

TABLE OF CONTENTS

January 10, 2020 Volume 44, Issue 2

PROPOSED RULES

PUBLIC HEALTH, DEPARTMENT OF	
Skilled Nursing and Intermediate Care Facilities Code	
77 Ill. Adm. Code 300.....	435
REVENUE, DEPARTMENT OF	
Retailers' Occupation Tax	
86 Ill. Adm. Code 130.....	485
Use Tax	
86 Ill. Adm. Code 150.....	487

ADOPTED RULES

GAMING BOARD, ILLINOIS	
Video Gaming (General)	
11 Ill. Adm. Code 1800.....	489
Riverboat Gambling	
86 Ill. Adm. Code 3000.....	521
STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS	
The Administration and Operation of the State Employees' Retirement	
System of Illinois	
80 Ill. Adm. Code 1540.....	534

EMERGENCY RULES

REVENUE, DEPARTMENT OF	
Retailers' Occupation Tax	
86 Ill. Adm. Code 130.....	552
Use Tax	
86 Ill. Adm. Code 150.....	577
Cannabis Cultivation Privilege Tax	
86 Ill. Adm. Code 422.....	594
Cannabis Purchaser Excise Tax	
86 Ill. Adm. Code 423.....	612

NOTICE OF CORRECTION TO NOTICE ONLY

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS	
The Administration and Operation of the State Employees' Retirement	
System of Illinois.....	636

SECOND NOTICES RECEIVED

JOINT COMMITTEE ON ADMINISTRATIVE RULES	
Second Notices Received.....	637

REGULATORY AGENDA

HEALTH FACILITIES AND SERVICES REVIEW BOARD	
Health Facilities and Services Operational Rules	
77 Ill. Adm. Code 1130.....	638

HIGHER EDUCATION, BOARD OF	
Diversifying Higher Education Faculty in Illinois Program	
23 Ill. Adm. Code 1080.....	639
HUMAN SERVICES, DEPARTMENT OF	
Medicaid Home and Community-Based Services Waiver Program for	
Individuals with Developmental Disabilities	
59 Ill. Adm. Code 120.....	640
PUBLIC HEALTH, DEPARTMENT OF	
Ambulatory Surgical Treatment Center Licensing Requirements	
77 Ill. Adm. Code 205.....	662
EXECUTIVE ORDERS AND PROCLAMATIONS	
PROCLAMATIONS	
COPD Awareness Month	
2019-242.....	685
School Psychology Week	
2019-243.....	685
Veterans Day	
2019-244.....	686
Prematurity Awareness Month	
2019-245.....	687
Family Caregivers Month	
2019-246.....	688
National Native American Heritage Month	
2019-247.....	689
Epilepsy Awareness Month	
2019-248.....	690

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 2020

	Issue#	Rules Due Date	Date of Issue	
	1	December 23, 2019	January 3, 2020	
	2	December 30, 2019	January 10, 2020	
	3	January 6, 2020	January 17, 2020	
	4	January 13, 2020	January 24, 2020	
	5	January 21, 2020	January 31, 2020	
	6	January 27, 2020	February 7, 2020	
	7	February 3, 2020	February 14, 2020	
	8	February 10, 2020	February 21, 2020	
	9	February 18, 2020	February 28, 2020	
	10	February 24, 2020	March 6, 2020	
	11	March 2, 2020	March 13, 2020	
	12	March 9, 2020	March 20, 2020	
	13	March 16, 2020	March 27, 2020	
	14	March 23, 2020	April 3, 2020	
	15	March 30, 2020	April 10, 2020	
	16	April 6, 2020	April 17, 2020	
	17	April 13, 2020	April 24, 2020	
	18	April 20, 2020	May 1, 2020	
	19	April 27, 2020	May 8, 2020	
	20	May 4, 2020	May 15, 2020	
	21	May 11, 2020	May 22, 2020	

	22	May 18, 2020	May 29, 2020	
	23	May 26, 2020	June 5, 2020	
	24	June 1, 2020	June 12, 2020	
	25	June 8, 2020	June 19, 2020	
	26	June 15, 2020	June 26, 2020	
	27	June 22, 2020	July 6, 2020	
	28	June 29, 2020	July 10, 2020	
	29	July 6, 2020	July 17, 2020	
	30	July 13, 2020	July 24, 2020	
	31	July 20, 2020	July 31, 2020	
	32	July 27, 2020	August 7, 2020	
	33	August 3, 2020	August 14, 2020	
	34	August 10, 2020	August 21, 2020	
	35	August 17, 2020	August 28, 2020	
	36	August 24, 2020	September 4, 2020	
	37	August 31, 2020	September 11, 2020	
	38	September 8, 2020	September 18, 2020	
	39	September 14, 2020	September 25, 2020	
	40	September 21, 2020	October 2, 2020	
	41	September 28, 2020	October 9, 2020	
	42	October 5, 2020	October 16, 2020	
	43	October 13, 2020	October 23, 2020	
	44	October 19, 2020	October 30, 2020	
	45	October 26, 2020	November 6, 2020	
	46	November 2, 2020	November 13, 2020	
	47	November 9, 2020	November 20, 2020	
	48	November 16, 2020	November 30, 2020	
	49	November 23, 2020	December 4, 2020	
	50	November 30, 2020	December 11, 2020	
	51	December 7, 2020	December 18, 2020	
	52	December 14, 2020	December 28, 2020	

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Skilled Nursing and Intermediate Care Facilities Code
- 2) Code Citation: 77 Ill. Adm. Code 300
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
300.230	Amendment
300.650	Amendment
300.686	Amendment
300.1230	Amendment
300.1231	New Section
300.1232	New Section
300.1233	New Section
300.1234	New Section
300.Appendix A	New Section
300.Appendix B	New Section
- 4) Statutory Authority: Nursing Home Care Act [210 ILCS 45]
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking implements amendments to the Nursing Home Care Act contained in PA 101-10. The amendments provide for increased Department oversight, including increased penalties, for facilities licensed under the Act and 77 Ill. Adm. Code 300 in obtaining informed consent from residents prior to administering psychotropic drugs. PA 101-10 and this rulemaking also provide for increased oversight and fines for violations of the minimum staffing ratios in the Act, and for signage in facilities found in violation of the staffing requirements.

