and takes action that addresses the home health agency's performance across the spectrum of care, including the prevention and reduction of medical errors. The home health agency shall maintain documentary evidence of its QAPI program and be able to demonstrate its operations. The program shall:~~Evaluation. The home health agency shall have written policies for evaluation and shall make an overall evaluation of the agency's total program at least once a year. This evaluation shall be made by the Professional Advisory Group (or a committee of this group), home health agency staff, consumers, or representation from professional disciplines that are participating in the provision of home health services. The evaluation shall consist of an overall policy and administrative review and a clinical record review. The evaluation shall assess the extent to which the agency's program is appropriate, adequate, effective and efficient. Results of the evaluation shall be reported and acted upon by those responsible for the operation of the agency and maintained separately as administrative records.~~

- 1) Be capable of showing measurable improvement in indicators when there is evidence that improvement in those indicators will improve health outcomes, patient safety, and quality of care;
- 2) Measure, analyze and track:
 - A) quality indicators, including adverse patient events; and
 - B) other aspects of performance that enable the home health agency to access processes of care, home health agency services, and operations;
- 3) Use quality indicator data, including measures and data collected to monitor the effectiveness and safety of services and quality of care; and identify opportunities for improvement;
- 4) Develop improvement activities to focus on high risk, high volume or a problem-prone area; consider incidence, prevalence, and severity of problems in those areas; and lead to an immediate correction of any

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

individual problem that directly or potentially threatens the health and safety of patients;

- 5) Track adverse patient events, analyze their causes, and implement preventive actions; and
- 6) Measure actions implemented to improve performance to determine their success and track performance to ensure improvements are sustained.

- k) Policy and Administrative Review. As a part of the evaluation process, the policies and administrative practices of the agency shall be reviewed to determine the extent to which they promote patient care that is appropriate, adequate, effective and efficient. ~~Mechanisms shall be established in writing for the collection of pertinent data to assist in evaluation. The data to be considered may include, but are not limited to: number of patients receiving each service offered; number of patient visits; reasons for discharge; breakdown by diagnosis; sources of referral; number of patients not accepted, with reasons; and total staff days for each service offered.~~
- l) Clinical Record Review
 - 1) ~~At least quarterly, members of professional disciplines representing at least the scope of the agency's programs shall review a sample of both active and closed clinical records to assure that established policies are followed in providing services (direct, as well as those under contractual arrangement). This review shall include, but not be limited to, whether the: A) Patient care plan was directly related to the stated diagnosis and plan of treatment; B) Frequency of visits was consistent with the plan of treatment; and C) Services could have been provided in a shorter span of time.~~ 2) Clinical records shall be reviewed continually for each ~~60~~62-day period that a patient received home health services to determine the adequacy of the plan of treatment and the appropriateness of continuing home health care.

(Source: Amended at 43 Ill. Reg. 9134, effective August 12, 2019)

Section 245.211 Services – Alzheimer's Disease and Related Dementias

A home health, home nursing and home services agency that provides any and all Alzheimer's disease or related dementias services shall comply with the Alzheimer's Disease and Related Dementias Services Act and this Part. (Section 25(1) of the Alzheimer's Disease and Related

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

Dementias Services Act)

(Source: Added at 43 Ill. Reg. 9134, effective August 12, 2019)

Section 245.240 Quality Improvement Program

- a) Home nursing, home services and placement agencies~~Each agency~~ shall develop a quality improvement program. The quality improvement program shall include written policies and shall evaluate the agency's total program at least once a year. The evaluation for ~~home health agencies~~, home services agencies, and home nursing agencies shall, at a minimum, include a clinical or client record review, as appropriate. This evaluation shall assess the extent to which the agency's program is appropriate, adequate, effective and efficient. Results of the evaluation shall be reported to and acted upon by those responsible for the operation of the agency and shall be maintained separately as administrative records.
- b) Record Review. At least quarterly, the agency shall review a sample of both active and closed clinical or client records to assure that established policies are followed in providing services (direct services, as well as those under contractual arrangement). If applicable, this review shall include, but not be limited to:
- 1) Whether the care plan was directly related to the stated diagnosis and plan of care;
 - 2) Whether the frequency of visits was consistent with the plan of care; and
 - ~~3) Whether the services could have been provided in a shorter span of time or with fewer visits; and~~
 - 34) Whether the service plan was followed by the home services worker or nursing staff.
- c) None of the information, interviews, reports, statements, memoranda and recommendations produced during or resulting from the agency's quality improvement program may be admissible as evidence nor discoverable in any action of any kind in any court, as provided in Article VIII, Part 21 of the Code of Civil Procedure (Medical Studies).

