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November 15, 2019 Volume 43, Issue 46

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INTRODUCTION

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

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

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

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

ILLINOIS REGISTER PUBLICATION SCHEDULE FOR 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 FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Wholesale Drug Distribution Licensing Act
- 2) Code Citation: 68 Ill. Adm. Code 1510
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
1510.10	Amendment
1510.15	New Section
1510.20	Repealed
1510.30	Repealed
1510.50	Repealed
1510.60	Amendment
1510.65	Amendment
1510.70	Amendment
1510.80	New Section
1510.85	New Section
1510.90	New Section
1510.100	New Section
1510.110	New Section
1510.120	New Section
- 4) Statutory Authority: Implementing and authorized by the Wholesale Drug Distribution Licensing Act [225 ILCS 120].
- 5) A Complete Description of the Subjects and Issues Involved: This proposed rulemaking implements the statutory change made to Wholesale Drug Distribution Licensing Act in PA 101-420, which creates a license for third-party logistics providers. The changes include the setting forth of licensure requirements for third-party logistics providers, fingerprints and liability insurance requirements, storage and record keeping requirements, and defining change of ownership. This rulemaking also includes technical changes to maintain consistency with Department Acts.
- 6) Any published studies or reports, along with the sources of underlying data, that were used when comprising this rulemaking, in accordance with 1 Ill. Adm. Code 100.355:
None
- 7) Will this rulemaking replace any emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No

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- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking will not require a local government to establish, expand 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: Persons who wish to comment on this proposed rulemaking may submit written comments no later than 45 days after the publication of this Notice to:

Department of Financial and Professional Regulation
Attention: Craig Cellini
320 West Washington, 2nd Floor
Springfield IL 62786

217/785-0813
fax: 217/557-4451

All written comments received within 45 days after this issue of the *Illinois Register* will be considered.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Licensed wholesale drug distributors and applicants, as well as newly-eligible third-party logistics providers regulated under the Act may be affected.
- B) Reporting, bookkeeping or other procedures required for compliance: Each applicant for license as a wholesale drug distributor or a third-party logistics provider shall maintain minimum liability insurance for the duration of the license. Additionally, each wholesale drug distributor and third-party logistics provider shall submit a bond or other equivalent means of security in the amount of one hundred thousand dollars (\$100,000.00).
- C) Types of professional skills necessary for compliance: The education, training and experience necessary to safely and lawfully engage in the wholesale

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distribution of drugs is necessary for all persons employed by a licensed wholesale distributor.

- 14) Small Business Impact Analysis:
- A) Types of businesses subject to the proposed rule:
- 54 professional, scientific and technical services
- B) Categories that the agency reasonably believes the rulemaking will impact, including:
- ii. regulatory requirements
- 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 FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENTS

TITLE 68: PROFESSIONS AND OCCUPATIONS
CHAPTER VII: DEPARTMENT OF PROFESSIONAL REGULATION
SUBCHAPTER b: PROFESSIONS AND OCCUPATIONSPART 1510
WHOLESALE DRUG DISTRIBUTION LICENSING ACTSUBPART A: GENERAL PROVISIONS

Section	
1510.10	Definitions
<u>1510.15</u>	<u>Liability Insurance Requirements</u>
1510.20	Application for Licensure (<u>Repealed</u>)
1510.30	Personnel (<u>Repealed</u>)
1510.40	Violations and Penalties
1510.50	Minimum Requirements for the Storage and Handling of Prescription Drugs and for the Establishment and Maintenance of Prescription Drug Distribution Records (<u>Repealed</u>)
1510.60	Renewals
1510.65	Fees
1510.70	Granting Variances

SUBPART B: WHOLESALE DISTRIBUTOR

<u>Section</u>	
<u>1510.80</u>	<u>Application for Licensure</u>
<u>1510.85</u>	<u>Personnel</u>
<u>1510.90</u>	<u>Change of Ownership for a Wholesale Drug Distributor</u>

SUBPART C: THIRD-PARTY LOGISTICS PROVIDER

<u>Section</u>	
<u>1510.100</u>	<u>Application for Licensure</u>
<u>1510.110</u>	<u>Change of Ownership of a Third-party Logistics Provider</u>

SUBPART D: STORAGE AND RECORDKEEPING REQUIREMENTS

<u>Section</u>	
<u>1510.120</u>	<u>Minimum Requirements for the Storage and Handling of Prescription Drugs and</u>

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

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for the Establishment and Maintenance of Prescription Drug Distribution Records

AUTHORITY: Implementing the Wholesale Drug Distribution Licensing Act [225 ILCS 120] and authorized by Section 2105-15(7) of the Civil Administrative Code of Illinois [20 ILCS 2105].

SOURCE: Emergency rules adopted at 16 Ill. Reg. 12216, effective July 17, 1992, for a maximum of 150 days; adopted at 16 Ill. Reg. 17077, effective October 26, 1992; emergency amendments at 27 Ill. Reg. 13639, effective July 24, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 18997, effective December 5, 2003; amended at 44 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS**Section 1510.10 Definitions**

"Act" means the Wholesale Drug Distribution Licensing Act [~~225 ILCS 120~~ Rev. Stat. 1991, ch. 111, par. 8301-1 et seq.].

"Blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing.

"Blood component" means that part of blood separated by physical or mechanical means.

"Board" means the State Board of Pharmacy.

"Department" means the Illinois Department of Financial and Professional Regulation.

"Director" means the Director of the Division~~Department~~ of Professional Regulation.

"Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

"Manufacturer" means anyone who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging or labeling a prescription drug.

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"Prescription drug" means any human drug required by ~~federal~~Federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to ~~section~~Section 503(b) of the Federal Food, Drug and Cosmetic Act (21 ~~USC~~U.S.C. 301 et seq. ~~(1976)~~).

"Third-party logistics provider" means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer, but does not take title to the prescription drug or have general responsibility to direct the prescription drug's sale or disposition.

"Wholesale distribution" or "wholesale distributions" means distribution of prescription drugs to a person other than a consumer or patient, but does not include:

Intracompany sales, defined as any transaction or transfer between any division, subsidiary, parent and/or affiliated or related company under the common ownership and control of a corporate entity;

The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of ~~those~~such organizations;

The sale, purchase or trade of a drug or an offer to sell, purchase or trade a drug by a charitable organization described in ~~section~~Section 501(c)(3) of the Internal Revenue Code of 1954 (26 USC 501(c)(3)) to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

The sale, purchase or trade of a drug or an offer to sell, purchase or trade a drug among hospitals or other health care entities that are under common control (~~for~~For purposes of this Section, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, by voting rights, or by contract, or otherwise);

The sale, purchase or trade of a drug or an offer to sell, purchase or trade a drug for emergency medical reasons (~~for~~For purposes of this

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~~Section, section~~ "emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage);

The sale, purchase or trade of a drug; an offer to sell, purchase or trade a drug; or the dispensing of a drug pursuant to a prescription;

The lawful distribution of drug samples by manufacturers' representatives or distributors' representatives;

The sale, purchase or trade of blood and blood components intended for transfusion; or

The sale of prescription drugs by a pharmacy to practitioners (i.e., licensed physicians, dentists, ~~veterinarians~~ or podiatrists), providing the sales do not exceed 5% of the annual dollar purchases of prescription drugs by the pharmacy and providing the pharmacy maintains a log of sales to practitioners that includes ~~date;~~ Date of sale; ~~practioner's~~ Practitioner's name and address; ~~drug~~ Drug and strength; ~~size~~ Size of package; and ~~quantity~~ Quantity sold.

"Wholesale distributor" means anyone engaged in wholesale distribution of prescription drugs, including, but not limited to, manufacturers; repackers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies that conduct wholesale distributions.

(Source: Amended at 44 Ill. Reg. _____, effective _____)

Section 1510.15 Liability Insurance Requirements

- a) Each applicant for license as a wholesale drug distributor or a third-party logistics provider shall maintain, for the duration of that license, minimum liability insurance.
- b) Each wholesale drug distributor shall submit a bond or other equivalent means of security, as approved by the Department, in the amount of \$100,000.

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- c) Each third-party logistics provider shall submit a bond or other equivalent means of security, as approved by the Department, in the amount of \$100,000.

(Source: Added at 44 Ill. Reg. _____, effective _____)

Section 1510.20 Application for Licensure (Repealed)

~~Every wholesale distributor, wherever located, who engages in wholesale distribution into, out of, or within Illinois shall be licensed by the Department in accordance with the Act and this Part before engaging in wholesale distribution of prescription drugs.~~

- a) ~~The applicant for a license as a wholesale drug distributor shall file with the Department an application which includes the following:~~
- ~~1) The name, full business address and telephone number of the applicant;~~
 - ~~2) All trade or business names used by the applicant;~~
 - ~~3) Addresses, telephone numbers and the names of contact persons at all facilities used by the applicant for the storage, handling and distribution of prescription drugs;~~
 - ~~4) The type of ownership or operation (i.e., partnership, corporation or sole proprietorship). If a corporation, a copy of the Articles of Incorporation; and~~
 - ~~5) The names of the owner and/or operator of the entity, including:~~
 - ~~A) The name of the person, if a person;~~
 - ~~B) The name of each partner and the name of the partnership, if a partnership;~~
 - ~~C) The name and title of each corporate officer and director, the corporate names, the name of the state where incorporated and the name of the parent company, if any, if a corporation; or~~
 - ~~D) The full name of the sole proprietor and the name of the business entity, if a sole proprietorship; and~~

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- ~~6) The fee set forth in Section 1510.65.~~
- b) ~~The Department shall consider the following factors in determining eligibility for licensure of persons who engage in the wholesale distribution of prescription drugs:~~
 - ~~1) Any conviction of the applicant under any federal, state or local laws relating to drug samples, wholesale or retail drug distribution, or distribution of controlled substances;~~
 - ~~2) Any felony conviction of the applicant under federal, state or local laws;~~
 - ~~3) The applicant's past experience in the manufacture or distribution of prescription drugs, including controlled substances;~~
 - ~~4) The furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or distribution;~~
 - ~~5) Suspension or revocation by federal, state or local government of any license currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances;~~
 - ~~6) Compliance with licensing requirements under previously granted licenses, if any;~~
 - ~~7) Compliance with the requirements to maintain and/or make available to the state licensing authority or to federal, state or local law enforcement officials those records required to be maintained by wholesale drug distributors; and~~
 - ~~8) Any other factors or qualifications the Department considers relevant to and consistent with public health and safety.~~
- e) ~~A separate license is required for each facility directly or indirectly owned or operated by the same business that distributes prescription drugs.~~
- d) ~~When the address or name of a facility is changed, the licensee shall be required to apply for a new license and pay a \$100 fee. If the facility is relocated, the~~

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~~licensee shall also cause the facility to pass an inspection, meeting all requirements of the Act and this Section.~~

- e) ~~Changes in any information in this Section shall be submitted to the Department within 45 days after such change.~~
- f) ~~The Department reserves the right to deny a license to an applicant if it determines that the granting of such a license would not be in the public interest.~~
- g) ~~The applicant shall retain on premises a copy of the application and check to the Department to serve as a temporary license prior to the issuance of a certificate of registration as a Wholesale Drug Distributor. This is valid for 90 days.~~

(Source: Repealed at 44 Ill. Reg. _____, effective _____)

Section 1510.30 Personnel (Repealed)

~~The licensed wholesale distributor shall employ personnel with the education, training and experience necessary to safely and lawfully engage in the wholesale distribution of drugs. As a condition for receiving and retaining a wholesale drug distributor license, the licensee shall require each person employed in any prescription drug wholesale distribution activity to have education, training and experience, or any combination thereof, sufficient for that person to perform the assigned functions in such a manner as to provide assurance that the drug product quality, safety and security will at all times be maintained as required by law.~~

(Source: Repealed at 44 Ill. Reg. _____, effective _____)

Section 1510.50 Minimum Requirements for the Storage and Handling of Prescription Drugs and for the Establishment and Maintenance of Prescription Drug Distribution Records (Repealed)

~~The following are minimum requirements for the storage and handling of prescription drugs, and for the establishment and maintenance of prescription drug distribution records by wholesale drug distributors and their officers, agents, representatives and employees:~~

- a) ~~Facilities. All facilities at which prescription drugs are stored, warehoused, handled, held, offered, marketed or displayed shall:~~
 - 1) ~~Be of suitable size and construction to facilitate cleaning, maintenance and~~

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~~proper operations;~~

- ~~2) Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment and security conditions;~~
 - ~~3) Have a quarantine area for storage of prescription drugs that are outdated, damaged, deteriorated, misbranded, adulterated, or that are in immediate or sealed secondary containers that have been opened;~~
 - ~~4) Be maintained in a clean and orderly condition; and~~
 - ~~5) Be free from infestation by insects, rodents, birds or vermin of any kind.~~
- b) ~~Security. All facilities used for wholesale drug distribution shall:~~
- ~~1) Be secure from unauthorized entry:~~
 - ~~A) Access from outside the premises shall be kept to a minimum and be well controlled;~~
 - ~~B) The outside perimeter of the premises shall be well lighted;~~
 - ~~C) Entry into areas where prescription drugs are held shall be limited to authorized personnel;~~
 - ~~2) Be equipped with an alarm system to detect entry after hours; and~~
 - ~~3) Be equipped with a security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.~~
- e) ~~Storage. All prescription drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or with requirements in the current edition of an official compendium.~~
- ~~1) If no storage requirements are established for a prescription drug, the drug~~

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~~may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality and purity are not adversely affected.~~

- ~~2) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices and/or logs shall be utilized to document proper storage of prescription drugs.~~
 - ~~3) The recordkeeping requirements in subsection (f) of this Section shall be followed for all stored drugs.~~
- d) ~~Examination of materials.~~
- ~~1) Upon receipt, each outside shipping container shall be visually examined to identify the product and to prevent the acceptance of contaminated prescription drugs or prescription drugs that are otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.~~
 - ~~2) Each outgoing shipment shall be carefully inspected to identify the prescription drug products and to ensure that there is no delivery of prescription drugs that have been damaged in storage or held under improper conditions.~~
 - ~~3) The recordkeeping requirements in subsection (f) of this Section shall be followed for all incoming and outgoing prescription drugs.~~
- e) ~~Returned, damaged and outdated prescription drugs.~~
- ~~1) Prescription drugs that are outdated, damaged, deteriorated, misbranded or adulterated shall be quarantined and physically separated from other prescription drugs until they are destroyed or returned to their supplier.~~
 - ~~2) Any prescription drugs whose immediate or sealed outer or sealed secondary containers have been opened or used shall be identified as such, and shall be quarantined and separated from other prescription drugs until they are either destroyed or returned to the supplier.~~

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- ~~3) If the conditions under which a prescription drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, then the drug shall be destroyed or returned to the supplier unless examination, testing or other investigation proves that the drug meets appropriate standards of safety, identity, strength, quality and purity. In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, the wholesale drug distributor shall consider, among other things, the conditions under which the drug has been held, stored or shipped before or during its return and the condition of the drug and its container, carton or labeling, as a result of storage or shipping.~~
 - ~~4) The recordkeeping requirements in subsection (f) of this Section shall be followed for all outdated, damaged, deteriorated, misbranded or adulterated prescription drugs.~~
- f) ~~Recordkeeping.~~
- ~~1) Wholesale drug distributors shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs. These records shall include the following information:~~
 - ~~A) The source of the drugs, including the name and principal address of the seller or transferor, and address of the location from which the drugs were shipped;~~
 - ~~B) The identity and quantity of the drugs received and distributed or disposed of; and~~
 - ~~C) The dates of receipt and distribution or other disposition of the drugs.~~
 - ~~2) Inventories and records shall be made available for inspection and photocopying by drug compliance investigators or any authorized official of any governmental agency charged with enforcement of this Part for a period of 2 years following disposition of the drugs.~~
 - ~~3) Records described in this Section that are kept at the inspection site or that~~

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~~can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within 2 working days of a request by an authorized official of any federal, State and local agencies charged with enforcement of this Part.~~

- g) ~~Written policies and procedures. Wholesale drug distributors shall establish, maintain and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory and distribution of prescription drugs, including policies and procedures for identifying, recording and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. Wholesale drug distributors shall include in their written policies and procedures the following:~~
- 1) ~~A procedure whereby the oldest approved stock of a prescription drug product is distributed first. The procedure may permit deviation from this requirement if such deviation is temporary and appropriate.~~
 - 2) ~~A procedure to be followed for handling recalls and withdrawals of prescription drugs. Such procedure shall be adequate to deal with recalls and withdrawals due to:~~
 - A) ~~Any action initiated at the request of the Food and Drug Administration or other federal, state or local law enforcement or other government agency, including the Department;~~
 - B) ~~Any voluntary action by the manufacturer to remove defective or potentially defective drugs from the market; or~~
 - e) ~~Any action undertaken to promote public health and safety by replacing of existing merchandise with an improved product or new package design.~~
 - 3) ~~A procedure to ensure that wholesale drug distributors prepare for, protect against and handle any crisis that affects security or operation of any facility in the event of strike, fire, flood or other natural disaster or other situations of local, State or national emergency.~~

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- 4) ~~A procedure to ensure that any outdated prescription drugs shall be segregated from other drugs and either returned to the manufacturer or destroyed. This procedure shall provide for written documentation of the disposition of outdated prescription drugs. This documentation shall be maintained for 2 years after disposition of the outdated drugs.~~
- h) ~~Responsible persons. Wholesale drug distributors shall establish and maintain lists of officers, directors, managers and other persons in charge of wholesale drug distribution, storage and handling, including a description of their duties and a summary of their qualifications.~~
- i) ~~Compliance with federal, state, and local laws. Wholesale drug distributors shall operate in compliance with applicable federal, state and local laws and regulations.~~
- 1) ~~Wholesale drug distributors shall permit drug compliance investigators of the Department and authorized federal, state and local law enforcement officials to enter and inspect upon presentation of appropriate identification, their premises and delivery vehicles, and to audit their records and written operating procedures, at reasonable times and in a reasonable manner, to the extent authorized by law.~~
- 2) ~~Wholesale drug distributors who deal in controlled substances shall register with the appropriate state controlled substance authority and with the Drug Enforcement Administration (DEA), and shall comply with all applicable state, local and DEA regulations.~~
- j) ~~Salvaging and reprocessing. Wholesale drug distributors shall be subject to the provisions of any applicable federal, state or local laws or regulations that relate to prescription drug product salvaging or reprocessing.~~

(Source: Repealed at 44 Ill. Reg. _____, effective _____)

Section 1510.60 Renewals

- a) The first renewal period for registration issued under the Act shall be December 31 of even-numbered years. The holder of a certificate of registration may renew thatsueh registration 60 days prior to the expiration date by filing an application with the Department and paying the required fee set forth in Section 1510.65.

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- b) It is the responsibility of each registrant to notify the Department of any change of mailing address. Failure to receive a renewal ~~notice form~~ from the Department shall not constitute an excuse for failure to pay the renewal fee or to renew a certificate of one's registration.

(Source: Amended at 44 Ill. Reg. _____, effective _____)

Section 1510.65 Fees

The following fees shall be paid to the Department for the administration of the Act and are not refundable:

- a) Application Fees
- 1) The fee for application for a certificate of registration as a wholesale drug distributor is \$200.
 - 2) The fee for application for a certificate of registration as a third-party logistics provider is \$200.
- b) Renewal Fees
- 1) The fee for the renewal of a certificate of registration shall be \$200 per year.
 - 2) The fee for renewal for a certificate of registration as a third-party logistics provider is \$200.
- c) General Fees
- 1) The fee for change of ownership of a wholesale drug distributor certificate of registration is \$200~~the issuance of a duplicate license, for the issuance of a replacement license for a license that has been lost or destroyed or for the issuance of a license with a change of name or address, other than during the renewal period, is \$20. No fee is required for name and address changes on Department records when no duplicate license is issued.~~

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- 2) The fee for change of ownership of a third-party logistics provider certificate of registration is \$200~~a certification of a licensee's record for any purpose is \$20.~~
- 3) The fee for the change of designated representative person responsible for drugs is \$50.
- 4) The fee for change of location is \$100~~a wall certificate showing licensure shall be the actual cost of producing the certificate.~~
- 5) The fee for a facility or business name change is \$100~~roster of persons licensed as a wholesale drug distributor in this State shall be the actual cost of producing the roster.~~

(Source: Amended at 44 Ill. Reg. _____, effective _____)

Section 1510.70 Granting Variances

~~a)~~The Director ~~of the Department~~ may grant variances from this Part~~these rules~~ in individual cases when he/she finds that:

- ~~a1)~~ The provision from which the variance is granted is not statutorily mandated;
- ~~b2)~~ No party will be injured by the granting of the variance; and
- ~~c3)~~ The rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome. ~~b)The Director shall notify the Board of the granting of such variance, and the reasons therefor, at the next meeting of the Board.~~

(Source: Amended at 44 Ill. Reg. _____, effective _____)

SUBPART B: WHOLESALE DISTRIBUTOR**Section 1510.80 Application for Licensure**

Each wholesale distributor, wherever located, who engages in wholesale distribution into, out of, or within Illinois shall be licensed by the Department in accordance with the Act and this Part before engaging in wholesale distribution of prescription drugs.

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- a) The applicant shall file with the Department an application that includes the following:
- 1) The name, full business address, and telephone number of the applicant;
 - 2) All trade or business names used by the applicant;
 - 3) Addresses, telephone numbers and names of contact persons at all facilities used by the applicant for the storage, handling and distribution of prescription drugs;
 - 4) The type of ownership or operation (i.e., partnership, corporation or sole proprietorship). If a corporation, a copy of the Articles of Incorporation;
 - 5) The names of the owner and/or operator of the entity, including:
 - A) The name of the person, if a person;
 - B) The name of each partner and the name of the partnership, if a partnership;
 - C) The name and title of each corporate officer and director, the corporate names, the name of the state where incorporated, and the name of the parent company, if any, if a corporation; or
 - D) The full name of the sole proprietor and the name of the business entity, if a sole proprietorship;
 - 6) A list of all licenses and permits issued to the applicant by any other state that authorizes the applicant to purchase or possess prescription drugs;
 - 7) The name of the designated representative for the wholesale drug distributor, together with the personal information statement and fingerprints required by Section 25(b)(7) of the Act;
 - 8) Minimum liability insurance set forth in Section 1510.15;

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- 9) Each wholesale drug distributor must designate an individual representative to serve as the contact person for the Department. This representative must provide the Department with all the information required under the Act;
 - 10) The fee set forth in Section 1510.65; and
 - 11) Any additional information required by the Department.
- b) The Department will consider the following factors in determining eligibility for licensure of persons who engage in the wholesale distribution of prescription drugs:
- 1) Any conviction of the applicant under any federal, state or local laws relating to drug samples, wholesale or retail drug distribution, or distribution of controlled substances;
 - 2) Any felony conviction of the applicant under federal, state or local laws;
 - 3) The applicant's past experience in the manufacture or distribution of prescription drugs, including controlled substances;
 - 4) The furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or distribution;
 - 5) Suspension or revocation by federal, state or local government of any license currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances;
 - 6) Compliance with licensing requirements under previously granted licenses, if any;
 - 7) Compliance with the requirements to maintain and/or make available to the state licensing authority or to federal, state or local law enforcement officials those records required to be maintained by wholesale drug distributors; and
 - 8) Any other factors or qualifications the Department considers relevant to, and consistent with, public health and safety.

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- c) A separate license is required for each facility, directly or indirectly owned or operated by the same business, that distributes prescription drugs.
- d) The Department reserves the right to deny a license to an applicant if it determines that the granting of that a license would not be in the public interest.

(Source: Added at 44 Ill. Reg. _____, effective _____)

Section 1510.85 Personnel

The licensed wholesale distributor shall employ personnel with the education, training and experience necessary to safely and lawfully engage in the wholesale distribution of drugs. As a condition for receiving and retaining a wholesale drug distributor license, the licensee shall require each person employed in any prescription drug wholesale distribution activity to have education, training and experience, or any combination of these, sufficient for that person to perform the assigned functions in a manner that provides assurance that the drug product quality, safety and security will at all times be maintained as required by law.

(Source: Added at 44 Ill. Reg. _____, effective _____)

Section 1510.90 Change of Ownership of a Wholesale Drug Distributor

- a) When the address or name of a facility is changed, the licensee shall be required to apply for a new license and pay a \$100 fee. If the facility is relocated, the facility shall pass an inspection, meeting all requirements of the Act and this Section.
- b) A new wholesale drug distributor application must be filed whenever:
 - 1) The address or name of a facility is changed;
 - 2) 50% or more of the ownership of the business, other than a publicly traded business, to which the wholesale drug distributor license was issued is sold or otherwise transferred to a person or entity that does not hold any interest in the business issued the wholesale drug distributor license prior to the sale or transfer; or

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- 3) A change occurs in more than half the board of directors or executive officers of a business issued a wholesale drug distributor license.
- c) Any change of ownership or change in location requires an inspection.
- d) Conversion of a business entity to a different type of business entity is considered a change of ownership.
- e) Any change of ownership of a parent company that owns a wholesale drug distributor shall not be considered a change of ownership of the wholesale drug distributor.
- f) Any change in information required by the Department shall be submitted to the Department 60 days prior to that change, except for changes in information of nonresident licensees. A nonresident licensee shall submit any change in information required by the Department within 30 days after a change of the resident state license.

(Source: Added at 44 Ill. Reg. _____, effective _____)

SUBPART C: THIRD-PARTY LOGISTICS PROVIDERSection 1510.100 Application for Licensure

Each resident and nonresident third-party logistics provider must be licensed by the Department, in accordance with the Act, prior to shipping a prescription drug into this State.

- a) The applicant shall file with the Department an application that includes the following:
 - 1) The name, full business address, and telephone number of the applicant;
 - 2) All trade or business names used by the applicant;
 - 3) Addresses, telephone numbers, and names of contact persons for all facilities used by the applicant for the storage, handling and distribution of prescription drugs;

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- 4) The type of ownership or operation, such as a partnership, corporation or sole proprietorship;
 - 5) The name of the owner or operator of the applicant, including:
 - A) if a natural person, the name of the natural person;
 - B) if a partnership, the name of each partner and the name of the partnership;
 - C) if a corporation, the name and title of each corporate officer and director, the corporate names, and the name of the state of incorporation; and
 - D) if a sole proprietorship, the full name of the sole proprietor and the name of the business entity;
 - 6) A list of all licenses and permits issued to the applicant by any other state that authorizes the applicant to purchase or possess prescription drugs;
 - 7) The name of the designated representative for the applicant, together with the personal information statement and fingerprints required by Section 25(b)(7) of the Act;
 - 8) Minimum liability insurance set forth in Section 1510.20;
 - 9) Each applicant must designate an individual representative to serve as the contact person for the Department. This representative must provide the Department with all the information required under the Act;
 - 10) The fee set forth in Section 1510.65; and
 - 11) Any additional information required by the Department.
- b) The Department will consider the following factors in determining eligibility for licensure as a third-party logistics provider:

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- 1) Any conviction of the applicant under any federal, state or local laws relating to drug samples, wholesale or retail drug distribution, or distribution of controlled substances;
 - 2) Any felony conviction of the applicant under federal, state or local laws;
 - 3) The applicant's past experience in the manufacture or distribution of prescription drugs, including controlled substances;
 - 4) The furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or distribution;
 - 5) Suspension or revocation by federal, state or local government of any license currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances;
 - 6) Compliance with licensing requirements under previously granted licenses, if any;
 - 7) Compliance with the requirements to maintain and/or make available to the state licensing authority or to federal, state or local law enforcement officials those records required to be maintained by wholesale drug distributors; and
 - 8) Any other factors or qualifications the Department considers relevant to, and consistent with, public health and safety.
- c) A separate license is required for each facility, directly or indirectly owned or operated by the same business, that distributes prescription drugs.
- d) The Department reserves the right to deny a license to an applicant if it determines that the granting of that license would not be in the public interest.

(Source: Added at 44 Ill. Reg. _____, effective _____)

Section 1510.110 Change of Ownership of a Third-Party Logistics Provider

- a) When the address or name of a facility is changed, the licensee shall be required to apply for a new license and pay a \$100 fee. If the facility is relocated, the

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facility shall pass an inspection, meeting all requirements of the Act and this Part.

- b) A new third-party logistics provider application must be filed whenever:
- 1) The address or name of a facility is changed;
 - 2) 50% or more of the ownership of the business, other than a publicly traded business, to which the third-party logistics provider license was issued is sold or otherwise transferred to a person or entity that does not hold any interest in the business issued the wholesale drug distributor license prior to the sale or transfer; or
 - 3) A change occurs in more than half the board of directors or executive officers of a business issued a third-party logistics provider license.
- c) Any change of ownership or change in location requires an inspection.
- d) Conversion of a business entity to a different type of business entity is considered a change of ownership.
- e) Any change of ownership of a parent company that owns a third-party logistics provider shall not be considered a change of ownership of the third-party logistics provider.
- f) Any change in information required by the Department shall be submitted to the Department 60 days prior to that change, except for changes in information of nonresident licensees. A nonresident licensee shall submit any change in information required by the Department within 30 days after a change of the resident state license.

(Source: Added at 44 Ill. Reg. _____, effective _____)

SUBPART D: STORAGE AND RECORDKEEPING REQUIREMENTS

Section 1510.120 Minimum Requirements for the Storage and Handling of Prescription Drugs and for the Establishment and Maintenance of Prescription Drug Distribution Records

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The following are minimum requirements for the storage and handling of prescription drugs, and for the establishment and maintenance of prescription drug distribution records by wholesale drug distributors and third-party logistics providers, and their officers, agents, representatives and employees:

- a) Facilities. All facilities at which prescription drugs are stored, warehoused, handled, held, offered, marketed or displayed shall:
 - 1) Be of suitable size and construction to facilitate cleaning, maintenance and proper operations;
 - 2) Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment and security conditions;
 - 3) Have a quarantine area for storage of prescription drugs that are outdated, damaged, deteriorated, misbranded or adulterated, or that are in immediate or sealed secondary containers that have been opened;
 - 4) Be maintained in a clean and orderly condition; and
 - 5) Be free from infestation by insects, rodents, birds or vermin of any kind.
- b) Security. All facilities used for wholesale drug distribution shall:
 - 1) Be secure from unauthorized entry.
 - A) Access from outside the premises shall be kept to a minimum and be well controlled.
 - B) The outside perimeter of the premises shall be well-lighted.
 - C) Entry into areas where prescription drugs are held shall be limited to authorized personnel;
 - 2) Be equipped with an alarm system to detect entry after hours; and
 - 3) Be equipped with a security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall

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provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

- c) Storage. All prescription drugs shall be stored at appropriate temperatures and under appropriate conditions, in accordance with requirements, if any, in the labeling of those drugs, or with requirements in the current edition of an official compendium such as the United States Pharmacopoeia and National Formulary.
- 1) If no storage requirements are established for a prescription drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality and purity are not adversely affected.
 - 2) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices and/or logs shall be utilized to document proper storage of prescription drugs.
 - 3) The recordkeeping requirements in subsection (f) shall be followed for all stored drugs.
- d) Examination of Materials
- 1) Upon receipt, each outside shipping container shall be visually examined to identify the product and to prevent the acceptance of contaminated prescription drugs or prescription drugs that are otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.
 - 2) Each outgoing shipment shall be carefully inspected to identify the prescription drug products and to ensure that there is no delivery of prescription drugs that have been damaged in storage or held under improper conditions.
 - 3) The recordkeeping requirements in subsection (f) shall be followed for all incoming and outgoing prescription drugs.
- e) Returned, Damaged and Outdated Prescription Drugs

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- 1) Prescription drugs that are outdated, damaged, deteriorated, misbranded or adulterated shall be quarantined and physically separated from other prescription drugs until they are destroyed or returned to their supplier.
 - 2) Any prescription drugs whose immediate or sealed outer or sealed secondary containers have been opened or used shall be identified accordingly and shall be quarantined and separated from other prescription drugs until they are either destroyed or returned to the supplier.
 - 3) If the conditions under which a prescription drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, the drug shall be destroyed or returned to the supplier unless examination, testing or other investigation proves that the drug meets appropriate standards of safety, identity, strength, quality and purity. In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety or, identity, strength, quality or purity, the wholesale drug distributor and/or third-party logistics provider shall consider, among other things:
 - A) the conditions under which the drug has been held, stored or shipped before or during its return; and
 - B) the condition of the drug and its container, carton or labeling because of the storage or shipping.
 - 4) The recordkeeping requirements in subsection (f) shall be followed for all outdated, damaged, deteriorated, misbranded or adulterated prescription drugs.
- f) Recordkeeping
- 1) Wholesale drug distributors and third-party logistics providers shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs. These records shall include the following information:
 - A) The source of the drugs, including the name and principal address of the seller or transferor and the address of the location from which the drugs were shipped;

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- B) The identity and quantity of the drugs received and distributed or disposed of; and
 - C) The dates of receipt and distribution or other disposition of the drugs.
- 2) Inventories and records shall be made available, for a period of 2 years following disposition of the drugs, for inspection and photocopying by drug compliance investigators or any authorized official of any governmental agency charged with enforcement of this Part.
 - 3) Records described in this Section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within 2 working days after a request by an authorized official of any federal, State and local agencies charged with enforcement of this Part.
- g) Written Policies and Procedures. Wholesale drug distributors and third-party logistics providers shall establish, maintain and adhere to written policies and procedures that shall be followed for the receipt, security, storage, inventory and distribution of prescription drugs, including policies and procedures for identifying, recording and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. Wholesale drug distributors shall include in their written policies and procedures the following:
- 1) A procedure in which the oldest approved stock of a prescription drug product is distributed first. The procedure may permit deviation from this requirement if the deviation is temporary and appropriate.
 - 2) A procedure to be followed for handling recalls and withdrawals of prescription drugs. This procedure shall be adequate to deal with recalls and withdrawals due to:
 - A) Any action initiated at the request of the Food and Drug Administration or other federal, state or local law enforcement or other government agency;

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- B) Any voluntary action by the manufacturer to remove defective or potentially defective drugs from the market; or
 - C) Any action undertaken to promote public health and safety by replacing existing merchandise with an improved product or new package design.
- 3) A procedure to ensure that wholesale drug distributors prepare for, protect against, and handle any crisis that affects security or operation of any facility in the event of strike or fire, flood or other natural disaster, or other situations of local, State or national emergency.
 - 4) A procedure to ensure that any outdated prescription drugs shall be segregated from other drugs and either returned to the manufacturer or destroyed. This procedure shall provide for written documentation of the disposition of outdated prescription drugs. This documentation shall be maintained for 2 years after disposition of the outdated drugs.
- h) Responsible Persons. Wholesale drug distributors and third-party logistics providers shall establish and maintain lists of officers, directors, managers and other persons in charge of wholesale drug distribution, storage and handling, including a description of their duties and a summary of their qualifications.
 - i) Compliance with Federal, State and Local Laws. Wholesale drug distributors and third-party logistics providers shall operate in compliance with applicable federal, state and local laws and regulations.
 - 1) Wholesale drug distributors and third-party logistics providers shall permit drug compliance investigators of the Department and authorized federal, state and local law enforcement officials, at reasonable times, in a reasonable manner, and upon presentation of appropriate identification, to the extent authorized by law, to:
 - A) enter and inspect their premises and delivery vehicles; and
 - B) audit their records and written operating procedures.

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- 2) Wholesale drug distributors and third-party logistics providers who deal in controlled substances shall register with the appropriate state-controlled substance authority and with the Drug Enforcement Administration (DEA), and shall comply with all applicable state, local and DEA regulations.
- j) Salvaging and Reprocessing. Wholesale drug distributors and third-party logistics providers shall be subject to the provisions of any applicable federal, state or local laws or regulations that relate to prescription drug product salvaging or reprocessing.