This rulemaking also implements PA 100-217, which provides for waivers from minimum staffing requirements under certain conditions.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

The Department anticipates adoption of this rulemaking approximately six to nine months after publication of the Notice in the *Illinois Register*.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- 7) Will this rulemaking replace any emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking may increase costs for county owned skilled nursing facilities.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning this rulemaking within 45 days after this issue of the *Illinois Register* to:

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

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

- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not-for-profit corporations affected: Skilled nursing facilities
 - B) Reporting, bookkeeping or other procedures required for compliance: Facilities will be required to maintain accurate records of informed consent and of minimum staffing requirements, including quarterly reports to the Department.
 - C) Types of professional skills necessary for compliance: Medical; pharmaceutical; nursing
- 14) Small Business Impact Analysis:

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- A) Types of businesses subject to the proposed rule:
- 62 Health Care and Social Assistance
- B) Categories that the agency reasonably believes the rulemaking will impact, including:
- i. hiring and additional staffing;
 - ii. regulatory requirements;
 - iii. purchasing;
 - iv. insurance charges;
 - vii. training requirements;
 - viii. record keeping;
 - x. other potential impacted categories.

- 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 PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIESPART 300
SKILLED NURSING AND INTERMEDIATE CARE FACILITIES CODE

SUBPART A: GENERAL PROVISIONS

Section	
300.110	General Requirements
300.120	Application for License
300.130	Licensee
300.140	Issuance of an Initial License for a New Facility
300.150	Issuance of an Initial License Due to a Change of Ownership
300.160	Issuance of a Renewal License
300.163	Alzheimer's Special Care Disclosure
300.165	Criteria for Adverse Licensure Actions
300.170	Denial of Initial License
300.175	Denial of Renewal of License
300.180	Revocation of License
300.190	Experimental Program Conflicting With Requirements
300.200	Inspections, Surveys, Evaluations and Consultation
300.210	Filing an Annual Attested Financial Statement
300.220	Information to Be Made Available to the Public By the Department
300.230	Information to Be Made Available to the Public By the Licensee
300.240	Municipal Licensing
300.250	Ownership Disclosure
300.260	Issuance of Conditional Licenses
300.270	Monitor and Receivership
300.271	Presentation of Findings
300.272	Determination to Issue a Notice of Violation or Administrative Warning
300.274	Determination of the Level of a Violation
300.276	Notice of Violation
300.277	Administrative Warning
300.278	Plans of Correction
300.280	Reports of Correction
300.282	Conditions for Assessment of Penalties
300.284	Calculation of Penalties (Repealed)

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

300.286	Notice of Penalty Assessment; Response by Facility
300.287	Consideration of Factors for Assessing Penalties
300.288	Reduction or Waiver of Penalties
300.290	Quarterly List of Violators (Repealed)
300.300	Alcoholism Treatment Programs In Long-Term Care Facilities
300.310	Department May Survey Facilities Formerly Licensed
300.315	Supported Congregate Living Arrangement Demonstration
300.320	Waivers
300.330	Definitions
300.340	Incorporated and Referenced Materials

SUBPART B: ADMINISTRATION

Section	
300.510	Administrator

SUBPART C: POLICIES

Section	
300.610	Resident Care Policies
300.615	Determination of Need Screening and Request for Resident Criminal History Record Information
300.620	Admission, Retention and Discharge Policies
300.624	Criminal History Background Checks for Persons Who Were Residents on May 10, 2006 (Repealed)
300.625	Identified Offenders
300.626	Discharge Planning for Identified Offenders
300.627	Transfer of an Identified Offender
300.630	Contract Between Resident and Facility
300.640	Residents' Advisory Council
300.650	Personnel Policies
300.651	Whistleblower Protection
300.655	Initial Health Evaluation for Employees
300.660	Nursing Assistants
300.661	Health Care Worker Background Check
300.662	Resident Attendants
300.663	Registry of Certified Nursing Assistants
300.665	Student Interns
300.670	Disaster Preparedness

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

300.680	Restraints
300.682	Nonemergency Use of Physical Restraints
300.684	Emergency Use of Physical Restraints
300.686	Unnecessary, Psychotropic, and Antipsychotic Medications Drugs
300.690	Incidents and Accidents
300.695	Contacting Local Law Enforcement
300.696	Infection Control

SUBPART D: PERSONNEL

Section	
300.810	General
300.820	Categories of Personnel
300.830	Consultation Services
300.840	Personnel Policies

SUBPART E: MEDICAL AND DENTAL CARE OF RESIDENTS

Section	
300.1010	Medical Care Policies
300.1020	Communicable Disease Policies
300.1025	Tuberculin Skin Test Procedures
300.1030	Medical Emergencies
300.1035	Life-Sustaining Treatments
300.1040	Care and Treatment of Sexual Assault Survivors
300.1050	Dental Standards
300.1060	Vaccinations

SUBPART F: NURSING AND PERSONAL CARE

Section	
300.1210	General Requirements for Nursing and Personal Care
300.1220	Supervision of Nursing Services
300.1230	Direct Care Staffing
300.1231	Calculation of Direct Care Staffing During Inspections, Surveys and Evaluations
300.1232	Waiver of Registered Professional Nurse Staffing Requirements
300.1233	Quarterly Administrative Staffing Compliance Review
300.1234	Penalties and Notice of Violation
300.1240	Additional Requirements