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

- d) Placement agencies shall assess the extent to which the agency's program is appropriate, adequate, effective and efficient, including, but not limited to, the placement of workers who have prior training and who are on the Health Care Worker Registry. Results of the evaluation shall be reported to those responsible for the operation of the agency and shall be maintained in a separate file as administrative records.

(Source: Amended at 43 Ill. Reg. 9134, effective August 12, 2019)

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF EXPEDITED CORRECTION

- 1) Heading of the Part: Residential Mortgage License Act of 1987
- 2) Code Citation: 38 Ill. Adm. Code 1050
- 3) Section Number: 1050.950
- 4) Date Proposal published in *Illinois Register*: 43 Ill. Reg. 18; January 4, 2019
- 5) Date Adoption published in *Illinois Register*: 43 Ill. Reg. 5272; May 10, 2019
- 6) Date Request for Expedited Correction published in *Illinois Register*: 43 Ill. Reg. 6864; June 7, 2019
- 7) Adoption Effective Date: May 10, 2019
- 8) Correction Effective Date: May 10, 2019
- 9) Reason for Approval of Expedited Correction: In Section 1050.950(b), "Identifier" is being replaced with "Identifler". The requested correction qualifies under Section 5-85(b) of the Illinois Administrative Procedure Act [5 ILCS 100].

Rules Coordinator

Date

The full text of the Corrected Rules begins on the following page:

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF EXPEDITED CORRECTION

TITLE 38: FINANCIAL INSTITUTIONS

CHAPTER II: DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

PART 1050

RESIDENTIAL MORTGAGE LICENSE ACT OF 1987

SUBPART A: DEFINITIONS

Section

1050.100	High Risk Home Loan Definitions; Applicability
1050.110	Definitions
1050.115	Administrative Decision (Repealed)
1050.120	Assisting (Repealed)
1050.125	Commissioner (Repealed)
1050.130	Control (Repealed)
1050.132	Conviction or Convicted (Repealed)
1050.135	Document (Repealed)
1050.140	Employee (Repealed)
1050.145	First Tier Subsidiary (Repealed)
1050.150	Hearing Officer (Repealed)
1050.155	High Risk Home Loan (Repealed)
1050.157	Licensee (Repealed)
1050.160	Material (Repealed)
1050.165	Other Regulatory Agencies (Repealed)
1050.170	Party (Repealed)
1050.175	Principal Place of Business (Repealed)
1050.180	Repurchase a Loan (Repealed)
1050.185	State (Repealed)
1050.190	Servicer (Repealed)
1050.195	Points and Fees (Repealed)
1050.197	Total Loan Amount (Repealed)
1050.198	Approved Credit Counselor (Repealed)
1050.199	Home Equity Loan (Repealed)

SUBPART B: FEES

Section

1050.210	Fees
1050.220	License Fees (Repealed)

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF EXPEDITED CORRECTION

- 1050.230 Amended License Fees – Corporate Changes (Repealed)
- 1050.240 Duplicate Original License Fees (Repealed)
- 1050.245 Loan Originator Registration Application Fee (Repealed)
- 1050.246 Loan Originator Registration Transfer Fee (Repealed)
- 1050.247 Loan Originator Registration Reactivation Fee (Repealed)
- 1050.248 Duplicate Loan Originator Certificate of Registration or Pocket Card Fee (Repealed)
- 1050.250 Examination Fees (Repealed)
- 1050.255 Direct Expenses of Out-of-State Examinations (Repealed)
- 1050.260 Additional Full-Service Office Fees (Repealed)
- 1050.270 Hearing Fees (Repealed)
- 1050.280 Late Fees (Repealed)
- 1050.290 Manner of Payment (Repealed)