(Source: Added at 44 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Retailers' Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 130
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
130.330	Amendment
130.1957	New Section
- 4) Statutory Authority: 35 ILCS 120/12; 20 ILCS 2505/2505-795
- 5) A Complete Description of the Subjects and Issues Involved: Section 130.330 is amended in response to legislation that expanded the Manufacturing Machinery and Equipment exemption to include production related tangible personal property purchased on or after July 1, 2019, that is primarily used or consumed in a production related process by a manufacturer in a manufacturing facility in which a manufacturing process takes place or by a graphic arts producer in graphic arts production. PA 101-9, effective July 1, 2019. The definition of production related tangible personal property includes supplies and consumables used in a manufacturing facility including fuels, coolants, solvents, oils, lubricants and adhesives, hand tools, protective apparel, and fire and safety equipment primarily used or consumed within a manufacturing facility in a production related process. Production related tangible personal property also includes all tangible personal property that is primarily used in research and development regardless of use within or without a manufacturing or graphic arts production facility. The new section, Section 130.1957, implements PA 101-31, codified at 35 ILCS 120/2-5(44). PA 101-31 creates an exemption from Retailers' Occupation Tax for data centers that receive a certificate of exemption from the Department of Commerce and Economic Opportunity ("DCEO"). Qualified tangible personal property used in the construction and operation of a data center that has been granted a certificate of exemption by DCEO, whether the tangible personal property is purchased by the owner, operator, or tenant of the data center or by a contractor of the owner, operator, or tenant, is exempt from Retailers' Occupation Tax.
- 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? Yes
- 8) Does this rulemaking contain an automatic repeal date? No

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- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rule does not create or enlarge a mandate as described in Section 3(b) of the State Mandates Act.
- 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:

Richard S. Wolters
Associate Counsel
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield IL 62794

217/782-2844

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: In Section 130.330, Manufacturers who purchase production related tangible personal property that is primarily used or consumed in a production related process in a manufacturing facility in which a manufacturing process takes place or by a graphic arts producer in graphic arts production. In Section 130.1957, all businesses making retail sales of qualified tangible personal property are affected.
- B) Reporting, bookkeeping or other procedures required for compliance: General bookkeeping, accounting and computer skills
- C) Types of professional skills necessary for compliance: General bookkeeping, accounting and computer skills
- 14) Small Business Impact Analysis:
- A) Types of businesses subject to the proposed rule;

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- 23 Construction
- 31-33 Manufacturing
- 44-45 Retail Trade
- 53 Real Estate Rental and Leasing

B) Categories that the agency reasonably believes the rulemaking will impact, including:

- ii. regulatory requirements;
- iii. record keeping;

15) Regulatory Agenda on which this rulemaking was summarized: July 2019

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

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TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 130
RETAILERS' OCCUPATION TAX

SUBPART A: NATURE OF TAX

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130.101	Character and Rate of Tax
130.105	Responsibility of Trustees, Receivers, Executors or Administrators
130.110	Occasional Sales
130.111	Sale of Used Motor Vehicles, Aircraft, or Watercraft by Leasing or Rental Business
130.115	Habitual Sales
130.120	Nontaxable Transactions

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130.201	The Test of a Sale at Retail
130.205	Sales for Transfer Incident to Service
130.210	Sales of Tangible Personal Property to Purchasers for Resale
130.215	Further Illustrations of Sales for Use or Consumption Versus Sales for Resale
130.220	Sales to Lessors of Tangible Personal Property
130.225	Drop Shipments

SUBPART C: CERTAIN STATUTORY EXEMPTIONS

Section	
130.305	Farm Machinery and Equipment
130.310	Food, Soft Drinks and Candy
130.311	Drugs, Medicines, Medical Appliances and Grooming and Hygiene Products
130.315	Fuel Sold for Use in Vessels on Rivers Bordering Illinois
130.320	Gasohol, Majority Blended Ethanol, Biodiesel Blends, and 100% Biodiesel
130.321	Fuel Used by Air Common Carriers in Flights Engaged in Foreign Trade or Engaged in Trade Between the United States and any of its Possessions
130.325	Graphic Arts Machinery and Equipment Exemption
130.330	Manufacturing Machinery and Equipment

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- 130.331 Manufacturer's Purchase Credit
- 130.332 Automatic Vending Machines
- 130.335 Pollution Control Facilities and Low Sulfur Dioxide Emission Coal-Fueled Devices
- 130.340 Rolling Stock
- 130.341 Commercial Distribution Fee Sales Tax Exemption
- 130.345 Oil Field Exploration, Drilling and Production Equipment
- 130.350 Coal Exploration, Mining, Off Highway Hauling, Processing, Maintenance and Reclamation Equipment
- 130.351 Aggregate Exploration, Mining, Off Highway Hauling, Processing, Maintenance and Reclamation Equipment

SUBPART D: GROSS RECEIPTS

Section

- 130.401 Meaning of Gross Receipts
- 130.405 How to Avoid Paying Tax on State or Local Tax Passed on to the Purchaser
- 130.410 Cost of Doing Business Not Deductible
- 130.415 Transportation and Delivery Charges
- 130.420 Finance or Interest Charges – Penalties – Discounts
- 130.425 Traded-In Property
- 130.430 Deposit or Prepayment on Purchase Price
- 130.435 State and Local Taxes Other Than Retailers' Occupation Tax
- 130.440 Penalties
- 130.445 Federal Taxes
- 130.450 Installation, Alteration and Special Service Charges
- 130.455 Motor Vehicle Leasing and Trade-In Allowances

SUBPART E: RETURNS

Section

- 130.501 Monthly Tax Returns – When Due – Contents
- 130.502 Quarterly Tax Returns
- 130.505 Returns and How to Prepare
- 130.510 Annual Tax Returns
- 130.515 First Return
- 130.520 Final Returns When Business is Discontinued
- 130.525 Who May Sign Returns
- 130.530 Returns Covering More Than One Location Under Same Registration – Separate

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	Returns for Separately Registered Locations
130.535	Payment of the Tax, Including Quarter Monthly Payments in Certain Instances
130.540	Returns on a Transaction by Transaction Basis
130.545	Registrants Must File a Return for Every Return Period
130.550	Filing of Returns for Retailers by Suppliers Under Certain Circumstances
130.551	Prepayment of Retailers' Occupation Tax on Motor Fuel
130.552	Alcoholic Liquor Reporting
130.555	Vending Machine Information Returns
130.560	Verification of Returns

SUBPART F: INTERSTATE COMMERCE

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130.601	Preliminary Comments (Repealed)
130.605	Sales of Property Originating in Illinois; Questions of Interstate Commerce
130.610	Sales of Property Originating in Other States (Repealed)

SUBPART G: CERTIFICATE OF REGISTRATION

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130.701	General Information on Obtaining a Certificate of Registration
130.705	Procedure in Disputed Cases Involving Financial Responsibility Requirements
130.710	Procedure When Security Must be Forfeited
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130.720	Separate Registrations for Different Places of Business of Same Taxpayer Under Some Circumstances
130.725	Display
130.730	Replacement of Certificate
130.735	Certificate Not Transferable
130.740	Certificate Required For Mobile Vending Units
130.745	Revocation of Certificate

SUBPART H: BOOKS AND RECORDS

Section	
130.801	Books and Records – General Requirements
130.805	What Records Constitute Minimum Requirement
130.810	Records Required to Support Deductions
130.815	Preservation and Retention of Records

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- 130.820 Preservation of Books During Pendency of Assessment Proceedings
130.825 Department Authorization to Destroy Records Sooner Than Would Otherwise be Permissible

SUBPART I: PENALTIES AND INTEREST

- Section
130.901 Civil Penalties
130.905 Interest
130.910 Criminal Penalties

SUBPART J: BINDING OPINIONS

- Section
130.1001 When Opinions from the Department are Binding

SUBPART K: SELLERS LOCATED ON, OR SHIPPING TO, FEDERAL AREAS

- Section
130.1101 Definition of Federal Area
130.1105 When Deliveries on Federal Areas Are Taxable
130.1110 No Distinction Between Deliveries on Federal Areas and Illinois Deliveries Outside Federal Areas

SUBPART L: TIMELY MAILING TREATED AS TIMELY FILING AND PAYING

- Section
130.1201 General Information
130.1205 Due Date that Falls on Saturday, Sunday or a Holiday

SUBPART M: LEASED PORTIONS OF LESSOR'S BUSINESS SPACE

- Section
130.1301 When Lessee of Premises Must File Return for Leased Department
130.1305 When Lessor of Premises Should File Return for Business Operated on Leased Premises
130.1310 Meaning of "Lessor" and "Lessee" in this Regulation

SUBPART N: SALES FOR RESALE

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Section

- 130.1401 Seller's Responsibility to Determine the Character of the Sale at the Time of the Sale
- 130.1405 Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale
- 130.1410 Requirements for Certificates of Resale (Repealed)
- 130.1415 Resale Number – When Required and How Obtained
- 130.1420 Blanket Certificate of Resale (Repealed)

SUBPART O: CLAIMS TO RECOVER ERRONEOUSLY PAID TAX

Section

- 130.1501 Claims for Credit – Limitations – Procedure
- 130.1505 Disposition of Credit Memoranda by Holders Thereof
- 130.1510 Refunds
- 130.1515 Interest

SUBPART P: PROCEDURE TO BE FOLLOWED UPON
SELLING OUT OR DISCONTINUING BUSINESS

Section

- 130.1601 When Returns are Required After a Business is Discontinued
- 130.1605 When Returns Are Not Required After Discontinuation of a Business
- 130.1610 Cross Reference to Bulk Sales Regulation

SUBPART Q: NOTICE OF SALES OF GOODS IN BULK

Section

- 130.1701 Bulk Sales: Notices of Sales of Business Assets

SUBPART R: POWER OF ATTORNEY

Section

- 130.1801 When Powers of Attorney May be Given
- 130.1805 Filing of Power of Attorney With Department
- 130.1810 Filing of Papers by Agent Under Power of Attorney

SUBPART S: SPECIFIC APPLICATIONS

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Section

- 130.1901 Addition Agents to Plating Baths
- 130.1905 Agricultural Producers
- 130.1910 Antiques, Curios, Art Work, Collectors' Coins, Collectors' Postage Stamps and Like Articles
- 130.1915 Auctioneers and Agents
- 130.1920 Barbers and Beauty Shop Operators
- 130.1925 Blacksmiths
- 130.1930 Chiropodists, Osteopaths and Chiropractors
- 130.1934 Community Water Supply
- 130.1935 Computer Software
- 130.1940 Construction Contractors and Real Estate Developers
- 130.1945 Co-operative Associations
- 130.1946 Tangible Personal Property Used or Consumed in Graphic Arts Production within Enterprise Zones Located in a County of more than 4,000 Persons and less than 45,000 Persons
- 130.1947 Tangible Personal Property Used or Consumed in the Process of Manufacturing and Assembly within Enterprise Zones or by High Impact Businesses
- 130.1948 Tangible Personal Property Used or Consumed in the Operation of Pollution Control Facilities Located within Enterprises Zones
- 130.1949 Sales of Building Materials Incorporated into the South Suburban Airport
- 130.1950 Sales of Building Materials Incorporated into the Illiana Expressway
- 130.1951 Sales of Building Materials Incorporated into Real Estate within Enterprise Zones
- 130.1952 Sales of Building Materials to a High Impact Business
- 130.1953 Sales of Building Materials to be Incorporated into a Redevelopment Project Area within an Intermodal Terminal Facility Area
- 130.1954 Sales of Building Materials Incorporated into Real Estate within River Edge Redevelopment Zones
- 130.1955 Farm Chemicals
- 130.1956 Dentists
- [130.1957 Tangible Personal Property Used in the Construction or Operation of Data Centers](#)
- 130.1960 Finance Companies and Other Lending Agencies – Installment Contracts – Bad Debts
- 130.1965 Florists and Nurserymen
- 130.1970 Hatcheries
- 130.1971 Sellers of Pets and the Like
- 130.1975 Operators of Games of Chance and Their Suppliers

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- 130.1980 Optometrists and Opticians
- 130.1985 Pawnbrokers
- 130.1990 Peddlers, Hawkers and Itinerant Vendors
- 130.1995 Personalizing Tangible Personal Property
- 130.2000 Persons Engaged in the Printing, Graphic Arts or Related Occupations, and Their Suppliers
- 130.2004 Sales to Nonprofit Arts or Cultural Organizations
- 130.2005 Persons Engaged in Nonprofit Service Enterprises and in Similar Enterprises Operated As Businesses, and Suppliers of Such Persons
- 130.2006 Sales by Teacher-Sponsored Student Organizations
- 130.2007 Exemption Identification Numbers
- 130.2008 Sales by Nonprofit Service Enterprises
- 130.2009 Personal Property Purchased Through Certain Fundraising Events for the Benefit of Certain Schools
- 130.2010 Persons Who Rent or Lease the Use of Tangible Personal Property to Others
- 130.2011 Sales to Persons Who Lease Tangible Personal Property to Exempt Hospitals
- 130.2012 Sales to Persons Who Lease Tangible Personal Property to Governmental Bodies
- 130.2013 Persons in the Business of Both Renting and Selling Tangible Personal Property – Tax Liabilities, Credit
- 130.2015 Persons Who Repair or Otherwise Service Tangible Personal Property
- 130.2020 Physicians and Surgeons
- 130.2025 Picture-Framers
- 130.2030 Public Amusement Places
- 130.2035 Registered Pharmacists and Druggists
- 130.2040 Retailers of Clothing
- 130.2045 Retailers on Premises of the Illinois State Fair, County Fairs, Art Shows, Flea Markets and the Like
- 130.2050 Sales and Gifts By Employers to Employees
- 130.2055 Sales by Governmental Bodies
- 130.2060 Sales of Alcoholic Beverages, Motor Fuel and Tobacco Products
- 130.2065 Sales of Automobiles for Use In Demonstration (Repealed)
- 130.2070 Sales of Containers, Wrapping and Packing Materials and Related Products
- 130.2075 Sales To Construction Contractors, Real Estate Developers and Speculative Builders
- 130.2076 Sales to Purchasers Performing Contracts with Governmental Bodies
- 130.2080 Sales to Governmental Bodies, Foreign Diplomats and Consular Personnel
- 130.2085 Sales to or by Banks, Savings and Loan Associations and Credit Unions
- 130.2090 Sales to Railroad Companies
- 130.2095 Sellers of Gasohol, Coal, Coke, Fuel Oil and Other Combustibles

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130.2100	Sellers of Feeds and Breeding Livestock
130.2101	Sellers of Floor Coverings
130.2105	Sellers of Newspapers, Magazines, Books, Sheet Music and Musical Recordings, and Their Suppliers; Transfer of Data Downloaded Electronically
130.2110	Sellers of Seeds and Fertilizer
130.2115	Sellers of Machinery, Tools and Special Order Items
130.2120	Suppliers of Persons Engaged in Service Occupations and Professions
130.2125	Discount Coupons, Gift Situations, Trading Stamps, Automobile Rebates and Dealer Incentives
130.2130	Undertakers and Funeral Directors
130.2135	Vending Machines
130.2140	Vendors of Curtains, Slip Covers and Other Similar Items Made to Order
130.2145	Vendors of Meals
130.2150	Vendors of Memorial Stones and Monuments
130.2155	Tax Liability of Sign Vendors
130.2156	Vendors of Steam
130.2160	Vendors of Tangible Personal Property Employed for Premiums, Advertising, Prizes, Etc.
130.2165	Veterinarians
130.2170	Warehousemen

SUBPART T: DIRECT PAYMENT PROGRAM

Section

130.2500	Direct Payment Program
130.2505	Qualifying Transactions, Non-transferability of Permit
130.2510	Permit Holder's Payment of Tax
130.2515	Application for Permit
130.2520	Qualification Process and Requirements
130.2525	Application Review
130.2530	Recordkeeping Requirements
130.2535	Revocation and Withdrawal
130.ILLUSTRATION A	Examples of Tax Exemption Cards
130.ILLUSTRATION B	Example of Notice of Revocation of Certificate of Registration
130.ILLUSTRATION C	Food Flow Chart

AUTHORITY: Implementing the Illinois Retailers' Occupation Tax Act [35 ILCS 120] and authorized by Section 2505-25 of the Department of Revenue Law [20 ILCS 2505].

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SOURCE: Adopted July 1, 1933; amended at 2 Ill. Reg. 50, p. 71, effective December 10, 1978; amended at 3 Ill. Reg. 12, p. 4, effective March 19, 1979; amended at 3 Ill. Reg. 13, pp. 93 and 95, effective March 25, 1979; amended at 3 Ill. Reg. 23, p. 164, effective June 3, 1979; amended at 3 Ill. Reg. 25, p. 229, effective June 17, 1979; amended at 3 Ill. Reg. 44, p. 193, effective October 19, 1979; amended at 3 Ill. Reg. 46, p. 52, effective November 2, 1979; amended at 4 Ill. Reg. 24, pp. 520, 539, 564 and 571, effective June 1, 1980; amended at 5 Ill. Reg. 818, effective January 2, 1981; amended at 5 Ill. Reg. 3014, effective March 11, 1981; amended at 5 Ill. Reg. 12782, effective November 2, 1981; amended at 6 Ill. Reg. 2860, effective March 3, 1982; amended at 6 Ill. Reg. 6780, effective May 24, 1982; codified at 6 Ill. Reg. 8229; recodified at 6 Ill. Reg. 8999; amended at 6 Ill. Reg. 15225, effective December 3, 1982; amended at 7 Ill. Reg. 7990, effective June 15, 1983; amended at 8 Ill. Reg. 5319, effective April 11, 1984; amended at 8 Ill. Reg. 19062, effective September 26, 1984; amended at 10 Ill. Reg. 1937, effective January 10, 1986; amended at 10 Ill. Reg. 12067, effective July 1, 1986; amended at 10 Ill. Reg. 19538, effective November 5, 1986; amended at 10 Ill. Reg. 19772, effective November 5, 1986; amended at 11 Ill. Reg. 4325, effective March 2, 1987; amended at 11 Ill. Reg. 6252, effective March 20, 1987; amended at 11 Ill. Reg. 18284, effective October 27, 1987; amended at 11 Ill. Reg. 18767, effective October 28, 1987; amended at 11 Ill. Reg. 19138, effective October 29, 1987; amended at 11 Ill. Reg. 19696, effective November 23, 1987; amended at 12 Ill. Reg. 5652, effective March 15, 1988; emergency amendment at 12 Ill. Reg. 14401, effective September 1, 1988, for a maximum of 150 days, modified in response to an objection of the Joint Committee on Administrative Rules at 12 Ill. Reg. 19531, effective November 4, 1988, not to exceed the 150 day time limit of the original rulemaking; emergency expired January 29, 1989; amended at 13 Ill. Reg. 11824, effective June 29, 1989; amended at 14 Ill. Reg. 241, effective December 21, 1989; amended at 14 Ill. Reg. 872, effective January 1, 1990; amended at 14 Ill. Reg. 15463, effective September 10, 1990; amended at 14 Ill. Reg. 16028, effective September 18, 1990; amended at 15 Ill. Reg. 6621, effective April 17, 1991; amended at 15 Ill. Reg. 13542, effective August 30, 1991; amended at 15 Ill. Reg. 15757, effective October 15, 1991; amended at 16 Ill. Reg. 1642, effective January 13, 1992; amended at 17 Ill. Reg. 860, effective January 11, 1993; amended at 17 Ill. Reg. 18142, effective October 4, 1993; amended at 17 Ill. Reg. 19651, effective November 2, 1993; amended at 18 Ill. Reg. 1537, effective January 13, 1994; amended at 18 Ill. Reg. 16866, effective November 7, 1994; amended at 19 Ill. Reg. 13446, effective September 12, 1995; amended at 19 Ill. Reg. 13568, effective September 11, 1995; amended at 19 Ill. Reg. 13968, effective September 18, 1995; amended at 20 Ill. Reg. 4428, effective March 4, 1996; amended at 20 Ill. Reg. 5366, effective March 26, 1996; amended at 20 Ill. Reg. 6991, effective May 7, 1996; amended at 20 Ill. Reg. 9116, effective July 2, 1996; amended at 20 Ill. Reg. 15753, effective December 2, 1996; expedited correction at 21 Ill. Reg. 4052, effective December 2, 1996; amended at 20 Ill. Reg. 16200, effective December 16, 1996; amended at 21 Ill. Reg. 12211, effective August 26, 1997;

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amended at 22 Ill. Reg. 3097, effective January 27, 1998; amended at 22 Ill. Reg. 11874, effective June 29, 1998; amended at 22 Ill. Reg. 19919, effective October 28, 1998; amended at 22 Ill. Reg. 21642, effective November 25, 1998; amended at 23 Ill. Reg. 9526, effective July 29, 1999; amended at 23 Ill. Reg. 9898, effective August 9, 1999; amended at 24 Ill. Reg. 10713, effective July 7, 2000; emergency amendment at 24 Ill. Reg. 11313, effective July 12, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 15104, effective October 2, 2000; amended at 24 Ill. Reg. 18376, effective December 1, 2000; amended at 25 Ill. Reg. 941, effective January 8, 2001; emergency amendment at 25 Ill. Reg. 1792, effective January 16, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 4674, effective March 15, 2001; amended at 25 Ill. Reg. 4950, effective March 19, 2001; amended at 25 Ill. Reg. 5398, effective April 2, 2001; amended at 25 Ill. Reg. 6515, effective May 3, 2001; expedited correction at 25 Ill. Reg. 15681, effective May 3, 2001; amended at 25 Ill. Reg. 6713, effective May 9, 2001; amended at 25 Ill. Reg. 7264, effective May 25, 2001; amended at 25 Ill. Reg. 10917, effective August 13, 2001; amended at 25 Ill. Reg. 12841, effective October 1, 2001; amended at 26 Ill. Reg. 958, effective January 15, 2002; amended at 26 Ill. Reg. 1303, effective January 17, 2002; amended at 26 Ill. Reg. 3196, effective February 13, 2002; amended at 26 Ill. Reg. 5369, effective April 1, 2002; amended at 26 Ill. Reg. 5946, effective April 15, 2002; amended at 26 Ill. Reg. 8423, effective May 24, 2002; amended at 26 Ill. Reg. 9885, effective June 24, 2002; amended at 27 Ill. Reg. 795, effective January 3, 2003; emergency amendment at 27 Ill. Reg. 11099, effective July 7, 2003, for a maximum of 150 days; emergency expired December 3, 2003; amended at 27 Ill. Reg. 17216, effective November 3, 2003; emergency amendment at 27 Ill. Reg. 18911, effective November 26, 2003, for a maximum of 150 days; emergency expired April 23, 2004; amended at 28 Ill. Reg. 9121, effective June 18, 2004; amended at 28 Ill. Reg. 11268, effective July 21, 2004; emergency amendment at 28 Ill. Reg. 15193, effective November 3, 2004, for a maximum of 150 days; emergency expired April 1, 2005; amended at 29 Ill. Reg. 7004, effective April 26, 2005; amended at 31 Ill. Reg. 3574, effective February 16, 2007; amended at 31 Ill. Reg. 5621, effective March 23, 2007; amended at 31 Ill. Reg. 13004, effective August 21, 2007; amended at 31 Ill. Reg. 14091, effective September 21, 2007; amended at 32 Ill. Reg. 4226, effective March 6, 2008; emergency amendment at 32 Ill. Reg. 8785, effective May 29, 2008, for a maximum of 150 days; emergency expired October 25, 2008; amended at 32 Ill. Reg. 10207, effective June 24, 2008; amended at 32 Ill. Reg. 17228, effective October 15, 2008; amended at 32 Ill. Reg. 17519, effective October 24, 2008; amended at 32 Ill. Reg. 19128, effective December 1, 2008; amended at 33 Ill. Reg. 1762, effective January 13, 2009; amended at 33 Ill. Reg. 2345, effective January 23, 2009; amended at 33 Ill. Reg. 3999, effective February 23, 2009; amended at 33 Ill. Reg. 15781, effective October 27, 2009; amended at 33 Ill. Reg. 16711, effective November 20, 2009; amended at 34 Ill. Reg. 9405, effective June 23, 2010; amended at 34 Ill. Reg. 12935, effective August 19, 2010; amended at 35 Ill. Reg. 2169, effective January 24, 2011; amended at 36 Ill. Reg. 6662, effective April 12, 2012; amended at 38 Ill. Reg. 12909, effective June 9, 2014; amended at 38 Ill. Reg. 17060, effective July 25, 2014; amended at 38 Ill. Reg. 17421,

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effective July 31, 2014; amended at 38 Ill. Reg. 17756, effective August 6, 2014; amended at 38 Ill. Reg. 19998, effective October 1, 2014; amended at 39 Ill. Reg. 1793, effective January 12, 2015; amended at 39 Ill. Reg. 12597, effective August 26, 2015; amended at 39 Ill. Reg. 14616, effective October 22, 2015; amended at 40 Ill. Reg. 6130, effective April 1, 2016; amended at 40 Ill. Reg. 13448, effective September 9, 2016; amended at 41 Ill. Reg. 10721, effective August 1, 2017; amended at 42 Ill. Reg. 2850, effective January 26, 2018; amended at 43 Ill. Reg. 4201, effective March 20, 2019; amended at 43 Ill. Reg. 5069, effective April 17, 2019; amended at 43 Ill. Reg. 8865, effective July 30, 2019; emergency amendment at 43 Ill. Reg. 9841, effective August 21, 2019, for a maximum of 150 days; amended at 44 Ill. Reg. _____, effective _____.

SUBPART C: CERTAIN STATUTORY EXEMPTIONS

Section 130.330 Manufacturing Machinery and Equipment

- a) General Provisions Applicable to All Types of Machinery and Equipment Under This Section
Notwithstanding the fact that the sales may be at retail, the Retailers' Occupation Tax does not apply to sales of machinery and equipment that will be used by the purchaser, or a lessee of the purchaser, primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease, whether the sale or lease is made directly by the manufacturer or by some other person. (Section 2-5(14) of the Act) The manufacturing and assembly machinery and equipment exemption includes machinery and equipment that replaces machinery and equipment in an existing manufacturing facility, as well as machinery and equipment that are for use in an expanded or new manufacturing facility. (Section 2-45 of the Act) In certain cases, purchases of machinery and equipment by a lessor will be exempt even though that lessor does not itself employ the machinery and equipment in an exempt manner. Initially, the exemption was for purchases of conventional machinery and equipment used or consumed primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease. The exemption has expanded over time to include not only conventional machinery and equipment used or consumed in a manufacturing or assembling process in a manufacturing facility (see subsection (c)) but also chemicals (see subsection (d)), computer software (see subsection (e)), machinery and equipment used primarily in graphic arts production (see subsection (g)), and production related tangible personal property (see subsection (h)). For purposes of this Section, unless otherwise provided, all the types of tangible personal property that qualify for the exemption

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under this Section will be referred to as "machinery and equipment". The following provisions apply to all items under this Section:

- 1) There may be instances in which items of tangible personal property do not meet the definition of conventional "machinery and equipment" under subsection (c), but do meet the definition of "graphic arts production" in subsection (g) or "production related tangible personal property" in subsection (h) and so would qualify for the exemption.
- 2) *The manufacturing machinery and equipment exemption is not subject to the sunset provisions contained in Section 2-45 of the Retailers' Occupation Tax Act. (Section 2-45 of the Act)*
- 3) All items considered machinery and equipment under this Section must be used primarily (over 50%) in manufacturing or assembling. Therefore, machinery that is used primarily in an exempt process and partially in a nonexempt manner would qualify for exemption. However, the purchaser must be able to establish through adequate records that the machinery and equipment is used over 50% of the time in an exempt manner in order to claim the exemption.
- 4) An item of machinery and equipment that initially is used primarily in manufacturing or assembling and, having been so used for less than one-half of its useful life, is converted to primarily nonexempt uses will become subject to tax at the time of the conversion, allowing for reasonable depreciation on the machinery and equipment.
- 5) The fact that particular machinery and equipment may be considered essential to the conduct of the business of manufacturing or assembling because its use is required by law or practical necessity does not, of itself, mean that machinery and equipment is used primarily in manufacturing or assembling.
- 6) Machinery and equipment used in the performance of a service, such as dry cleaning, is not used in the production of tangible personal property for wholesale or retail sale or lease and is thus taxable. However, a manufacturer or assembler who uses machinery and equipment to produce goods for wholesale or retail sale or lease by itself or another, or to perform assembly or fabricating work for a customer who retains the

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manufacturer or assembler only for its services, will not be liable for tax on the machinery and equipment it uses as long as the goods produced either for itself or another are destined for wholesale or retail sale or lease, rather than for use and consumption.

7) The exemption requires that the product produced as a result of the manufacturing or assembling process be tangible personal property for wholesale or retail sale or lease. Accordingly, a manufacturer or assembler who uses any significant portion of the output of its machinery and equipment, either for internal consumption or any other nonexempt use, or a lessor who leases otherwise exempt machinery and equipment to such a manufacturer or assembler, will not be eligible to claim the exemption on that machinery and equipment. No apportionment of production capacity between output for sale or lease and output for self-use will be permitted and no partial exemption for any item of machinery and equipment will be allowed. For example, the purchase of hot-mix asphalt machinery would be taxable if the majority of the asphalt produced (over 50%) was used to fulfill the purchaser's own construction contracts and not sold at wholesale or retail.

a) ~~General. Notwithstanding the fact that the sales may be at retail, the Retailers' Occupation Tax does not apply to sales of machinery and equipment that will be used by the purchaser, or a lessee of the purchaser, primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease, whether the sale or lease is made directly by the manufacturer or by some other person. [35 ILCS 120/2-5(14)] In certain cases, purchases of machinery and equipment by a lessor will be exempt even though that lessor does not itself employ the machinery and equipment in an exempt manner. Beginning July 1, 2017, the exemption includes machinery and equipment used primarily in graphic arts production, more fully explained in subsection (h). The manufacturing machinery and equipment exemption is not subject to the sunset provisions contained in the Use Tax Act, Service Use Tax Act, Service Occupation Tax Act and Retailers' Occupation Tax Act. (Section 2-45 of ROTA)~~

b) Manufacturing and Assembling Processes Described

1) The manufacturing process is the production of any article of tangible personal property, whether the article is a finished product or an article for use in the process of manufacturing or assembling a different article of

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tangible personal property, by procedures commonly regarded as manufacturing, processing, fabricating or refining that changes some existing material or materials into a material with a different form, use or name. These changes must result from the process in question and be substantial and significant.

- 2) The assembling process is the production of an article of tangible personal property, whether the article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by the combination of existing materials in a manner commonly regarded as assembling that results in an article or material of a different form, use or name.
- 3) The process or activity must be commonly regarded as manufacturing. To be so regarded, it must be thought of as manufacturing by the general public. Generally, the scale, scope and character of a process or operation will be considered to determine if the process or operation is commonly regarded as manufacturing. Manufacturing includes such activities as processing, fabricating and refining.
- 4) The use of machinery and equipment in any industrial, commercial or business activity that may be distinguished from manufacturing or assembling will not be an exempt use and the machinery and equipment will be subject to tax.
- 5) Manufacturing generally does not include extractive industrial activities. Logging and drilling for oil, gas and water neither produce articles of tangible personal property nor effect any significant or substantial change in the form, use or name of the materials or resources upon which they operate. However, the extractive processes of mining or quarrying may constitute manufacturing. (See *Nokomis Quarry Co. v. Department of Revenue*, 295 Ill. App. 3d 264, 692 N.E.2d 855, 860 (5th Dist. 1998) (holding that a calculated blasting method that is performed with specific desired results, which changes limestone deposits into materials with a different form, possessing new qualities or combinations, constitutes manufacturing).) Blasting agents, high explosives, detonators, lead-in line and blasting machines are examples of exempt tangible personal property that is often used in the extractive process of quarrying. Equipment used primarily to drill and load holes to place blasting material that fractures

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aggregate qualifies as manufacturing machinery and equipment. Dredges that are used primarily in a sand and gravel mining operation to pick up and sort materials from a riverbed also qualify for the exemption. Equipment, such as crawler dozers, used primarily to move shot rock after blasting, and wheel loaders, used primarily to load the mined product into off-highway haulage trucks for transport to the crusher-sorter machine, will qualify for the exemption. In addition, wheel loaders used to transport the mined product to the crusher-sorter machine or onto a conveyor system will qualify for the exemption. Machinery and equipment used primarily in activities such as crushing, washing, sizing and blending will qualify for the exemption if the process results in the assembling of an article of tangible personal property with a different form than the material extracted, which possesses new qualities or combinations. Other types of mining and quarrying equipment may be exempt under this subsection (b)(5) if used in qualifying activities.

- 6) Until July 1, 2017, the printing process was not commonly regarded as manufacturing. Therefore, machinery and equipment used in any printing application will not qualify for the exemption. This includes graphic arts, newspapers or books, as well as other industrial or commercial applications. Beginning July 1, 2017, the exemption includes machinery and equipment used in graphic arts production. (See subsection (g).)
- 7) Agricultural, horticultural and related, similar or comparable activities, including commercial fishing, beekeeping, production of seedlings or seed corn, and development of hybrid seeds, plants or shoots, are not manufacturing or assembling and, accordingly, machinery and equipment used in those activities is subject to tax under this Section. (However, see Section 130.305 for the Farm Machinery and Equipment Exemption.)
- 8) The preparation of food and beverages by restaurants, food service establishments, and other retailers is not manufacturing.
- 9) Effective September 1, 1988, manufacturing includes photoprocessing if the products of photoprocessing are sold. Machinery and equipment that would qualify for exemption includes, but is not limited to, developers, dryers, enlargers, mounting machines, roll film splicers, film developing image makers, disc film opening and spindling devices, film indexers, photographic paper exposure equipment, photographic paper developing

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machines, densitometers, print inspection devices, photo print/negative cut assembly stations, film sleeve insertion machines, negative image producers, film coating equipment, photo transparency mounters, processor rack sanitizers, photo print embossers, photo print mounting presses, graphic slide generators, chemical mixing equipment, and paper exposure positioning and holding devices. Cameras and equipment used to take pictures or expose film are not eligible, as the photoprocessing begins after the film is exposed. Retail/net price calculation equipment and chemical reclamation equipment are not considered to be manufacturing machinery and equipment.

- 1) ~~This exemption exempts from tax only machinery and equipment used in manufacturing or assembling tangible personal property for sale or lease. Thus, the use of machinery and equipment in any industrial, commercial or business activity that may be distinguished from manufacturing or assembling will not be an exempt use and the machinery and equipment will be subject to tax.~~
- 2) ~~The manufacturing process is the production of any article of tangible personal property, whether the article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by procedures commonly regarded as manufacturing, processing, fabricating or refining that changes some existing material or materials into a material with a different form, use or name. These changes must result from the process in question and be substantial and significant.~~
- 3) ~~The process or activity must be commonly regarded as manufacturing. To be so regarded, it must be thought of as manufacturing by the general public. Generally, the scale, scope and character of a process or operation will be considered to determine if the process or operation is commonly regarded as manufacturing. Manufacturing includes such activities as processing, fabricating and refining.~~
- 4) ~~Manufacturing generally does not include extractive industrial activities. Logging and drilling for oil, gas, and water neither produce articles of tangible personal property nor effect any significant or substantial change in the form, use or name of the materials or resources upon which they operate. However, the extractive processes of mining or quarrying may~~

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~~constitute manufacturing. See *Nokomis Quarry Co. v. Department of Revenue*, 295 Ill. App. 3d 264, 692 N.E.2d 855, 860 (5th Dist. 1998) (holding that a calculated blasting method that is performed with specific desired results, which changes limestone deposits into materials with a different form, possessing new qualities or combinations, constitutes manufacturing). Blasting agents, high explosives, detonators, lead-in line and blasting machines are examples of exempt tangible personal property that is often used in the extractive process of quarrying. Equipment used primarily to drill and load holes to place blasting material that fractures aggregate qualifies as manufacturing machinery and equipment. Dredges that are used primarily in a sand and gravel mining operation to pick up and sort materials from a riverbed also qualify for the exemption. Equipment, such as crawler dozers, used primarily to move shot rock after blasting, and wheel loaders, used primarily to load the mined product into off-highway haulage trucks for transport to the crusher-sorter machine, will qualify for the exemption. In addition, wheel loaders used to transport the mined product to the crusher-sorter machine or onto a conveyor system will qualify for the exemption. Machinery and equipment used primarily in activities, such as crushing, washing, sizing and blending, will qualify for the exemption, if the process results in the assembling of an article of tangible personal property with a different form than the material extracted, which possesses new qualities or combinations. Other types of mining and quarrying equipment may be exempt under this subsection (b)(4) if used in qualifying activities. (See subsections (c) and (d).)~~

- 5) ~~Through June 30, 2017, the printing process is not commonly regarded as manufacturing. Therefore, machinery and equipment used in any printing application will not qualify for exemption. This includes graphic arts, newspapers, books, etc., as well as other industrial or commercial applications.~~
- 6) ~~Agricultural, horticultural and related, similar or comparable activities, including commercial fishing, beekeeping, production of seedlings or seed corn, and the development of hybrid seeds, plants or shoots, are not manufacturing or assembling and, accordingly, machinery and equipment used in such activities is subject to tax. (However, see Section 130.305 for the Farm Machinery and Equipment Exemption.)~~

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- 7) ~~The preparation of food and beverages by restaurants, food service establishments, and other retailers is not manufacturing.~~
- 8) ~~Assembling means the production of any article of tangible personal property, whether that article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by the combination of existing materials in a manner commonly regarded as assembling that results in a material of a different form, use or name.~~
- 9) ~~Effective September 1, 1988 manufacturing includes photoprocessing if the products of photoprocessing are sold. Machinery and equipment that would qualify for exemption includes, but are not limited to, developers, dryers, enlargers, mounting machines, roll film splicers, film developing image makers, disc film opening and spindling devices, film indexers, photographic paper exposure equipment, photographic paper developing machines, densitometers, print inspection devices, photo print/negative cut assembly stations, film sleeve insertion machines, negative image producers, film coating equipment, photo transparency mounters, processor rack sanitizers, photo print embossers, photo print mounting presses, graphic slide generators, chemical mixing equipment and paper exposure positioning and holding devices, etc. Cameras and equipment used to take pictures or expose film are not eligible as the photoprocessing begins after the film is exposed. Retail/net price calculation equipment and chemical reclamation equipment are not considered to be manufacturing machinery and equipment.~~
- c) Machinery and Equipment. This subsection (c) describes "conventional" machinery and equipment that qualify for the exemption as it was originally enacted. Qualifying items that fall outside this definition of conventional machinery and equipment are described more fully in other subsections.
- 1) *The exemption under this subsection (c) applies to machinery and equipment that will be used by the purchaser, or a lessee of the purchaser, primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease. The manufacturing and assembly machinery and equipment exemption also includes machinery and equipment that replaces machinery and equipment in an existing manufacturing facility as well as machinery and equipment that are for*

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use in an expanded or new manufacturing facility. The machinery and equipment exemption also includes machinery and equipment used in the general maintenance or repair of exempt machinery and equipment or for in-house manufacture of exempt machinery and equipment.