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

SUBPART G: RESIDENT CARE SERVICES

Section

- 300.1410 Activity Program
- 300.1420 Specialized Rehabilitation Services
- 300.1430 Work Programs
- 300.1440 Volunteer Program
- 300.1450 Language Assistance Services

SUBPART H: MEDICATIONS

Section

- 300.1610 Medication Policies and Procedures
- 300.1620 Compliance with Licensed Prescriber's Orders
- 300.1630 Administration of Medication
- 300.1640 Labeling and Storage of Medications
- 300.1650 Control of Medications

SUBPART I: RESIDENT AND FACILITY RECORDS

Section

- 300.1810 Resident Record Requirements
- 300.1820 Content of Medical Records
- 300.1830 Records Pertaining to Residents' Property
- 300.1840 Retention and Transfer of Resident Records
- 300.1850 Other Resident Record Requirements
- 300.1860 Staff Responsibility for Medical Records
- 300.1870 Retention of Facility Records
- 300.1880 Other Facility Record Requirements

SUBPART J: FOOD SERVICE

Section

- 300.2010 Director of Food Services
- 300.2020 Dietary Staff in Addition to Director of Food Services
- 300.2030 Hygiene of Dietary Staff
- 300.2040 Diet Orders
- 300.2050 Meal Planning

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

300.2060	Therapeutic Diets (Repealed)
300.2070	Scheduling Meals
300.2080	Menus and Food Records
300.2090	Food Preparation and Service
300.2100	Food Handling Sanitation
300.2110	Kitchen Equipment, Utensils, and Supplies

SUBPART K: MAINTENANCE, HOUSEKEEPING, AND LAUNDRY

Section	
300.2210	Maintenance
300.2220	Housekeeping
300.2230	Laundry Services

SUBPART L: FURNISHINGS, EQUIPMENT, AND SUPPLIES

Section	
300.2410	Furnishings
300.2420	Equipment and Supplies
300.2430	Sterilization of Equipment and Supplies

SUBPART M: WATER SUPPLY AND SEWAGE DISPOSAL

Section	
300.2610	Codes
300.2620	Water Supply
300.2630	Sewage Disposal
300.2640	Plumbing

SUBPART N: DESIGN AND CONSTRUCTION STANDARDS
FOR NEW INTERMEDIATE CARE AND SKILLED NURSING FACILITIES

Section	
300.2810	Applicability of these Standards
300.2820	Codes and Standards
300.2830	Preparation of Drawings and Specifications
300.2840	Site
300.2850	Administration and Public Areas
300.2860	Nursing Unit

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

300.2870	Dining, Living, Activities Rooms
300.2880	Therapy and Personal Care
300.2890	Service Departments
300.2900	General Building Requirements
300.2910	Structural
300.2920	Mechanical Systems
300.2930	Plumbing Systems
300.2940	Electrical Systems

SUBPART O: DESIGN AND CONSTRUCTION STANDARDS
FOR EXISTING INTERMEDIATE CARE AND SKILLED NURSING FACILITIES

Section	
300.3010	Applicability
300.3020	Codes and Standards
300.3030	Preparation of Drawings and Specifications
300.3040	Site
300.3050	Administration and Public Areas
300.3060	Nursing Unit
300.3070	Living, Dining, Activities Rooms
300.3080	Treatment and Personal Care
300.3090	Service Departments
300.3100	General Building Requirements
300.3110	Structural
300.3120	Mechanical Systems
300.3130	Plumbing Systems
300.3140	Electrical Requirements

SUBPART P: RESIDENT'S RIGHTS

Section	
300.3210	General
300.3220	Medical Care
300.3230	Restraints (Repealed)
300.3240	Abuse and Neglect
300.3250	Communication and Visitation
300.3260	Resident's Funds
300.3270	Residents' Advisory Council
300.3280	Contract With Facility

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

300.3290	Private Right of Action
300.3300	Transfer or Discharge
300.3310	Complaint Procedures
300.3320	Confidentiality
300.3330	Facility Implementation

SUBPART Q: SPECIALIZED LIVING FACILITIES FOR THE MENTALLY ILL

Section

300.3410	Application of Other Sections of These Minimum Standards (Repealed)
300.3420	Administrator (Repealed)
300.3430	Policies (Repealed)
300.3440	Personnel (Repealed)
300.3450	Resident Living Services Medical and Dental Care (Repealed)
300.3460	Resident Services Program (Repealed)
300.3470	Psychological Services (Repealed)
300.3480	Social Services (Repealed)
300.3490	Recreational and Activities Services (Repealed)
300.3500	Individual Treatment Plan (Repealed)
300.3510	Health Services (Repealed)
300.3520	Medical Services (Repealed)
300.3530	Dental Services (Repealed)
300.3540	Optometric Services (Repealed)
300.3550	Audiometric Services (Repealed)
300.3560	Podiatric Services (Repealed)
300.3570	Occupational Therapy Services (Repealed)
300.3580	Nursing and Personal Care (Repealed)
300.3590	Resident Care Services (Repealed)
300.3600	Record Keeping (Repealed)
300.3610	Food Service (Repealed)
300.3620	Furnishings, Equipment and Supplies (New and Existing Facilities) (Repealed)
300.3630	Design and Construction Standards (New and Existing Facilities) (Repealed)

SUBPART R: DAYCARE PROGRAMS

Section

300.3710	Day Care in Long-Term Care Facilities
----------	---------------------------------------

SUBPART S: PROVIDING SERVICES TO PERSONS WITH SERIOUS MENTAL ILLNESS

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

Section

- 300.4000 Applicability of Subpart S
- 300.4010 Comprehensive Assessments for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S
- 300.4020 Reassessments for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S
- 300.4030 Individualized Treatment Plan for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S
- 300.4040 General Requirements for Facilities Subject to Subpart S
- 300.4050 Psychiatric Rehabilitation Services for Facilities Subject to Subpart S
- 300.4060 Discharge Plans for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S
- 300.4070 Work Programs for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S
- 300.4080 Community-Based Rehabilitation Programs for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S
- 300.4090 Personnel for Providing Services to Persons with Serious Mental Illness for Facilities Subject to Subpart S