SUBPART C: LICENSING

Section

- 1050.310 Application for an Illinois Residential Mortgage License
- 1050.320 Application for Renewal of an Illinois Residential Mortgage License (Repealed)
- 1050.330 Waiver of License Fee
- 1050.340 Full-Service Office
- 1050.350 Additional Full-Service Office
- 1050.360 Continuing Education Requirements for Certain Employees (Repealed)
- 1050.370 Licensing of Mortgage Loan Originators

SUBPART D: OPERATIONS AND SUPERVISION

Section

- 1050.410 Net Worth
- 1050.420 Line of Credit (Repealed)
- 1050.425 Examination
- 1050.430 Late Audit Reports
- 1050.440 Escrow
- 1050.450 Audit Workpapers
- 1050.460 Selection of Independent Auditor (Repealed)
- 1050.470 Proceedings Affecting a License
- 1050.475 Change in Business Activities
- 1050.480 Change of Ownership, Control or Name or Address of Licensee
- 1050.490 Bonding Requirements

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF EXPEDITED CORRECTION

SUBPART E: ANNUAL REPORT OF MORTGAGE ACTIVITY, MORTGAGE
BROKERAGE ACTIVITY, PURCHASING ACTIVITY,
AND MORTGAGE SERVICING ACTIVITY

Section

1050.610	Filing Requirements
1050.620	Reporting Forms
1050.630	Annual Report of Mortgage Activity
1050.640	Annual Report of Brokerage Activity
1050.650	Annual Report of Servicing Activity
1050.655	Annual Report of Purchasing Activity
1050.660	Verification

SUBPART F: LOAN DELINQUENCY EXAMINATION

Section

1050.710	Computation of National Residential Mortgage Foreclosure Rate (Repealed)
1050.720	Computation of Illinois Residential Mortgage Foreclosure Rate (Repealed)
1050.730	Excess Foreclosure Rate (Repealed)
1050.740	Loan Delinquency Hearing
1050.750	Director's Authority – Unusually High Rate (Repealed)

SUBPART G: SERVICING

Section

1050.810	New Loans
1050.820	Transfer of Servicing
1050.830	Real Property Tax and Hazard Insurance Payments
1050.840	Payment Processing
1050.850	Toll-Free Telephone Arrangement
1050.860	Payoff of Outstanding Mortgage Loan
1050.870	Compliance with Other Laws

SUBPART H: ADVERTISING

Section

1050.910	General Prohibition
1050.920	Definition of Advertisement
1050.930	Compliance with Other Laws

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF EXPEDITED CORRECTION

- 1050.940 Requirements
- 1050.950 Misleading and Deceptive Advertising Prohibition

SUBPART I: LOAN BROKERAGE PRACTICES

- Section
- 1050.1010 Loan Brokerage Agreement
- 1050.1020 Loan Brokerage Disclosure Statement
- 1050.1030 Prohibited Practice

SUBPART J: LOAN APPLICATION PRACTICES

- Section
- 1050.1100 High Risk Home Loan Application Practices; Applicability
- 1050.1110 Borrower Information Document
- 1050.1120 Description of Required Documentation
- 1050.1130 Maintenance of Records (Repealed)
- 1050.1140 Loan Application Procedures
- 1050.1150 Copies of Signed Documents
- 1050.1160 Confirmation of Statements
- 1050.1170 Cancellation of Application
- 1050.1175 Loan Log
- 1050.1176 Record Retention
- 1050.1177 Required Loan Application File Documents
- 1050.1180 Ability to Repay
- 1050.1185 Verification of Ability to Pay Loan
- 1050.1186 Fraudulent or Deceptive Practices
- 1050.1187 Prepayment Penalty

SUBPART K: GENERAL LENDING PRACTICES

- Section
- 1050.1200 High Risk Home Loan Lending Practices; Applicability
- 1050.1210 Notice to Joint Borrowers
- 1050.1220 Inaccuracy of Disclosed Information
- 1050.1230 Changes Affecting Loans in Process (Repealed)
- 1050.1240 Prohibition of Unauthorized Lenders
- 1050.1250 Good Faith Requirements
- 1050.1260 Pre-paid Insurance Products and Warranties