- 2) Equipment includes an independent device or tool separate from any machinery but essential to an integrated manufacturing or assembly process, including computers used primarily in a manufacturer's computer assisted design, computer assisted manufacturing (CAD/CAM) system; any subunit or assembly comprising a component of any machinery or auxiliary, adjunct, or attachment parts of machinery, such as tools, dies, jigs, fixtures, patterns, and molds; and any parts that require periodic replacement in the course of normal operation. (Section 2-45 of the Act)
- 3) By way of illustration and not limitation, machinery and equipment used primarily in the following activities will generally be considered exempt:
 - A) The use of machinery and equipment to effect a direct and immediate physical change upon the tangible personal property to be sold;
 - B) The use of machinery and equipment to guide or measure a direct and immediate physical change upon the tangible personal property to be sold, provided this function is an integral and essential part of tuning, verifying or aligning the component parts of that property;
 - C) The use of machinery and equipment to inspect, test or measure the tangible personal property to be sold, when the function is an integral part of the production flow;
 - D) The use of machinery and equipment to convey, handle or transport the tangible personal property to be sold within production stations on the production line or directly between the production stations or buildings within the same plant;
 - E) The use of machinery and equipment to place the tangible personal property to be sold into the container, package or wrapping in

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which this property is normally sold, when the machinery and equipment is used as a part of an integrated manufacturing process;

F) The production or processing of food, including the use of baking equipment such as ovens to bake bread or other bakery items, whether that baking is performed by a central bakery or a retail grocery store;

G) The use of machinery and equipment such as buffers, builders or vulcanizing equipment to retread tires, whether or not the tire casing is provided by the purchaser.

4) By way of illustration and not limitation, the machinery and equipment used primarily in the following activities will generally not be considered to be exempt:

A) The use of machinery and equipment to transport work in process, or semifinished goods, between plants;

B) The use of machinery or equipment in managerial, sales or other nonproduction, nonoperational activities, including disposal of waste, scrap or residue, production scheduling, work routing, purchasing, receiving, accounting, fiscal management, general communications, plant security, sales, marketing, product exhibition and promotion, or personnel recruitment, selection or training;

C) The use of machinery and equipment in the preparation of food and beverages by a retailer for retail sale, i.e., restaurants, vending machines, food service establishments;

D) The use of machinery and equipment used in the last step of the retail sale. Examples are embroidery or monogramming machines used by tee-shirt retailers or sewing machines used to hem garments sold by a clothing store.

d) The exemption includes chemicals or chemicals acting as catalysts but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a product being manufactured or assembled for sale or lease. (Section 2-45

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of the Act) Effective July 1, 2019, chemicals that do not make a direct and immediate change or act as a catalyst may qualify if they are production related. The following examples are illustrative:

EXAMPLE 1: A chemical acid is used to etch copper off the surface of a printed circuit board during the manufacturing process. The acid causes a direct and immediate change upon the product. The acid qualifies for the exemption.

EXAMPLE 2: An aluminum oxide catalyst is used in a catalytic cracking process to refine heavy gas oil into gasoline. In this process, large molecules of gas oil or feed are broken up into smaller molecules. After the catalyst is injected into the feed and used in the cracking process, it is drawn off and reused in subsequent manufacturing processes. The catalyst qualifies for the exemption.

- e) *The exemption includes computer software used to operate exempt machinery and equipment used in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease. (Section 2-25 of the Act)*
- f) The exemption includes the sale of materials to a purchaser who manufactures the materials into an exempted type of machinery and equipment or tools that the purchaser uses in the manufacturing of tangible personal property or leases to a manufacturer of tangible personal property. However, the purchaser must maintain adequate records clearly demonstrating the incorporation of these materials into exempt machinery and equipment.
- g) Beginning July 1, 2017, the manufacturing machinery and equipment exemption includes machinery and equipment used primarily in graphic arts production. "Graphic arts production" means the production of tangible personal property for wholesale or retail sale or lease by means of printing, including ink jet printing, by one or more of the processes described in Groups 323110 through 323122 of Subsector 323, Groups 511110 through 511199 of Subsector 511, and Group 512230 of Subsector 512 of the North American Industry Classification System (NAICS) published by the U.S. Office of Management and Budget, 1997 edition. Graphic arts production does not include the transfer of images onto paper or other tangible personal property by means of photocopying or final printed products in electronic or audio form, including the production of software or audiobooks. Persons engaged primarily in the business of printing or publishing newspapers or magazines that qualify as newsprint and ink, by one or more of the processes described in Groups 511110 through 511199 of Subsector 511 of the

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NAICS published by the U.S. Office of Management and Budget, 1997 edition, are deemed to be engaged in graphic arts production. (Section 2-30 of the Act)

- 1) The manufacturing machinery and equipment exemption applies to qualifying machinery and equipment used in graphic arts production processes, as those processes are described in the NAICS and includes repair and replacement parts, both new and used, and including equipment that is manufactured on special order to be used primarily in graphic arts production.
- 2) Manufacturing includes printing by methods of engraving, letterpress, lithography, gravure, flexography, screen, quick and digital printing. It also includes the printing of manifold business forms, blankbooks, looseleaf binders, books, periodicals and newspapers. Included in graphic arts production are prepress services described in Subsector 323122 of the NAICS (e.g., the creation and preparation of negative or positive film from which plates are produced, plate production, cylinder engraving, typesetting and imagesetting). Also included are trade binding and related printing support activities set forth in Subsector 323121 of the NAICS (e.g., tradebinding, sample mounting and postpress services, such as book or paper bronzing, edging, embossing, folding, gilding, gluing, die cutting, finishing, tabbing and indexing).
- 3) By way of illustration and not limitation, the following activities will generally be considered graphic arts production:
 - A) Digital Printing and Quick Printing. This means the printing of graphical text or images by a process utilizing digital technology. It also includes the printing of what is commonly known as "digital photography" (e.g., use of a qualifying integrated computer and printer system to print a digital image). The exemption extends only to machinery and equipment, including repair and replacement parts, used in the act of production. Accordingly, no other type or kind of tangible personal property will qualify for the exemption, even though it may be used primarily in the graphic arts business.
 - B) Prepress or Preliminary Processes. Prepress or preliminary processes include the steps required to transform an original into a

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state that is ready for reproduction by printing. Prepress or preliminary processes include typesetting, film production, color separation, final photocomposition (e.g., image assembly and imposition (stripping)) and platemaking. Prepress or preliminary processes include the manipulation of images or text in preparation for printing for the purpose of conforming those images to the specific requirements of the printing process being utilized. For example, the images must be conformed for a specific signature layout and formatted to a specific paper size. In addition, colors must be calibrated to the specific type of paper or printing process utilized, so that they conform to customer specifications. Prepress or preliminary processes do not, however, include the creation or artistic enhancement of images that will later be reproduced in printed form by a graphic arts process. For example, the creation of an advertisement pursuant to customer direction, or enhancement of a photograph received from a customer by adding a border or text or rearranging the placement of images in the photograph, is not the performance of a qualifying prepress or preliminary process. Prepress or preliminary processes can be performed at the printing facility, a separate prepress or preliminary facility, the customer's location, or other location. The following are examples of equipment used in qualifying prepress or preliminary activities:

- i) Large scale, fixed-position cameras used to photograph two-dimensional copy to produce negatives or positives used in the production of plates; film processors; scanners; impositioners; RIP (raster image processor) equipment; proofing equipment; imagesetters, plate processors, helioklichographs, and computer-to-plate and computer-to-press equipment.
- ii) Computers that qualify include computers used primarily to receive, store and manipulate images to conform them to the requirements of a specific printing process that will later be performed. Computers used in connection with what is commonly referred to as "digital photography" will qualify if used primarily to format the graphic image that will be printed (e.g., used to format the size and layout of images to be printed). If the computers are primarily used,

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however, to apply background colors, borders or other artistic enhancements, or to view and select particular digital images to be printed, they will not qualify for the exemption.

- iii) Digital cameras do not qualify if they are used primarily to create an original image that will later be reproduced by a graphic arts process.
- iv) Servers used primarily to transfer images and text to qualifying equipment qualify, but do not qualify if used primarily in a nonexempt activity (for example, servers used to maintain an in-house email system).
- v) Scanners used primarily to input previously created images or text that will be reproduced by a graphic arts process qualify for the exemption.

C) Transfer of Images or Text from Computers, Plates, Cylinders or Blankets to Paper or Other Stock to be Printed. This process begins when paper is introduced on the press. Examples of qualifying equipment used in this activity include printing plates, printing presses, blankets and rollers, automatic blanket washers, scorers and dies, folders, punchers, stackers, strappers used in the pressroom for signatures, dryers, chillers and cooling towers. Laser or ink jet printers used to print on paper or other stock are also included in this exemption.

- i) Equipment used primarily to handle or convey printed materials between production stations in an integrated on-line graphic arts process is included in the exemption (e.g., a forklift or bindery cart will qualify for the exemption if it is primarily used to convey book covers that have been printed and cut to binding and finishing equipment).
- ii) Computer equipment used primarily to operate exempt graphic arts equipment also qualifies for the exemption.

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- iii) Equipment, such as transformers, used primarily to provide power to qualifying printing presses or bindery lines qualifies for the exemption. Similarly, heating and cooling machinery and equipment used to produce an environment necessary for the production of printed material qualifies for the exemption. For example, humidity-control equipment used to reduce static during the printing process qualifies for the exemption.

- D) Activities Involving the Binding, Collating or Finishing of the Graphic Arts Product. Equipment used in these activities includes, for instance, binders, packers, gatherers, joggers, trimmers, selectronic equipment, blow-in card feeders, inserters, stitchers, gluers, spiral binders, addressing machines, labelers and ink-jet printers.
 - i) Machinery and equipment used to convey materials to packaging areas after the graphic arts product has been printed, bound and finished qualifies for the exemption. That equipment includes, for instance, conveyor systems, hoists or other conveyance mechanisms used to direct the final printed product into packaging areas.

 - ii) Machinery and equipment used to package materials after the graphic arts product has been printed, bound and finished qualifies for the exemption. Packaging equipment includes, for instance, cartoning systems, palletizers, stretch wrappers, strappers, shrink tunnels and similar equipment.

- 4) By way of illustration and not limitation, machinery and equipment used primarily in the following activities will generally not be considered exempt:
 - A) The use of machinery and equipment primarily to produce graphic arts items not for wholesale or retail sale or lease (e.g., items produced for internal consumption or items produced and distributed without charge).

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- B) The use of machinery and equipment (e.g., fork lifts, roll clamps and roll grabbers) to convey raw materials to the press.
 - C) The use of machinery and equipment to convey materials to final storage or shipping areas. That equipment includes, for instance, fork lifts used primarily to place the packaged printed product into final storage or shipping areas.
 - D) The use of machinery and equipment to gather information, track jobs, or perform data-related functions prior to a qualifying prepress activity (e.g., computers used primarily to edit or create text, data or other copy). That equipment includes items such as inventory tracking devices and bar-code readers.
 - E) The use of machinery and equipment used primarily to photocopy printed matter. A copier that is capable of printing images or text transmitted to it in digital form may qualify if used primarily in that manner. However, a copier that produces photocopies by means of xerographic technology is subject to tax.
 - F) The use of machinery and equipment in managerial, sales or other nonproduction, nonoperational activities, including production scheduling, purchasing, receiving, accounting, physical management, general communications, plant security, marketing, or personnel recruitment, selection or training. Waste disposal equipment (e.g., equipment used to contain and recapture paper dust) does not qualify for the exemption.
 - G) The use of machinery and equipment for general ventilation, heating, cooling, climate control or general illumination, except when the machinery and equipment is used to produce an environment necessary for the production of printed material.
- 5) Machinery and equipment that initially is used primarily in graphic arts production and having been so used for less than one-half of its useful life and is converted to primarily nonexempt uses will become subject to the tax at the time of the conversion, allowing for reasonable depreciation on the item of machinery and equipment.

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- h) *Beginning on July 1, 2019, the manufacturing and assembling machinery and equipment exemption includes production related tangible personal property. (Section 2-45 of the Act)*
- 1) Production related tangible personal property means all tangible personal property used or consumed in a production related process by a manufacturer in a manufacturing facility in which a manufacturing process takes place or by a graphic arts producer in graphic arts production. Production related tangible personal property also means all tangible personal property that is used or consumed in research and development regardless of use within or without a manufacturing or graphic arts production facility.
- 2) By way of illustration and not limitation, the following uses of tangible personal property by manufacturers, including graphic arts producers, will be considered production related:
- A) Tangible personal property purchased by a manufacturer for incorporation into real estate within a manufacturing facility for use in a production related process, or tangible personal property purchased by a construction contractor for incorporation into real estate within a manufacturing facility for use in a production related process.
- B) Supplies and consumables used in a manufacturing process in a manufacturing facility, including fuels, coolants, solvents, oils, lubricants and adhesives.
- C) Hand tools, protective apparel, and fire and safety equipment used or consumed within a manufacturing facility.
- D) Tangible personal property used or consumed in a manufacturing facility for purposes of pre-production and post-production material handling, receiving, quality control, inventory control, storage, staging and packing for shipping or transportation.
- E) Fuel used in a ready-mix cement truck to rotate the mixing drum in order to manufacture concrete or cement. However, only the amount of fuel used to rotate the drum will qualify. The amount of

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fuel used or consumed in transportation of the truck will not qualify as production related tangible personal property. The amount of fuel used in a qualifying manner to rotate the drum may be stated as a percentage of the entire amount of fuel used or consumed by the ready-mix truck.

3) By way of illustration and not limitation, the following uses of tangible personal property by manufacturers, including graphic arts producers, will not be considered production related:

A) The use of trucks, trailers and motor vehicles that are required to be titled or registered pursuant to the Illinois Motor Vehicle Code [625 ILCS 5], and aircraft or watercraft required to be registered with an agency of State or federal government.

B) The use of office supplies, computers, desks, copiers and equipment for sales, purchasing, accounting, fiscal management, marketing, and personnel recruitment or selection activities, even if the use takes place within a manufacturing or graphic arts production facility.

C) The use or consumption of tangible personal property for aesthetic or decorative purposes, including landscaping and artwork.

i) Sales to Lessors

1) For the exemption to apply, the purchaser need not itself employ the exempt machinery and equipment in manufacturing. If the purchaser leases that machinery and equipment to a lessee-manufacturer who uses it in an exempt manner, the sale to the purchaser-lessor will be exempt from tax. A vendor may exclude these sales from its taxable gross receipts provided the purchaser-lessor provides the vendor with a properly completed exemption certificate and this Section would support an exemption if the sale were made directly to the lessee-manufacturer.

2) If a purchaser-lessor subsequently leases the machinery and equipment to a lessee who does not use it in a manner that would qualify directly for the exemption, the purchaser-lessor will become liable for the tax, allowing for reasonable depreciation on the machinery and equipment.

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j) Exemption Certificates

- 1) A vendor that makes sales of machinery and equipment to a manufacturer or lessor of a manufacturer incurs Retailers' Occupation Tax on that sale and must collect Use Tax unless the purchaser certifies the exempt nature of the purchase to the vendor as set out in this subsection (j).
- 2) The user of qualifying machinery and equipment shall prepare a certificate of exemption for each transaction stating facts establishing the exemption for that transaction and submit the certificate to the vendor. If the user has an active registration or resale number, that number may be given in lieu of the prescribed certificate. (Section 2-45 of the Act) Certificates shall be retained by the vendor and shall be made available to the Department for inspection or audit. The Department shall prescribe the form of the certificate.
- 3) If a manufacturer or lessor purchases at retail from a vendor who is not registered to collect Illinois Use Tax, the purchaser must prepare the completed exemption certificate and retain it in its files. The exemption certificate shall be available to the Department for inspection or audit.
- 4) In the case of a vendor who makes sales of qualifying machinery and equipment to a contractor who will incorporate it into real estate so that the contractor, itself, would be the taxable user (see Sections 130.1940 and 130.2075), the purchasing contractor should provide the vendor with a certification that the machinery and equipment will be transferred to a manufacturer as manufacturing machinery and equipment in the performance of a construction contract for the manufacturer. The purchasing contractor should include the manufacturer's name and registration number on the certification when claiming the exemption.

- k) The exemption does not include machinery and equipment used in the generation of electricity for wholesale or retail sale; the generation or treatment of natural or artificial gas for wholesale or retail sale that is delivered to customers through pipes, pipelines or mains; or the treatment of water for wholesale or retail sale that is delivered to customers through pipes, pipelines or mains. (Section 2-45 of the Act) (The provisions of this subsection (k) were established by P.A. 98-583,

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which states that the provisions are declaratory of existing law as to the meaning and scope of this exemption.)

- 1) Opinions and Rulings
Informal ruling and opinion letters issued by the Department regarding the coverage and applicability of this exemption to specific devices will be maintained by the Department in Springfield. They will be available for public inspection and may be copied or reproduced at taxpayer's expense. Trade secrets or other confidential information in these letters will be deleted prior to release to public access files.
- 1) ~~The law exempts only the purchase and use of "machinery" and "equipment" used in manufacturing or assembling. Accordingly, no other type or kind of tangible personal property will qualify for the exemption, even though it may be used primarily in the manufacturing or assembling of tangible personal property for sale or lease.~~
- 2) ~~Machinery means major mechanical machines or major components of such machines contributing to a manufacturing or assembling process: including, machinery and equipment used in the general maintenance or repair of such exempt machinery and equipment or for in-house manufacture of exempt machinery and equipment.~~
- 3) ~~Equipment includes any independent device or tool separate from any machinery but essential to an integrated manufacturing or assembling process: including computers used primarily in operating exempt machinery and equipment in a computer-assisted design, computer-assisted manufacturing (CAD/CAM) system; or any subunit or assembly comprising a component of any machinery or auxiliary, adjunct, or attachment, parts of machinery, such as tools, dies, jigs, fixtures, patterns and molds, and any parts which require periodic replacement in the course of normal operation. Beginning August 23, 2001, equipment includes computers used primarily in a manufacturer's computer-assisted design, computer-assisted manufacturing (CAD/CAM) system. For example, beginning August 23, 2001, a computer used by a manufacturer 25% of the time in operating exempt machinery and equipment (computer-assisted manufacturing – CAM) and 75% of the time in design (computer-assisted design – CAD) will now qualify for the exemption. Prior to~~

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~~August 23, 2001, a computer used in the manner described in the preceding sentence would not have qualified for the exemption because it did not primarily (over 50% of the time) operate exempt machinery and equipment. The exemption does not include hand tools, supplies (such as rags, sweeping or cleaning compounds), coolants, lubricants, adhesives, or solvents, items of personal apparel (such as gloves, shoes, glasses, goggles, coveralls, aprons, masks, mask air filters, belts, harnesses, or holsters), coal, fuel oil, electricity, natural gas, artificial gas, steam, refrigerants or water. (Section 2-45 of the Act)~~

- 4) ~~The exemption includes the sale of materials to a purchaser who manufactures the materials into an exempted type of machinery or equipment or tools that the purchaser uses in the manufacturing of tangible personal property or leases to a manufacturer of tangible personal property. However, the purchaser must maintain adequate records clearly demonstrating the incorporation of these materials into exempt machinery and equipment.~~
- 5) ~~Machinery and equipment does not include foundations for, or special purpose buildings to house or support, machinery and equipment.~~
- 6) ~~The exemption includes chemicals or chemicals acting as catalysts but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a product being manufactured or assembled for sale or lease. (Section 2-45 of the Act) The following examples are illustrative:~~
 - A) ~~Example 1. A chemical acid is used to etch copper off the surface of a printed circuit board during the manufacturing process. The acid causes a direct and immediate change upon the product. The acid qualifies for the exemption.~~
 - B) ~~Example 2. An aluminum oxide catalyst is used in a catalytic cracking process to refine heavy gas oil into gasoline. In this process, large molecules of gas oil or feed are broken up into smaller molecules. After the catalyst is injected into the feed and used in the cracking process, it is drawn off and reused in subsequent manufacturing processes. The catalyst qualifies for the exemption.~~

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- 7) ~~The exemption does not include machinery and equipment used in the generation of electricity for wholesale or retail sale; the generation or treatment of natural or artificial gas for wholesale or retail sale that is delivered to customers through pipes, pipelines, or mains; or the treatment of water for wholesale or retail sale that is delivered to customers through pipes, pipelines, or mains. [35 ILCS 120/2-45] (The provisions set forth in this subsection (c)(7) were established by Public Act 98-0583, which states that the provisions are declaratory of existing law as to the meaning and scope of this exemption.)~~
- 8) ~~The exemption includes computer software used to operate exempt machinery and equipment used in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease. [35 ILCS 120/2-25]~~
- d) Primary Use
- 1) ~~The law requires that machinery and equipment be used primarily in manufacturing or assembling. Therefore, machinery that is used primarily in an exempt process and partially in a nonexempt manner would qualify for exemption. However, the purchaser must be able to establish through adequate records that the machinery or equipment is used over 50 percent in an exempt manner in order to claim the deduction.~~
- 2) ~~The fact that particular machinery or equipment may be considered essential to the conduct of the business of manufacturing or assembling because its use is required by law or practical necessity does not, of itself, mean that machinery or equipment is used primarily in manufacturing or assembling.~~
- 3) ~~By way of illustration and not limitation, the following activities will generally be considered to constitute an exempt use:~~
- A) ~~The use of machinery or equipment to effect a direct and immediate physical change upon the tangible personal property to be sold;~~
- B) ~~The use of machinery or equipment to guide or measure a direct~~

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~~and immediate physical change upon the tangible personal property to be sold, provided this function is an integral and essential part of tuning, verifying, or aligning the component parts of such property;~~

- ~~C) The use of machinery or equipment to inspect, test or measure the tangible personal property to be sold where the function is an integral part of the production flow;~~
- ~~D) The use of machinery and equipment to convey, handle, or transport the tangible personal property to be sold within production stations on the production line or directly between the production stations or buildings within the same plant;~~
- ~~E) The use of machinery or equipment to place the tangible personal property to be sold into the container, package, or wrapping in which this property is normally sold when the machinery or equipment is used as a part of an integrated manufacturing process;~~
- ~~F) The production or processing of food, including the use of baking equipment such as ovens to bake bread or other bakery items, whether that baking is performed by a central bakery or a retail grocery store;~~
- ~~G) The use of machinery or equipment such as buffers, builders, or vulcanizing equipment to retread tires, whether or not the tire casing is provided by the purchaser.~~

4) ~~By way of illustration and not limitation, the following activities will generally not be considered to be manufacturing:~~

- ~~A) The use of machinery or equipment in the construction, reconstruction, alteration, remodeling, servicing, repairing, maintenance or improvement of real estate;~~
- ~~B) The use of machinery or equipment in research and development of new products or production techniques, machinery or equipment;~~

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- ~~C) Except as provided in subsection (h)(4)(B), the use of machinery or equipment to store, convey, handle or transport materials or parts or sub-assemblies prior to their entrance into the production cycle;~~
- ~~D) The use of machinery or equipment to store, convey, handle or transport finished articles of tangible personal property to be sold or leased after completion of the production cycle;~~
- ~~E) The use of machinery or equipment to transport work in process, or semifinished goods, between plants;~~
- ~~F) The use of machinery or equipment in managerial, sales, or other nonproduction, nonoperational activities including disposal of waste, scrap or residue, inventory control, production scheduling, work routing, purchasing, receiving, accounting, fiscal management, general communications, plant security, sales, marketing, product exhibition and promotion, or personnel recruitment, selection or training;~~
- ~~G) The use of machinery or equipment to prevent or fight fires or to protect employees, such as protective equipment face masks, helmets, gloves, coveralls, and goggles or for safety, accident protection or first aid, even though the machinery or equipment may be required by law;~~
- ~~H) The use of machinery or equipment for general ventilation, heating, cooling, climate control or general illumination, not required by the manufacturing process;~~
- ~~I) The use of machinery or equipment in the preparation of food and beverages by a retailer for retail sale, i.e., restaurants, vending machines, food service establishments;~~
- ~~J) The use of machinery or equipment used in the last step of the retail sale. Examples are paint mixing equipment used by a hardware store, embroidery or monogramming machines used by tee shirt retailers and a sewing machine used to hem garments sold by a clothing store.~~

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- 5) ~~An item of machinery or equipment that initially is used primarily in manufacturing or assembling and having been so used for less than one-half of the useful life is converted to primarily nonexempt uses will become subject to tax at the time of the conversion, allowing for reasonable depreciation on the machinery or equipment.~~
- e) ~~Product Use~~
- 1) ~~The statute requires that the product produced as a result of the manufacturing or assembling process be tangible personal property for sale or lease. Accordingly, a manufacturer or assembler who uses any significant portion of the output of its machinery or equipment, either for internal consumption or any other nonexempt use, or a lessor who leases otherwise exempt machinery and equipment to such a manufacturer or assembler, will not be eligible to claim the exemption on that machinery and equipment. No apportionment of production capacity between output for sale or lease and output for self use will be permitted and no partial exemption for any item of machinery and equipment will be allowed.~~
- 2) ~~The production of articles of tangible personal property for sale, a portion of which is diverted by the manufacturer of the property to use as sales samples or as the subjects of quality control testing that renders the articles unfit for sale, will nevertheless be deemed to be production for sale, provided this diversion represents only a small portion of the production of the articles of tangible personal property or of the sale of those articles.~~
- 3) ~~Machinery and equipment used in the performance of a service, such as dry cleaning, is not used in the production of tangible personal property for sale and is thus taxable. However, a manufacturer or assembler who uses machinery and equipment to produce goods for sale or lease by itself or another, or to perform assembly or fabricating work for a customer who retains the manufacturer or assembler only for its services, will not be liable for tax on the machinery and equipment it uses as long as the goods produced either for itself or another are destined for sale or lease, rather than for use and consumption.~~
- f) ~~Sales to Lessors of Manufacturers~~

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- 1) ~~For this exemption to apply, the purchaser need not itself employ the exempt machinery or equipment in manufacturing. If the purchaser leases that machinery or equipment to a lessee manufacturer who uses it in an exempt manner, the sale to the purchaser lessor will be exempt from tax. A supplier may exclude these sales from its taxable gross receipts provided the purchaser lessor provides to the supplier a properly completed exemption certificate and this Section would support an exemption if the sale were made directly to the lessee manufacturer.~~
 - 2) ~~Should a purchaser lessor subsequently lease the machinery or equipment to a lessee who does not use it in a manner that would qualify directly for the exemption, the purchaser lessor will become liable for the tax, allowing for reasonable depreciation on the machinery or equipment.~~
- g) Exemption Certificates
- 1) ~~The user of such machinery or equipment and tools shall prepare a certificate of exemption for each transaction stating facts establishing the exemption for that transaction and submit the certificate to the retailer. The certificates shall be retained by the retailer and shall be made available to the Department for inspection or audit. The Department shall prescribe the form of the certificate. If the user has an active registration or resale number, that number may be given in lieu of the prescribed certificate.~~
 - 2) ~~If a manufacturer or lessor purchases at retail from a vendor who is not registered to collect Illinois Use Tax, the purchaser must prepare and retain in its files, the completed exemption certificate. The exemption certificate shall be available to the Department for inspection or audit.~~
 - 3) ~~A vendor who makes sales of machinery or equipment to a manufacturer or lessor of a manufacturer must collect Use Tax, and will owe Retailers' Occupation Tax, on that sale unless the purchaser certifies the exempt nature of the purchase to the vendor as set out in this subsection (g). The ST-587 Equipment Exemption Certificate must be submitted in lieu of taxes at the time the taxes are due.~~
 - 4) ~~In the case of a vendor who makes sales of qualifying machinery or equipment to a contractor who will incorporate it into real estate so that~~

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~~he, the contractor, would be the taxable user (see Sections 130.1940 and 130.2075 of this Part), the purchasing contractor should provide the vendor with a certification that the machinery or equipment will be transferred to a manufacturer as manufacturing machinery or equipment in the performance of a construction contract for the manufacturer. The purchasing contractor should include the manufacturer's name and registration number on the certification when claiming the exemption.~~

- h) ~~Beginning July 1, 2017, the manufacturing machinery and equipment exemption includes machinery and equipment used primarily in graphic arts production. "Graphic arts production" means the production of tangible personal property for wholesale or retail sale or lease by means of printing, including ink jet printing, by one or more of the processes described in Groups 323110 through 323122 of Subsector 323, Groups 511110 through 511199 of Subsector 511, and Group 512230 of Subsector 512 of the North American Industry Classification System (NAICS) published by the U.S. Office of Management and Budget, 1997 edition. Graphic arts production does not include the transfer of images onto paper or other tangible personal property by means of photocopying or final printed products in electronic or audio form, including the production of software or audiobooks. Persons engaged primarily in the business of printing or publishing newspapers or magazines that qualify as newsprint and ink, by one or more of the processes described in Groups 511110 through 511199 of subsector 511 of the NAICS published by the U.S. Office of Management and Budget, 1997 edition, are deemed to be engaged in graphic arts production. [35 ILCS 120/2-30]~~
- 1) ~~Subsections (a) through (g) apply fully to graphic arts production, except when the specific provisions of subsection (h) are broader than the provisions of subsections (a) through (g). When the provisions are broader, the provisions of subsection (h) control. For example, subsection (h)(4)(B) provides that equipment used in certain activities performed during prepress or preliminary processes would be considered equipment used in graphic arts production and would qualify for the exemption. In contrast, subsection (d)(4)(C) provides that machinery or equipment used in certain activities prior to entrance into the production cycle would generally not be considered manufacturing and would not qualify for the exemption. Subsection (h)(4)(B) controls.~~
- 2) ~~The manufacturing machinery and equipment exemption applies to qualifying machinery and equipment used in graphic arts production~~

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~~processes, as those processes are described in the NAICS and includes repair and replacement parts, both new and used, and including equipment that is manufactured on special order to be used primarily in graphic arts production.~~

- 3) ~~Manufacturing includes printing by methods of engraving, letterpress, lithography, gravure, flexography, screen, quick and digital printing. It also includes the printing of manifold business forms, blankbooks, looseleaf binders, books, periodicals and newspapers. Included in graphic arts production are prepress services described in Subsector 323122 of the NAICS (e.g., the creation and preparation of negative or positive film from which plates are produced, plate production, cylinder engraving, typesetting and imagesetting). Also included are trade binding and related printing support activities set forth in Subsector 323121 of the NAICS (e.g., tradebinding, sample mounting and postpress services, such as book or paper bronzing, edging, embossing, folding, gilding, gluing, die cutting, finishing, tabbing and indexing).~~
- 4) ~~By way of illustration and not limitation, the following activities will generally be considered graphic arts production:~~
 - A) ~~Digital Printing and Quick Printing. This means the printing of graphical text or images by a process utilizing digital technology. It also includes the printing of what is commonly known as "digital photography" (e.g., use of a qualifying integrated computer and printer system to print a digital image). The exemption extends only to machinery and equipment, including repair and replacement parts, used in the act of production. Accordingly, no other type or kind of tangible personal property will qualify for the exemption, even though it may be used primarily in the graphic arts business.~~
 - B) ~~Prepress or Preliminary Processes. Prepress or preliminary processes include the steps required to transform an original into a state that is ready for reproduction by printing. Prepress or preliminary processes include typesetting, film production, color separation, final photocomposition (e.g., image assembly and imposition (stripping)) and platemaking. Prepress or preliminary processes include the manipulation of images or text in preparation~~

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~~for printing for the purpose of conforming those images to the specific requirements of the printing process being utilized. For example, the images must be conformed for a specific signature layout and formatted to a specific paper size. In addition, colors must be calibrated to the specific type of paper or printing process utilized, so that they conform to customer specifications. Prepress or preliminary processes do not, however, include the creation or artistic enhancement of images that will later be reproduced in printed form by a graphic arts process. For example, the creation of an advertisement pursuant to customer direction, or enhancement of a photograph received from a customer by adding a border, text or rearranging the placement of images in the photograph, is not the performance of a qualifying prepress or preliminary process. Prepress or preliminary processes can be performed at the printing facility, a separate prepress or preliminary facility, the customer's location, or other location. The following are examples of equipment used in qualifying prepress or preliminary activities:~~

- ~~i) Large scale, fixed position cameras used to photograph two dimensional copy to produce negatives or positives used in the production of plates; film processors; scanners; impositioners; RIP (raster image processor) equipment; proofing equipment; imagesetters, plate processors, helioklischographs and computer to plate and computer to press equipment.~~
- ~~ii) Computers that qualify include computers used primarily to receive, store and manipulate images to conform them to the requirements of a specific printing process that will later be performed. Computers used in connection with what is commonly referred to as "digital photography" will qualify if used primarily to format the graphic image that will be printed (e.g., used to format the size and layout of images to be printed). If the computers are primarily used, however, to apply background colors, borders or other artistic enhancements, or to view and select particular digital images to be printed, they will not qualify for the exemption.~~

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- iii) ~~Digital cameras do not qualify if they are used primarily to create an original image that will later be reproduced by a graphic arts process.~~
 - iv) ~~Servers used primarily to transfer images and text to qualifying equipment qualify, but do not qualify if used primarily in a nonexempt activity (for example, servers used to maintain an in-house email system).~~
 - v) ~~Scanners used primarily to input previously created images or text that will be reproduced by a graphic arts process qualify for the exemption.~~
- Ⓒ) ~~Transfer of Images or Text from Computers, Plates, Cylinders or Blankets to Paper or Other Stock to be Printed. This process begins when paper is introduced on the press. Examples of qualifying equipment used in this activity include printing plates, printing presses, blankets and rollers, automatic blanket washers, scorers and dies, folders, punchers, stackers, strappers used in the pressroom for signatures, dryers, chillers and cooling towers. Laser or ink jet printers used to print on paper or other stock are also included in this exemption.~~
- i) ~~Equipment used primarily to handle or convey printed materials between production stations in an integrated on-line graphic arts process is included in the exemption (e.g., a forklift or bindery cart will qualify for the exemption if it is primarily used to convey book covers that have been printed and cut to binding and finishing equipment).~~
 - ii) ~~Computer equipment used primarily to operate exempt graphic arts equipment also qualifies for the exemption.~~
 - iii) ~~Equipment, such as transformers, used primarily to provide power to qualifying printing presses or bindery lines, qualifies for the exemption. Similarly, heating and cooling machinery or equipment used to produce an environment necessary for the production of printed material qualifies~~

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~~for the exemption. For example, humidity control equipment used to reduce static during the printing process qualifies for the exemption.~~

- ~~D) Activities Involving the Binding, Collating or Finishing of the Graphic Arts Product. Equipment used in these activities includes, for instance, binders, packers, gatherers, joggers, trimmers, selectronic equipment, blow in card feeders, inserters, stitchers, gluers, spiral binders, addressing machines, labelers and ink jet printers.~~
- ~~i) Machinery or equipment used to convey materials to packaging areas after the graphic arts product has been printed, bound and finished qualifies for the exemption. That equipment includes, for instance, conveyor systems, hoists or other conveyance mechanisms used to direct the final printed product into packaging areas.~~
- ~~ii) Machinery or equipment used to package materials after the graphic arts product has been printed, bound and finished qualifies for the exemption. Packaging equipment includes, for instance, cartoning systems, palletizers, stretch wrappers, strappers, shrink tunnels and similar equipment.~~
- 5) By way of illustration and not limitation, the following activities will generally not be considered to be graphic arts production:
- A) The use of machinery or equipment primarily to produce graphic arts items not for wholesale, retail sale, or lease (e.g., items produced for internal consumption or items produced and distributed without charge).
- B) The use of machinery and equipment (e.g., fork lifts, roll clamps and roll grabbers) to convey raw materials to the press.
- C) The use of machinery or equipment to convey materials to final storage or shipping areas. That equipment includes, for instance,

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~~fork lifts used primarily to place the packaged printed product into final storage or shipping areas.~~

- ~~D) The use of machinery or equipment to gather information, track jobs or perform data related functions prior to a qualifying prepress activity (e.g., computers used primarily to edit or create text, data or other copy). That equipment includes items such as inventory tracking devices and bar code readers.~~
- ~~E) The use of machinery or equipment used primarily to photocopy printed matter. A copier that is capable of printing images or text transmitted to it in digital form may qualify if used primarily in that manner. However, a copier that produces photocopies by means of xerographic technology is subject to tax.~~
- ~~F) The use of machinery or equipment in managerial, sales or other nonproduction, nonoperational activities, including inventory control, production scheduling, purchasing, receiving, accounting, physical management, general communications, plant security, marketing, or personnel recruitment, selection or training. Waste disposal equipment (e.g., equipment used to contain and recapture paper dust) does not qualify for the exemption.~~
- ~~G) The use of machinery and equipment to prevent or fight fires or to protect employees, such as protective masks, respirators, first aid kits, gloves, coveralls and goggles, or for safety, accident protection or first aid, even though that machinery or equipment may be required by law.~~
- ~~H) The use of machinery or equipment for general ventilation, heating, cooling, climate control or general illumination, except when the machinery or equipment is used to produce an environment necessary for the production of printed material.~~
- 6) Machinery or equipment that initially is used primarily in graphic arts production and having been so used for less than one-half of the useful life and is converted to primarily nonexempt uses will become subject to the tax at the time of the conversion, allowing for reasonable depreciation on the item of machinery or equipment.