SUBPART T: FACILITIES PARTICIPATING IN ILLINOIS DEPARTMENT OF
HEALTHCARE AND FAMILY SERVICES'
DEMONSTRATION PROGRAM FOR PROVIDING
SERVICES TO PERSONS WITH SERIOUS MENTAL ILLNESS

Section

- 300.6000 Applicability of Subpart T (Repealed)
- 300.6005 Quality Assessment and Improvement for Facilities Subject to Subpart T (Repealed)
- 300.6010 Comprehensive Assessments for Residents of Facilities Subject to Subpart T (Repealed)
- 300.6020 Reassessments for Residents of Facilities Subject to Subpart T (Repealed)
- 300.6030 Individualized Treatment Plan for Residents of Facilities Subject to Subpart T (Repealed)
- 300.6040 General Requirements for Facilities Subject to Subpart T (Repealed)
- 300.6045 Serious Incidents and Accidents in Facilities Subject to Subpart T (Repealed)
- 300.6047 Medical Care Policies for Facilities Subject to Subpart T (Repealed)
- 300.6049 Emergency Use of Restraints for Facilities Subject to Subpart T (Repealed)
- 300.6050 Psychiatric Rehabilitation Services for Facilities Subject to Subpart T (Repealed)

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- 300.6060 Discharge Plans for Residents of Facilities Subject to Subpart T (Repealed)
 300.6070 Work Programs for Residents of Facilities Subject to Subpart T (Repealed)
 300.6080 Community-Based Rehabilitation Programs for Residents of Facilities Subject to Subpart T (Repealed)
 300.6090 Personnel for Providing Services to Residents of Facilities Subject to Subpart T (Repealed)
 300.6095 Training and Continuing Education for Facilities Subject to Subpart T (Repealed)

SUBPART U: ALZHEIMER'S SPECIAL CARE UNIT OR CENTER PROVIDING CARE TO PERSONS WITH ALZHEIMER'S DISEASE OR OTHER DEMENTIA

Section

- 300.7000 Applicability
 300.7010 Admission Criteria
 300.7020 Assessment and Care Planning
 300.7030 Ability-Centered Care
 300.7040 Activities
 300.7050 Staffing
 300.7060 Environment
 300.7070 Quality Assessment and Improvement
 300.7080 Variances to Enhance Residents' Quality of Life
- 300.APPENDIX A [Example of Staffing Calculations from Section 300.1230](#)~~Interpretation, Components, and Illustrative Services for Intermediate Care Facilities and Skilled Nursing Facilities (Repealed)~~
- 300.APPENDIX B [Crosswalk of Nursing Home Care Act Job Descriptions and Payroll Based Journal Job Titles](#)~~Classification of Distinct Part of a Facility for Different Levels of Service (Repealed)~~
- 300.APPENDIX C Federal Requirements Regarding Patients'/Residents' Rights (Repealed)
 300.APPENDIX D Forms for Day Care in Long-Term Care Facilities
 300.APPENDIX E Criteria for Activity Directors Who Need Only Minimal Consultation (Repealed)
 300.APPENDIX F Guidelines for the Use of Various Drugs
 300.APPENDIX G Facility Report
 300.TABLE A Sound Transmission Limitations in New Skilled Nursing and Intermediate Care Facilities
 300.TABLE B Pressure Relationships and Ventilation Rates of Certain Areas for New Intermediate Care Facilities and Skilled Nursing Facilities
 300.TABLE C Construction Types and Sprinkler Requirements for Existing Skilled

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

300.TABLE D Nursing Facilities/Intermediate Care Facilities
Heat Index Table/Apparent Temperature

AUTHORITY: Implementing and authorized by the Nursing Home Care Act [210 ILCS 45].

SOURCE: Emergency rules adopted at 4 Ill. Reg. 10, p. 1066, effective March 1, 1980, for a maximum of 150 days; adopted at 4 Ill. Reg. 30, p. 311, effective July 28, 1980; emergency amendment at 6 Ill. Reg. 3229, effective March 8, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 5981, effective May 3, 1982; amended at 6 Ill. Reg. 6454, effective May 14, 1982; amended at 6 Ill. Reg. 8198, effective June 29, 1982; amended at 6 Ill. Reg. 11631, effective September 14, 1982; amended at 6 Ill. Reg. 14550 and 14554, effective November 8, 1982; amended at 6 Ill. Reg. 14684, effective November 15, 1982; amended at 7 Ill. Reg. 285, effective December 22, 1982; amended at 7 Ill. Reg. 1972, effective January 28, 1983; amended at 7 Ill. Reg. 8579, effective July 11, 1983; amended at 7 Ill. Reg. 15831, effective November 10, 1983; amended at 7 Ill. Reg. 15864, effective November 15, 1983; amended at 7 Ill. Reg. 16992, effective December 14, 1983; amended at 8 Ill. Reg. 15599, 15603, and 15606, effective August 15, 1984; amended at 8 Ill. Reg. 15947, effective August 17, 1984; amended at 8 Ill. Reg. 16999, effective September 5, 1984; codified at 8 Ill. Reg. 19766; amended at 8 Ill. Reg. 24186, effective November 29, 1984; amended at 8 Ill. Reg. 24668, effective December 7, 1984; amended at 8 Ill. Reg. 25102, effective December 14, 1984; amended at 9 Ill. Reg. 132, effective December 26, 1984; amended at 9 Ill. Reg. 4087, effective March 15, 1985; amended at 9 Ill. Reg. 11049, effective July 1, 1985; amended at 11 Ill. Reg. 16927, effective October 1, 1987; amended at 12 Ill. Reg. 1052, effective December 24, 1987; amended at 12 Ill. Reg. 16811, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18477, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 4684, effective March 24, 1989; amended at 13 Ill. Reg. 5134, effective April 1, 1989; amended at 13 Ill. Reg. 20089, effective December 1, 1989; amended at 14 Ill. Reg. 14950, effective October 1, 1990; amended at 15 Ill. Reg. 554, effective January 1, 1991; amended at 16 Ill. Reg. 681, effective January 1, 1992; amended at 16 Ill. Reg. 5977, effective March 27, 1992; amended at 16 Ill. Reg. 17089, effective November 3, 1992; emergency amendment at 17 Ill. Reg. 2420, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 8026, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; amended at 17 Ill. Reg. 15106, effective September 3, 1993; amended at 17 Ill. Reg. 16194, effective January 1, 1994; amended at 17 Ill. Reg. 19279, effective October 26, 1993; amended at 17 Ill. Reg. 19604, effective November 4, 1993; amended at 17 Ill. Reg. 21058, effective November 20, 1993; amended at 18 Ill. Reg. 1491, effective January 14, 1994; amended at 18 Ill. Reg. 15868, effective October 15, 1994; amended at 19 Ill. Reg. 11600, effective July 29, 1995; emergency amendment at 20 Ill. Reg. 567, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996;