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF EXPEDITED CORRECTION

1050.1270	Refinancing Prohibited in Certain Cases
1050.1272	Balloon Payments
1050.1275	Financing of Certain Points and Fees
1050.1276	Payments to Contractors
1050.1277	Negative Amortization
1050.1278	Negative Equity
1050.1280	Counseling Prior to Perfecting Foreclosure Proceedings

SUBPART L: COMMITMENT AND CLOSING PRACTICES

Section

1050.1305	Approval Notice (Repealed)
1050.1310	Inconsistent Conditions Prohibited
1050.1315	Avoidance of Commitment
1050.1320	Charges to Seller
1050.1325	Intentional Delay
1050.1330	No Duplication to Borrower of Seller's Costs
1050.1335	Fees and Charges
1050.1340	Refunds on Failure to Close
1050.1345	Representative at Closing
1050.1350	Compliance with Other Laws
1050.1355	Failure to Close – Disclosure
1050.1360	Escrow Account Agreements at Closing

SUBPART M: EXEMPTION GUIDELINES

Section

1050.1410	General
1050.1420	Interpretative Guidelines

SUBPART N: ADMINISTRATIVE HEARING PROCEDURES

Section

1050.1510	Applicability
1050.1520	Definitions (Repealed)
1050.1530	Filing
1050.1540	Form of Documents
1050.1550	Computation of Time
1050.1560	Appearances

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF EXPEDITED CORRECTION

1050.1570	Request for Hearing
1050.1580	Notice of Hearing
1050.1590	Service of the Notice of Hearing
1050.1595	Bill of Particulars or Motion for More Definite Statement
1050.1600	Motion and Answer
1050.1610	Consolidation and Severance of Matters – Additional Parties
1050.1620	Intervention
1050.1630	Postponement or Continuance of Hearing
1050.1640	Authority of Hearing Officer
1050.1650	Bias or Disqualification of Hearing Officer
1050.1660	Prehearing Conferences
1050.1670	Discovery
1050.1680	Subpoenas
1050.1690	Conduct of Hearing
1050.1700	Default
1050.1710	Evidence
1050.1720	Hostile Witnesses
1050.1730	Record of Proceedings
1050.1740	Briefs
1050.1750	Hearing Officer's Recommendation
1050.1760	Order of the Director
1050.1770	Rehearings and Reopening of Hearings
1050.1790	Costs of Hearing

SUBPART O: MORTGAGE AWARENESS PROGRAM

Section	
1050.1800	Applicability
1050.1810	General
1050.1820	Guidelines
1050.1830	Offer of Mortgage Awareness Program

SUBPART P: DEFAULT AND FORECLOSURE RATES ON CONVENTIONAL LOANS

Section	
1050.1900	Applicability
1050.1910	Report of Default and Foreclosure Rates on Conventional Loans
1050.1920	Director's Review and Analysis

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF EXPEDITED CORRECTION

SUBPART Q: THIRD PARTY REVIEW OF HIGH RISK HOME LOANS

Section

- 1050.2000 Applicability
- 1050.2010 Third Party Review of High Risk Home Loans

SUBPART R: REGISTRATION OF LOAN ORIGINATORS

Section

- 1050.2100 Mortgage Loan Originators; Applicability (Repealed)
- 1050.2110 Application for Registration (Repealed)
- 1050.2112 Evaluation of Applications (Repealed)
- 1050.2115 Examination (Repealed)
- 1050.2120 Continuing Education Requirements for Loan Originators (Repealed)
- 1050.2125 Certificate of Registration Issuance (Repealed)
- 1050.2130 Roster of Registered Loan Originators (Repealed)
- 1050.2135 Pocket Card (Repealed)
- 1050.2140 Certificate of Registration Renewal (Repealed)
- 1050.2145 Certificate of Registration Transfer Application or Inactive Notice (Repealed)
- 1050.2150 Inactive Registration Status; Reactivation (Repealed)
- 1050.2155 Temporary Permits (Repealed)
- 1050.2160 Confidential Information (Repealed)
- 1050.2165 Averments (Repealed)
- 1050.2170 Suspension or Revocation of Registration, Refusal to Renew, Fines (Repealed)
- 1050.2175 Loan Originator Hearings; Fees and Costs (Repealed)
- 1050.2180 Criminal Proceedings (Repealed)
- 1050.2185 Violations of Tax Acts (Repealed)
- 1050.2190 Disciplinary Action for Educational Loan Defaults (Repealed)
- 1050.2195 Nonpayment of Child Support (Repealed)