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- 7) ~~Sales to Lessors of Graphic Arts Equipment. The statute provides for the purchase of graphic arts machinery and equipment by lessors who will lease that machinery and equipment for use in graphic arts production. Therefore, if the purchaser of the machinery or equipment leases the machinery and equipment to a lessee who uses it in an exempt manner, the sale to the purchaser lessor will be exempt from tax. A supplier may exclude these sales from his or her taxable gross receipts provided that the purchaser lessor provides to him or her a properly completed exemption certificate and the information contained in the certificate would support an exemption if the sale were made directly to the lessee. Should a purchaser lessor subsequently lease the machinery or equipment to a lessee who does not primarily use it in an exempt manner, at the time the machinery and equipment is converted to primarily nonexempt uses, the purchaser lessor is liable for tax at the time of conversion, allowing for reasonable depreciation on the machinery or equipment.~~
- 8) ~~Exemption Certification. Purchasers wishing to claim the manufacturing machinery and equipment exemption shall prepare a certificate of exemption as provided in subsection (g).~~
- i) ~~Opinions and Rulings
Informal ruling and opinion letters issued by the Department regarding the coverage and applicability of this exemption to specific devices will be maintained by the Department in Springfield. They will be available for public inspection and may be copied or reproduced at taxpayer's expense. Trade secrets or other confidential information in these letters will be deleted prior to release to public access files.~~

(Source: Amended at 44 Ill. Reg. _____, effective _____)

SUBPART S: SPECIFIC APPLICATIONS

Section 130.1957 Tangible Personal Property Used in the Construction or Operation of Data Centers

- a) Effective January 1, 2020, qualified tangible personal property used in the construction or operation of a data center that has been granted a certificate of exemption by the Department of Commerce and Economic Opportunity

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("DCEO"), whether that tangible personal property is purchased by the owner, operator, or tenant, of the data center or by a contractor or subcontractor of the owner, operator, or tenant is exempt from Retailers' Occupation Tax. (Section 2-5(44) of the Act) To receive the exemption, the data center must obtain a certificate of exemption from DCEO pursuant to Section 605-1025 of the Department of Commerce and Economic Opportunity Law (DCEO Law) [20 ILCS 605].

b) For purposes of this Section:

1) *"Data center" means a building or a series of buildings rehabilitated or constructed to house working servers in one physical location or multiple sites within the State of Illinois. (Section 2-5 (44) of the Act) The certificate of exemption must identify the location or locations of the building or buildings housing the working servers in order to claim that the exemption. If the certificate of exemption does not identify the location or locations, the presumption is that the qualified tangible personal property does not qualify for the exemption.*

2) Qualified Tangible Personal Property

A) *"Qualifies Tangible Personal Property" means:*

i) *electrical systems and equipment; climate control and chilling equipment and systems; mechanical systems and equipment; monitoring and secure systems; emergency generators; hardware; computers; servers; data storage devices; network connectivity equipment; racks; cabinets; telecommunications cabling infrastructure; raised floor systems; peripheral components or systems; software; mechanical, electrical, or plumbing systems; battery systems; cooling systems and towers; temperature control systems; other cabling; and other data center infrastructure equipment and systems necessary to operate qualified tangible personal property, including fixtures; and*

ii) *component parts of any of the property listed in subsection (b)(2)(A)(i), including installation, maintenance, repair,*

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refurbishment, and replacement of qualified tangible personal property to generate, transform, transmit, distribute, or manage electricity necessary to operate qualified tangible personal property; and all other tangible personal property that is essential to the operations of a computer data center.

B) The term "qualified tangible personal property" also includes building materials physically incorporated into the qualifying data center. (Section 2-5(44) of the Act)

3) "Qualifying Illinois data center" for purposes of applying, for a certificate of exemption, means a new or existing data center that meets the requirements of Section 605-1025 of the DCEO Law.

c) Each owner, operator, or tenant of a data center, or a contractor or subcontractor of the owner, operator or tenant, must provide an active certificate of exemption before it can make tax exempt purchases of qualified tangible personal property.

d) Data centers that would have qualified for a certificate of exemption prior to January 1, 2020, had P.A. 101-31 been in effect, may apply for and obtain an exemption for subsequent purchases of computer equipment or enabling software purchased or leased to upgrade, supplement, or replace computer equipment or enabling software purchased or leased in the original investment that would have qualified. (Section 2-5(44) of the Act)

e) To document the exemption allowed under this Section, the retailer must obtain from the owner, operator, or tenant of a data center, or a contractor or subcontractor of the owner, operator or tenant, a copy of the certificate of exemption issued by DCEO. In addition, the retailer must obtain a certification that contains:

- 1) the name and description of the purchaser (i.e., owner, operator, contractor, subcontractor, or tenant);
- 2) a statement that the tangible personal property is being purchased for use in the construction or operation of a data center located in Illinois;
- 3) the location or address of the data center;

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- 4) a description of the tangible personal property being purchased;
 - 5) the purchaser's signature and date of purchase.
- f) Tangible Personal Property Used in the Rehabilitation, Construction and Operation of a Data Center – Tangible Personal Property Qualifying for the Exemption
- 1) Tangible personal property purchased and used in the rehabilitation and construction of a building or series of buildings that house working servers, and that is physically incorporated into the building or series of buildings, qualifies for the exemption. For example, gross receipts from sales of the following items qualify for the exemption:
 - A) common building materials, such as lumber, bricks, cement, windows, doors, insulation, roofing materials and sheet metal;
 - B) plumbing systems and components of those systems, such as bathtubs, lavatories, sinks, faucets, garbage disposals, water pumps, water heaters, water softeners and water pipes;
 - C) heating systems and components of those systems, such as furnaces, ductwork, vents, stokers, boilers, heating pipes and radiators;
 - D) electrical systems and components of those systems, such as wiring, outlets and light fixtures that are physically incorporated into the real estate;
 - E) central air conditioning systems, ventilation systems and components of those systems that are physically incorporated into the real estate;
 - F) built-in cabinets physically incorporated into the real estate;
 - G) built-in appliances, such as refrigerators, stoves, ovens and trash compactors that are physically incorporated into the real estate; and;

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- H) floor coverings, such as tile, linoleum and carpeting that are glued or otherwise permanently affixed to the real estate by use of tacks, staples, or wood stripping filled with nails that protrude upward (sometimes referred to as "tacking strips" or "tack-down strips").
- 2) Tangible personal property purchased and used in the rehabilitation and construction of a building or series of buildings that house working servers and that is not physically incorporated into the building or series of buildings qualifies for the exemption. For example, gross receipts from sales of tools, machinery and other similar items that are used to rehabilitate and construct the data center qualify for the exemption.
- 3) Tangible personal property purchased and used in the operation of a data center qualifies for the exemption. The exemption does not extend to tangible personal property used to conduct the business of providing data or cloud services. For example, gross receipts from the sales of the following do not qualify for the exemption:
- A) office supplies, cleaning supplies and office equipment; and
- B) cell phones and personal communication devices.
- 4) Tangible personal property used in the installation, maintenance, repair, refurbishment and replacement of qualified tangible personal property to generate, transform, transmit, distribute or manage electricity necessary to operate qualified tangible personal property is exempt. Except as provided in this subsection (f)(4) and subsection (h)(3), the exemption does not include tangible personal property used to maintain, repair, refurbish or replace qualified tangible personal property or to install that tangible personal property.
- 5) Tangible personal property purchased that is not used in the construction or operation of a data center does not qualify for the exemption. For example, gross receipts from sales of the following items do not qualify for the exemption:
- A) motor vehicles used by managers and office personnel;
- B) indoor and outdoor plants and landscaping materials;

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- C) concrete, cement, asphalt and outdoor lighting used in the construction or maintenance of parking facilities;
 - D) free-standing appliances, such as stoves, oven, refrigerators, washing machines, portable ventilation units, window air conditioning units, lamps, clothes washers, clothes dryers, trash compactors and dishwashers, that may be connected to and operate from a building's electrical or plumbing system but that are not physically incorporated into the real estate;
 - E) floor coverings, such as rugs, that do not qualify under subsection (f)(1)(H) or that are attached to the structure or physical plant using only two-sided tape; and
 - F) fuel used in the of operation of a data center.
- g) If the retailer obtains the documents identified in subsection (e) from the owner, operator or tenant of a data center, or a contractor or subcontractor of the owner, operator or tenant of a data center, the retailer shall be relieved of any tax liability relating to the sale in the event the tangible personal property purchased by the owner, operator, tenant, contractor or subcontractor from the retailer is not used by the owner, operator, tenant, contractor or subcontractor in the construction or operation of a data center identified in the exemption certificate issued by DCEO. If it is subsequently determined that the tangible personal property was not used in the construction or operation of a qualifying data center, the owner, operator, tenant, contractor or subcontractor shall be liable for Use Tax on the purchase of the tangible personal property for which an exemption was claimed under this Section.
- h) Tangible Personal Property Leased to Owners, Operators, Contractors, Subcontractors and Tenants of Data Centers
- 1) Except as provided in subsection (h)(3), tangible personal property that is purchased by a lessor and leased to an owner, operator or tenant, or a contractor or subcontractor of the owner, operator or tenant, of a data center, does not qualify for the data center exemption. The exemption does not extend to lessors. Lessors of tangible personal property under true leases are deemed to be the users of that property. Consequently,

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lessors incur a Use Tax liability (and applicable local occupation tax reimbursement obligations) based on their cost price for the items. (See Section 130.220 (Sales to Lessors of Tangible Personal Property) and Section 130.2010 (Persons Who Rent or Lease the Use of Tangible Personal Property to Others).)

- 2) Tangible personal property that is purchased by an owner operator or tenant, or a contractor or subcontractor of the owner, operator or tenant, of a data center, as a lessor, and leased to an owner, operator or tenant of a data center, will qualify for the data center exemption.
- 3) In the case of data centers that were in existence prior to January 1, 2020 and have obtained an exemption certificate, computer equipment or enabling software leased to upgrade, supplement or replace existing computer equipment or enabling software purchased or leased, that would have qualified as qualified tangible personal property when purchased or leased, is exempt. (See subsection (d).) In the case of data centers that were in existence prior to January 1, 2020, the lessor of the computer equipment or enabling software that is leased to the owner, operator or tenant of the data center after January 1, 2020 may claim the exemption for the first lease of computer equipment or enabling software after January 1, 2020 to upgrade, supplement or replace existing computer equipment or enabling software.
 - i) An item that initially qualifies for the data center exemption that is converted to a nonexempt use or is moved to a nonqualified location will become subject to tax at the time of its conversion based on the lesser of the purchase price or fair market value of the item at the time of conversion.
 - j) The exemption, for tangible personal property used in the construction or operation of a data center, in Section 2-5(44) of the Retailers' Occupation Tax Act and this Section is not subject to the sunset provisions of Section 2-70 of the Retailers' Occupation Tax Act.

(Source: Added at 44 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Parking Excise Tax
- 2) Code Citation: 86 Ill. Adm. Code 195
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
195.100	New Section
195.105	New Section
195.110	New Section
195.115	New Section
195.120	New Section
195.125	New Section
195.130	New Section
195.135	New Section
195.140	New Section
195.145	New Section
195.150	New Section
- 4) Statutory Authority: 35 ILCS 525/10-50; 35 ILCS 120/12.
- 5) A Complete Description of the Subjects and Issues Involved: The proposed rules implement PA 101-31, codified at 35 ILCS 525. Beginning on January 1, 2020, a tax is imposed on the privilege of using in this State a parking space in a parking area or garage for the use of parking one or more motor vehicles, recreational vehicles, or other self-propelled vehicles. The tax is imposed at the rate of 6% of the purchase price for a parking space paid for on an hourly, daily, or weekly basis; and 9% of the purchase price for a parking space paid for on a monthly or annual basis.
- 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

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- 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:

Richard S. Wolters
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield IL 62794

217/782-2844
- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any person, except the federal government, the State, municipalities, counties and special districts, who engages in the business of operating a parking area or garage for consideration, or who, directly or through an agreement or arrangement with another party, collects the consideration for parking or storage of motor vehicles, recreational vehicles, or other self-propelled vehicles, at that parking place, must collect and remit the tax imposed on the purchaser of the parking space. If the federal government, the State, municipalities, counties or special districts enter into an agreement with a third-party to operate the parking area or garage, the third-party must collect and remit the tax. Persons that operate 3 or fewer parking spaces are exempt from collecting the tax.
 - B) Reporting, bookkeeping or other procedures required for compliance: General bookkeeping, accounting and computer skills
 - C) Types of professional skills necessary for compliance: General bookkeeping, accounting and computer skills
- 14) Small Business Impact Analysis:
 - A) Types of businesses subject to the proposed rule:

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B) Categories that the agency reasonably believes the rulemaking will impact, including:

- ii. regulatory requirements;
- iii. record keeping;

15) Regulatory Agenda on which this rulemaking was summarized: July 2019

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

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TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 195
PARKING EXCISE TAX

Section	
195.100	Nature of the Tax
195.105	Definitions
195.110	Tax Imposed
195.115	Exemptions from Tax
195.120	Collection of Tax
195.125	Filing of Returns
195.130	Books and Records
195.135	Registration of Operators
195.140	Revocation of Certificate of Registration
195.145	Valet Services
195.150	Incorporation by Reference

AUTHORITY: Implementing the Parking Excise Tax Act [35 ILCS 525].

SOURCE: Adopted at 44 Ill. Reg. _____, effective _____.

Section 195.100 Nature of the Tax

- a) *Beginning January 1, 2020, the Parking Excise Tax Act ("Act") [35 ILCS 525] imposes a tax on the privilege of using in this State a parking space in a parking area or garage for the use of parking one or more motor vehicles, recreational vehicles, or other self-propelled vehicles. (Section 10-10(a) of the Act)*
- b) The tax is imposed upon the person purchasing and using a parking space in a parking area or garage. *The tax is collected from the purchaser by the operator of the parking area or garage. (Section 10-10(b) of the Act)*

Section 195.105 Definitions

"Booking intermediary" means any person or entity that facilitates the processing and fulfillment of reservation transactions between an operator and a person or entity desiring parking in a parking lot or garage of that operator.

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"Charge or fee paid for parking" means the gross amount of consideration for the use or privilege of parking a motor vehicle in or upon any parking lot or garage in the State, collected by an operator and valued in money, whether received in money or otherwise, including cash, credits, property, and services, determined without any deduction for costs or expenses, but not including charges that are added to the charge or fee on account of the tax imposed by the Act or on account of any other tax imposed on the charge or fee. "Charge or fee paid for parking" excludes separately stated charges not for the use or privilege of parking and excludes amounts retained by or paid to a booking intermediary for services provided by the booking intermediary. If any separately stated charge is not optional, it shall be presumed that it is part of the charge for the use or privilege of parking.

"Department" means the Department of Revenue.

"Motor vehicle" means a motor vehicle as defined in Section 1-146 of the Illinois Vehicle Code [625 ILCS 5].

"Operator" means any person who engages in the business of operating a parking area or garage, or who, directly or through an agreement or arrangement with another party, collects the consideration for parking or storage of motor vehicles, recreational vehicles, or other self-propelled vehicles, at that parking place. This includes, but is not limited to, any facilitator or aggregator that collects from the purchaser the charge or fee paid for parking. "Operator" does not include a bank, credit card company, payment processor, booking intermediary, or person whose involvement is limited to performing functions that are similar to those performed by a bank, credit card company, payment processor, or booking intermediary.

"Parking area or garage" means any real estate, building, structure, premises, enclosure or other place, whether enclosed or not, except a public way, within the State, where motor vehicles, recreational vehicles, or other self-propelled vehicles, are stored, housed or parked for hire, charge, fee or other valuable consideration in a condition ready for use, or where rent or compensation is paid to the owner, manager, operator or lessee of the premises for the housing, storing, sheltering, keeping or maintaining motor vehicles, recreational vehicles, or other self-propelled vehicles. "Parking area or garage" includes any parking area or garage, whether the vehicle is parked by the owner of the vehicle or by

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the operator or an attendant. "Parking area or garage" includes a self-storage unit capable of storing a motor vehicle, recreational vehicle or self-propelled vehicle when the lessor of the storage unit has knowledge of the contents of the storage unit at the time the storage unit is leased.

"Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, or a receiver, trustee, guardian, or other representative appointed by order of any court.

"Public way" means any passageway (e.g., alley, road, highway, boulevard, turnpike) or part thereof (e.g., a bridge) open as a right-of-way to the public and designed for travel.

"Purchase price" means the consideration paid for the purchase of a parking space in a parking area or garage, valued in money, whether received in money or otherwise, including cash, gift cards, credits, and property, and shall be determined without any deduction on account of the cost of materials used, labor or service costs, or any other expense whatsoever. "Purchase price" includes any and all charges that the recipient pays related to or incidental to obtaining the use or privilege of using a parking space in a parking area or garage, including but not limited to any and all related markups, service fees, convenience fees, facilitation fees, cancellation fees, overtime fees, or other such charges, regardless of terminology. If credit is extended, then the amount of the credit shall be included only as and when payments are made. However, "purchase price" shall not include consideration paid for:

optional, separately stated charges not for the use or privilege of using a parking space in the parking area or garage. For example, separately stated charges for washing and waxing a motor vehicle, oil changes, installation of accessories, and repairs are not included in the purchase price;

any charge for a dishonored check;

any finance or credit charge, penalty or charge for delayed payment, or discount for prompt payment;

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any purchase by a purchaser if the operator is prohibited by Federal or State Constitution, treaty, convention, statute or court decision from collecting the tax from the purchaser. Consideration paid for parking in a parking space in a parking area or garage by the federal government, the State, or a foreign mission that possesses an active tax exemption number is not included in the purchase price;

the isolated or occasional sale of parking spaces subject to tax under this Act by a person who does not hold himself out as being engaged (or who does not habitually engage) in selling of parking spaces;

any amounts added to a purchaser's bill because of charges made pursuant to the tax imposed by the Act; and

any amounts added to a purchaser's bill because of charges made pursuant to a tax imposed on the purchaser by a county or municipal ordinance for the privilege of using a parking space in a parking area or garage.

"Purchaser" means any person who acquires a parking space in a parking area or garage for use for valuable consideration.

"Recreational vehicle" means a recreational vehicle as defined in Section 1-169 of the Illinois Vehicle Code.

"Self-propelled vehicle" means a vehicle propelled by its own engine or motor. "Self-propelled vehicle" includes, but is not limited to, all-terrain vehicles, autocycles, low-speed electric vehicles, low-speed gas vehicles, mopeds, motor driven cycles and motorcycles. "Self-propelled vehicle" does not include airplanes, boats and watercraft.

"Use" means the exercise by any person of any right or power over, or the enjoyment of, a parking space in a parking area or garage subject to tax under the Act. (Section 10-5 of the Act)

Section 195.110 Tax Imposed

- a) *Beginning on January 1, 2020, a tax is imposed on the privilege of using in this State a parking space in a parking area or garage for the use of parking one or more motor vehicles, recreational vehicles, or other self-propelled vehicles.*

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- 1) *The tax is imposed at the rate of:*
 - A) *6% of the purchase price for a parking space paid for on an hourly, daily, or weekly basis; and*
 - B) *9% of the purchase price for a parking space paid for on a monthly or annual basis. (Section 10-10 of the Act)*
- 2) The rate of tax shall be determined based on the rental period agreed to by the operator and the purchaser in the contract for the parking space.

EXAMPLE: A purchaser contracts with an operator to rent a parking space on a month-to-month basis. The contract permits the purchaser to make payments twice a month. The tax is imposed at the rate of 9%.

- b) *The tax shall be collected from the purchaser by the operator.*
- c) *An operator that has paid or remitted the tax imposed by the Act to another operator in connection with the same parking transaction, or the use of the same parking space, that is subject to tax under the Act, shall be entitled to a credit for the tax paid or remitted against the amount of tax owed under the Act, provided that the other operator is registered under the Act. The operator claiming the credit shall have the burden of proving it is entitled to claim a credit. (Section 10-10 of the Act) An invoice to the operator that separately states "tax paid" or states "all taxes included" is sufficient documentation to permit the operator to claim the credit.*
- d) The operator of a parking area or garage must collect the tax on the purchase of all parking spaces in a parking area or garage unless the operator is exempt from collecting the tax or the tax is not due on the transaction. The Act does not provide an exemption for purchases of parking spaces by a person that intends to resell the parking spaces.

EXAMPLE 1: A company provides a service in which an individual may contact the company by use of the Internet to locate and rent a parking space in a parking area or garage near a particular venue. The company charges the purchaser \$21.20 for the parking space and a fee of \$5 payable to the company. The garage owner charged the company \$20 for the parking space and \$1.20 in tax that is

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separately stated on the invoice. The company forwards the \$21.20 to the garage owner and retains the \$5 fee. The company must collect and remit tax on \$26.20. The company owes \$1.57 in tax and may take a credit for \$1.20 in tax paid to the owner of the parking area or garage. The garage owner must remit tax in the amount of \$1.20.

EXAMPLE 2: A company provides a service in which an individual may contact the company by use of the Internet to locate and rent a parking space in a parking area or garage. The company charges the purchaser \$30.00 for the parking space and a fee of \$5 payable to the company. The garage owner charged the company \$30 for the parking space and failed to separately state and collect the tax or state that all taxes are included in the purchase price. The company forwards the \$30 to the garage owner and retains the \$5 fee. The company must collect and remit tax on \$35. The company owes \$2.10 in tax. The garage owner must remit tax on the \$30, or \$1.80. Because the garage owner failed to separately state and collect tax on the \$30 from the company or state that all taxes are included in the purchase price, the company may not take a credit for the tax paid by the garage owner.

EXAMPLE 3: A hotel purchases the privilege of using 50 parking spaces at an adjacent parking garage at a price of \$100 per space per month for the purpose of reselling the use of the spaces to its hotel guests. The garage must charge the hotel \$109 per parking space (\$100 plus tax of \$9, using the monthly rate of 9%), and it must remit the \$9 in tax per parking space to the Department. If the hotel resells the use of a parking space to a guest at a price of \$20 per day, it must charge its guest \$21.20 (\$20 plus tax of \$1.20, using the daily rate of 6%). At the end of the month, the hotel will be required to remit the difference between the total amount of tax it collected from its guests for daily parking during the month and the \$450 in tax that it paid to the garage for the parking spaces.

EXAMPLE 4: A grocery store owner rents 10 parking spaces from an adjoining landowner for \$1,000 per month and allows its customers to park free while shopping in its store. The landowner must collect and remit tax (9% x \$1,000, or \$90) on the purchase price paid by the grocery store owner to the landowner to lease the parking spaces. The grocery store has no tax liability for providing free spaces to its customers.

EXAMPLE 5: A municipality owns and operates a parking area. It retains a company to install machines on the lot that accept electronic payments. The

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company also provides a mobile application that permits a person to pay for parking electronically. All payments made by a customer either by using the machine on the lot or the mobile application are paid to the municipality. The municipality pays the company a fee for its services. The municipality is the operator of the lot and, pursuant to Section 195.115(b), is not required to collect and remit the tax.

e) Marketing or Facilitating Rental

- 1) A person who, for a fee, assists an operator in marketing or facilitating the rental of the operator's parking spaces, reserves parking spaces for customers in the operator's parking area or garage, collects the purchase price from customers, and remits the purchase price to the operator (less the fee if permitted by the agreement), is not engaged in the business of operating a parking area or garage if the following conditions are met:
 - A) the person has no ownership interest in, or legal right to operate, lease or license, parking areas or garages;
 - B) the operator controls and sets the inventory of parking spaces customers may reserve using the person's services;
 - C) the operator establishes the purchase price for the parking spots;
 - D) the person markets or facilitates the rental of the parking spaces at the purchase price set by the operator;
 - E) the person represents to prospective customers that all taxes are included in the purchase price or separately states the tax based on the purchase price set by the operator;
 - F) any additional fees charged to customers and retained by the person are separately stated;
 - G) the agreement requires the operator to pay, and the operator pays, the tax imposed by the Act on the purchase price established by the operator and paid by the customer; and

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- H) the operator is registered with the Department to collect and remit the tax imposed by the Act.
- 2) If the conditions listed in subsection (e)(1) are not met, the person is engaged in the business of operating a parking area or garage and is responsible for registering with the Department and collecting and remitting the tax on the purchase price received from the customer. The person may take a credit for the tax paid by the operator. The operator is responsible for remitting tax to the Department on the amount received from the person. (See subsection (c).)

EXAMPLE: A company provides a service in which an individual may contact the company by use of the Internet to locate and reserve a parking space in a parking area or garage near a particular venue. The company does not have any ownership interest in, or legal right to operate, lease or license, parking areas or garages. The operator of a garage with which the company has an agreement has advised the company that the company can reserve up to 10 spaces in the operator's garage and the purchase price for parking spaces in the garage is \$15. The company charges the purchaser \$15 for the parking space. The company states on its website that all taxes are included in the purchase price. Based on the agreement with the owner of the garage, for each space that is rented by the company, the company retains \$1 plus 10% of the \$15 purchase price paid by the purchaser. ($\$1 + .10 \times \$15 = \$2.50$.) Per the agreement, the company forwards the balance of \$12.50 to the garage owner. The garage owner is registered with the Department and remits tax on the \$15 purchase price. Because the agreement between the company and operator meets the requirements of subsection (e)(1), the company is not required to register with the Department and remit tax on \$2.50.

- f) If a business provides the location of available parking spaces to persons for a fee and does not collect the actual cost of parking in the selected parking area or garage, the fee is not taxable.

EXAMPLE: A company provides a web application that allows a person to locate and rent available parking spaces in the area the person wishes to find a parking space. The app also provides the purchaser with the prices for each of the available parking spaces. The fee for finding a parking space is \$5. The person selects a parking space that costs \$15 and is charged the \$5 fee. The company

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charges the purchaser the \$5 fee but does not charge the person the \$15 for the cost of the parking space. The garage owner collects the \$15 parking fee and the tax of \$0.90 from the purchaser when the purchaser enters or exits the garage. The \$5 fee is not taxable.

- g) If a lessor of commercial real estate is required by the terms of a lease to provide a minimum number of parking spaces to the lessee for use by the lessee's employees, customers, or clients, the lessor is not considered to be engaged in the business of operating a parking area or garage, unless the lease agreement identifies a specific value for the parking spaces.

EXAMPLE 1: A lessor leases 2,000 square feet of office space to a lessee for \$15,000 a month. The terms of the lease require the lessor to provide the tenant with 20 parking spaces in the parking garage and 10 surface parking spaces. The consideration for the parking spaces is not specified in monthly lease rental or on the books and records of the lessor. The parking spaces are not subject to tax.

EXAMPLE 2: A professional sports team sells season skybox tickets to attend home games for \$100,000. Six parking passes at no additional charge are included in the price of the skybox. The sports team does not separately state the value of the 6 parking passes on its books and records. The person renting a skybox also can purchase extra tickets for the standard rate of \$50 per game. The 6 parking passes included in the price of the skyboxes are not subject to tax. The purchase price paid for the extra tickets are taxable.

- h) A lessor of an enclosed storage space or unit leased for the storage of tangible personal property is not required to collect the tax unless the lessor knows at the time the lease is agreed upon or executed that the storage space or unit will be used for parking a motor vehicle, recreational vehicle or self-propelled vehicle. A lessor may obtain knowledge by receiving the information orally from the lessee or by the lessee identifying the contents of the storage unit in the lease. A lease or other material that states storage spaces or units may be used to store motor vehicles, recreational vehicles, or self-propelled vehicles, or states the storage of motor vehicles, recreational vehicles, or self-propelled vehicles is not prohibited, does not impart knowledge to the lessor at the time a lease is agreed upon or executed that the storage space or unit will be used for parking a motor vehicle, recreational vehicle or self-propelled vehicle. The fact that the lessor believes that some lessees may be using the storage spaces or units to park motor vehicles,

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recreational vehicles, or self-propelled vehicles does not impose an obligation on the lessor to collect the tax.

- i) *If any operator erroneously collects tax or collects more from the purchaser than the purchaser's liability for the transaction, the purchaser shall have a legal right to claim a refund of that amount from the operator. However, if the amount is not refunded to the purchaser for any reason, the operator is liable to pay that amount to the Department. (Section 10-10 of the Act)*
- j) If an operator advertises a single rate ("all taxes included"), the operator must determine the base amount of the purchase price to properly calculate and remit the tax.

EXAMPLE 1: A parking operator charges a customer a single rate of \$200 per week. The amount includes the 6% State tax. The operator must determine the base amount of the purchase price paid for parking. The calculation used to calculate the base amount of the purchase price paid for parking is $\$200 \div (1 + .06) = \188.68 . The amount of \$188.68 is the base amount of the purchase price for determining the amount of tax. The State tax that the operator must remit is $\$11.32 (.06 \times 188.68)$.

EXAMPLE 2: A parking operator charges a customer a single rate of \$200 per week. The amount includes a 22% city tax, 9% county tax, and the 6% State tax. To determine the base amount of the purchase price paid for parking, the operator must first determine the combined tax rate for all qualifying parking taxes charged the customer ($0.22 + 0.09 + 0.06 = .37$). The calculation used to calculate the base amount of the purchase price paid for parking is $\$200 \div (1 + .37) = \145.99 . The amount of \$145.99 is the base amount of the purchase price used for determining the taxes that can be deducted from the single rate of \$200 and the amount of State tax that must be remitted by the operator. The city tax would be $\$32.12 (.22 \times \$145.98)$, the county tax would be $\$13.14 (.09 \times \$145.99)$, and the State tax that the operator must remit is $\$8.76 (.06 \times \$145.99)$.

- k) If a purchaser pays for the entire term of a parking space in advance (i.e., weekly, monthly, annually), the tax shall be collected and remitted in the month received.

EXAMPLE: The purchaser pays \$2,400 in January to park in a parking space for a year. The entire \$2,400 is subject to tax when received and reported on the return for January.

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Section 195.115 Exemption from Tax

The tax imposed by the Act shall not apply to:

- a) *parking in a parking area or garage operated by the federal government or its instrumentalities that has been issued an active tax exemption number by the Department under Section 1g of the Retailers' Occupation Tax Act [35 ILCS 120]. For this exemption to apply, the parking area or garage must be operated by the federal government or its instrumentalities. The exemption under this subsection (a) does not apply if the parking area or garage is operated by a third party, whether under a lease or other contractual arrangement, or held in any other manner whatsoever. (Section 10-20(1) of the Act);*
- b) parking in a parking area or garage operated by the State, State universities created by statute, or a unit of local government, e.g., counties, municipalities, townships, and special districts, that have been issued an active tax exemption number by the Department under Section 1g of the Retailers' Occupation Tax Act. For this exemption to apply, the parking area or garage must be operated by the State, State universities created by statute, or the unit of local government. The exemption under this subsection (b) does not apply if the parking area or garage is operated by a third party, whether under a lease or other contractual arrangement, or held in any other manner whatsoever;
- c) *residential off-street parking for home or apartment tenants or condominium occupants, if the arrangement for that parking is provided in the home or apartment lease or in a separate writing between the landlord and tenant, or in a condominium agreement between the condominium association and the owner, occupant, or guest of a unit, whether the parking charge is payable to the landlord, condominium association, or the operator of the parking spaces (Section 10-20(2) of the Act). The landlord, association or operator must maintain supporting documentation to substantiate the claim. A list of residents or occupants claiming the exemption maintained by the operator that has been reviewed and approved by the landlord or association qualifies as supporting documentation.*

EXAMPLE 1: A person enters into a residential lease agreement with a landlord that requires the landlord to provide 2 parking spaces to the tenant for \$100 per month. The landlord has made arrangements with an operator of a parking garage

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to make available 2 parking spaces to the tenant. The lease requires the tenant to pay the \$100 per month directly to the operator of the garage. The operator is not required to collect tax from the tenant on the use of the 2 parking spaces. The operator should obtain a copy of the lease and maintain it in its books and records.

EXAMPLE 2: A tenant with a residential lease agreement or a condominium owner is told by his or her landlord or condominium association that the landlord or condominium association has an arrangement with a parking garage operator to provide parking to the tenants or the owners that desire parking. Based on this arrangement, the tenant or condominium owner enters into an agreement for parking with the designated operator. The landlord or condominium association provides a list of tenants or owners to the operator to verify their residency. The operator can rely on that list to exempt the tenant or owner from paying the tax and the operator from remitting the tax;

- d) *parking by hospital employees in a parking space that is owned and operated by a public, private, or non-public hospital for which they work (Section 10-20(3) of the Act). The exemption under this subsection (d) does not apply if the parking area or garage is operated by a third party, whether under a lease or other contractual arrangement, or held in any other manner whatsoever;*
- e) *parking in a parking area or garage where 3 or fewer motor vehicles are stored, housed, or parked for hire, charge, fee or other valuable consideration, if the operator of the parking area or garage does not act as the operator of more than a total of 3 parking spaces located in the State. If any operator of parking areas or garages, including any facilitator or aggregator, acts as an operator of more than 3 parking spaces in total that are located in the State, then this exemption shall not apply to any of those spaces. (Section 10-20(4) of the Act);*

EXAMPLE 1: Every year a fair comes to a town. The owners of property near the fairground sell parking spaces on their property for \$10 per day. If an owner of property makes available for use more than 3 parking spaces, the owner is liable for collecting and remitting the tax.

EXAMPLE 2: A company near a baseball stadium contracts with residents near the stadium to rent space in their driveways during game days. Each resident enters into an agreement with the company to make available 3 or fewer parking spaces. As a result of the agreements with the residents, the company in the aggregate has 20 parking spaces to rent on game days. The company charges a

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purchaser \$30 for the rental of a parking space. The company must register and remit tax at the rate of 6% of the \$30 purchase price received for the rental of a parking space. The company pays the residents \$25 for each parking space that is rented by the company. Because the residents rent 3 or fewer parking spaces, the residents are not required to register and remit tax on the consideration received from the company.

EXAMPLE 3: The same facts as Example 2, except one resident enters into an agreement with the company to make 4 parking spaces available for rent. Because the resident is providing more than 3 parking spaces, the resident is required to register and remit tax on the consideration received from the rental of all 4 of the parking spaces. Because the resident does not bill the company for the parking spaces and separately state and collect tax on the \$25, the company may not take a credit for the tax paid by the resident;

- f) a person engaged in the business of renting real estate that leases real estate to a lessee that may park motor vehicles, recreational vehicles or self-propelled vehicles for the lessee's own use and not for the purpose of sub-leasing parking spaces for consideration. This person is not engaged in the business of operating a parking area or garage.

EXAMPLE 1: A car dealership leases real estate from a person to park the dealership's excess inventory. The lessor is not engaged in the business of operating a parking area or garage.