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

amended at 20 Ill. Reg. 10142, effective July 15, 1996; amended at 20 Ill. Reg. 12208, effective September 10, 1996; amended at 21 Ill. Reg. 15000, effective November 15, 1997; amended at 22 Ill. Reg. 4094, effective February 13, 1998; amended at 22 Ill. Reg. 7218, effective April 15, 1998; amended at 22 Ill. Reg. 16609, effective September 18, 1998; amended at 23 Ill. Reg. 1103, effective January 15, 1999; amended at 23 Ill. Reg. 8106, effective July 15, 1999; amended at 24 Ill. Reg. 17330, effective November 1, 2000; amended at 25 Ill. Reg. 4911, effective April 1, 2001; amended at 26 Ill. Reg. 3113, effective February 15, 2002; amended at 26 Ill. Reg. 4846, effective April 1, 2002; amended at 26 Ill. Reg. 10523, effective July 1, 2002; emergency amendment at 27 Ill. Reg. 2181, effective February 1, 2003, for a maximum of 150 days; emergency expired June 30, 2003; emergency amendment at 27 Ill. Reg. 5452, effective March 25, 2003, for a maximum of 150 days; emergency expired August 21, 2003; amended at 27 Ill. Reg. 5862, effective April 1, 2003; emergency amendment at 27 Ill. Reg. 14204, effective August 15, 2003, for a maximum of 150 days; emergency expired January 11, 2004; amended at 27 Ill. Reg. 15855, effective September 25, 2003; amended at 27 Ill. Reg. 18105, effective November 15, 2003; expedited correction at 28 Ill. Reg. 3528, effective November 15, 2003; amended at 28 Ill. Reg. 11180, effective July 22, 2004; amended at 28 Ill. Reg. 14623, effective October 20, 2004; amended at 29 Ill. Reg. 876, effective December 22, 2004; emergency amendment at 29 Ill. Reg. 11824, effective July 12, 2005, for a maximum of 150 days; emergency rule modified in response to JCAR Recommendation at 29 Ill. Reg. 15101, effective September 23, 2005, for the remainder of the maximum 150 days; emergency amendment expired December 8, 2005; amended at 29 Ill. Reg. 12852, effective August 2, 2005; amended at 30 Ill. Reg. 1425, effective January 23, 2006; amended at 30 Ill. Reg. 5213, effective March 2, 2006; amended at 31 Ill. Reg. 6044, effective April 3, 2007; amended at 31 Ill. Reg. 8813, effective June 6, 2007; amended at 33 Ill. Reg. 9356, effective June 17, 2009; amended at 34 Ill. Reg. 19182, effective November 23, 2010; amended at 35 Ill. Reg. 3378, effective February 14, 2011; amended at 35 Ill. Reg. 11419, effective June 29, 2011; expedited correction at 35 Ill. Reg. 17468, effective June 29, 2011; amended at 36 Ill. Reg. 14090, effective August 30, 2012; amended at 37 Ill. Reg. 2298, effective February 4, 2013; amended at 37 Ill. Reg. 4954, effective March 29, 2013; amended at 38 Ill. Reg. 22851, effective November 21, 2014; amended at 39 Ill. Reg. 5456, effective March 25, 2015; amended at 41 Ill. Reg. 14811, effective November 15, 2017; amended at 43 Ill. Reg. 3536, effective February 28, 2019; amended at 44 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 300.230 Information to Be Made Available to the Public By the Licensee

- a) *Every facility shall conspicuously post ~~for~~ display in an area of its offices accessible to residents, employees, and visitors the following:*

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- 1) *Its current license;*
 - 2) *A description, provided by the Department of complaint procedures established under the Act and the name, address, and telephone number of a person authorized by the Department to receive complaints;*
 - 3) *A copy of any order pertaining to the facility issued by the Department or a court; and*
 - 4) *A list of the material available for public inspection under subsection (b) of this Section and Section 3-210 of the Act. (Section 3-209 of the Act)*
- b) *A facility shall retain the following for public inspection:*
- 1) *A complete copy of every inspection report of the facility received from the Department during the past five years;*
 - 2) *A copy of every order pertaining to the facility issued by the Department or a court during the past five years;*
 - 3) *A description of the services provided by the facility and the rates charged for those services and items for which a resident may be separately charged;*
 - 4) *A copy of the statement of ownership~~Statement of Ownership~~ required by Section 3-207 of the Act;*
 - 5) *A record of personnel employed or retained by the facility who are licensed, certified or registered by the Department of Financial and Professional Regulation; ~~and~~*
 - 6) *A complete copy of the most recent inspection report of the facility received from the Department; and. ~~(Section 3-210 of the Act)~~*
 - 7) *A copy of the current Consumer Choice Information Report required by Section 2-214 of the Act. (Section 3-210 of the Act)*
- c) *A facility that has received a notice of violation for a violation of the minimum*

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

staffing requirements under Section 3-202.05 of the Act and Section 300.1230 of this Part shall display, during the period of time the facility is out of compliance, a notice stating in Calibri (body) font and 26-point type in black letters on an 8.5 by 11 inch white paper the following:

"Notice Dated:

This facility does not currently meet the minimum staffing ratios required by law. Posted at the direction of the Illinois Department of Public Health."