SUBPART S: PROVISIONAL REGISTRATION OF LOAN ORIGINATORS

Section

- 1050.2200 Purpose (Repealed)
- 1050.2210 Definitions (Repealed)
- 1050.2220 Registration Required (Repealed)
- 1050.2230 Exemptions (Repealed)
- 1050.2240 Application for Provisional Certificate of Registration; Contents; Amendment (Repealed)

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF EXPEDITED CORRECTION

- 1050.2250 Issuance of Provisional Certificate of Registration; Effective Date; Conditions (Repealed)
1050.2260 Loan Origination Practices (Repealed)
1050.2270 Enforcement (Repealed)

- 1050.APPENDIX A Estimated Monthly Income and Expenses Worksheet (Repealed)
1050.APPENDIX B Mortgage Ratio Worksheet (Repealed)

AUTHORITY: Implementing and authorized by the Residential Mortgage License Act of 1987 [205 ILCS 635/4-1(g)].

SOURCE: Filed January 18, 1974; amended at 2 Ill. Reg. 2, p. 1, effective January 16, 1978; codified at 8 Ill. Reg. 4524; amended at 9 Ill. Reg. 17393, effective October 24, 1985; Part repealed by emergency rule at 12 Ill. Reg. 3041, and new Part adopted by emergency rule at 12 Ill. Reg. 3079, effective January 13, 1988, for a maximum of 150 days; Part repealed at 12 Ill. Reg. 8683, and new Part adopted at 12 Ill. Reg. 8685, effective May 10, 1988; emergency amendment at 12 Ill. Reg. 9721, effective May 18, 1988, for a maximum of 150 days; amended at 13 Ill. Reg. 17056, effective October 20, 1989; amended at 15 Ill. Reg. 8580, effective May 28, 1991; emergency amendment at 16 Ill. Reg. 2915, effective February 10, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 10463, effective June 23, 1992; emergency amendment at 16 Ill. Reg. 12634, effective August 1, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 20179, effective December 9, 1992; amended at 17 Ill. Reg. 3513, effective March 2, 1993; transferred from Chapter III, 38 Ill. Adm. Code 450 (Commissioner of Savings and Loan Associations) to Chapter VIII, 38 Ill. Adm. Code 1050 (Commissioner of Savings and Residential Finance) pursuant to Savings Bank Act [205 ILCS 205] at 17 Ill. Reg. 4475; emergency amendment at 19 Ill. Reg. 11080, effective July 13, 1995, for a maximum of 150 days; emergency expired December 11, 1995; amended at 19 Ill. Reg. 15465, effective October 31, 1995; amended at 20 Ill. Reg. 388, effective January 1, 1996; recodified from Chapter VIII, Commissioner of Savings and Residential Finance, to Chapter II, Office of Banks and Real Estate, pursuant to PA 89-508, at 20 Ill. Reg. 12645; amended at 21 Ill. Reg. 10972, effective August 1, 1997; amended at 22 Ill. Reg. 230, effective December 19, 1997; amended at 24 Ill. Reg. 64, effective January 1, 2000; emergency amendment at 24 Ill. Reg. 19322, effective December 15, 2000, for a maximum of 150 days; emergency repealed at 25 Ill. Reg. 3696, effective January 30, 2001 in response to an objection of the Joint Committee on Administrative Rules at 25 Ill. Reg. 1857; amended at 25 Ill. Reg. 6174, effective May 17, 2001; emergency amendment at 27 Ill. Reg. 10783, effective July 1, 2003, for a maximum of 150 days; emergency expired November 27, 2003; amended at 28 Ill. Reg. 797, effective December 29, 2003; emergency amendment at 28 Ill. Reg. 7137, effective April 30, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 10352, effective June 29, 2004; amended at 28 Ill. Reg. 13351,