EXAMPLE 2: A car dealership leases real estate from a person to park motor vehicles for the purpose of making retail sales of the motor vehicles. The lessor is not engaged in the business of operating a parking area or garage.

EXAMPLE 3: A railroad company leases real estate to a municipality. The municipality makes improvements on the property to permit commuters to park their motor vehicles on the real estate. The railroad company is not engaged in the business of operating a parking area or garage;

- g) a person that makes *isolated or occasional sales of parking spaces subject to tax under the Act and who does not hold himself or herself out as being engaged (or who does not habitually engage) in selling of parking spaces* (Section 10-5 of the Act).

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EXAMPLE: A local promoter intends to hold a large concert on a farm and requires plenty of parking spaces for the attendees. The promoter leases a large field from a local farmer to park cars during the event. The farmer has never leased his field in the past. The farmer is exempt from collecting and remitting tax on the rental of his field to the promoter.

- h) *any transaction in interstate commerce, to the extent that the transaction may not, under the Constitution and statutes of the United States, be made the subject of taxation by this State (Section 10-10(e) of the Act).*

Section 195.120 Collection of Tax

- a) *Beginning with bills issued or charges collected for a purchase of a parking space in a parking area or garage on and after January 1, 2020, the tax imposed by the Act shall be collected from the purchaser by the operator at the rate stated in Section 195.110 and shall be remitted to the Department as provided in the Act. All charges for parking spaces in a parking area or garage are presumed subject to tax collection. Operators shall collect the tax from purchasers by adding the tax to the amount of the purchase price received from the purchaser. The tax imposed by the Act shall, when collected, be stated as a distinct item separate and apart from the purchase price of the service subject to tax under the Act. However, when it is not possible to state the tax separately, the purchases are exempt from this requirement so long as purchasers are notified by language on the invoice or notified by a sign that the tax is included in the purchase price. (Section 10-25(a) of the Act) A statement of "all tax included" on a paper or electronic receipt or invoice provided to the purchaser will be sufficient to satisfy the requirement that the tax be separately stated, as long as the purchaser can request a breakdown of the tax included amounts from the operator.*
- 1) Every operator of any parking area or garage that advertises a single rate for a parking space may include the total sum of all charges and all applicable tax in its advertised rate. Any display of a single, advertised rate shall include in a clear and conspicuous manner, the following language: "All taxes included." However, nothing in this subsection (a)(1) prevents the operator from separately stating both the parking rate and the tax.
 - 2) At events where an operator or valet service collects the purchase price for the use of a parking space in cash, it will be presumed that it is not

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possible to state the tax as a distinct item separate and apart from the purchase price. If a sign is displayed with an advertised rate, the operator must comply with subsection (a)(1).

- b) *Any person purchasing a parking space in a parking area or garage subject to tax under the Act as to which there has been no charge made to that person of the tax imposed by Section 195.110 shall make payment of the tax imposed by Section 195.110 in the form and manner provided by the Department. The payment shall be made to the Department in the manner and form required by the Department not later than the 20th day of the month following the month of purchase of the parking space. (Section 10-25(b) of the Act) This subsection does not relieve the operator of the obligation to collect the tax from the purchaser and remit the tax to the Department, nor does it negate the operator's liability for the tax.*
- c) *The tax required to be collected by any operator or valet business, and any tax collected by that person, shall constitute a debt owed by that person to the State (Section 10-45 of the Act).*

Section 195.125 Filing of Returns

- a) *Except as otherwise provided in this Section, on or before the last day of each calendar month, every operator engaged in the business of providing to purchasers parking areas and garages in this State during the preceding calendar month shall file a return with the Department stating:*
- 1) *the name of the operator;*
 - 2) *the address of its principal place of business;*
 - 3) *the total amount of receipts received by the operator during the preceding calendar month for sales of parking spaces to purchasers in parking areas or garages;*
 - 4) *deductions allowed by law;*
 - 5) *the total amount of receipts received by the operator during the preceding calendar month or period upon which the tax was computed;*
 - 6) *the amount of tax due; and*

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- 7) *such other reasonable information as the Department may require.*
- b) *If an operator ceases to engage in the kind of business that makes it responsible for filing returns under the Act, then that operator shall file a final return under the Act with the Department on or before the last day of the month after discontinuing that business.*
- c) *All returns required to be filed and payments required to be made under the Act shall be by electronic means. Taxpayers who demonstrate hardship in filing or paying electronically may petition the Department to waive the electronic filing or payment requirement, or both.*
- d) *If the same person has more than one business registered with the Department under separate registrations under the Act, that person shall not file each return that is due as a single return covering all such registered businesses but shall file separate returns for each such registered business. If the operator is a corporation, the return filed on behalf of that corporation shall be signed by the president, vice-president, secretary, or treasurer, or by a properly accredited agent of the corporation. When an operator operates multiple parking areas or garages under one business registration, the operator shall file one return. Upon request of the Department, an operator must provide a list of all locations where the operator engages in the business of operating a parking area or garage.*
- e) *The operator filing the return under the Act shall, at the time of filing the return, pay to the Department the amount of tax imposed by the Act less a discount of 1.75%, not to exceed \$1,000 per month, which is allowed to reimburse the operator for the expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying data to the Department on request. The discount is allowed for each return that is filed pursuant to the Act and is allowed only for returns that are filed in the manner required by subsection (c).*
- f) *If the Department subsequently determines that all or any part of the credit taken was not actually due to the taxpayer, the taxpayer's discount shall be reduced by an amount equal to the difference between the discount as applied to the credit taken and that actually due, and that taxpayer shall be liable for penalties and interest on that difference (Section 10-15 of the Act).*

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- g) Except as otherwise provided in subsection (k), each operator for the first year is required to file a return for each month, regardless of the fact that he or she may not have any tax liability to pay for that month. At the end of the first year, the Department will determine whether the taxpayer shall file on a quarterly or an annual basis, pursuant to subsections (h) and (i).
- h) If, after one year, the operator's average monthly tax liability to the Department does not exceed \$200, the Department may authorize the operator's returns to be filed on a quarter annual basis, with: the return for January, February and March of a given year being due on or before the last day of April of that year; the return for April, May and June of a given year being due on or before the last day of July of that year; the return for July, August and September of a given year being due on or before the last day of October of that year; and the return for October, November and December of a given year being due on or before the last day of January of the following year. Quarter annual returns, as to form and substance, shall be subject to the same requirements as monthly returns. The Department will periodically review taxpayer information, including returns filed by the taxpayer, to determine if any changes have occurred that require the taxpayer to file returns on other than a monthly or quarterly basis. If the Department determines that a change is required in filing frequency, it will notify the taxpayer of its determination.
- i) If, after one year, the operator's average monthly tax liability with the Department does not exceed \$50, the Department may authorize the operator's returns to be filed on an annual basis, with the return for a given year being due on or before the last day of January of the following year. Annual returns, as to form and substance, shall be subject to the same requirements as monthly returns. The Department will periodically review taxpayer information, including returns filed by the taxpayer, to determine if any changes have occurred that require the taxpayer to file returns on other than a quarterly basis. If the Department determines that a change is required in filing frequency, it will notify the taxpayer of its determination.
- j) Beginning January 1, 2021, if the taxpayer's average monthly tax liability to the Department under the Act was \$20,000 or more during the preceding 4 complete calendar quarters, he or she shall file a return with the Department each month by the last day of the month next following the month during which the tax liability is incurred and shall make payment to the Department on or before the 7th, 15th, 22nd and last day of the month during which the liability is incurred. Each

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payment shall be in an amount equal to 22.5% of the taxpayer's actual liability for the month or 25% of the taxpayer's liability for the same calendar month of the preceding year. The amount of the quarter monthly payments shall be credited against the final tax liability of the taxpayer's return for that month filed under this Section. Once applicable, the requirement of the making of quarter monthly payments to the Department pursuant to this Section shall continue until the taxpayer's average monthly prepaid tax collections during the preceding 4 complete calendar quarters (excluding the month of highest liability and the month of lowest liability) is less than \$19,000 or until the taxpayer's average monthly liability to the Department, as computed for each calendar quarter of the 4 preceding complete calendar quarters, is less than \$20,000. If any such quarter monthly payment is not paid at the time or in the amount required, the taxpayer shall be liable for penalties and interest on the difference, except insofar as the taxpayer has previously made payments for that month in excess of the minimum payments previously due.

- k) An operator that will rent parking spaces in a parking area or garage for 14 days or less in a calendar year may file returns and remit tax on an annual basis.

Section 195.130 Books and Records

- a) Every operator shall keep records and books of all sales of parking spaces, together with invoices, sales records, copies of bills of sale, and other pertinent papers and documents. For purposes of this Section, "records" means all data maintained by the operator, including data on paper, microfilm, microfiche or any type of machine-sensible data compilation.
- b) All books and records and other papers and documents that are required by the Act to be kept shall be kept in the English language and shall, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees.
- c) It shall be presumed that all purchases of parking spaces are subject to tax under the Act until the contrary is established. The burden of proving that a transaction is not taxable under the Act shall be upon the person who would be required to remit the tax to the Department if the transaction were taxable.
- d) Any operator who fails to keep books and records or fails to produce books and records for examination, as required by this Section, is liable to pay to the

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Department, for deposit into the Tax Compliance and Administration Fund, a penalty of \$1,000, for the first failure to keep books and records or produce books and records for examination, and a penalty of \$3,000, for each subsequent failure to keep books and records or produce books and records for examination. The penalties imposed under this Section shall not apply if the taxpayer shows that he or she acted with ordinary business care and prudence.

Section 195.135 Registration of Operators

- a) *A person who engages in business as an operator of a parking area or garage in this State shall register with the Department. Application for a certificate of registration shall be made to the Department, by electronic means, in the form and manner prescribed by the Department and shall contain any reasonable information the Department may require. The application shall contain the name of the person responsible for paying the tax to the Department. (See Section 3-7 of the Uniform Penalty and Interest Act [35 ILCS 735].) Upon receipt of the application for a certificate of registration in proper form and manner, the Department shall issue to the applicant a certificate of registration. Operators who demonstrate that they do not have access to the Internet or demonstrate hardship in applying electronically may petition the Department to waive the electronic application requirements. (Section 10-30(a) of the Act)*
- b) An operator that operates multiple parking areas or garages under one taxpayer identification number is not required to obtain a separate certificate of registration for each parking area or garage.
- c) *The Department may refuse to issue or reissue a certificate of registration to any applicant for the reasons set forth in Section 2505-380 of the Department of Revenue Law [20 ILCS 2505] (Section 10-30(b) of the Act).*
- d) *Any person aggrieved by any decision of the Department under this Section may, within 20 days after notice of that decision, protest and request a hearing. The Department shall give notice to the person of the time and place fixed for the hearing and shall hold a hearing in conformity with the provisions of the Act. After the hearing, the Department will issue its final administrative decision in the matter to the requestor. In the absence of a protest lodged within 20 days, the Department's decision shall become final without any further determination being made or notice given. (Section 10-30(c) of the Act)*

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Section 195.140 Revocation of Certificate of Registration

- a) *The Department may, after notice and a hearing as provided in the Act, revoke the certificate of registration of any operator who violates any of the provisions of the Act or this Part. Before revocation of a certificate of registration, the Department shall, within 90 days after noncompliance and at least 7 days prior to the date of the hearing, give the operator so accused notice in writing of the charge against him or her, and on the date designated shall conduct a hearing upon this matter. The lapse of the 90-day period shall not preclude the Department from conducting revocation proceedings at a later date if necessary. Any hearing held under this Section shall be conducted by the Director or by any officer or employee of the Department designated in writing by the Director.*
- b) *The Department may revoke a certificate of registration for the reasons set forth in Section 2505-380 of the Department of Revenue Law.*
- c) *Upon the hearing of any such proceeding, the Director or any officer or employee of the Department designated in writing by the Director may administer oaths. The Department may procure by its subpoena the attendance of witnesses and, by its subpoena duces tecum, the production of relevant books and papers. Any circuit court, upon application either of the operator or of the Department, may, by order duly entered, require the attendance of witnesses and the production of relevant books and papers before the Department in any hearing relating to the revocation of certificates of registration. Upon refusal or neglect to obey the order of the court, the court may compel obedience to the order by proceedings for contempt.*
- d) *The Department may, by application to any circuit court, obtain an injunction requiring any person who engages in business as an operator under the Act to obtain a certificate of registration. Upon refusal or neglect to obey the order of the court, the court may compel obedience by proceedings for contempt. (Section 10-35 of the Act)*

Section 195.145 Valet Services

- a) *Persons engaged in the business of providing valet services are subject to the tax imposed by the Act on the purchase price received in connection with their valet parking operations (Sections 10-40(a) of the Act). It shall be presumed that the*

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consideration paid by a person to an operator of valet parking includes payment for the privilege of using a parking space.

- b) A valet service that parks cars on public rights of way without charge is not subject to tax and is not required to collect the tax imposed by this Act. A valet parking operator claiming no tax liability, or claiming a reduced liability, under this subsection shall have the burden of proving to the Department that the parking occurred on the public way for free and not in a parking lot or parking garage.
- c) *Tips received by persons parking cars for operators providing valet services are not subject to the tax imposed by the Act if the tips are retained by the person receiving the tip. If the tips are turned over to the valet business, the tips shall be included in the purchase price.* (Section 10-40(c) of the Act)

EXAMPLE: A restaurant provides parking without charge. For the benefit of customers, the owner of the restaurant has employees park the cars for the customers. Customers often tip the employees for parking and returning their cars. The employees get to keep the tips. The tips are not taxable under this Act.

- d) *Persons engaged in the business of providing valet services are entitled to take the credit in Section 195.110(c)* (Section 10-40(b) of the Act).

Section 195.150 Incorporation by Reference

All of the provisions of Sections 1, 2a, 2b, 3 (except provisions relating to transaction returns and except for provisions that are inconsistent with the Act, in respect to all provisions of those Sections other than the State rate of tax), 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5j, 6, 6a, 6b, 6c, 6d, 7, 8, 9, 10, 11, 11a, 12, and 13 of the Retailers' Occupation Tax Act that are not inconsistent with the Act, and all provisions of the Uniform Penalty and Interest Act [35 ILCS 735] shall apply, as far as practicable, to the subject matter of the Act to the same extent as if those provisions were included in the Act [35 ILCS 525/10-55].

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- 1) Heading of the Part: Cigarette Use Tax Act
- 2) Code Citation: 86 Ill. Adm. Code 450
- 3) Section Number: 450.10 Proposed Action:
Amendment
- 4) Statutory Authority: 35 ILCS 130/8
- 5) A Complete Description of the Subjects and Issues Involved: Section 450.10 is amended to implement changes to the Cigarette Use Tax Act made by PA 101-31. PA 101-31, effective July 1, 2019, increased the tax on cigarettes from 99 mills per cigarette to 149 mills per cigarette (\$1.98 per package of 20 cigarettes to \$2.98 per package of 20 cigarettes). Pursuant to Section 2 of the Cigarette Tax Act, all moneys received by the Department under the Cigarette Tax Act and the Cigarette Use Tax Act from the additional 50 mills per cigarette tax are payable into the Capital Projects Fund. A floor tax requires a distributor to pay the additional tax to the extent that the volume of affixed and unaffixed stamps in the distributor's possession on July 1, 2019 exceeds the average monthly volume of cigarette stamps purchased by the distributor in calendar year 2018.
- 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 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:

Richard S. Wolters

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Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield IL 62794

217/782-2844

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Distributors of cigarettes are affected.
 - B) Reporting, bookkeeping or other procedures required for compliance: Basic accounting and computer skills
 - C) Types of professional skills necessary for compliance: Basic accounting and computer skills
- 14) Small Business Impact Analysis:
- A) Types of businesses subject to the proposed rule:
 - 42 Wholesale Trade
 - B) Categories that the agency reasonably believes the rulemaking will impact, including:
 - ii. regulatory requirements;
 - iii. record keeping;
- 15) Regulatory Agenda on which this rulemaking was summarized: July 2019

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

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NOTICE OF PROPOSED AMENDMENT

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 450
CIGARETTE USE TAX ACT

Section	
450.10	Nature and Rate of Tax
450.20	Tax Stamps – Affixed Out of State
450.30	Licenses and Permits – Bonds
450.40	Reports and Returns
450.50	Books and Records; Invoices; Penalties
450.60	Unused Stamps – Sale of – Notice to Department – Mutilated Stamps
450.70	Cigarettes Used Outside Illinois
450.80	Purchase of Cigarettes by Governmental Bodies for Use
450.90	Credit for Stamps that Are Damaged, Unused, Destroyed or on Packages Returned to the Manufacturer
450.100	Sample Packages of Cigarettes – Stamps or Other Evidence of Tax Collection Affixed
450.110	Forfeited Cigarettes and Vending Machines
450.120	Claims for Credit or Refund
450.130	Protest Procedures

AUTHORITY: Implementing and authorized by the Cigarette Use Tax Act [35 ILCS 135].

SOURCE: Filed and effective June 17, 1958; codified at 8 Ill. Reg. 13838; amended at 13 Ill. Reg. 10687, effective June 16, 1989; amended at 14 Ill. Reg. 6804, effective April 19, 1990; amended at 15 Ill. Reg. 122, effective December 24, 1990; amended by emergency rulemaking at 23 Ill. Reg. 9546, effective July 29, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 14753, effective December 8, 1999; amended at 24 Ill. Reg. 9909, effective June 23, 2000; emergency amendment at 24 Ill. Reg. 10759, effective July 6, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 17800, effective November 28, 2000; amended at 25 Ill. Reg. 937, effective January 8, 2001; emergency amendment at 26 Ill. Reg. 9027, effective June 10, 2002, for a maximum of 150 days; emergency expired November 5, 2002; amended at 27 Ill. Reg. 1647, effective January 15, 2003; emergency amendment at 27 Ill. Reg. 10529, effective July 1, 2003, for a maximum of 150 days; emergency expired November 27, 2003; amended at 28 Ill. Reg. 3911, effective February 13, 2004; amended at 32 Ill. Reg. 17580, effective October 27, 2008; amended at 42 Ill. Reg. 23186, effective November 29, 2018; amended at 43 Ill. Reg. 8915, effective July 30, 2019; amended at 44 Ill. Reg. _____, effective _____.

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Section 450.10 Nature and Rate of Tax

- a) The Cigarette Use Tax is imposed upon the privilege of using cigarettes in this State, and the tax rate is ~~29 mills per cigarette so used or 58 cents on a package of 20 cigarettes; except that, beginning July 1, 2002, the tax rate is 49 mills per cigarette or 98 cents on a package of 20 cigarettes. Beginning June 24, 2012, the tax rate is~~ 99 mills per cigarette or \$1.98 on a package of 20 cigarettes through June 30, 2019; and, beginning July 1, 2019, the tax rate is 149 mills per cigarette or \$2.98 on a package of 20 cigarettes. All moneys received by the Department under the Cigarette Use Tax Act (the Act) shall be distributed as provided in Section 2 of the Cigarette Tax Act (Section 35 of the Act).
- b) The tax must be collected by a distributor maintaining a place of business in this State or a distributor authorized by Section 7 of the Act to hold a permit to collect the tax, and the amount of the tax shall be added to the price of the cigarettes sold by the distributor and must be stated on the invoice as a separate item from the selling price of the cigarettes except when the purchaser is a federal or foreign government agency or instrumentality (see Section 450.50).
- c) Distributors who are not subject to the Cigarette Tax Act [35 ILCS 130], but who are subject to the Cigarette Use Tax Act [35 ILCS 135] ~~(the Act)~~, must remit, to the Department of Revenue (the Department), the amount of Cigarette Use Tax to be collected by them through the purchase and affixation of tax stamps or meter impression units (when the use of meters is authorized by the Department) to any original package of cigarettes before delivering the cigarettes (or causing them to be delivered) in this State to any purchaser, or (in the case of manufacturers of cigarettes in original packages that are contained inside a sealed transparent wrapper) by imprinting the language to be prescribed by the Department on the original package of cigarettes beneath the outside wrapper.
- 1) *No stamp or imprint may be affixed to, or made upon, any package of cigarettes unless that package complies with all requirements of the federal Cigarette Labeling and Advertising Act (15 USC 1331 and following), for the placement of labels, warnings, or any other information upon a package of cigarettes that is sold within the United States. Under the authority of Section 6 of the Cigarette Use Tax Act, the Department shall revoke the license of any distributor that is determined to have violated this subsection (c)(1). A person may not affix a stamp on a*

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package of cigarettes, cigarette papers, wrappers, or tubes if that individual package has been marked for export outside the United States with a label or notice in compliance with 27 CFR 290.185. It is not a defense to a proceeding for violation of this subsection (c)(1) that the label or notice has been removed, mutilated, obliterated, or altered in any manner. (Section 3 of the ~~Cigarette Use Tax~~ Act)

- 2) Packages of cigarettes, cigarette papers, wrappers, or tubes stamped or imprinted in a manner not in accordance with subsection (c)(1) and found in the possession of a distributor create a rebuttable presumption that the packages of cigarettes, cigarette papers, wrappers, or tubes were stamped or imprinted in violation of the Act.
- 3) Packages of cigarettes, cigarette papers, wrappers, or tubes stamped or imprinted in a manner not in accordance with subsection (c)(1) and found in the possession of a retailer create a rebuttable presumption that the packages of cigarettes, cigarette papers, wrappers, or tubes were stamped or imprinted by the distributor from whom they were obtained in violation of the Act.
- 4) *No stamp or imprint may be affixed to, or made upon, any package of cigarettes (Section 3 of the Act) that:*
 - A) *bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including but not limited to labels stating "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording;*
 - B) *does not comply with:*
 - i) *all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including but not limited to the precise warning labels specified in the federal Cigarette Labeling and Advertising Act (15 USC 1333); and*

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- ii) *all federal trademark and copyright laws;*
- C) *is imported into the United States in violation of 26 USC 5754 or any other federal law or implementing federal regulations;*
- D) *the person affixing the stamp or imprint otherwise knows or has reason to know the manufacturer did not intend to be sold, distributed, or used in the United States;*
- E) *for which there has not been submitted to the Secretary of the U.S. Department of Health and Human Services the list or lists of the ingredients added to tobacco in the manufacture of the cigarettes required by the federal Cigarette Labeling and Advertising Act (15 USC 1335a); or*
- F) *has been altered, prior to sale or distribution to the ultimate consumer, so as to remove, conceal, or obscure:*
 - i) *any statement, label, stamp, sticker, or notice described in 86 Ill. Adm. Code 440.50(k)(1); or*
 - ii) *any health warning that is not specified in, or does not conform with the requirements of, the federal Cigarette Labeling and Advertising Act. (Section 3-10 of the Act)*
- 5) Packages of cigarettes, cigarette papers, wrappers, or tubes stamped or imprinted in a manner not in accordance with subsection (c)(4) and found in the possession of a distributor create a rebuttable presumption that the packages of cigarettes, cigarette papers, wrappers or tubes were stamped or imprinted in violation of the Act.
- 6) Packages of cigarettes, cigarette papers, wrappers or tubes stamped or imprinted in a manner not in accordance with subsection (c)(4) and found in the possession of a retailer create a rebuttable presumption that the packages of cigarettes, cigarette papers, wrappers or tubes were stamped or imprinted by the distributor from whom they were obtained in violation of the Act.
- 7) *On the first business day of each month, each person licensed to affix the*

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State tax stamp to cigarettes shall file with the Department, for all cigarettes imported into the United States to which the person has affixed the tax stamp in the preceding month.

- 8) *A copy of:*

 - A) *the permit issued pursuant to the Internal Revenue Code (26 USC 5713), to the person importing the cigarettes into the United States allowing the person to import the cigarettes; and*
 - B) *the customs form containing, with respect to the cigarettes, the internal revenue tax information required by the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives.*

- 9) *A statement, signed by the person under penalty of perjury, which shall be treated as confidential by the Department and exempt from disclosure under the Freedom of Information Act [5 ILCS 140], identifying the brand and brand styles of all such cigarettes, the quantity of each brand style of such cigarettes, the supplier of such cigarettes, and the person or persons, if any, to whom such cigarettes have been conveyed for resale.*
- 10) *In addition to the statement required in subsection (c)(9), a separate statement, signed by the individual under penalty of perjury, which shall not be treated as confidential or exempt from disclosure, separately identifying the brands and brand styles of such cigarettes.*
- 11) *In addition to the statement required in subsection (c)(9) and (c)(10), a separate statement, signed by an officer of the manufacturer or importer under penalty of perjury, certifying that the manufacturer or importer has complied with:*

 - A) *the package health warning and ingredient reporting requirements of the federal Cigarette Labeling and Advertising Act (15 USC 1333 and 1335a) with respect to such cigarettes; and*
 - B) *the provisions of Exhibit T of the Master Settlement Agreement entered in the case of People of the State of Illinois v. Philip Morris, et al. (Circuit Court of Cook County, No. 96-L13146), including a statement indicating whether the manufacturer is, or is*

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not, a participating tobacco manufacturer within the meaning of Exhibit T. (Section 3-10 of the Act)

- 12) The Department may revoke or suspend the license or licenses of any distributor, in the manner provided in Section 6 of the Cigarette Use Tax Act, if the Department determines that the distributor knew or had reason to know that the distributor was committing any of the acts prohibited in subsection (c)(4) of this Section or had failed to comply with any of the requirements of ~~subsection (b) of~~ Section 3-10(~~b~~) of the Act. In addition, the Department may impose on the distributor a civil penalty in an amount not to exceed the greater of 500% of the retail value of the cigarettes involved or \$5,000. Cigarettes acquired, held, owned, possessed, transported in, imported into, or sold or distributed in this State in violation of subsection (c)(4) ~~of this Section~~ shall be subject to seizure and forfeiture whether the violation is knowing or otherwise. (See Section 3-10(c)(1) of the Act.)
- d) At the time of purchasing stamps from the Department or any person authorized by the Department, when purchase of the stamps is required by the Cigarette Use Tax Act or at the time when the tax that he or she has collected is remitted by a distributor to the Department without the purchase of stamps from the Department or any person authorized by the Department when that method of remitting the tax that has been collected is required or authorized by the Act, the distributor will be allowed a discount during any year commencing July 1 and ending the following June 30. The discount shall be equal to 1.75% of the amount of the tax payable under the Act up to and including the first \$3,000,000.00 paid by the distributor to the Department during any year and 1.5% of the amount of any additional tax paid by the distributor to the Department during that year.
- e) This discount is to cover the distributor's cost of collecting the tax.
- f) Two or more distributors that use a common means of affixing revenue tax stamps or that are owned or controlled by the same interests shall be treated as a single distributor for the purpose of computing the discount.
- g) *All payment for revenue tax stamps must be made by means of electronic funds transfer. (Section 3 of the Act)*
- h) The Cigarette Use Tax collected by a distributor who is liable to collect and remit

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a like amount of tax with respect to the same cigarettes under the Cigarette Tax Act need not be remitted to the Department under the Act. In other words, the amount that the distributor is liable to collect and remit under the Cigarette Tax Act with respect to particular cigarettes is offset against the amount collected from the purchaser by the distributor under the Act with respect to the same cigarettes. Sections 3 and 10 of the Act permit this offset in order to avoid the double remittance of tax to the State on the same transactions in the case of sales of cigarettes in Illinois.

- i) In those instances in which a distributor is required to affix tax stamps or meter impressions to original packages of cigarettes under the Act, rather than under the Cigarette Tax Act, the provisions of the Part relating to the Cigarette Tax Act (86 Ill. Adm. Code 440) shall apply.
- j) When cigarettes are acquired for use in this State without Illinois tax stamps being affixed to the original packages and without authorized tax imprints placed underneath the sealed transparent wrapper of the original packages, the user is required to remit the amount of the Cigarette Use Tax directly to the Department. Before January 1, 2002, the tax shall be remitted to the Department by the user within 3 days after he acquires the cigarettes. On and after January 1, 2002, the tax shall be remitted to the Department by the user within 30 days after he or she acquires the cigarettes.
- k) *The Department may refuse to sell cigarette stamps to any person who does not comply with the provisions of the Act. (Section 3 of the Act)*
- l) Section 1 of the Act provides that the term "*distributor*" does not include any person who transfers cigarettes to a not-for-profit research institution that conducts tests concerning the health effects of tobacco products and who does not offer the cigarettes for resale.
- m) Any retailer having cigarettes in its possession on July 1, 2019 to which tax stamps have been affixed is not required to pay the additional tax that begins on July 1, 2019 imposed by PA 101-31 on those stamped cigarettes. Any distributor having cigarettes in his or her possession on July 1, 2019 to which tax stamps have been affixed, and any distributor having stamps in his or her possession on July 1, 2019 that have not been affixed to packages of cigarettes before July 1, 2019, is required to pay the additional tax that begins on July 1, 2019 imposed by PA 101-31 to the extent that the volume of affixed and unaffixed stamps in the

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distributor's possession on July 1, 2019 exceeds the average monthly volume of cigarette stamps purchased by the distributor in calendar year 2018. This payment, less the discount provided in Section 3 of the Act, is due when the distributor first makes a purchase of cigarette stamps on or after July 1, 2019 or on the first due date of a return under the Act occurring on or after July 1, 2019, whichever occurs first. Those distributors may elect to pay the additional tax on packages of cigarettes to which stamps have been affixed and on any stamps in the distributor's possession that have not been affixed to packages of cigarettes in their possession on July 1, 2019 over a period not to exceed 12 months from the due date of the additional tax by notifying the Department in writing. The first payment for distributors making this election is due when the distributor first makes a purchase of cigarette tax stamps on or after July 1, 2019 or on the first due date of a return under the Act occurring on or after July 1, 2019, whichever occurs first. Distributors making this election are not entitled to take the discount provided in Section 3 of the Act on those payments. (Section 2 of the Act)

(Source: Amended at 44 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: County Motor Fuel Tax
- 2) Code Citation: 86 Ill. Adm. Code 695
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
695.101	Amendment
695.105	Amendment
695.115	Amendment
- 4) Statutory Authority: 55 ILCS 5/5-1035.1
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking implements the changes to the County Motor Fuel Tax Law [55 ILCS 5/5-1035.1] made by PA 101-32. PA 101-32 expands the authority to impose a tax on persons engaged in the county in the business of selling motor fuel to include Lake and Will Counties (in addition to the existing counties of DuPage, Kane, and McHenry). It also provides that the initial rate imposed may not be less than 4 cents per gallon (previously capped at 4 cents per gallon) and may not exceed 8 cents per gallon. Finally, PA 101-32 provides for automatic annual increases in the tax rate.
- 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 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:

Samuel J. Moore

DEPARTMENT OF REVENUE

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Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield IL 62794

217/782-2844

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not-for-profit corporations affected: None directly. If a county imposes or increase its motor fuel tax under the authority of the County Motor Fuel Tax Law, motor fuel retailers, including those that are small businesses, and purchasers of motor fuel in the county, including small businesses and not-for-profit corporations, would be subject to the tax.
- B) Reporting, bookkeeping or other procedures required for compliance: County Motor Fuel Tax returns would be required to be filed by motor fuel retailers in the county who are small businesses.
- C) Types of professional skills necessary for compliance: None

14) Small Business Impact Analysis:

- A) Types of businesses subject to the proposed rule: Those businesses impacted by the rulemaking are small businesses that sell motor fuel at retail in counties that impose a County Motor Fuel Tax.

44-45 Retail Trade

- B) Categories that the agency reasonably believes the rulemaking will impact, including:
- ii. record keeping;

15) Regulatory Agenda on which this rulemaking was summarized: July 2019

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

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TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 695
COUNTY MOTOR FUEL TAX

Section

695.101	Nature of the County Motor Fuel Tax
695.105	Registration and Returns
695.110	Claims to Recover Erroneously Paid Tax
695.115	Jurisdictional Questions
695.120	Incorporation of Retailers' Occupation Tax Regulations by Reference
695.125	Penalties, Interest and Procedures
695.130	Effective Date

AUTHORITY: Implementing Section 5-1035.1 of the County Motor Fuel Tax Law [55 ILCS 5] and authorized by Section 2505-95 of the Civil Administrative Code of Illinois [20 ILCS 2505].

SOURCE: Adopted at 25 Ill. Reg. 4922, effective March 23, 2001; emergency amendment at 38 Ill. Reg. 4164, effective January 22, 2014, for a maximum of 150 days; emergency expired June 20, 2014; amended at 38 Ill. Reg. 14428, effective June 25, 2014; amended at 44 Ill. Reg. _____, effective _____.

Section 695.101 Nature of the County Motor Fuel Tax

- a) Authority to Impose Tax
Under the County Motor Fuel Tax Law ("Law") [55 ILCS 5/5-1035.1], *the county board of the counties of DuPage, Kane Lake, Will and McHenry may, by an ordinance or resolution adopted by the affirmative vote of a majority of the members elected or appointed to the county board, impose a tax upon all persons engaged in the business of selling motor fuel, as now or hereafter defined in the Motor Fuel Tax Law [35 ILCS 505], at retail for the operation of motor vehicles upon public highways or for the operation of recreational watercraft upon waterways. Kane County may exempt diesel fuel from the tax imposed pursuant to this Section. The initial tax rate may not be less than~~If imposed, such tax shall only be imposed in half-cent increments, at a rate not exceeding~~ 4 cents per gallon of motor fuel sold at retail within the county for the purpose of use or consumption and not for the purpose of resale and may not exceed 8 cents per gallon of motor fuel sold at retail within the county for the purpose of use or*

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consumption and not for the purpose of resale. The proceeds from the tax shall be used by the county solely for the purpose of operating, constructing and improving public highways and waterways, and acquiring real property and rights-of-way for public highways and waterways within the county imposing the tax. The County Motor Fuel Tax imposed under the ~~County Motor Fuel Tax~~ Law is an occupation tax upon retailers of motor fuel and is administered by the Illinois Department of Revenue ("Department") in the same manner as the Retailers' Occupation Tax. The tax imposed by a county board under the County Motor Fuel Tax Law and this Part, and all civil penalties that may be assessed as an incident thereof, shall be collected and enforced by the Department.

b) Annual Rate Increase

By June 1, 2020, and by June 1 of each year thereafter, the Department of Revenue will determine an annual rate increase to take effect on July 1 of that calendar year and continue through June 30 of the next calendar year. Not later than June 1 of each year, the Department of Revenue will publish on its website the rate that will take effect on July 1 of that calendar year. The rate shall be determined in accordance with the provisions of the Law. The rate shall be rounded to the nearest one-tenth of one cent. Each new rate may not exceed the rate in effect on June 30 of the previous year plus one cent. (Section (a-5) of the Law)

- 1) With respect to rate increases, if the rate in effect on June 30, 2020 is 4 cents per gallon, then the rate that takes effect on July 1, 2021 as a result of the annual rate increase may not exceed 5 cents per gallon. If, however, the county board adopts an ordinance or resolution to increase the rate on July 1, 2021 to 6 cents per gallon, then the 6 cents per gallon rate shall take effect on July 1, 2021, notwithstanding that it exceeds the rate in effect on June 30, 2020 by more than one cent per gallon.
- 2) While the rate set by the county board by ordinance or resolution may not exceed 8 cents per gallon, the rate in effect thereafter may exceed 8 cents per gallon as a result of the annual rate increase provision.

c)b) Passing on the Tax

The legal incidence of the ~~County Motor Fuel Tax~~ Law is on the seller. Nevertheless, the General Assembly has authorized persons subject to any tax imposed pursuant to the authority granted in the ~~County Motor Fuel Tax~~ Law to reimburse themselves for their County Motor Fuel Tax liability by separately

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stating such tax as an additional charge, which charge may be stated in combination, in a single amount, with State tax ~~that~~^{which} sellers are required to collect under the Use Tax Act [35 ILCS 105], pursuant to such bracket schedules as the Department has prescribed (see 86 Ill. Adm. Code 150. Table A).

- d)e) Exclusion from "Gross Receipts"
Any amount added to the selling price of motor fuel by the seller because of a County Motor Fuel Tax, or because of the Illinois Retailers' Occupation Tax [35 ILCS 120], the Illinois Use Tax [35 ILCS 105], or any local occupation or use tax administered by the Department and collected from the purchaser, shall not be regarded as a part of the seller's gross receipts that are subject to such County Motor Fuel Tax.