- 1) The notice shall be posted, at a minimum, at all publicly used exterior entryways into the facility, inside the main entrance lobby, and next to any registration desk for easily accessible viewing. The notice shall also be posted on the main page of the facility's website.
- 2) Pursuant to Section 300.1234(a)(5), the Department shall have the discretion to determine the gravity of any violation and, taking into account mitigating and aggravating circumstances and facts, may reduce the requirement of, and amount of time for, posting the notice. (Section 3-209 of the Act)

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

SUBPART C: POLICIES

Section 300.650 Personnel Policies

- a) Each facility shall develop and maintain written personnel policies that are followed in the operation of the facility. These policies shall include, at a minimum, each of the following requirements ~~of this Section~~.
- b) Employee Records
 - 1) Employment application forms shall be completed for each employee and kept on file in the facility. Completed forms shall be available to Department personnel for review.
 - 2) Individual personnel files for each employee shall contain date of birth; home address; educational background; experience, including types and places of employment; date of employment and position employed to fill

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

in this facility; and (if no longer employed in this facility) last date employed and reasons for leaving.

- 3) Individual personnel files for each employee shall also contain health records, including the initial health evaluation and the results of the tuberculin skin test required under Section 300.655, and any other pertinent health records.
- 4) Individual personnel records for each employee shall also contain records of evaluation of performance.
- c) Prior to employing any individual in a position that requires a State license, the facility shall contact the Illinois Department of [Financial and Professional Regulation](#) to verify that the individual's license is active. A copy of the license shall be placed in the individual's personnel file.
- d) The facility shall check the status of all applicants with the Health Care Worker Registry prior to hiring.
- e) All personnel shall have either training or experience, or both, in the job assigned to them.
- f) Orientation and In-Service Training
 - 1) All new employees, including student interns, shall complete an orientation program covering, at a minimum, the following: general facility and resident orientation; job orientation, emphasizing allowable duties of the new employee; resident safety, including fire and disaster, emergency care and basic resident safety; and understanding and communicating with the type of residents being cared for in the facility. In addition, all new direct care staff, including student interns, shall complete an orientation program covering the facility's policies and procedures for resident care services before being assigned to provide direct care to residents. This orientation program shall include information on the prevention and treatment of decubitus ulcers and the importance of nutrition in general health care.
 - 2) All employees, except student interns shall attend in-service training programs pertaining to their assigned duties at least annually. These in-

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

service training programs shall include the facility's policies, skill training and ongoing education to enable all personnel to perform their duties effectively. The in-service training sessions regarding personal care, nursing and restorative services shall include information on the prevention and treatment of decubitus ulcers. In-service training concerning dietary services shall include information on the effects of diet in treatment of various diseases or medical conditions and the importance of laboratory test results in determining therapeutic diets. Written records of program content for each session and of personnel attending each session shall be kept.

3) *All facilities shall provide training and education on the requirements of Section 2-106.1 of the Act and Section 300.686 of this Part to all personnel involved in providing care to residents, and train and educate those personnel on the methods and procedures to effectively implement the facility's policies. Training and education provided under Section 2-106.1 of the Act and Section 300.686 shall be documented in each personnel file. (Section 2-106.1(b-15) of the Act)*

- g) Employees shall be assigned duties that are directly related to their functions, as identified in their job descriptions. Exceptions may be made in emergencies.
- h) Personnel policies shall include a plan to provide personnel coverage for regular staff when they are absent.
- i) ~~Every facility shall have a current, dated weekly employee time schedule posted where employees may refer to it. This schedule shall contain the employee's name, job title, job duty (identifying the duty or duties listed in Section 300.1230(f)(1) through (10), if applicable), shift assignment, hours of work, and days off. If an employee works in two different job duties during the same week, specifically including those job duties listed in Section 300.1230(f), if applicable, the facility shall separately state the hours of work for each job duty. The schedule shall be kept on file in the facility for one year after the week for which the schedule was used.~~
- j) ~~Time spent in scheduled breaks and scheduled in-service training when staff are not providing direct care shall be documented.~~

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

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

Section 300.686 Unnecessary, Psychotropic, and Antipsychotic Medications ~~Drugs~~

- a) For the purposes of this Section, the following definitions shall apply:
- 1) "Adverse consequence" – unwanted, uncomfortable, or dangerous effects that a medication may have, such as impairment or decline in an individual's mental or physical condition or functional or psychosocial status. It may include, but is not limited to, various types of adverse medication reactions and interactions (e.g., medication-medication, medication-food, and medication-disease).
 - 2) "Antipsychotic medication" – a medication that is used to treat symptoms of psychosis such as delusions, hearing voices, hallucinations, paranoia, or confused thoughts. Antipsychotic medications are used in the treatment of schizophrenia, severe depression, and severe anxiety. Older antipsychotic medications tend to be called typical antipsychotics. Those developed more recently are called atypical antipsychotics.
 - 3) "Dose" – the total amount/strength/concentration of a medication given at one time or over a period of time. The individual dose is the amount/strength/concentration received at each administration. The amount received over a 24-hour period may be referred to as the daily dose.
 - 4) "Duplicative therapy" – multiple medications of the same pharmacological class or category or any medication therapy that substantially duplicates a particular effect of another medication that the individual is taking.
 - 5) "Emergency" – has the same meaning as in Section 1-112 of the Act and Section 300.330 of this Part.
 - 6) "Excessive dose" – the total amount of any medication (including duplicative therapy) given at one time or over a period of time that is greater than the amount recommended by the manufacturer's label, package or insert, and the accepted standards of practice for a resident's age and condition.
 - 7) "Gradual dose reduction" – the stepwise tapering of a dose to determine if

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

symptoms, conditions or risks can be managed by a lower dose or if the dose or medication can be discontinued.