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF EXPEDITED CORRECTION

effective September 21, 2004; amended at 29 Ill. Reg. 14808, effective September 26, 2005; amended at 29 Ill. Reg. 19187, effective November 10, 2005; amended at 34 Ill. Reg. 17339, effective October 29, 2010; amended at 36 Ill. Reg. 250, effective January 1, 2012; amended at 38 Ill. Reg. 2019, effective December 27, 2013; amended at 41 Ill. Reg. 12405, effective October 6, 2017; amended at 43 Ill. Reg. 5272, effective May 10, 2019; expedited correction at 43 Ill. Reg. 9197, effective May 10, 2019.

SUBPART H: ADVERTISING

Section 1050.950 Misleading and Deceptive Advertising Prohibition

Advertisements by licensees shall not be false, misleading or deceptive. Examples of prohibited advertising include but are not limited to the following:

- a) No advertisement regarding residential mortgage lending or brokering may indicate or imply that interest rates or charges for loans are in any way "recommended", "approved", "set" or "established" by the State or the Act;
- b) The NMLS Unique ~~Identifier~~Identifier of the licensee shall not appear in any advertisement relating to activities other than residential mortgage lending or brokering, unless wording relating to the licensee's residential mortgage services also appears in the such advertisements and in prominence equal to or greater than the language regarding its other activities.

(Source: Amended at 43 Ill. Reg. 5272, effective May 10, 2019; expedited correction at 43 Ill. Reg. 9197, effective May 10, 2019)

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received during the period of August 6, 2019 through August 12, 2019. The rulemakings are scheduled for the September 17, 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.

<u>Second Notice Expires</u>	<u>Agency and Rule</u>	<u>Start of First Notice</u>	<u>JCAR Meeting</u>
9/18/19	<u>Insurance</u> , Preferred Provider Programs (50 Ill. Adm. Code 4520)	10/5/18 42 Ill. Reg. 17368	9/17/19

PROCLAMATION

2019-140**Flag Lowering – SPC Michael Nance**

WHEREAS, all citizens owe a tremendous debt of gratitude to the men and women of the armed forces who selflessly serve to protect our lives and keep our families safe. Every day, these men and women face great risks and put their lives on the line to perform their duties; and,

WHEREAS, SPC Michael Isaiah Nance, 24, Chicago, was killed in action on Monday, July 29, 2019, from small arms fire in Uruzgan Province, Afghanistan, was a proud member of the United States Army, assigned to B Company, 1st Battalion, 505th Parachute Infantry Regiment, 82nd Airborne Division, Fort Bragg, North Carolina, was representing the State of Illinois with pride; and,

WHEREAS, SPC Nance is survived by his mother and stepfather, John D. And Mrs. Shushawandra Gregoire, his father, Michael S. Nance, his younger brother, John-John Gregoire, and many more family members; and,

WHEREAS, funeral service for SPC Michael Nance will be held on Tuesday, August 13, 2019, at Trinity United Church of God and Christ, 400 W 95th St in Chicago, with interment at Abraham Lincoln National Cemetery in Elwood;

THEREFORE, I, JB Pritzker, Governor of the State of Illinois, do hereby order all persons or entities governed by the Illinois Flag Display Act to fly their flags at half-staff from sunrise on Sunday, August 11th, until sunset on Tuesday, August 13, 2019, in honor and remembrance of SPC Michael Nance whose selfless service and sacrifice is an inspiration to the citizens of the Land of Lincoln.

Issued by the Governor August 9, 2019

Filed by the Secretary of State August 9, 2019

ILLINOIS ADMINISTRATIVE CODE
Issue Index - With Effective Dates

Rules acted upon in Volume 43, Issue 34 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

20 - 2405	.....	8964
20 - 2425	.....	8977
20 - 2435	.....	8992
20 - 2535	.....	8999
86 - 700	.....	9010
20 - 1232	.....	9084

ADOPTED RULES

83 - 455	8/12/2019	9117
89 - 113	8/9/2019	9122
77 - 245	8/12/2019	9134

NOTICE OF EXPEDITED CORRECTION

38 - 1050	5/10/2019	9197
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