(Source: Amended at 44 Ill. Reg. _____, effective _____)

Section 695.105 Registration and Returns

- a) Separate Registration Not Required
A retailer's registration under the Illinois Retailers' Occupation Tax Act [35 ILCS 120] is sufficient for the County Motor Fuel Tax Law. No special registration for the ~~County Motor Fuel Tax~~ Law is required.
- b) Requirements as to Returns
- 1) The information required for the ~~County Motor Fuel Tax~~ Law shall be furnished on the return form prescribed by the Department.
 - 2) On or before the ~~20th~~^{twentieth} day of each calendar month, every person engaged in the business of selling motor fuel, as now or hereafter defined in the Motor Fuel Tax Law [35 ILCS 505], at retail in the counties of DuPage, Kane, ~~Lake, Will~~ or McHenry for the operation of motor vehicles upon public highways or for the operation of recreational watercraft upon waterways during the preceding calendar month shall file a return with the Department for ~~the~~^{such} preceding month, stating the name of the seller; the address of his ~~or her~~ principal place of business, the address of the principal place of business (if that is a different address) from which he ~~or she~~ is engaged in the business of selling ~~the~~^{such} motor fuel at retail; total gallons of motor fuel sold; deductions allowed by law; and amount of tax due.

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- 3) If the retailer files his or her Illinois Retailers' Occupation Tax returns on the gross receipts basis, he or she must report County Motor Fuel Tax information in his or her returns on the same basis. If the retailer files his or her Illinois Retailers' Occupation Tax returns on the gross sales basis, he or she must report County Motor Fuel Tax information in his or her returns on the gross sales basis.

(Source: Amended at 44 Ill. Reg. _____, effective _____)

Section 695.115 Jurisdictional Questions

- a) Definitions

When used in this Part, "County" means any one of the counties of DuPage, Kane, Lake, Will or McHenry authorized under the County Motor Fuel Tax Law ~~[55 ILCS 5/5-1035.1]~~ to impose a County Motor Fuel Tax.

When used in this Part, "Selling Activities" refers to those activities that comprise "an occupation, the business of which is to sell tangible personal property at retail". "Selling Activities" includes "the composite of many activities extending from the preparation for, and the obtaining of, orders for goods to the final consummation of the sale by the passing of title and payment of the purchase price". *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321 (1943).

- b) Retailer's Selling Activities Determine Taxing Jurisdiction

- 1) Occupation of Selling. The ~~County Motor Fuel Tax~~ Law authorizes the county boards of the counties of DuPage, Kane, Lake, Will and McHenry to impose a tax on those engaged in the county in the business of selling motor fuel at retail within the county. Because the statute imposes a tax on the retail business of selling, and not on specific sales, the jurisdiction in which the sale takes place is not necessarily the jurisdiction where the County Motor Fuel Tax is owed. Rather, it is the jurisdiction where the seller is engaged in the business of selling that can impose the tax. *Automatic Voting Machs. v. Daley*, 409 Ill. 438, 447 (1951) ("In short, the tax is imposed on the "occupation" of the retailer and not upon the "sales" as such.") (citing *Mahon v. Nudelman*, 377 Ill. 331 (1941) and *Standard Oil Co. v. Dep't of Finance*, 383 Ill. 136 (1943)); see also *Young v.*

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Hulman, 39 Ill. 2d 219, 225 (1968) ("the retailers occupational tax . . . imposes liability upon the occupation of selling at retail and not on the sale itself").

- 2) Composite of Selling Activities. The occupation of selling is comprised of "the composite of many activities extending from the preparation for, and the obtaining of, orders for goods to the final consummation of the sale by the passing of title and payment of the purchase price". *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321 (1943). Thus, establishing where "the taxable business of selling is being carried on" requires a fact-specific inquiry into the composite of activities that comprise the retailer's business. *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraph 32 (citing *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321-22 (1943)).
- 3) Multijurisdictional Retailers. Some retailers are engaged in retail operations with selling activities in multiple jurisdictions within the State, or in jurisdictions located in more than one state. The selling activities that comprise these businesses "are as varied as the methods which men select to carry on retail business". *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321 (1943). Consequently, "it is . . . not possible to prescribe by definition which of the many activities must take place in [a jurisdiction] to constitute it an occupation conducted in [that jurisdiction] . . . [I]t is necessary to determine each case according to the facts which reveal the method by which the business was conducted". *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321-22 (1943); see also *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraph 36.
- 4) Statutory Intent. It is the intent of the County Motor Fuel Tax that retailers will incur County Motor Fuel Tax in a jurisdiction in Illinois if they "enjoyed the greater part of governmental [services and] protection" in that jurisdiction. *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraph 34 (quoting *Svithiod Singing Club v. McKibbin*, 381 Ill. 194, 197 (1942)). By allowing the Counties of DuPage, Kane, [Lake](#), [Will](#) and McHenry to impose tax on retailers who conduct business in the county, the ~~County Motor Fuel Tax~~ Law links the retailer's tax liability to where it principally enjoys the benefits of government services. *Svithiod Singing Club v. McKibbin*, 381 Ill. 194, 199 (1942).

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- 5) **Determination of Taxing Jurisdiction.** Applying the provisions in subsections (b)(1) and (b)(4), a seller incurs County Motor Fuel Tax in the county if its predominant and most important selling activities take place in the county. Isolated or limited business activities within a jurisdiction do not constitute engaging in the business of selling in that jurisdiction when other more significant selling activities occur outside the jurisdiction, and the business predominantly takes advantage of government services provided by other jurisdictions. *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 322-23 (1943); *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraphs 30 through 35.
- 6) **Substance over Form.** The Department "may look through the form of a putatively [multijurisdictional] transaction to its substance" to determine where "enough of the business of selling took place" and, thus, where the seller is subject to local retailers' occupation tax. *Marshall & Huschart Mach. Co. v. Dep't of Revenue*, 18 Ill. 2d 496, 501 (1960); *Fed. Bryant Mach. Co. v. Dep't of Revenue*, 41 Ill. 2d 64, 67 (1968); *Int'l-Stanley Corp. v. Dep't of Revenue*, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraph 31. For example, the Department will not look to the location of a party that is owned by or has common ownership with a supplier or a purchaser if that party does not, in substance, conduct the selling activities related to the sales.
- 7) **Same Standard Applies to Intrastate and Interstate Retailers.** For purposes of determining where a retailer is engaged in the business of selling, it does not matter whether the retailer is engaged in selling activities in taxing jurisdictions in multiple states, or in multiple jurisdictions in this State. The legal standard is the same. The retailer is engaged in the business of selling in the taxing jurisdiction where its predominant and most important selling activities take place. *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316 (1943); *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraph 30 ("the location of the business of selling inside or outside the [S]tate controls..."). If a retailer engages in some selling activities in a taxing jurisdiction in this State, but that retailer's predominant selling activities are outside the State, the retailer's obligation to collect and remit taxes on Illinois sales is governed by the Illinois Use Tax Act [35 ILCS 105/2] (defining "retailer maintaining a place of business in the State"); *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130,

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paragraph 31 ("some combination of activities within the [S]tate are insufficient for the retail occupation tax to apply") (citing *Automatic Voting Machs. v. Daley*, 409 Ill. 438, 447 (1951)).

- 8) Because it is not practicable for retailers to divide County Motor Fuel Tax among competing jurisdictions, a retailer subject to the County Motor Fuel Tax is engaged in the business of selling in only one location in Illinois for each sale.
- c) Application of Composite of Selling Activities Test to Retailers Conducting Selling Activities in Multiple Taxing Jurisdictions. Every retailer maintaining a place of business in this State shall determine the taxing jurisdictions in which it is engaged in the business of selling with respect to each of its sales by applying the standards set forth in this subsection (c), except when a retailer is engaged in particular selling activities identified by a statute that specifies the taxing jurisdiction where retailers engaged in those activities shall remit County Motor Fuel Tax. These retailers shall remit County Motor Fuel Tax as directed by statute, notwithstanding anything in this Part to the contrary.
 - 1) Primary Selling Activities. Without attempting to anticipate every kind of fact situation that may arise, taxpayers that divide selling activities among personnel located in multiple jurisdictions shall consider the following selling activities to determine where they are engaged in the business of selling with respect to each sale. A retailer is engaged in the business of selling in only one location for each sale, but may be engaged in the business of selling in different locations for different sales:
 - A) Location of sales personnel exercising discretion and authority to solicit customers on behalf of a seller and to bind the seller to the sale;
 - B) Location where the seller takes action that binds it to the sale, which may be acceptance of purchase orders, submission of offers subject to unilateral acceptance by the buyer, or other actions that bind the seller to that sale;
 - C) The location where payment is tendered and received, or from which invoices are issued with respect to each sale;

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- D) Location of inventory if tangible personal property that is sold is in the retailer's inventory at the time of its sale or delivery, and
- E) The location of the retailer's headquarters, which is the principal place from which the business of selling tangible personal property is directed or managed. In general, this is the place at which the offices of the principal executives are located. When executive authority is located in multiple jurisdictions, the place of daily operational decision making is the headquarters.
- 2) A retailer engaging in three or more primary selling activities in one location in the State for a particular sale shall remit the County Motor Fuel Tax imposed by the taxing bodies with authority to impose County Motor Fuel Tax on those engaged in the business of selling in that location for that sale. A retailer engaging in three or more primary selling activities for a particular sale outside the State shall collect and remit tax to the State to the extent required by the Illinois Use Tax Act [35 ILCS 105] for that sale, except as provided in subsection (d).
- 3) Application of Primary Selling Activities to Common Selling Operations. Retailers engaged in selling operations with a single location where the primary selling activities predominate constitute the vast majority of retailers in the State. Subsections (c)(3)(A) ~~and (B) through (c)(3)(C)~~ apply the primary selling activities to certain common selling operations and identify the location where the Department will presume the seller is engaged in the business of selling with respect to each sale.
- A) Over the Counter Sales. If a purchaser is present at a place of business owned or leased by a retailer and there enters into an agreement with the retailer's sales personnel to purchase tangible personal property, and makes payment for that property at the same place of business, then the County Motor Fuel Tax for that sale is incurred at the retailer's place of business where the sale occurred regardless of whether the purchaser takes immediate possession of the tangible personal property, or the retailer delivers or arranges for the property to be delivered to the purchaser.
- ~~B) Sales through Vending Machines. A retailer is engaged in the business of selling food, beverages or other tangible personal~~

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~~property through a vending machine at the location where the vending machine is located when the sale is made if:~~

- ~~i) the vending machine is a device operated by coin, currency, credit card, token, coupon or similar device that dispenses food, beverage or other tangible personal property;~~
- ~~ii) the food, beverage or other tangible personal property is contained within the vending machine and dispensed from the vending machine; and~~
- ~~iii) the purchaser takes possession of the purchased food, beverage or other tangible personal property immediately.~~

B) Sales from Vehicles Carrying Uncommitted Stock of Goods. The seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously completed sales, but actual sales and deliveries) from a vehicle in which a stock of goods is being carried for sale is the place at which the sales and deliveries actually are made. The vehicle carrying the stock of goods for sale is regarded as a portable place of business.

- 4) Secondary Selling Activities. If the primary selling activities listed in subsection (c)(1) occur in multiple jurisdictions, but no individual jurisdiction has more than two primary selling activities, the following additional selling activities shall be considered to determine the jurisdiction in which the retailer is engaged in the business of selling.
- A) Location where marketing and solicitation occur;
 - B) Location where the seller engages in activities necessary to procure goods for sale;
 - C) Location of the retailer's officers, executives or employees with authority to set prices or determine other terms of sale if determinations are made in a location different than that identified in subsection (c)(1)(A);

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- D) Location where purchase orders or other contractual documents are received when purchase orders are accepted, processed, or fulfilled in a location or locations different from where they are received;
 - E) Location where title passes; and
 - F) Location where the retailer displays goods to prospective customers, such as a showroom.
- 5) Except as provided in subsection (d), a retailer that is not engaged in the business of selling in a jurisdiction under subsection (c)(2) is engaged in the business of selling in the jurisdiction where its inventory is located under subsection (c)(1)(D), or where its headquarters is located under subsection (c)(1)(E), whichever jurisdiction is the location where more selling activities occur, considering both primary and secondary selling activities.
- 6) A retailer that is not engaged in the business of selling in a jurisdiction under subsection (c)(2) or (c)(5) is presumed to be engaged in the business of selling at the location of its headquarters absent clear and convincing evidence to the contrary.
- d) Presumptions Applying to Certain Selling Operations
- 1) For certain classes of retailers with unique, complicated or widely dispersed selling activities, determining appropriate tax situs in every situation presents substantial administrative difficulties for both retailers and tax enforcement personnel. Subsections (d)(2) provides an through (d)(5) provide administrative "short cuts" that balances the administrative difficulties presented by certain selling operations against the need for accurate tax assessment.
 - 2) In-State Inventory/Out of State Selling Activity. If a retailer's selling activities take place in taxing jurisdictions outside this State, except that the tangible personal property that is sold is in an inventory in the possession of the retailer located within a jurisdiction in Illinois at the time of its sale (or is subsequently produced by the retailer in the jurisdiction), then delivered in Illinois to the purchaser, the jurisdiction where the property is located at the time of the sale or when it is subsequently

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produced by the retailer will determine where the retailer is engaged in business with respect to that sale. *Chemed Corp., Inc. v. Department of Revenue*, 186 Ill. App. 3d 402 (4th Dist. 1989).

(Source: Amended at 44 Ill. Reg. _____, effective _____)

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NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Public Information, Rulemaking, and Organization
- 2) Code Citation: 2 Ill. Adm. Code 725
- 3)

<u>Section Numbers</u> :	<u>Adopted Actions</u> :
725.10	Amendment
725.20	Amendment
725.30	Amendment
725.40	Amendment
725.50	Amendment
725.110	Amendment
725.120	Amendment
725.130	Amendment
725.210	New Section
725.TABLE A	New Section
725.TABLE B	New Section
- 4) Statutory Authority: Implementing Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15] and authorized by Section 4.01 of the Illinois Act on the Aging [20 ILCS 105/4.01].
- 5) Effective Date of Rules: October 30, 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*: As this is a Title 2 internal rulemaking, First Notice publication was not required.
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: As this is a Title 2 internal rulemaking, First Notice publication was not required.

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- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreement letter issued by JCAR? None were made.
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: This rulemaking will update current public information and rulemaking rules. The rulemaking will also add rules regarding organization.
- 16) Information and questions regarding these adopted rules shall be directed to:

Tracey Trigillo
Deputy General Counsel
Illinois Department on Aging
One Natural Resources Way, Suite 100
Springfield IL 62702-1271

217/785-3346

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

DEPARTMENT ON AGING

NOTICE OF ADOPTED AMENDMENTS

TITLE 2: GOVERNMENTAL ORGANIZATION
SUBTITLE D: CODE DEPARTMENTS
CHAPTER II: DEPARTMENT ON AGING

PART 725

PUBLIC INFORMATION, RULEMAKING AND ORGANIZATION

SUBPART A: PUBLIC INFORMATION

Section

- 725.10 Rules of General Application
725.20 Operating Manuals
725.30 Public Information
725.40 [Materials to Aid Users with Finding and Using Department Rules](#)~~Statistical~~
[Information](#)
725.50 Individual Case Record Information

SUBPART B: RULEMAKING

Section

- 725.110 Identification of Need for Rulemaking
725.120 [Requests](#)~~Petitions~~ for Adoption of Rules
725.130 Rulemaking Proceedings

SUBPART C: ORGANIZATION STRUCTURESection

725.210 [Department Organization](#)

725.TABLE A [Rulemaking Chart](#)

725.TABLE B [Organization Chart](#)

AUTHORITY: Implementing Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100] and authorized by Section 4.01 of the Illinois Act on the Aging [20 ILCS 105].

SOURCE: Adopted at 5 Ill. Reg. 3722, effective March 31, 1981; codified at 8 Ill. Reg. 12885; amended at 43 Ill. Reg. 13289, effective October 30, 2019.

SUBPART A: PUBLIC INFORMATION

DEPARTMENT ON AGING

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Section 725.10 Rules of General Application

- a) ~~The Department's rules are available on the Illinois General Assembly website maintains a compilation of its rules currently in force, as filed with the Secretary of State, in its central offices in Springfield. The rules compilation is available for public inspection during regular working hours. Copies of the rules compilation are available without charge to State agencies and officials. Other persons may obtain copies by paying a charge for mailing and publication costs. Requests for information regarding the Department's rules should be directed to:~~

~~Office of General Counsel~~~~Public Information Officer~~
Illinois Department on Aging
One Natural Resources Way, #100421 East Capitol Avenue
Springfield, Illinois 6270262706
Aging.Rulemaking@illinois.gov

- b) The Department's rules are found at:

2 Ill. Adm. Code, Part 725, Public Information, Rulemaking and Organization;
2 Ill. Adm. Code, Part 726, Access to Information of the Department on Aging;
4 Ill. Adm. Code, Part 1725, Americans With Disabilities Act and Civil Rights Program Grievance Procedure;
86 Ill. Adm. Code, Part 530, Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act;
89 Ill. Adm. Code, Part 210, Introduction;
89 Ill. Adm. Code, Part 220, General Programmatic Requirements;
89 Ill. Adm. Code, Part 230, Older Americans Act Programs;
89 Ill. Adm. Code, Part 240, Community Care Program;
89 Ill. Adm. Code, Part 270, Adult Protection and Advocacy Services;
89 Ill. Adm. Code, Part 271, Joint Rules of The Department on Aging and The Department of Financial and Professional Regulation: Financial Exploitation Training by Financial Institutions; and
89 Ill. Adm. Code, Part 280, Community Based Residential Facilities Demonstration Project
~~The rules are also on file in the Cook County Law Library in Chicago.~~

(Source: Amended at 43 Ill. Reg. 13289, effective October 30, 2019)

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Section 725.20 Operating Manuals

The Department's operating procedures and policies are contained in policy and procedure manuals and in policy and procedure letters. Copies of these materials may be published on the Department's website maintained in the central office and in each area agency on aging office and are available for public inspection during regular working hours. Copies of individual pages are available without charge. Persons may subscribe for the manuals or letters for an annual fee which covers the cost of mailing and publication. Requests for information regarding the Department's operating procedures and policies not published on the Department's website should be directed to:

FOI Public Information Officer
Illinois Department on Aging
One Natural Resources Way, #100421 East Capitol Avenue
Springfield, Illinois 6270262706
Aging.FOIA@illinois.gov

(Source: Amended at 43 Ill. Reg. 13289, effective October 30, 2019)

Section 725.30 Public Information

Current informational information documents and brochures about subjects and activities of the programs administered by the Department may be published available on the Department's website without charge through the Public Information Officer. (See 5 ILCS 100/5-15(a)(2)) Requests for information and copies of A listing of current informational documents and brochures not published on the Department's website should be directed to:

FOI Officer
Illinois Department on Aging
One Natural Resources Way, #100
Springfield, Illinois 62702
Aging.FOIA@illinois.gov is available upon request.

(Source: Amended at 43 Ill. Reg. 13289, effective October 30, 2019)

Section 725.40 Materials to Aid Users with Finding and Using Department Rules Statistical Information

Tables of contents, indices, reference tables, and other materials to aid users in finding and

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using the agency's collection of rules currently in force are available on the Illinois General Assembly website. (See 5 ILCS 100/5-15(a)(3)) Requests for information regarding materials not available on the websites of the Illinois General Assembly and the Department should be directed to:

Office of General Counsel
Illinois Department on Aging
One Natural Resources Way, #100
Springfield, Illinois 62702
Aging.Rulemaking@illinois.gov. ~~Statistical information involving caseloads and expenditures, area plans, and State area budgets are available through the Public Information Officer upon request.~~

(Source: Amended at 43 Ill. Reg. 13289, effective October 30, 2019)

Section 725.50 Individual Case Record Information

- a) Information concerning individuals receiving services through programs administered by the Department and/or by the area agency is protected under ~~federal~~Federal and State confidentiality laws and rules (45 CFR 1321.19 and 45 CFR 205.50) and Department rules, policies and procedures and may be released only under specified conditions.
- b) Where information ~~is furnished by or to other agencies~~ covered by federal and State confidentiality laws, rules, and rules and/or Department rules, policies and procedures ~~is furnished by or to other agencies, such laws, rules, policies and procedures~~ ~~the requirements of State law~~ shall be applied to such ~~acquired~~ information.

(Source: Amended at 43 Ill. Reg. 13289, effective October 30, 2019)

SUBPART B: RULEMAKING

Section 725.110 Identification of Need for Rulemaking

~~The Department shall initiate rulemaking proceedings when:~~

- a) When the Department identifies a need for rulemaking, all rulemaking including rules, amendments, and repealers will be prepared in accordance with the Illinois

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Administrative Procedure Act [5 ILCS 100] and the Rulemaking Procedures for Codification (1 Ill. Adm. Code 100). Please refer to Table A.~~A unit of the Department recommends that a new rule be adopted or an existing rule be amended or repealed; or~~

- b) Proposed rulemaking of any type shall be coordinated by the General Counsel to the Director before submission to the Administrative Code Unit of the Illinois State Library. The General Counsel shall coordinate all rulemaking for the Department with the Joint Committee on Administrative Rules.~~A petition for rulemaking is received and favorably considered by the Department; petitions for Department rulemaking shall be governed by the provisions of the rule on such matters; or~~
- c) Public hearings may be conducted on proposed rulemaking.~~Required by rule or regulation, or order of court.~~
- d) All timely public comments shall be considered by the Director during the first notice period. Comments must be received by the contact person designated for receipt of comments for the rulemaking by 5:00 p.m. on the closing date to be timely.

(Source: Amended at 43 Ill. Reg. 13289, effective October 30, 2019)

Section 725.120 Requests~~Petitions~~ for Adoption of Rules

Any person may request~~petition~~ the Department adopt~~for the adoption of~~ a new rule or amend~~the amendment~~ or repeal ~~of~~ a rule currently in effect.

- a) The written request needs to:~~Form of Petition~~
The petition shall be in writing and shall:
 - 1) Identify the current rule to be amended or repealed or state the substance of the new rule proposed,
 - 2) Include an explanation and any supporting documentation~~supporting the petition~~, and
 - 3) Identify the requestor's~~petitioner's~~ organizational affiliation, if any.

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- b) ~~Submission of Petition Requests~~ ~~Petitions should~~ shall be directed to:
addressed to the Office of the Director c/o Office of General Counsel
Director,
 Illinois Department on Aging
One Natural Resources Way, #100421 East Capitol Avenue,
 Springfield, Illinois 62702
Aging.Rulemaking@illinois.gov ~~The Department shall acknowledge~~
~~submittal of the petition by mailing a notice of receipt to the petitioner.~~
- c) ~~Consideration by Department~~ ~~The request~~ petition will ~~shall~~ be considered by the Department ~~Department~~ and if ~~the~~ Department initiates ~~selects to initiate~~ rulemaking proceedings based on the request basis of the petition, the Department it may notify ~~shall mail a notice to the~~ requestor ~~petitioner~~ of the intended action.
- d) ~~Denial of Petition~~ ~~The request~~ A petition is denied if ~~when~~ the Department either notifies the requestor ~~petitioner~~ of its denial or does not initiate rulemaking proceedings on the subject of the request ~~petition~~ within 30 calendar days after ~~submittal~~.

(Source: Amended at 43 Ill. Reg. 13289, effective October 30, 2019)

Section 725.130 Rulemaking Proceedings

~~When a need for rulemaking has been identified, the rule proposal shall be prepared in the form used by the Department for its rules which incorporates the substance of the recommendation. The draft shall indicate any changes in existing rules or additional new rules resulting from the initial rule proposal. Copies of the draft shall be circulated for review by Department operating and administering units which may be affected by it and adjustments in the draft shall be made on the basis of the review. If the Department determines rulemaking the rule should be pursued, the necessary steps for filing filing and publication, as specified in the Illinois Administrative Procedure Act [5 ILCS 100](Ill. Rev. Stat. 1991, ch. 127, pars. 1001-1 et seq.) shall be followed.~~

(Source: Amended at 43 Ill. Reg. 13289, effective October 30, 2019)

SUBPART C: ORGANIZATION STRUCTURE

Section 725.210 Department Organization

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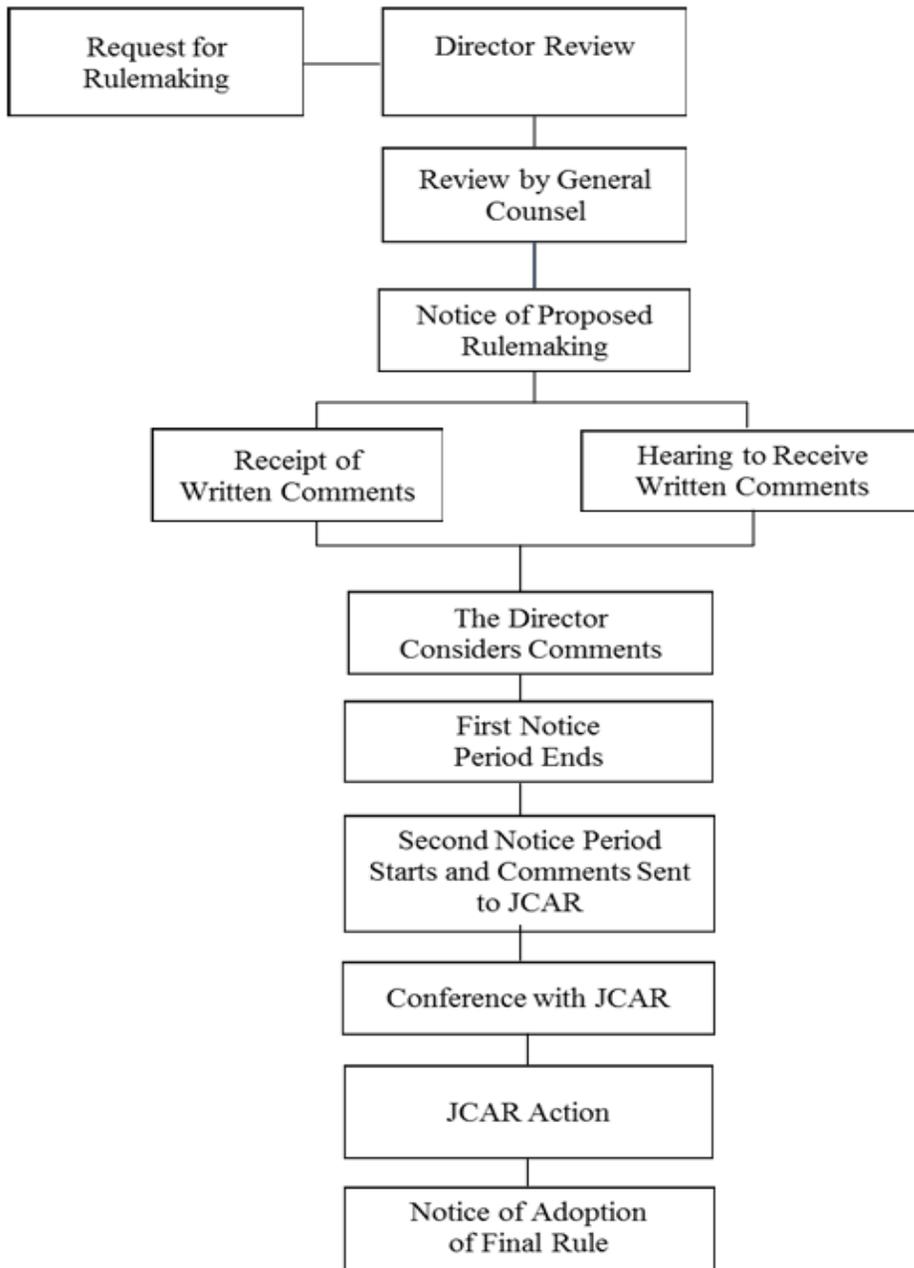
- a) The organization and duties of the Department staff are established by the Director, as provided by Section 6.05 of the Illinois Act on Aging [20 ILCS 105/6.05].
- b) The organization of the Department is illustrated in the organization chart in Table B.

(Source: Added at 43 Ill. Reg. 13289, effective October 30, 2019)

DEPARTMENT ON AGING

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Section 725.TABLE A Rulemaking Chart

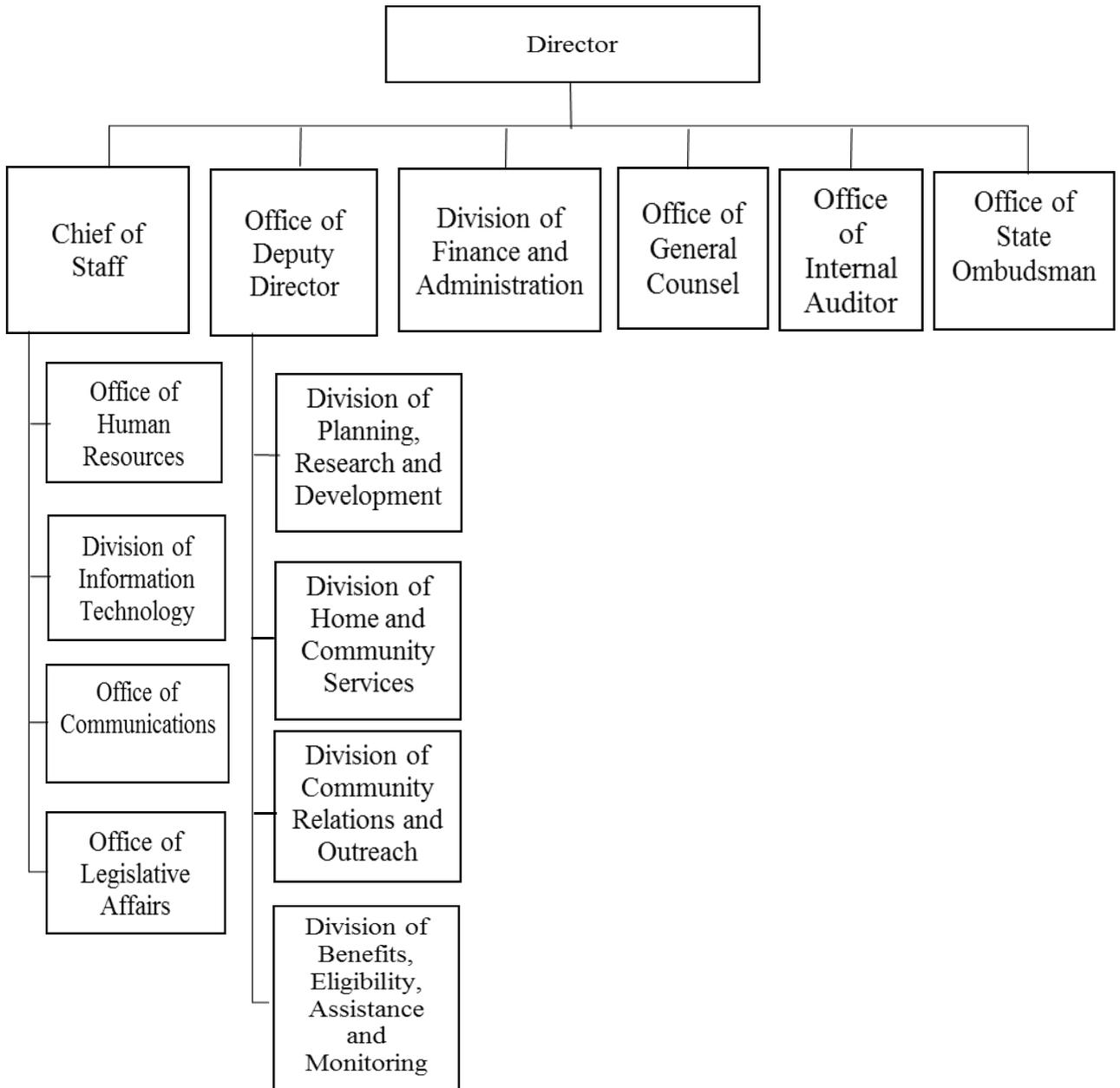


(Source: Added at 43 Ill. Reg. 13289, effective October 30, 2019)

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Section 725.TABLE B Organization Chart



(Source: Added at 43 Ill. Reg. 13289, effective October 30, 2019)

DEPARTMENT ON AGING

NOTICE OF ADOPTED REPEALER

- 1) Heading of Part: Access to Information of the Department on Aging
- 2) Code Citation: 2 Ill. Adm. Code 726
- 3)

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
726.10	Repealed
726.20	Repealed
726.110	Repealed
726.120	Repealed
726.210	Repealed
726.220	Repealed
726.310	Repealed
726.320	Repealed
726.410	Repealed
726.420	Repealed
726.430	Repealed
726.APPENDIX A	Repealed
726.APPENDIX B	Repealed
- 4) Statutory Authority: Implementing and authorized by Section 3(h) of the Freedom of Information Act [5 ILCS 140], implementing Section 4.01(11) of the Illinois Act on the Aging [20 ILCS 105] and Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100].
- 5) Effective Date of Repealer: October 30, 2019
- 6) Does this repealer contain an automatic repeal date? No
- 7) Does this repealer contain incorporations by reference? No
- 8) A copy of the adopted repealer, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: As this is a Title 2 internal rulemaking, First Notice publication was not required.
- 10) Has JCAR issued a Statement of Objection to this repealer? No

DEPARTMENT ON AGING

NOTICE OF ADOPTED REPEALER

- 11) Differences between Proposal and Final Version: As this is a Title 2 Internal rulemaking, First Notice publication was not required.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will this repealer replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Repealer: This rulemaking repeals the outdated rules in Part 726. The Department will file a new Part consisting of JCAR model rules with Department information.
- 16) Information and questions regarding this adopted repealer shall be directed to:

Tracey Trigillo
Deputy General Counsel
Illinois Department on Aging
One Natural Resources Way, Suite 100
Springfield IL 62702-1271

217/785-3346

DEPARTMENT ON AGING

NOTICE OF ADOPTED RULES

- 1) Heading of Part: Access to Records of the Department on Aging
- 2) Code Citation: 2 Ill. Adm. Code 726
- 3)

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
726.100	New Section
726.105	New Section
726.200	New Section
726.205	New Section
726.210	New Section
726.300	New Section
726.305	New Section
726.310	New Section
726.315	New Section
726.400	New Section
726.405	New Section
726.410	New Section
726.415	New Section
726.420	New Section
726.425	New Section
726.430	New Section
726.435	New Section
726.500	New Section
726.505	New Section
726.510	New Section
726.APPENDIX A	New Section
- 4) Statutory Authority: Implementing and authorized by Section 3(h) of the Freedom of Information Act [5 ILCS 140], implementing Section 4.01(11) of the Illinois Act on the Aging [20 ILCS 105] and Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100].
- 5) Effective Date of Rules: October 30, 2019
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? Yes

DEPARTMENT ON AGING

NOTICE OF ADOPTED RULES

- 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*: As this is a Title 2 internal rulemaking, First Notice publication was not required.
- 10) Has JCAR issued a Statement of Objection to these rules? No
- 11) Differences between Proposal and Final Version: As this is a Title 2 internal rulemaking, First Notice publication was not required.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreement letter issued by JCAR? None were made.
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: Part 726, Access to Records of the Department on Aging, is a new Part that is intended to provide rulemaking following the repeal of outdated Department rules pertaining to the Freedom of Information Act (FOIA) [5 ILCS 140]. The rulemaking consists of the Joint Committee on Administrative Rules (JCAR) FOIA model rules and includes the Department's current location and contact information.
- 16) Information and questions regarding these adopted rules shall be directed to:

Tracey Trigillo
Deputy General Counsel
Illinois Department on Aging
One Natural Resources Way, Suite 100
Springfield IL 62702-1271

217/785-3346

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

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TITLE 2: GOVERNMENTAL ORGANIZATION
SUBTITLE D: CODE DEPARTMENTS
CHAPTER II: DEPARTMENT ON AGING

PART 726

ACCESS TO RECORDS OF THE DEPARTMENT ON AGING

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Section

726.500 Inspection and Copying of Records
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726.510 Reduction and Waiver of Fees

726.APPENDIX A Fee Schedule for Duplication and Certification of Records

AUTHORITY: Implementing and authorized by Section 3(h) of the Freedom of Information Act [5 ILCS 140], implementing Section 4.01(11) of the Illinois Act on the Aging [20 ILCS 105] and Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100].

SOURCE: Adopted at 8 Ill. Reg. 12060, effective July 1, 1984; former Part repealed at 43 Ill. Reg. 13300 and new Part adopted at 43 Ill. Reg. 13302, effective October 30, 2019.

SUBPART A: INTRODUCTION

Section 726.100 Summary and Purpose

- a) This Part states the policy of the Department on Aging (Agency) for making its records available for reasonable public inspection while, at the same time, protecting legitimate interests in confidentiality.
- b) This Part:
 - 1) Establishes the following classifications for records in the Agency's possession:
 - A) Records that shall be disclosed; and
 - B) Records that shall be withheld from disclosure;
 - 2) Contains the procedures by which requesters may obtain records in the Agency's possession; and

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- 3) Contains the procedures for claiming and determining that records submitted to the Agency are exempt from disclosure.

Section 726.105 Definitions

Terms not defined in this Section shall have the same meaning as in the Freedom of Information Act [5 ILCS 140]. The following definitions are applicable for purposes of this Part.