- 8) "Informed consent" – documented permission for specific medications, given freely, without coercion or deceit, by a capable resident, or by a resident's surrogate decision maker, after the resident, or the resident's surrogate decision maker, has been fully informed of, and had an opportunity to consider, the nature of the medications, the likely benefits and most common risks to the resident of receiving the medications, any other likely and most common consequences of receiving or not receiving the medications, and possible alternatives to the proposed medications.
- 9) "Psychotropic medication" – medication that is used for or listed as used for psychotropic, antidepressant, antimanic or antianxiety behavior modification or behavior management purposes in the Prescribers Digital Reference database, the Lexicomp-online database, or the American Society of Health-System Pharmacists database. Psychotropic medication also includes any medication listed in 42 CFR 483.45(c)(3).
- 10) "Surrogate decision maker" – an individual representing the resident's interests in regard to consent to receive psychotropic medications, as permitted by Section 2-106.1(b) of the Act and this Section. (Section 2-106.1(b) of the Act)
- ba) A resident shall not be given unnecessary medications~~drugs~~ in accordance with Section 300.Appendix F. In addition, an unnecessary medication~~drug~~ is any drug used:
- 1) In~~in~~ an excessive dose, including in duplicative therapy;
 - 2) For~~for~~ excessive duration;
 - 3) Without~~without~~ adequate monitoring;
 - 4) Without~~without~~ adequate indications for its use;~~or~~
 - 5) In~~in~~ the presence of adverse consequences that indicate the medications~~drugs~~ should be reduced or discontinued. (Section 2-106.1(a) of the Act); or

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- 6) Any combination of the circumstances stated in subsections (b)(1) through (5).
- c) Residents shall not be given antipsychotic medications unless antipsychotic medication therapy is ordered by a physician or an authorized prescribing professional, as documented in the resident's comprehensive assessment, to treat a specific symptom or suspected condition as diagnosed and documented in the clinical record or to rule out the possibility of one of the conditions in accordance with Appendix F.
- d) Residents who use antipsychotic medications shall receive gradual dose reductions and behavior interventions, unless clinically contraindicated, in an effort to discontinue these medications in accordance with Appendix F. In compliance with subsection 2-106.1(b) of the Act and this Section, the facility shall obtain informed consent for each dose reduction.
- e~~b~~) ~~Except in the case of an emergency, psychotropic~~ ~~prescribed or administered~~ ~~without the informed consent of the resident or; the resident's surrogate decision maker~~ ~~guardian, or other authorized representative.~~ ~~(Section 2-106.1(b) of the Act)~~ ~~Additional informed consent is not required for reductions in dosage level or deletion of a specific medication, pursuant to subsection (g)(9).~~ ~~Informed consent is required~~ ~~The informed consent may provide~~ for a medication administration program of sequentially increased doses or a combination of medications to establish the lowest effective dose that will achieve the desired therapeutic outcome, pursuant to subsection (f)(9). The most common side ~~Side~~ effects of the medications shall be described. In an emergency, a facility shall:
- 1) Document the alleged emergency in detail, including the facts surrounding the medication's need; and
 - 2) Present this documentation to the resident and the resident's representative or other surrogate decision maker. (Section 2-106.1(b) of the Act)
- e) Residents shall not be given antipsychotic drugs unless antipsychotic drug therapy is necessary, as documented in the resident's comprehensive assessment, to treat a specific or suspected condition as diagnosed and documented in the clinical

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

~~record or to rule out the possibility of one of the conditions in accordance with Section 300. Appendix F.~~

- d) ~~Residents who use antipsychotic drugs shall receive gradual dose reductions and behavior interventions, unless clinically contraindicated, in an effort to discontinue these drugs in accordance with Section 300. Appendix F.~~
- e) ~~For the purposes of this Section:~~
- 1) ~~"Duplicative drug therapy" means any drug therapy that duplicates a particular drug effect on the resident without any demonstrative therapeutic benefit. For example, any two or more drugs, whether from the same drug category or not, that have a sedative effect.~~
 - 2) ~~"Psychotropic medication" means medication that is used for or listed as used for antipsychotic, antidepressant, antimanic or antianxiety behavior modification or behavior management purposes in the latest edition of the AMA Drug Evaluations (Drug Evaluation Subscription, American Medical Association, Vols. I-III, Summer 1993), United States Pharmacopoeia Dispensing Information Volume I (USP DI) (United States Pharmacopoeial Convention, Inc., 15th Edition, 1995), American Hospital Formulary Service Drug Information 1995 (American Society of Health Systems Pharmacists, 1995), or the Physician's Desk Reference (Medical Economics Data Production Company, 49th Edition, 1995) or the United States Food and Drug Administration approved package insert for the psychotropic medication. (Section 2-106.1(b) of the Act)~~
 - 3) ~~"Antipsychotic drug" means a neuroleptic drug that is helpful in the treatment of psychosis and has a capacity to ameliorate thought disorders.~~
- f) Protocol for Securing Informed Consent for Psychotropic Medication
- 1) Except in the case of an emergency as described in subsection (e), no resident shall be administered psychotropic medication prior to a discussion between the resident or the resident's surrogate decision maker, or both, and the resident's physician or a physician the resident was referred to, a registered pharmacist who is not a dispensing pharmacist for the facility where the resident lives, or a licensed nurse about the most common possible risks and benefits of a recommended