"Act" means the Illinois Act on the Aging [20 ILCS 105].

"Agency" means Department on Aging as established by the Act.

"Commercial purpose" means the use of any part of a record or records, or information derived from records, in any form for sale, resale, or solicitation or advertisement for sales or services. For purposes of this definition, requests made by news media and non-profit, scientific, or academic organizations shall not be considered to be made for a "commercial purpose" when the principal purpose of the request is:

to access and disseminate information concerning news and current or passing events;

for articles or opinion or features of interest to the public; or

for the purpose of academic, scientific, or public research or education.
(Section 2(c-10) of FOIA)

"Copying" means the reproduction of any record by means of any photographic, electronic, mechanical, or other process, device or means now known or hereafter developed and available to the Agency. (Section 2(d) of FOIA)

"Director" means the Director of the Agency.

"FOIA" means the Freedom of Information Act [5 ILCS 140].

"Freedom of Information Officer" or "FOI Officer" means an individual or individuals responsible for receiving and responding to requests for public records.

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"News media" means a newspaper or other periodical issued at regular intervals, news service in paper or electronic form, radio station, television station, television network, community antenna television service, or person or corporation engaged in making news reels or other motion picture news for public showing. (Section 2(f) of FOIA)

"Person" means any individual, corporation, partnership, firm, organization or association, acting individually or as a group. (Section 2(b) of FOIA)

"Private information" means unique identifiers, including a person's Social Security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person. (Section 2(c-5) of FOIA)

"Public Access Counselor" means an individual appointed to that office by the Attorney General under Section 7 of the Attorney General Act [15 ILCS 205].

"Public body" means all legislative, executive, administrative, or advisory bodies of the State, State universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, any subsidiary bodies of any of the foregoing, including but not limited to committees and subcommittees thereof, and a School Finance Authority created under Article 1E of the School Code [105 ILCS 5]. (Section 2(a) of FOIA)

"Records" means all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of or under the control of the Agency. (Section 2(c) of FOIA)

"Recurrent requester" means a person that, in the 12 months immediately preceding the request, has submitted to the same public body a minimum of 50 requests for records, a minimum of 15 requests for records within a 30-day

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period, or a minimum of 7 requests for records within a 7 day period. For the purposes of this definition, requests made by news media and non-profit, scientific, or academic organizations shall not be considered in calculating the number of requests made in the time periods, in this definition when the principal purpose of the requests is to access and disseminate information concerning news and current or passing events, for articles of opinion or features of interest to the public, or for the purpose of academic, scientific, or public research or education. For the purposes of this definition, "request" means a written document (or oral request, if the public body chooses to honor oral requests) that is submitted to a public body via personal delivery, mail, telefax, electronic mail, or other means available to the public body and that identifies the particular public record the requester seeks. One request may identify multiple records to be inspected or copied. (Section 2(g) of FOIA)

"Requester" is any person who has submitted to the Agency a written request, electronically or on paper, for records.

"Unwarranted invasion of personal privacy" means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information. (Section 7(1)(c) of FOIA)

SUBPART B: CLASSIFICATION OF RECORDS

Section 726.200 Records that Will Be Disclosed

Upon request meeting the requirements of this Part, the Agency shall disclose to the requester all records requested except that it shall not disclose certain records as provided in Section 726.205 or 726.210. Records covered under this Section shall include, but are not limited to:

- a) *Records of funds. All records relating to the obligation, receipt and use of public funds of the Agency are records subject to inspection and copying by the public. (Section 2.5 of FOIA)*
- b) *Payrolls. Certified payroll records submitted to the Agency under Section 5(a)(2) of the Prevailing Wage Act [820 ILCS 130] are records subject to inspection and copying in accordance with the provisions of FOIA; except that contractors' and employees' addresses, telephone numbers, and Social Security numbers will be redacted by the Agency prior to disclosure. (Section 2.10 of FOIA)*

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- c) *Criminal history records. The following documents maintained by the Agency pertaining to criminal history record information are records subject to inspection and copying by the public pursuant to FOIA:*
- 1) *Court records that are public;*
 - 2) *Records that are otherwise available under State or local law; and*
 - 3) *Records in which the requesting party is the individual identified, except as provided under Section 7(1)(d)(vi) of FOIA. (Section 2.15(b) of FOIA)*
- d) *Settlement agreements. All settlement agreements entered into by or on behalf of the Agency are records subject to inspection and copying by the public, provided that information exempt from disclosure under Section 726.205 or 726.210 may be redacted. (Section 2.20 of FOIA)*

Section 726.205 Records that Will Be Withheld from Disclosure

- a) For exemptions from FOIA that are stated in FOIA, see Section 7(1) of FOIA.
- b) *A record that is not in the possession of the Agency but is in the possession of a party with whom the Agency has contracted to perform a governmental function on behalf of the Agency, and that directly relates to the governmental function and is not otherwise exempt under FOIA, shall be considered a record of the Agency for purposes of Subpart C. (Section 7(2) of FOIA)*

Section 726.210 Statutory Exemptions

For exemptions from FOIA that are stated in other statutes, see Section 7.5 of FOIA.

**SUBPART C: PROCEDURES FOR REQUESTING
RECORDS FROM THE AGENCY****Section 726.300 Submittal of Requests for Records**

- a) Any request for public records should be submitted in writing to the FOI Officer at the Agency.

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- b) The Agency has one FOI Officer, located in the Springfield office.
- c) Contact information for the FOI Officer can be found online at www2.illinois.gov/Pages/FOIA-Contacts.aspx.
- d) FOIA requests may be submitted via mail, e-mail, or in person to:

FOIA Office
Illinois Department on Aging
One Natural Resources Way, Suite 100
Springfield IL 62702-1271
Aging.FOIA@illinois.gov

- e) Emailed requests should contain the request in the body of the e-mail and indicate in the subject line of the e-mail that it contains a FOIA request.

Section 726.305 Information To Be Provided in Requests for Records

A request for records should include:

- a) The complete name, mailing address and telephone number of the requester;
- b) As specific a description as possible of the records sought. Requests that the Agency considers unduly burdensome or categorical may be denied. (See Section 3(g) of FOIA and Section 726.405 of this Part.);
- c) A statement as to the requested medium and format for the Agency to use in providing the records sought: for example, paper, specific types of digital or magnetic media, or videotape;
- d) A statement as to the requested manner for the Agency to use in providing the records sought: for example, inspection at Agency headquarters or providing paper or electronic copies;
- e) A statement as to whether the requester needs certified copies of all or any portion of the records, including reference to the specific documents that require certification; and
- f) A statement as to whether the request is for a commercial purpose.

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Section 726.310 Requests for Records for Commercial Purposes

- a) *It is a violation of FOIA for a person to knowingly obtain a record for a commercial purpose without disclosing that it is for a commercial purpose if requested to do so by the Agency. (Section 3.1(c) of FOIA)*
- b) *The Agency shall respond to a request for records to be used for a commercial purpose within 21 working days after receipt. The response shall:*
 - 1) *Provide to the requester an estimate of the time required by the Agency to provide the records requested and an estimate of the fees to be charged, which the Agency may require the person to pay in full before copying the requested documents;*
 - 2) *Deny the request pursuant to one or more of the exemptions set out in Section 726.205 or 726.210;*
 - 3) *Notify the requester that the request is unduly burdensome and extend an opportunity to the requester to attempt to reduce the request to manageable proportions; or*
 - 4) *Provide the records requested. (Section 3.1(a) of FOIA)*
- c) *Unless the records are exempt from disclosure, the Agency shall comply with a request within a reasonable period considering the size and complexity of the request, and giving priority to records requested for non-commercial purposes. (Section 3.1(b) of FOIA)*

Section 726.315 Records Maintained Online

- a) *Notwithstanding any provision of FOIA to the contrary, a public body is not required to copy a public record that is published on the public body's website. The public body shall notify the requester that the public record is available online and direct the requester to the website where the record can be reasonably accessed.*
- b) *If the person requesting the public record is unable to reasonably access the record online after being directed to the website pursuant to subsection (a), the*

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requester may resubmit his or her request for the record stating his or her inability to reasonably access the record online, and the public body shall make the requested record available for inspection or copying as provided in Section 3 of FOIA. (Section 8.5 of FOIA)

SUBPART D: AGENCY RESPONSE TO REQUESTS FOR RECORDS

Section 726.400 Timeline for Agency Response

- a) Except as stated in subsection (b) or (c), the Agency will respond to any written request for records within 5 business days after its receipt of the request. Failure to comply with a written request, extend the time for response, or deny a request within 5 business days after its receipt shall be considered a denial of the request. If the Agency fails to respond to a request within the requisite periods in this subsection (a) but thereafter provides the requester with copies of the requested records, it will not impose a fee for those copies. If the Agency fails to respond to a request received, it will not treat the request as unduly burdensome as provided under Section 726.405. (Section 3(d) of FOIA) A written request from the Agency to provide additional information shall be considered a response to the FOIA request.
- b) *The time limits prescribed in subsection (a) may be extended for not more than 5 business days from the original due date for any of the following reasons:*
 - 1) *The requested records are stored in whole or in part at locations other than the office having charge of the requested records;*
 - 2) *The request requires the collection of a substantial number of specified records;*
 - 3) *The request is couched in categorical terms and requires an extensive search for the records responsive to it;*
 - 4) *The requested records have not been located in the course of routine search and additional efforts are being made to locate them;*
 - 5) *The requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are*

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exempt from disclosure under Section 7 or 7.5 of FOIA or should be revealed only with appropriate deletions;

- 6) *The request for records cannot be complied with by the Agency within the time limits prescribed by subsection (a) without unduly burdening or interfering with the operations of the Agency; or*
- 7) *There is a need for consultation, which shall be conducted with all practicable speed, with another public body or among two or more components of a public body having a substantial interest in the determination or in the subject matter of the request. (Section 3(e) of FOIA)*
- c) *The person making a request and the Agency may agree in writing to extend the time for compliance for a period to be determined by the parties. If the requester and the Agency agree to extend the period for compliance, a failure by the Agency to comply with any previous deadlines shall not be treated as a denial of the request for the records. (Section 3(e) of FOIA)*
- d) *When additional time is required for any of the reasons set forth in subsection (b), the Agency will, within 5 business days after receipt of the request, notify the person making the request of the reasons for the extension and the date by which the response will be forthcoming. Failure to respond within the time permitted for extension shall be considered a denial of the request. If the Agency fails to respond to a request within the time permitted for extension but thereafter provides the requester with copies of the requested public records, it may not impose a fee for those copies. If the Agency issues an extension and subsequently fails to respond to the request, it will not treat the request as unduly burdensome under Section 726.405. (Section 3(f) of FOIA)*

Section 726.405 Requests for Records that the Agency Considers Unduly Burdensome

- a) *The Agency will fulfill requests calling for all records falling within a category unless compliance with the request would unduly burden the Agency, there is no way to narrow the request, and the burden on the Agency outweighs the public interest in the information. Before invoking this exemption, the Agency will extend to the requester an opportunity to confer with it in an attempt to reduce the request to manageable proportions. (Section 3(g) of FOIA) The amended request must be in writing.*

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- b) If the Agency determines that a request is unduly burdensome, *it shall do so in writing, specifying the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operations of the Agency. The response shall be treated as a denial of the request for information.* (Section 3(g) of FOIA)
- c) *Repeated requests from the same person for records that are unchanged or identical to records previously provided or properly denied under this Part shall be deemed unduly burdensome.* (Section 3(g) of FOIA)

Section 726.410 Recurrent Requesters

- a) *Notwithstanding any provision of this Part to the contrary, the Agency will respond to a request from a recurrent requester, as defined in Section 726.105, within 21 business days after receipt. The response shall:*
 - 1) *provide to the requester an estimate of the time required by the Agency to provide the records requested and an estimate of the fees to be charged, which the Agency may require the person to pay in full before copying the requested documents;*
 - 2) *deny the request pursuant to one or more of the exemptions set out in this Part;*
 - 3) *notify the requester that the request is unduly burdensome and extend an opportunity to the requester to attempt to reduce the request to manageable proportions; or*
 - 4) *provide the records requested.*
- b) *Within 5 business days after receiving a request from a recurrent requester, the Agency will notify the requester that the Agency is treating the request as a recurrent request, of the reasons why the Agency is treating the request as a recurrent request, and that the Agency will send an initial response within 21 business days after receipt in accordance with subsection (a). The Agency will also notify the requester of the proposed responses that can be asserted pursuant to subsection (a).*

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- c) *Unless the records are exempt from disclosure, the Agency will comply with a request within a reasonable period considering the size and complexity of the request.* (Section 3.2 of FOIA)

Section 726.415 Requests for Records that Require Electronic Retrieval

- a) A request for records that requires electronic retrieval will be treated the same as any other request for records, with the same timeline and extensions as allowed for other records.
- b) The Agency will retrieve and provide electronic records only in a format and medium that is available to the Agency.

Section 726.420 Denials of Requests for Records

- a) The Agency will deny requests for records when:
- 1) Compliance with the request would unduly burden the Agency, as determined pursuant to Section 726.405, and the requester has not reduced the request to manageable proportions; or
 - 2) The records are exempt from disclosure pursuant to Section 7 or 7.5 of FOIA or Section 726.205 or 726.210 of this Part.
- b) The denial of a request for records must be in writing.
- 1) The notification shall include a description of the records denied; *the reason for the denial, including a detailed factual basis for the application of any exemption claimed; and the names and titles or positions of each person responsible for the denial* (Section 9(a) of FOIA);
 - 2) *Each notice of denial shall also inform the person of the right to review by the Public Access Counselor and provide the address and phone number for the Public Access Counselor* (Section 9(a) of FOIA); and
 - 3) *When a request for records is denied on the grounds that the records are exempt under Section 7 or 7.5 of FOIA, the notice of denial shall specify the exemption claimed to authorize the denial and the specific reasons for*

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the denial, including a detailed factual basis and a citation to the supporting legal authority (Section 9(b) of FOIA).

- c) A requester may treat the Agency's failure to respond to a request for records within 5 business days after receipt of the written request as a denial for purposes of the right to review by the Public Access Counselor.
- d) If the Agency has given written notice pursuant to Section 726.400(d), failure to respond to a written request within the time permitted for extension may be treated as a denial for purposes of the right to review by the Public Access Counselor.
- e) *Any person making a request for records shall be deemed to have exhausted his or her administrative remedies with respect to that request if the Agency fails to act within the time periods provided in Section 726.400. (Section 9(c) of FOIA)*

Section 726.425 Requests for Review of Denials – Public Access Counselor

- a) *A person whose request to inspect or copy a record is denied by the Agency may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the date of the final denial. The request for review shall be in writing, be signed by the requester, and include a copy of the request for access to records and any response from the Agency. (Section 9.5(a) of FOIA)*
- b) *A person whose request to inspect or copy a record is made for a commercial purpose may not file a request for review with the Public Access Counselor. A person whose request to inspect or copy a record was treated by the Agency as a request for a commercial purpose may file a request for review with the Public Access Counselor for the limited purpose of reviewing whether the Agency properly determined that the request was made for a commercial purpose. (Section 9.5(b) of FOIA)*
- c) *Within 7 business days after the Agency receives a request for review from the Public Access Counselor, the Agency shall provide copies of records requested and shall otherwise fully cooperate with the Public Access Counselor. (Section 9.5(c) of FOIA)*

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- d) *Within 7 business days after it receives a copy of a request for review and request for production of records from the Public Access Counselor, the Agency may, but is not required to, answer the allegations of the request for review. The answer may take the form of a letter, brief, or memorandum. The Public Access Counselor shall forward a copy of the answer to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy. (Section 9.5(d) of FOIA)*
- e) *The requester may, but is not required to, respond in writing to the answer within 7 business days and shall provide a copy of the response to the Agency. (Section 9.5(d) of FOIA)*
- f) *In addition to the request for review, and the answer and response to the request, if any, a requester or the Agency may furnish affidavits or records concerning any matter germane to the review. (Section 9.5(e) of FOIA)*
- g) *A binding opinion from the Attorney General shall be binding upon both the requester and the Agency, subject to administrative review under Section 726.435. (Section 9.5(f) of FOIA)*
- h) *If the Attorney General decides to exercise his or her discretion to resolve a request for review by mediation or by a means other than issuance of a binding opinion, the decision not to issue a binding opinion shall not be reviewable. (Section 9.5(f) of FOIA)*
- i) *Upon receipt of a binding opinion concluding that a violation of FOIA has occurred, the Agency will either take necessary action immediately to comply with the directive of the opinion or shall initiate administrative review under Section 726.435. If the opinion concludes that no violation of FOIA has occurred, the requester may initiate administrative review under Section 726.435. (Section 9.5(f) of FOIA)*
- j) *If the Agency discloses records in accordance with an opinion of the Attorney General, the Agency is immune from all liabilities by reason thereof and shall not be liable for penalties under FOIA. (Section 9.5(f) of FOIA)*
- k) *If the requester files suit under Section 726.430 with respect to the same denial that is the subject of a pending request for review, the requester shall notify the Public Access Counselor. (Section 9.5(g) of FOIA)*

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- 1) *The Attorney General may also issue advisory opinions to the Agency regarding compliance with FOIA. A review may be initiated upon receipt of a written request from the Director of the Agency or the Agency's Chief Legal Counsel, which shall contain sufficient accurate facts from which a determination can be made. The Public Access Counselor may request additional information from the Agency in order to assist in the review. If the Agency relies in good faith on an advisory opinion of the Attorney General in responding to a request, the Agency is not liable for penalties under FOIA, so long as the facts upon which the opinion is based have been fully and fairly disclosed to the Public Access Counselor.* (Section 9.5(h) of FOIA)

Section 726.430 Circuit Court Review

A requester also has the right to file suit for injunctive or declaratory relief in the Circuit Court for Sangamon County or for the county in which the requester resides, in accordance with the procedures set forth in Section 11 of FOIA.

Section 726.435 Administrative Review

A binding opinion issued by the Attorney General shall be considered a final decision of an administrative agency, for purposes of administrative review under the Administrative Review Law [735 ILCS 5/Art. III]. An action for administrative review of a binding opinion of the Attorney General shall be commenced in Cook County or Sangamon County. An advisory opinion issued to the Agency shall not be considered a final decision of the Attorney General for purposes of this Section. (Section 11.5 of FOIA)

SUBPART E: PROCEDURES FOR PROVIDING RECORDS TO REQUESTERS

Section 726.500 Inspection and Copying of Records

- a) The Agency may make available records for personal inspection at the Agency's headquarters office located at One Natural Resources Way, Suite 100, Springfield IL 62702-1271, or at another location agreed to by both the Agency and the requester. No original record shall be removed from State-controlled premises except under constant supervision of the agency responsible for maintaining the record. The Agency may provide records in duplicate forms, including, but not limited to, paper copies, data processing printouts, videotape, microfilm, audio tape, reel to reel microfilm, photographs, computer disks and diazo.

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- b) *When a person requests a copy of a record maintained in an electronic format, the Agency shall furnish it in the electronic format specified by the requester, if feasible. If it is not feasible to furnish the records in the specified electronic format, then the Agency shall furnish it in the format in which it is maintained by the Agency, or in paper format at the option of the requester. (Section 6(a) of FOIA)*
- c) A requester may inspect records by appointment only, scheduled subject to space availability. The Agency will schedule inspection appointments to take place during normal business hours, which are 8:30 a.m. to 5:00 p.m. Monday through Friday, exclusive of State holidays. If the requester must cancel the viewing appointment, the requester shall so inform the Agency as soon as possible before the appointment.
- d) In order to maintain routine Agency operations, the requester may be asked to leave the inspection area for a specified period of time.
- e) The requester will have access only to the designated inspection area.
- f) Requesters shall not be permitted to take briefcases, folders or similar materials into the room where the inspection takes place. An Agency employee may be present during the inspection.
- g) The requester shall segregate and identify the documents to be copied during the course of the inspection.

Section 726.505 Fees for Records

- a) In accordance with Section 726.510, unless a fee is otherwise fixed by statute, the Agency will provide copies of records and certifications of records in accordance with the fee schedule set forth in Appendix A.
- b) *In calculating its actual cost for reproducing records or for the use of the equipment of the Agency to reproduce records, the Agency will not include the costs of any search for and review of the records or other personnel costs associated with reproducing the records. (Section 6(b) of FOIA)*

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- c) In order to expedite the copying of records that the Agency cannot copy, due to the volume of the request or the operational needs of the Agency, in the timelines established in Section 726.400, the requester may provide, at the requester's expense, the copy machine, all necessary materials, and the labor to copy the public records at the Agency headquarters in Section 726.500, or at another location agreed to by both the Agency and the requester. No original record shall be removed from State-controlled premises except under constant supervision of the agency responsible for maintaining the record.
- d) Copies of records will be provided to the requester only upon payment of any fees due. *The Agency may charge the requester for the actual cost of purchasing the recording medium, whether disc, diskette, tape, or other medium, but the Agency will not charge the requester for the costs of any search for and review of the records or other personnel costs associated with reproducing the records.* (Section 6(a) of FOIA) Payment must be by check or money order sent to the Agency, payable to "Treasurer, State of Illinois".
- e) If a contractor is used to inspect or copy records, the following procedures shall apply:
- 1) The requester, rather than the Agency, must contract with the contractor;
 - 2) The requester is responsible for all fees charged by the contractor;
 - 3) The requester must notify the Agency of the contractor to be used prior to the scheduled on-site inspection or copying;
 - 4) Only Agency personnel may provide records to the contractor;
 - 5) The Agency must have verification that the requester has paid the Agency, if payment is due, for the copying of the records before providing the records to the contractor; and
 - 6) The requester must provide to the Agency the contractor's written agreement to hold the records secure and to copy the records only for the purpose stated by the requester.
- f) *The Agency may charge up to \$10 for each hour spent by personnel in searching for and retrieving a requested record. No fees shall be charged for the first 8*

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hours spent by personnel in searching for or retrieving a requested record. The Agency may charge the actual cost of retrieving and transporting public records from an off-site storage facility when the public records are maintained by a third-party storage company under contract with the Agency. If the Agency imposes a fee pursuant to this subsection (f), it must provide the requester with an accounting of all fees, costs, and personnel hours in connection with the request for public records. The provisions of this subsection (f) apply only to commercial requests. (Section 6(f) of FOIA)

Section 726.510 Reduction and Waiver of Fees

- a) *Fees may be reduced or waived by the Agency if the requester states the specific purpose for the request and indicates that a waiver or reduction of the fee is in the public interest. In making this determination, the Agency will consider the following:*
 - 1) *Whether the principal purpose of the request is to disseminate information regarding the health, safety, welfare or legal rights of the general public; and*
 - 2) *Whether the principal purpose of the request is personal or commercial benefit. For purposes of this subsection (a), "commercial benefit" shall not apply to requests made by news media when the principal purpose of the request is to access and disseminate information regarding the health, safety, welfare or legal rights of the general public. (Section 6(c) of FOIA)*
- b) *In setting the amount of the waiver or reduction, the Agency will take into consideration the amount of materials requested and the cost of copying them. (Section 6(c) of FOIA)*
- c) *The Agency will provide copies of records without charge to federal, State and municipal agencies, Constitutional officers and members of the General Assembly, and not-for-profit organizations providing evidence of good standing with the Secretary of State's Office.*
- d) *Except to the extent that the General Assembly expressly provides, statutory fees applicable to copies of records when furnished in a paper format will not be*

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applicable to those records when furnished to a requester in an electronic format.
(Section 6(a) of FOIA)

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Section 726.APPENDIX A Fee Schedule for Duplication and Certification of Records

TYPE OF DUPLICATION	FEE (PER COPY)
Paper copy from original, up to and including 50 copies of black and white, letter or legal sized copies	No charge
Paper copy from original, in excess of 50 copies of black and white, letter or legal sized copies	\$.15/page
Paper copy from microfilm original	\$.15/page
Microfilm diazo from original	\$.50/diazo
VHS video copy of tape	Actual cost of the reproduction
Audio tape copy of tape	Actual cost of the reproduction
CD ROM disk	Actual cost of the reproduction
Photograph from negative	Actual cost of the reproduction
Blueprints/oversized prints	Actual cost of the reproduction
Paper copies in color or in a size other than letter or legal	Actual cost of the reproduction
Certification fee	\$1.00/record

NOTE: Expense for delivery other than by First Class U.S. Mail must be borne by the requester.

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- 1) Heading of the Part: Public Schools Evaluation, Recognition and Supervision
- 2) Code Citation: 23 Ill. Adm. Code 1
- 3)

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
1.792	New Section
1.794	New Section
- 4) Statutory Authority: 105 ILCS 5/2-3
- 5) Effective Date of Rules: October 29, 2019
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A statement that 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 *Illinois Register*: 43 Ill. Reg. 4963; May 3, 2019
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version:

In Section 1.792(a), deleted "[105 ILCS 5]".

In Section 1.794(a), deleted "(see Section 2-3.173 of the School Code) [105 ILCS 5]".

In Section 1.794(e), changed "[105 ILCS 5/2-3.173]" to ". (Section 2-3.173 of the School Code)".
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? Yes

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<u>Section Number:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
1.540	Amendment	43 Ill. Reg. 7389; July 5, 2019

- 15) Summary and Purpose of Rulemaking: PA 100-596 made several changes to Article 21B of the School Code. Specifically, it added a provision in Section 21B-20 that created short-term substitute teaching licenses that are valid until June 30, 2023. Among other clarifications, this rulemaking will add provisions clarifying that short-term substitute teachers may hold the short-term substitute teacher license and that an individual who holds a valid and active educator license with stipulations endorsed for paraprofessional and at least an associate degree may be a short-term substitute teacher without obtaining the license.

Additionally, this rulemaking will add provisions per PA 100-813, which provided that the State Board of Education shall implement a program and adopt rules to allow school districts to supplement their substitute teacher recruitment for elementary and secondary schools with the use of recruiting firms.

- 16) Information and questions regarding these adopted rules shall be directed to:

Azita Kakvand
Agency Rules Coordinator
Illinois State Board of Education
100 North First Street
Springfield IL 62777-0001

217/782-6510
rules@isbe.net

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

STATE BOARD OF EDUCATION

NOTICE OF ADOPTED AMENDMENTS

TITLE 23: EDUCATION AND CULTURAL RESOURCES

SUBTITLE A: EDUCATION

CHAPTER I: STATE BOARD OF EDUCATION

SUBCHAPTER a: PUBLIC SCHOOL RECOGNITION

PART 1

PUBLIC SCHOOLS EVALUATION, RECOGNITION AND SUPERVISION

SUBPART A: RECOGNITION REQUIREMENTS

Section

- 1.10 Public School Accountability Framework
- 1.20 Operational Requirements
- 1.30 State Assessment
- 1.40 Adequate Yearly Progress
- 1.50 Calculation of Participation Rate
- 1.60 Subgroups of Students; Inclusion of Relevant Scores
- 1.70 Additional Indicators for Adequate Yearly Progress
- 1.75 Student Information System
- 1.77 Educator Licensure Information System (ELIS)
- 1.79 School Report Card
- 1.80 Academic Early Warning and Watch Status
- 1.85 School and District Improvement Plans; Restructuring Plans
- 1.88 Additional Accountability Requirements for Districts Serving Students of Limited English Proficiency under Title III
- 1.90 System of Rewards and Recognition – The Illinois Honor Roll
- 1.95 Appeals Procedure
- 1.97 Survey of Learning Conditions
- 1.100 Waiver and Modification of State Board Rules and School Code Mandates
- 1.110 Appeal Process under Section 22-60 of the School Code

SUBPART B: SCHOOL GOVERNANCE

Section

- 1.210 Approval of Providers of Training for School Board Members under Section 10-16a of the School Code
- 1.220 Duties of Superintendent (Repealed)
- 1.230 Board of Education and the School Code (Repealed)
- 1.240 Equal Opportunities for all Students

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- 1.242 Temporary Exclusion for Failure to Meet Minimum Academic or Attendance Standards
- 1.245 Waiver of School Fees
- 1.250 District to Comply with 23 Ill. Adm. Code 180 (Repealed)
- 1.260 Commemorative Holidays to be Observed by Public Schools (Repealed)
- 1.270 Book and Material Selection (Repealed)
- 1.280 Discipline
- 1.285 Requirements for the Use of Isolated Time Out and Physical Restraint
- 1.290 Absenteeism and Truancy Policies

SUBPART C: SCHOOL DISTRICT ADMINISTRATION

Section

- 1.310 Administrative Qualifications and Responsibilities
- 1.320 Evaluation of Licensed Educators
- 1.330 Toxic Materials Training

SUBPART D: THE INSTRUCTIONAL PROGRAM

Section

- 1.410 Determination of the Instructional Program
- 1.420 Basic Standards
- 1.422 Electronic Learning (E-Learning) Days Pilot Program
- 1.423 Competency-Based High School Graduation Requirements Pilot Program
- 1.425 Additional Criteria for Physical Education
- 1.430 Additional Criteria for Elementary Schools
- 1.440 Additional Criteria for High Schools
- 1.442 State Seal of Biliteracy
- 1.443 Illinois Global Scholar Certificate
- 1.445 Required Course Substitute
- 1.450 Special Programs (Repealed)
- 1.460 Credit Earned Through Proficiency Examinations
- 1.462 Uniform Annual Consumer Education Proficiency Test (Repealed)
- 1.465 Ethnic School Foreign Language Credit and Program Approval
- 1.470 Adult and Continuing Education
- 1.480 Correctional Institution Educational Programs

SUBPART E: SUPPORT SERVICES

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Section

- 1.510 Transportation
- 1.515 Training of School Bus Driver Instructors
- 1.520 Home and Hospital Instruction
- 1.530 Health Services
- 1.540 Undesignated Epinephrine Auto-injectors; Opioid Antagonists

SUBPART F: STAFF LICENSURE REQUIREMENTS

Section

- 1.610 Personnel Required to be Qualified
- 1.620 Accreditation of Staff (Repealed)
- 1.630 Paraprofessionals; Other Unlicensed Personnel
- 1.640 Requirements for Different Certificates (Repealed)
- 1.650 Transcripts of Credits
- 1.660 Records of Professional Personnel

SUBPART G: STAFF QUALIFICATIONS

Section

- 1.700 Requirements for Staff Providing Professional Development
- 1.705 Requirements for Supervisory and Administrative Staff
- 1.710 Requirements for Elementary Teachers
- 1.720 Requirements for Teachers of Middle Grades
- 1.730 Minimum Requirements for Secondary Teachers and Specified Subject Area Teachers in Grades 6 and Above through June 30, 2004
- 1.735 Requirements to Take Effect from July 1, 1991, through June 30, 2004
- 1.736 Requirements to Take Effect from July 1, 1994, through June 30, 2004
- 1.737 Minimum Requirements for the Assignment of Teachers in Grades 9 through 12 Beginning July 1, 2004
- 1.740 Standards for Reading through June 30, 2004
- 1.745 Requirements for Reading Teachers and Reading Specialists at all Levels as of July 1, 2004
- 1.750 Standards for Media Services through June 30, 2004
- 1.755 Requirements for Library Information Specialists Beginning July 1, 2004
- 1.760 Standards for School Support Personnel Services
- 1.762 Supervision of Speech-Language Pathology Assistants
- 1.770 Standards for Special Education Personnel
- 1.780 Standards for Teachers in Bilingual Education Programs

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- 1.781 Requirements for Bilingual Education Teachers in Prekindergarten, Kindergarten and any of Grades 1-12
- 1.782 Requirements for Teachers of English as a Second Language in Prekindergarten, Kindergarten and any of Grades 1-12
- 1.783 Requirements for Administrators of Bilingual Education Programs
- 1.790 Substitute Teacher
- [1.792 Short-Term Substitute Teacher](#)
- [1.794 Substitute Teachers; Recruiting Firms](#)
- 1.APPENDIX A Professional Staff Educator Licensure
- 1.APPENDIX B Competency-Based High School Graduation Requirements Pilot Program Criteria for Review
- 1.APPENDIX C Glossary of Terms (Repealed)
- 1.APPENDIX D State Goals for Learning
- 1.APPENDIX E Evaluation Criteria – Student Performance and School Improvement Determination (Repealed)
- 1.APPENDIX F Criteria for Determination – Student Performance and School Improvement (Repealed)
- 1.APPENDIX G Criteria for Determination – State Assessment (Repealed)
- 1.APPENDIX H Guidance and Procedures for School Districts Implementing the Illinois Global Scholar Certificate

AUTHORITY: Implementing Sections 2-3.25, 2-3.25g, 2-3.44, 2-3.96, 2-3.159, 10-17a, 10-20.14, 10-21.4a, 10-22.43a, 21B-5, 21B-20, 22-30, 22-60, 24-24, 26-13, 27-3.5, 27-6, 27-12.1, 27-13.1, 27-20.3, 27-20.4, 27-20.5, 27-22, 27-23.3 and 27-23.8 and authorized by Section 2-3.6 of the School Code [105 ILCS 5].

SOURCE: Adopted September 21, 1977; codified at 7 Ill. Reg. 16022; amended at 9 Ill. Reg. 8608, effective May 28, 1985; amended at 9 Ill. Reg. 17766, effective November 5, 1985; emergency amendment at 10 Ill. Reg. 14314, effective August 18, 1986, for a maximum of 150 days; amended at 11 Ill. Reg. 3073, effective February 2, 1987; amended at 12 Ill. Reg. 4800, effective February 26, 1988; amended at 14 Ill. Reg. 12457, effective July 24, 1990; amended at 15 Ill. Reg. 2692, effective February 1, 1991; amended at 16 Ill. Reg. 18010, effective November 17, 1992; expedited correction at 17 Ill. Reg. 3553, effective November 17, 1992; amended at 18 Ill. Reg. 1171, effective January 10, 1994; emergency amendment at 19 Ill. Reg. 5137, effective March 17, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 6530, effective May 1, 1995; amended at 19 Ill. Reg. 11813, effective August 4, 1995; amended at 20 Ill. Reg. 6255, effective April 17, 1996; amended at 20 Ill. Reg. 15290, effective November 18, 1996; amended at 22 Ill. Reg. 22233, effective December 8, 1998; emergency amendment at 24 Ill. Reg. 6111,

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effective March 21, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 12985, effective August 14, 2000; amended at 25 Ill. Reg. 8159, effective June 21, 2001; amended at 25 Ill. Reg. 16073, effective November 28, 2001; amended at 26 Ill. Reg. 1157, effective January 16, 2002; amended at 26 Ill. Reg. 16160, effective October 21, 2002; amended at 28 Ill. Reg. 8486, effective June 1, 2004; emergency amendment at 28 Ill. Reg. 13637, effective September 27, 2004, for a maximum of 150 days; amended at 29 Ill. Reg. 1891, effective January 24, 2005; amended at 29 Ill. Reg. 11811, effective July 13, 2005; amended at 29 Ill. Reg. 12351, effective July 28, 2005; amended at 29 Ill. Reg. 15789, effective October 3, 2005; amended at 29 Ill. Reg. 19891, effective November 23, 2005; amended at 30 Ill. Reg. 8480, effective April 21, 2006; amended at 30 Ill. Reg. 16338, effective September 26, 2006; amended at 30 Ill. Reg. 17416, effective October 23, 2006; amended at 31 Ill. Reg. 5116, effective March 16, 2007; amended at 31 Ill. Reg. 7135, effective April 25, 2007; amended at 31 Ill. Reg. 9897, effective June 26, 2007; amended at 32 Ill. Reg. 10229, effective June 30, 2008; amended at 33 Ill. Reg. 5448, effective March 24, 2009; amended at 33 Ill. Reg. 15193, effective October 20, 2009; amended at 34 Ill. Reg. 2959, effective February 18, 2010; emergency amendment at 34 Ill. Reg. 9533, effective June 24, 2010, for a maximum of 150 days; amended at 34 Ill. Reg. 17411, effective October 28, 2010; amended at 35 Ill. Reg. 1056, effective January 3, 2011; amended at 35 Ill. Reg. 2230, effective January 20, 2011; amended at 35 Ill. Reg. 12328, effective July 6, 2011; amended at 35 Ill. Reg. 16743, effective September 29, 2011; amended at 36 Ill. Reg. 5580, effective March 20, 2012; amended at 36 Ill. Reg. 8303, effective May 21, 2012; amended at 38 Ill. Reg. 6127, effective February 27, 2014; amended at 38 Ill. Reg. 11203, effective May 6, 2014; amended at 39 Ill. Reg. 2773, effective February 9, 2015; emergency amendment at 39 Ill. Reg. 12369, effective August 20, 2015, for a maximum of 150 days; amended at 39 Ill. Reg. 13411, effective September 24, 2015; amended at 40 Ill. Reg. 1900, effective January 6, 2016; amended at 40 Ill. Reg. 2990, effective January 27, 2016; amended at 40 Ill. Reg. 4929, effective March 2, 2016; amended at 40 Ill. Reg. 12276, effective August 9, 2016; emergency amendment at 40 Ill. Reg. 15957, effective November 18, 2016, for a maximum of 150 days; amended at 41 Ill. Reg. 126, effective December 27, 2016; amended at 41 Ill. Reg. 4430, effective April 5, 2017; amended at 41 Ill. Reg. 6924, effective June 2, 2017; emergency amendment at 41 Ill. Reg. 8932, effective June 28, 2017, for a maximum of 150 days; amended at 41 Ill. Reg. 14044, effective November 3, 2017; amended at 42 Ill. Reg. 11512, effective June 8, 2018; amended at 43 Ill. Reg. 3792, effective February 28, 2019; amended at 43 Ill. Reg. 10213, effective August 30, 2019; amended at 43 Ill. Reg. 10718, effective September 11, 2019; amended at 43 Ill. Reg. 13324, effective October 29, 2019.

SUBPART G: STAFF QUALIFICATIONS

Section 1.792 Short-Term Substitute Teacher

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- a) To serve as a short-term substitute teacher, an individual shall hold a valid short-term substitute teaching license issued pursuant to Section 21B-20(4) of the School Code.
- b) Any individual who holds a valid and active educator license and at least an associate degree may serve as a short-term substitute teacher without having to also hold the short-term substitute teaching license.
- c) In accordance with Section 21B-20(4) of the School Code, a short-term substitute teacher shall be employed no more than five consecutive days per licensed teacher under contract.
- d) All individuals must complete the training required pursuant to Section 10-20.67 of the School Code prior to serving as a short-term substitute teacher.
- e) All short-term substitute teaching licenses shall expire June 30, 2023.

(Source: Added at 43 Ill. Reg. 13324, effective October 29, 2019)

Section 1.794 Substitute Teachers; Recruiting Firms

- a) School districts *may supplement their substitute teacher recruitment for elementary and secondary schools with the use of recruiting firms.*
- b) To qualify for this program, a district not organized under Article 34 of the School Code shall demonstrate to the State Board, using a form designed by the State Board for this purpose, verifying that it has been unable to find an adequate number of substitute teachers and has exhausted all other efforts.
- c) A district organized under Article 34 of the School Code must provide assurance to the State Board, using a form designated by the State Board, for this purpose, verifying:
 - 1) The district is *unable to find an adequate number of substitute teachers and has exhausted all other efforts;*
 - 2) The district has *prioritized existing substitute teachers over substitute teachers from recruiting firms;*

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- 3) Copies of all substitute teacher contracts will be filed with the district's regional office of education, acting as an extension of the State Board of Education, in an electronic or paper format; and
- 4) Each recruiting firm contracted by the district shall file an annual report with the district that includes the number of substitute teachers placed in the district, the total cost of the contract to the district, and the percentage of substitute teacher openings that were filled.
- d) Substitute teachers provided by recruiting firms must meet all mandated State laws, rules, and screening requirements for substitute teachers, as well as additional requirements outlined in Section 2-3.173 of the School Code.
- e) A recruiting firm may enter into an agreement with a labor organization that has a collective bargaining agreement with a school district. (Section 2-3.173 of the School Code)

(Source: Added at 43 Ill. Reg. 13324, effective October 29, 2019)

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NOTICE OF ADOPTED AMENDMENT

- 1) Heading of the Part: Use Tax
- 2) Code Citation: 86 Ill. Adm. Code 150
- 3) Section Number: 150.803 Adopted Action:
New Section
- 4) Statutory Authority: 35 ILCS 105/2; 35 ILCS 105/12; 20 ILCS 2505/2505-90
- 5) Effective Date of Rule: November 1, 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 Agency's principal office and is available for public inspection.
- 9) Notice of Proposal published in *Illinois Register*: 43 Ill. Reg. 1714; February 8, 2019
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: The only changes made were the ones agreed upon with JCAR. Only grammatical and technical changes were made.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreement letter issued by JCAR? 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: These regulations implement the provisions of Article 80 of PA 100-587, the FY2019 Budget Implementation Act ("Act"). Prior to the Act, an out-of-State retailer (a "remote seller") had to maintain a physical presence in Illinois before it could be required to collect and remit Illinois Use Tax on sales of tangible personal property to Illinois purchasers. The Act, however, created a new type of nexus which does not require a physical presence. The Act's nexus standards are substantially similar to provisions enacted by South Dakota and upheld in the recent U.S.

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Supreme Court case, *South Dakota v. Wayfair, Inc.*, No. 17-494 (U.S. June 21, 2018). Effective October 1, 2018, the Act requires remote sellers to register with the Department and collect and remit Use Tax on sales to Illinois purchasers if they meet specific selling thresholds. Retailers whose cumulative gross receipts from sales of tangible personal property to purchasers in Illinois are \$100,000 or more, or who enter into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois, must register and collect and remit Use Tax. The Act provides that retailers must determine on a quarterly basis whether they meet either of the selling thresholds for the immediately preceding 12-month period; if they meet either of the selling thresholds, they are required to collect and remit Use Tax and file returns for the subsequent year. These regulations implement the provisions of the Act. They provide key definitions; explain how retailers assess their selling activities by making quarterly lookback determinations; and provide rules that retailers must apply in determining if they have met either of the selling thresholds. Examples are provided throughout the regulations. The regulations also generally describe the relationship of these regulations to other nexus regulations, the types of retailers that may be affected by these new nexus provisions, and the Use Tax that must be collected, including the way it is distributed in Illinois.

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

Jerilynn Troxell Gorden
Deputy General Counsel
Legal Services Office
Illinois Department of Revenue
101 West Jefferson
Springfield IL 62794

217/782-2844

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

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 150
USE TAX

SUBPART A: NATURE OF THE TAX

Section	
150.101	Description of the Tax
150.105	Rate and Base of Tax
150.110	How To Compute Depreciation
150.115	How To Determine Effective Date
150.120	Effective Date of New Taxes
150.125	Relation of Use Tax to Retailers' Occupation Tax
150.130	Accounting for the Tax
150.135	How to Avoid Paying Tax on Use Tax Collected From the Purchaser

SUBPART B: DEFINITIONS

Section	
150.201	General Definitions

SUBPART C: KINDS OF USES AND USERS NOT TAXED

Section	
150.301	Cross References
150.305	Effect of Limitation that Purchase Must be at Retail From a Retailer to be Taxable
150.306	Interim Use and Demonstration Exemptions
150.310	Exemptions to Avoid Multi-State Taxation
150.311	Commercial Distribution Fee Sales Tax Exemption (Repealed)
150.315	Non-resident Exemptions
150.320	Meaning of "Acquired Outside This State"
150.325	Charitable, Religious, Educational and Senior Citizens Recreational Organizations as Buyers
150.330	Governmental Bodies as Buyers
150.331	Persons Who Lease Tangible Personal Property to Exempt Hospitals
150.332	Persons Who Lease Tangible Personal Property to Governmental Bodies
150.335	Game or Game Birds Purchased at Game Breeding and Hunting Areas or Exotic

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- Game Hunting Areas
- 150.336 Fuel Brought into Illinois in Locomotives
- 150.337 Food, Drugs, Medicines and Medical Appliances When Purchased for Use by a Person Receiving Medical Assistance under the Illinois Public Aid Code
- 150.340 Manufacturing Machinery and Equipment; Production Related Tangible Personal Property; Department Determination of Amount of Exemption (Repealed)

SUBPART D: COLLECTION OF THE USE TAX FROM USERS BY RETAILERS

- Section
- 150.401 Collection of the Tax by Retailers From Users
- 150.405 Tax Collection Brackets
- 150.410 Tax Collection Brackets for a 2¼% Rate of Tax (Repealed)
- 150.415 Tax Collection Brackets for a 2½% Rate of Tax (Repealed)
- 150.420 Tax Collection Brackets for a 2¾% Rate of Tax (Repealed)
- 150.425 Tax Collection Brackets for a 3% Rate of Tax (Repealed)
- 150.430 Tax Collection Brackets for a 3¼% Rate of Tax (Repealed)
- 150.435 Tax Collection Brackets for a 3½% Rate of Tax (Repealed)
- 150.440 Tax Collection Brackets for a 3¾% Rate of Tax (Repealed)
- 150.445 Tax Collection Brackets for a 4% Rate of Tax (Repealed)
- 150.455 Tax Collection Brackets for a 4¼% Rate of Tax (Repealed)
- 150.460 Tax Collection Brackets for a 4½% Rate of Tax (Repealed)
- 150.465 Tax Collection Brackets for a 4¾% Rate of Tax (Repealed)
- 150.470 Tax Collection Brackets for a 5% Rate of Tax (Repealed)
- 150.475 Tax Collection Brackets for a 5¼% Rate of Tax (Repealed)
- 150.480 Tax Collection Brackets for a 5½% Rate of Tax (Repealed)
- 150.485 Tax Collection Brackets for a 5¾% Rate of Tax (Repealed)
- 150.490 Tax Collection Brackets for a 6% Rate of Tax (Repealed)
- 150.500 Tax Collection Brackets for a 6% Rate of Tax (Repealed)
- 150.505 Optional 1% Schedule (Repealed)
- 150.510 Exact Collection of Tax Required When Practicable
- 150.515 Prohibition Against Retailer's Representing That He Will Absorb The Tax
- 150.520 Display of Tax Collection Schedule (Repealed)
- 150.525 Methods for Calculating Tax on Sales of Items Subject to Differing Tax Rates

SUBPART E: RECEIPT FOR THE TAX

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Section
150.601 Requirements

SUBPART F: SPECIAL INFORMATION FOR TAXABLE USERS

Section
150.701 When and Where to File a Return
150.705 Use Tax on Items that are Titled or Registered in Illinois
150.710 Procedure in Claiming Exemption from Use Tax
150.715 Receipt for Tax or Proof of Exemption Must Accompany Application for Title or Registration
150.716 Display Certificates for House Trailers
150.720 Issuance of Title or Registration Where Retailer Fails or Refuses to Remit Tax Collected by Retailer from User
150.725 Direct Payment of Tax by User to Department on Intrastate Purchase Under Certain Circumstances
150.730 Direct Reporting of Use Tax to Department by Registered Retailers

SUBPART G: REGISTRATION OF OUT-OF-STATE RETAILERS

Section
150.801 When Out-of-State Retailers Must Register and Collect Use Tax
150.802 Trade Show Appearances
[150.803 Wayfair Nexus – Nexus Without Physical Presence](#)
150.805 Voluntary Registration by Certain Out-of-State Retailers
150.810 Incorporation by Reference

SUBPART H: RETAILERS' RETURNS

Section
150.901 When and Where to File
150.905 Deduction for Collecting Tax
150.910 Incorporation by Reference
150.915 Itemization of Receipts from Sales and the Tax Among the Different States from Which Sales are Made into Illinois

SUBPART I: PENALTIES, INTEREST, STATUTE OF LIMITATIONS
AND ADMINISTRATIVE PROCEDURES

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Section
150.1001 General Information

SUBPART J: TRADED-IN PROPERTY

Section
150.1101 General Information

SUBPART K: INCORPORATION OF ILLINOIS
RETAILERS' OCCUPATION TAX REGULATIONS BY REFERENCE

Section
150.1201 General Information

SUBPART L: BOOKS AND RECORDS

Section
150.1301 Users' Records
150.1305 Retailers' Records
150.1310 Use of Signs to Prove Collection of Tax as a Separate Item
150.1315 Consequence of Not Complying with Requirement of Collecting Use Tax
 Separately From the Selling Price
150.1320 Incorporation by Reference

SUBPART M: CLAIMS TO RECOVER ERRONEOUSLY PAID TAX

Section
150.1401 Claims for Credit – Limitations – Procedure
150.1405 Disposition of Credit Memoranda by Holders Thereof
150.1410 Refunds
150.1415 Interest

150.TABLE A Tax Collection Brackets

AUTHORITY: Implementing the Use Tax Act [35 ILCS 105] and authorized by Section 2505-90 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-90].

SOURCE: Adopted August 1, 1955; amended at 4 Ill. Reg. 24, p. 553, effective June 1, 1980; amended at 5 Ill. Reg. 5351, effective April 30, 1981; amended at 5 Ill. Reg. 11072, effective

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October 6, 1981; codified at 6 Ill. Reg. 9326; amended at 8 Ill. Reg. 3704, effective March 12, 1984; amended at 8 Ill. Reg. 7278, effective May 11, 1984; amended at 8 Ill. Reg. 8623, effective June 5, 1984; amended at 11 Ill. Reg. 6275, effective March 20, 1987; amended at 14 Ill. Reg. 6835, effective April 19, 1990; amended at 15 Ill. Reg. 5861, effective April 5, 1991; emergency amendment at 16 Ill. Reg. 14889, effective September 9, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 1947, effective February 2, 1993; amended at 18 Ill. Reg. 1584, effective January 13, 1994; amended at 20 Ill. Reg. 7019, effective May 7, 1996; amended at 20 Ill. Reg. 16224, effective December 16, 1996; amended at 22 Ill. Reg. 21670, effective November 25, 1998; amended at 24 Ill. Reg. 10728, effective July 7, 2000; amended at 25 Ill. Reg. 953, effective January 8, 2001; emergency amendment at 25 Ill. Reg. 1821, effective January 16, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 5059, effective March 23, 2001; amended at 25 Ill. Reg. 6540, effective May 3, 2001; amended at 25 Ill. Reg. 10937, effective August 13, 2001; amended at 26 Ill. Reg. 971, effective January 15, 2002; amended at 26 Ill. Reg. 9902, effective June 24, 2002; amended at 27 Ill. Reg. 1607, effective January 15, 2003; emergency amendment at 27 Ill. Reg. 11209, effective July 1, 2003, for a maximum of 150 days; emergency expired November 27, 2003; emergency amendment at 28 Ill. Reg. 15266, effective November 3, 2004, for a maximum of 150 days; emergency expired April 1, 2005; amended at 29 Ill. Reg. 7079, effective April 26, 2005; emergency amendment at 32 Ill. Reg. 8806, effective May 29, 2008, for a maximum of 150 days; emergency expired October 25, 2008; amended at 32 Ill. Reg. 17554, effective October 24, 2008; amended at 32 Ill. Reg. 19149, effective December 1, 2008; amended at 38 Ill. Reg. 20022, effective October 1, 2014; amended at 39 Ill. Reg. 11085, effective July 21, 2015; amended at 40 Ill. Reg. 13471, effective September 12, 2016; amended at 42 Ill. Reg. 15446, effective July 27, 2018; emergency amendment at 42 Ill. Reg. 17247, effective September 11, 2018, for a maximum of 150 days; emergency expired February 7, 2019; amended at 42 Ill. Reg. 23143, effective November 29, 2018; amended at 43 Ill. Reg. 13333, effective November 1, 2019.

SUBPART G: REGISTRATION OF OUT-OF-STATE RETAILERS

Section 150.803 Wayfair Nexus – Nexus Without Physical Presence

- a) Background. An out-of-state retailer (a "remote retailer") making sales to Illinois purchasers from locations outside Illinois is required to register with the Department and collect and remit Use Tax on those sales if it falls within the definition of a "retailer maintaining a place of business in this State" in Section 2 of the Use Tax Act [35 ILCS 105]. The Department is authorized to require these retailers to act as tax collectors because they have established sufficient contacts, or nexus, with Illinois. There are two groups of remote retailers that must collect Use Tax on sales to Illinois purchasers:

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- 1) Remote Retailers With a Physical Presence in Illinois. Prior to October 1, 2018, remote retailers must have a physical presence in Illinois before they can be required to collect Use Tax. The types of activities constituting a physical presence, as limited by the series of court cases described in this subsection (a)(1), are found in Section 2 of the Use Tax Act's definition of a "retailer maintaining a place of business in this State". (See 35 ILCS 105/2.) The physical presence requirement was established in a series of United States Supreme Court decisions. See, for example, Scripto v. Carson, 362 U.S. 207 (1960); National Bellas Hess v. Department of Revenue of the State of Illinois, 386 U.S. 753 (1967); Quill Corporation v. North Dakota, 504 U.S. 298 (1992). In 1996, the Illinois Supreme Court ruled that remote retailers need only "more than the slightest" physical presence to be required to collect Use Tax. See Brown's Furniture v. Wagner, 171 Ill. 2d 410 (1996). Any remote retailer that currently has a physical presence in Illinois will continue to be required to act as a Use Tax collector. Regulations describing these types of retailers are found at 86 Ill. Adm. Code 150.801 and 150.802.

NOTE: The provisions of this Section do not apply to remote retailers with a physical presence in Illinois.

- 2) Remote Retailers Without a Physical Presence in Illinois. In South Dakota v. Wayfair, Inc., No. 17-494 (U.S. June 21, 2018), the U.S. Supreme Court upheld a South Dakota statute that imposed tax collection obligations on remote retailers that met specific selling thresholds but had no physical presence in the state. This decision abrogated the longstanding physical presence requirement of Quill, deeming it "unsound and incorrect". Illinois P.A. 100-587 enacted nexus standards, effective October 1, 2018, that are virtually identical to those upheld in Wayfair. This Section explains the requirements for "Wayfair nexus" in Illinois.
- b) Wayfair Nexus. P.A. 100-587 requires remote retailers with no physical presence in Illinois to register and to collect and remit Use Tax, as provided in this subsection (b):
 - 1) *Beginning October 1, 2018, a retailer making sales of tangible personal property to purchasers in Illinois from outside of Illinois must register with the Department and collect and remit Use Tax if:*

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- A) The cumulative gross receipts from sales of tangible personal property to purchasers in Illinois are \$100,000 or more; or
- B) The retailer enters into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois.
- 2) A retailer shall determine on a quarterly basis, ending on the last day of March, June, September, and December, whether he or she meets either of the criteria of subsection (b)(1) for the preceding 12-month period. If the retailer meets either of the criteria of subsection (b)(1) for a 12-month period, he or she is considered a retailer maintaining a place of business in Illinois and is required to collect and remit the Use Tax and file returns for one year.
- A) At the end of that one-year period, the retailer shall determine whether he or she met either of the criteria of subsection (b)(1) during the preceding 12-month period. If the retailer met either of the criteria in subsection (b)(1) for the preceding 12-month period, he or she is considered a retailer maintaining a place of business in Illinois and is required to collect and remit Use Tax and file returns for the subsequent year.
- B) If, at the end of a one-year period, a retailer that was required to collect and remit the Use Tax determines that he or she did not meet either of the criteria in subsection (b)(1) during the preceding 12-month period, the retailer shall subsequently determine on a quarterly basis, ending on the last day of March, June, September, and December, whether he or she meets either of the criteria of subsection (b)(1) for the preceding 12-month period. [35 ILCS 105/2(9)]
- c) Preliminary Evaluation of Applicability of This Section. This Section is not applicable to the specific types of remote retailers described in subsections (c)(1) and (c)(2). Remote retailers are cautioned to first evaluate these provisions to determine whether they must proceed to calculate the thresholds under subsection (c)(3).

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- 1) This Section applies only to remote retailers who do not have a physical presence in Illinois. While remote retailers may believe they do not have a physical presence in Illinois, they must carefully examine their activities in making this determination. Many times, such retailers actually do have a physical presence in Illinois because they maintain inventory in Illinois from which sales are filled. When sales made to Illinois purchasers are filled from Illinois inventory, these retailers incur Retailers' Occupation Tax liability on those sales (for further information on these transactions, see subsection (g)(4)). The presence of inventory in Illinois creates physical presence nexus for these remote retailers with respect to sales they make from outside Illinois that are not filled from their Illinois inventory. As a result of this physical presence nexus, they are required to collect Use Tax on sales made to Illinois purchasers from outside Illinois that are not filled from their Illinois inventory. Remote retailers that engage in these types of selling are not subject to this Section because they already have nexus through their physical presence in Illinois.

- 2) This Section does not apply to remote retailers who exclusively make nontaxable sales (i.e., 100% of their sales to Illinois purchasers are exempt).

EXAMPLE: If Remote Retailer A's only activities are sales of exempt manufacturing machinery and equipment to Illinois manufacturers, it is not required to register with the Department. If Remote Retailer A makes any taxable sales, however, this Section applies and it must determine whether it meets either of the thresholds in subsection (b)(1) and is required to collect Use Tax; the rules provided in subsection (c)(3)(E)(i) through (v) must be applied when making this determination. For example, for purposes of determining if it has met the thresholds under subsection (b)(1), the manufacturer must include its exempt sales as provided in subsection (c)(3)(E)(v).

- 3) Calculation of the Number of Separate Transactions or Amount of Gross Receipts. Wayfair nexus is created if a remote retailer's cumulative gross receipts from sales of tangible personal property to purchasers in Illinois are \$100,000 or more, or if it enters into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois.

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- A) "Gross receipts" means all the consideration actually received for a sale by the remote retailer. See 86 Ill. Adm. Code 130.401 for additional information regarding gross receipts. Subsection (c)(3)(E) describes the types of transactions for which gross receipts must be included or excluded for purposes of determining if the threshold under subsection (b)(1)(A) is met.
- B) "Illinois purchaser" means a person in Illinois who, through a sale at retail, acquires the ownership of tangible personal property for a valuable consideration. [35 ILCS 105/2]
- C) "Entering into a sale" occurs when a remote retailer has taken action that binds it to a sale. This may occur even though the tangible personal property that has been sold has not yet shipped to the purchaser.

EXAMPLE: On August 20, 2018, a remote retailer takes actions binding it to a sale that is scheduled for shipment on October 15. This sale must be included in the calculation used to determine the retailer's sales transactions for its initial lookback period (see subsection (d)(1)).

- D) "Separate transactions" means sales transactions that are documented on separate invoices, regardless of the manner in which the tangible personal property is delivered to the purchaser.

EXAMPLE 1: A purchaser orders 12 items of clothing from a remote retailer. He receives an invoice confirming his order of 12 items. However, due to a back order, 3 of the clothing items are shipped separately from the other 9 items. Shipment of the 3 back-ordered items, even with a separate shipping invoice, is not considered a separate transaction because the original transaction was invoiced as one sale.

EXAMPLE 2: A purchaser places an order of home repair tools at 8:00 a.m. from a remote retailer. She receives an invoice confirming her order at 8:15 a.m. At 2:00 p.m., the purchaser realizes she needs 5 other tools to complete the job, and orders these tools from the same remote retailer. The remote retailer

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confirms this order with a separate invoice. In this example, two different transactions have occurred. This is the case, even if the retailer sends all the ordered tools to the purchaser in one package.

EXAMPLE 3: A mother places an order with Company B for care packages to be delivered to her son's dormitory at 8 scheduled intervals during the school year. Each delivery is separately invoiced. These are counted as 8 separate transactions.

E) Remote retailers must apply the following rules governing whether a transaction should be included or excluded when determining if they meet either of the thresholds in subsection (b)(1):

i) Sales for resale must be excluded. (See 86 Ill. Adm. Code 130.201.)

EXAMPLE: Remote Retailer A makes sales of seedlings to Company B. Company B provides a resale certificate indicating that 60% of the seedlings will be sold to customers at retail (a purchase for resale) and that it will use 40% of the seedlings in its landscaping business (a purchase for use). If Remote Retailer A calculates the threshold using gross receipts, it should include only 40% of the gross receipts. If it calculates the threshold using transactions, however, the entire transaction with Company B must be included.

ii) Sales of tangible personal property that is required to be registered with an agency of this State, including motor vehicles, watercraft, aircraft, and trailers, that are made from locations outside Illinois to Illinois purchasers must be excluded. Taxes on these items will continue to be paid, as required by Section 10 of the Use Tax Act, by purchasers as a condition of titling or registering these items.

iii) Occasional sales must be excluded. (See 86 Ill. Adm. Code 130.110.) Occasional sales are not considered sales at retail. For example, a retailer that engages in selling

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computers and software over the Internet closes a regional office in Michigan. As part of that closure, it sells its office furniture and printing equipment on an Internet marketplace platform. Transactions and gross receipts from these sales are excluded from the calculation because they are not considered sales at retail.

iv) Sales made by a remote retailer that are subject to Retailers' Occupation Tax must be excluded. For example, sales made by a remote retailer at an Illinois trade show that are subject to Retailers' Occupation Tax are excluded for purposes of calculating the thresholds in subsection (b)(1).

v) All sales of tangible personal property, other than those excluded by this subsection (c)(3)(E), even if they are exempt from tax, must be included for purposes of calculating the thresholds in subsection (b)(1).

d) Determination of Obligation to Begin Tax Collection on October 1, 2018;
Determination of Obligation to Continue Tax Collection

1) In order to determine if it is required to begin collecting Use Tax on October 1, 2018 for sales made on and after October 1, 2018, a remote retailer must examine its selling activities for the period September 1, 2017 through August 31, 2018. If it met either of the thresholds in subsection (b)(1) during this period, it must register with the Department and collect Use Tax for a one-year period on sales made to Illinois purchasers on and after October 1, 2018. Filing frequency may be monthly or quarterly, as provided in accordance with regulations at 86 Ill. Adm. Code 130.501 (monthly filing applies when a retailer's average monthly tax liability exceeds \$200) and 130.502 (quarterly filing applies when a retailer's average monthly tax liability does not exceed \$200). For monthly filers, the first return for sales made in October 2018 is due on or before November 20, 2018.

2) At the end of the one-year collection period in subsection (d)(1), the remote retailer must examine its sales for the year it collected Use Tax. If it determines its sales to Illinois purchasers met either of the thresholds in subsection (b)(1) during that year, it must continue to collect taxes for

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another year. The remote retailer must make this analysis each year thereafter that it is required to collect Use Tax.

- 3) Alternatively, if, at the end of the one-year collection period in subsection (d)(1), the remote retailer determines that its sales to Illinois purchasers did not meet either of the thresholds in subsection (b)(1) during that year, it may discontinue acting as a Use Tax collector.
 - A) The Department strongly recommends that remote retailers continue collecting the Use Tax as a courtesy to their Illinois purchasers, as those purchasers will still incur a Use Tax liability that they must otherwise self-assess and remit directly to the Department. Remote retailers may change their filing frequency with the Department at this time in accordance with 86 Ill. Adm. Code 130.501 (monthly, as noted in subsection (d)(1)), 130.502 (quarterly, as noted in subsection (d)(1)), or 130.510 (annual filing applies if a retailer's average monthly tax liability does not exceed \$50).
 - B) If a remote retailer is no longer required to collect Use Tax and chooses to discontinue collection, it must notify the Department.
 - C) If a remote retailer is no longer required to collect Use Tax and has chosen to discontinue collection, it must redetermine, on a rolling quarterly basis, whether it is obligated to once more begin collecting Use Tax. For each quarter ending on the last day of March, June, September, and December, the remote retailer must examine its sales for the immediately preceding 12-month period to determine whether it met either of the thresholds in subsection (b)(1). If it met either of those thresholds during that 12-month lookback period, it must collect Use Tax for the following 12-month period. At the end of that 12-month period, it must examine its sales as provided in subsections (d)(2) and (d)(3) to determine if it must continue to collect tax.
- e) Determination of Tax Collection Obligation of Remote Sellers that First Begin Making Sales After October 1, 2018. Remote retailers that first begin making sales to Illinois purchasers after October 1, 2018 must determine, on a quarterly basis, whether they are obligated to begin collecting tax. For each quarter ending

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on the last day of March, June, September, and December, the remote retailer must examine its sales for the immediately preceding 12-month period to determine whether it met either of the thresholds in subsection (b)(1). If it met either of those thresholds during that 12-month lookback period, it must collect Use Tax for the following 12-month period. At the end of that 12-month period, it must examine its sales as provided in subsections (d)(2) and (d)(3) to determine if it must continue to collect tax.

EXAMPLE 1: Remote Retailer A makes sales to Illinois customers beginning on November 1, 2019. At the end of December (its first quarterly period), it calculates that it made 500 sales transactions to Illinois purchasers. As a result, it is required to collect taxes on sales to Illinois purchasers for a one-year period beginning January 1, 2020 through December 31, 2020. On December 31, 2020, it must examine its sales to Illinois purchasers for the one-year lookback period beginning January 1, 2020 through December 31, 2020 to determine if it must continue to collect tax.

EXAMPLE 2: Remote Retailer A makes sales to Illinois customers beginning on December 1, 2019. At the end of December 2019 (its first quarterly period), it calculates that it has not met the selling thresholds for the previous 12-month period. Remote Retailer A is not required to begin collecting taxes at this time. At the end of March 2020 (its next quarterly period), however, it determines that it made \$200,000 in sales for the preceding 12-month period. As a result, it is required to collect taxes on sales to Illinois purchasers for a one-year period beginning April 1, 2020 through March 31, 2021. On March 31, 2021, it must examine its sales to Illinois purchasers for the one-year lookback period beginning April 1, 2020 through March 31, 2021 to determine if it must continue to collect tax.

- f) Affected Remote Retailers. Remote retailers are advised to closely examine all their activities to determine if they are required to register under the new nexus standards of P.A. 100-587. For instance, remote retailers that voluntarily collect Use Tax may become mandatory Use Tax collectors. Other remote retailers, such as telephone, television and catalog sellers, may be required to register and collect and remit Use Tax on sales to Illinois purchasers. Other types of remote retailers that may be required to register could include:

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- 1) remote retailers without physical presence in Illinois who make sales to Illinois purchasers using a traditional drop-ship arrangement. (See 86 Ill. Adm. Code 130.225.)
- 2) remote retailers without physical presence who make sales to Illinois purchasers using an Internet marketplace platform.
- 3) remote retailers that meet the "safe harbor" rules for trade shows, but who may nonetheless meet the new Wayfair thresholds. (See 86 Ill. Adm. Code 150.802.)

EXAMPLE: Retailer A operates a booth at a trade show and meets the "safe harbor" rules for trade show attendance. Prior to October 1, 2018, it would not be required to collect Use Tax on sales made from outside Illinois to Illinois purchasers because it is not considered to have a physical presence in Illinois. On August 1, 2018, however, it determines that it has met the thresholds under this Section for collecting Use Tax on sales made from outside Illinois to Illinois customers. Beginning October 1, 2018, it is required to collect and remit Use Tax on all sales to Illinois purchasers.

NOTE: It must also remit Retailers' Occupation Tax on any sales it makes to purchasers at an Illinois trade show. (See Section 150.802 (e).)

- 4) Internet Auctioneers. 86 Ill. Adm. Code 130.1915 provides additional information regarding the tax liability of auctioneers.
- g) Tax Collection. Once a remote retailer determines it has nexus, it must register with the Department and collect and remit Use Tax on the sales it makes to Illinois purchasers from its out-of-state location. Remote retailers are subject to all provisions of the Use Tax Act and regulations promulgated under that Act. (See 86 Ill. Adm. Code 150.)
- 1) Sales made to purchasers by remote retailers from out-of-state locations are subject to the State 6.25% Use Tax (1% for qualifying low rate items; see 86 Ill. Adm. Code 130.310 and 130.311).
 - 2) Illinois tax statutes do not authorize local jurisdictions, except for the City of Chicago, to impose Use Tax on general merchandise (the tax imposed

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by the City of Chicago is collected by the City of Chicago and not by the Department). As a result, there is no local Use Tax for remote retailers to collect on returns filed with the Department.

3) Illinois tax statutes only authorize local jurisdictions to impose occupation taxes upon retailers who are engaged in the business of selling tangible personal property within that jurisdiction. Activities that constitute "engaging in the occupation of selling tangible personal property" are described in Department regulations (for example, 86 Ill. Adm. Code 270.115). Typical examples include brick and mortar stores making over-the-counter sales. Retailers that engage in selling tangible personal property in Illinois are subject to the 6.25% State Retailers' Occupation Tax and any applicable local occupation taxes.

4) It is important to note that a remote retailer that incurs a Use Tax collection obligation may also make some sales that are subject to State and local retailers' occupation tax. For instance, a retailer will incur State and local retailers' occupation tax when the tangible personal property sold by the remote retailer is in an inventory in the possession of the retailer located within a jurisdiction in Illinois at the time of its sale. (See, for example, 86 Ill. Adm. Code 270.115(d)(3)(A).) As a result, remote retailers are cautioned to examine the nature of their selling operations, since some sales may be subject to State and local retailers' occupation tax.

h) Tax Distribution – Differences in Distribution of Use Tax and Retailers' Occupation Tax

1) Use Tax remitted by remote sellers is distributed differently than Retailers' Occupation Tax and local occupation taxes. The 1.25% local share of the State 6.25% Use Tax is deposited into the State and Local Sales Tax Reform Fund (see 30 ILCS 105/6z-17). After amounts are transferred to the Tax Compliance and Administration Fund, specific percentages are allocated to the City of Chicago, the Regional Transportation Authority Occupation and Use Tax Replacement Fund, and the Madison County Mass Transit District. Next, specific amounts are transferred into the Build Illinois Fund. The remainder of the monies are transferred into the Local Government Distributive Fund [30 ILCS 115], from which they are distributed to all municipalities and counties (except for Chicago, which is

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distributed as described in this subsection (h)(1)) based upon the population of each municipality or county in proportion to the total State population.

- 2) In contrast, the 1.25% local share of the 6.25% State Retailers' Occupation Tax, as well as the entire amount of locally-imposed occupation taxes, are distributed to the local taxing jurisdiction in which the selling occurred. The location in which selling occurs is determined in accordance with Department regulations (for example, 86 Ill. Adm. Code 270.115).

(Source: Added at 43 Ill. Reg. 13333, effective November 1, 2019)

JOINT COMMITTEE ON ADMINISTRATIVE RULES

SECOND NOTICES RECEIVED

The following second notices were received during the period of October 29, 2019 through November 4, 2019. These rulemakings are scheduled for the November 12, 2019 meeting. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rulemaking should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

Second Notice Expires	Agency and Rule	Start of First Notice	JCAR Meeting
12/13/19	<u>Insurance</u> , Mistake in Benefit under Article 3 and Article 4 Pensions (50 Ill. Adm. Code 4450)	5/31/19 43 Ill. Reg. 6242	11/12/19
12/13/19	<u>Human Services</u> , Developmental Disabilities Services (89 Ill. Adm. Code 144)	7/12/19 43 Ill. Reg. 7596	11/12/19
12/14/19	<u>Emergency Management Agency</u> , General Grantmaking (IEMA) (44 Ill. Adm. Code 7030)	7/26/19 43 Ill. Reg. 7903	11/12/19

PROCLAMATIONS

2019-206**Vietnam Veterans Recognition Day**

WHEREAS, in the late 1950s and early 1960s, United States military personnel began serving as military advisors to the South Vietnamese military in their conflict with North Vietnam; and,

WHEREAS, as the Vietnam War escalated over the subsequent decade; Americans, including many Illinoisans, were called to join the war as the United States implemented a military draft; and,

WHEREAS, as the war continued, over 58,000 members of the United States Armed Forces would lose their lives and more than 300,000 were wounded; and,

WHEREAS, nearly 3,000 Illinoisans were killed or listed as missing in action during the Vietnam War; and,

WHEREAS, upon returning home, those who served in Vietnam were met with a vigorous public debate about the involvement of the United States in the war; and,

WHEREAS, as these veterans returned home, many of them were not given the credit and support they deserved for dutifully serving their country; many were met with vigorous protests and condemnations and received widespread insults by opponents of the Vietnam War; and,

WHEREAS, while service members returning home following World War II and the Korean War were met with homecoming celebrations, veterans returning from Vietnam were met with strong opposition that was directed at them rather than the appropriate decision makers in Washington; and,

WHEREAS, many who returned home from the battlefield were spit on, called killers, and ignored by the American public at a time when they needed the support of their fellow citizens;

WHEREAS, the General Assembly passed a resolution called for the state to stand united in our strong support of all military personnel who served and sacrificed during the Vietnam War and offer our heartfelt and sincere apology to all Vietnam veterans who were mistreated after returning home from their service;

THEREFORE, I, JB Pritzker, Governor of the State of Illinois, declare November 1, 2019 as Vietnam Veterans Recognition Day in the State of Illinois, and instruct that all flags be lowered to half-mast on November 1, 2019 as a sign of respect to all Vietnam veterans. And be it further RESOLVED, that we urge all Illinoisans to show support and gratitude to all Americans who

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have worn the uniform of the United States and who put their lives in danger to defend our freedoms.

Issued by the Governor October 31,2019

Filed by the Secretary of State October 31, 2019

ILLINOIS ADMINISTRATIVE CODE
Issue Index - With Effective Dates

Rules acted upon in Volume 43, Issue 46 are listed in the Issues Index by Title number, Part number, Volume and Issue. Inquiries about the Issue Index may be directed to the Administrative Code Division at (217) 782-7017/18.

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