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

medication without the use of standardized consent forms designated by the Department. (Section 2-106.1(b) of the Act)

- 2) Prior to initiating any detailed discussion designed to secure informed consent, a professional shall inform the resident or the resident's surrogate decision maker that the resident's physician has prescribed a psychotropic medication for the resident, and that informed consent is required from the resident or the resident's surrogate decision maker before the resident may be given the medication.
- 3) The discussion shall include information about:
 - A) The name of the medication;
 - B) The condition or symptoms that the medication is intended to treat, and how the medication is expected to treat those symptoms;
 - C) How the medication is intended to affect those symptoms;
 - D) Other common effects or side effects of the medication, and any reasons (e.g., age, health status, other medications) that the resident is more or less likely to experience side effects;
 - E) Dosage information, including how much medication would be administered, how often, and the method of administration (e.g., orally or by injection; with, before, or after food);
 - F) Any tests and related procedures that are required for the safe and effective administration of the medication;
 - G) Any food or activities the resident should avoid while taking the medication;
 - H) Any possible alternatives to taking the medication that could accomplish the same purpose; and
 - D) Any possible consequences to the resident of not taking the medication.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- 4) Pursuant to Section 2-105 of the Act, the discussion designed to secure informed consent shall be private, between the resident or the resident's surrogate decision maker and the resident's physician, or a physician the resident was referred to, or a registered pharmacist who is not a dispensing pharmacist for the facility where the resident lives, or an advanced practice nurse.
- 5) In addition to the oral discussion, the resident or his or her surrogate decision maker shall be given the information in subsection (f)(3) in writing. The information shall be in plain language, understandable to the resident or his or her surrogate decision maker. If the written information is in a language not understood by the resident or his or her surrogate decision maker, the facility shall provide a translator capable of communicating with the resident or his or her surrogate decision maker and the authorized prescribing professional conducting the discussion. The authorized prescribing professional shall guide the resident through the written information. The written information shall include a place for the resident or his or her surrogate decision maker to give, or to refuse to give, informed consent. The written information shall be placed in the resident's record. Informed consent is not secured until the resident or surrogate decision maker has given written informed consent.
- 6) Informed consent shall be sought first from a resident, then from a surrogate decision maker, in the following order or priority:
 - A) The resident's guardian of the person if one has been named by a court of competent jurisdiction.
 - B) In the absence of a court-ordered guardian, informed consent shall be sought from a health care agent under the Illinois Power of Attorney Act who has authority to give consent.
 - C) If neither a court-ordered guardian of the person, nor a health care agent under the Power of Attorney Act, is available, and the attending physician determines that the resident lacks capacity to make decisions, informed consent shall be sought from the resident's attorney-in-fact designated under the Mental Health Treatment Preference Declaration Act [755 ILCS 43], if applicable, or the resident's representative. (Section 2-106.1(b) of

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

the Act)

- 7) Regardless of the availability of a surrogate decision maker, the resident may be notified and present at any discussion required by this Section. Upon request, the resident shall be given, at a minimum, written information about the medication and an oral explanation of common side effects of the medication to facilitate the resident in identifying the medication and in communicating the existence of side effects to the direct care staff.
- 8) The facility shall inform *the resident, surrogate decision maker, or both of the existence of a copy of:*
- A) *the resident's care plan;*
 - B) *the facility policies and procedures adopted in compliance with Section 2-106.1(b-15) of the Act, and this Section; and*
 - C) *a notification that the most recent of the resident's care plans and the facility's policies are available to the resident or surrogate decision maker upon request.*
- 9) The maximum possible period for informed consent shall be until:
- A) *A change in the prescription occurs, either as to type of psychotropic medication or dosage;*
 - B) *A resident's care plan changes in a way that affects the prescription or dosage of the psychotropic medication. (Section 2-106.1(b) of the Act); or*
 - C) *One year, unless there is a change in the prescription or in the resident's care plan as provided in subsections (f)(9)(A) and (B).*
- 10) A resident or his or her surrogate decision maker shall not be asked to consent to the administration of a new psychotropic medication in a dosage or frequency that exceeds the maximum recommended daily dosage as found in the Prescribers Digital Reference database, the Lexicomp-online database, or the American Society of Health-System

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

Pharmacists database unless the reason for exceeding the recommended daily dosage is explained to the resident or his or her surrogate decision maker by a licensed medical professional, and the reason for exceeding the recommended daily dosage is justified by the prescribing prescriber in the clinical record. The dosage and frequency shall be reviewed and re-justified by the licensed prescriber on a weekly basis and reviewed by a consulting pharmacist. The justification for exceeding the recommended daily dosage shall be recorded in the resident's record and shall be approved within seven calendar days after obtaining informed consent, in writing, by the medical director of the facility.

- 11) Pursuant to Section 2-104(c) of the Act, the resident or the resident's surrogate decision maker shall be informed, at the time of the discussion required by subsection (f)(1), that his or her informed consent may be withdrawn at any time, and that, even with informed consent, the resident may refuse to take the medication.
- 12) The facility shall obtain informed consent using forms provided by the Department on its official website, or on forms approved by the Department, pursuant to Section 2-106.1(b) of the Act. The facility shall document on the consent form whether the resident is capable of giving informed consent for medication therapy, including for receiving psychotropic medications. If the resident is not capable of giving informed consent, the identity of the resident's surrogate decision maker shall be placed in the resident's record.
- 13) No facility shall deny continued residency to a person on the basis of the person's or resident's, or the person's or resident's surrogate decision maker's, refusal of the administration of psychotropic medication, unless the facility can demonstrate that the resident's refusal would place the health and safety of the resident, the facility staff, other residents, or visitors at risk. A facility that alleges that the resident's refusal to consent to the administration of psychotropic medication will place the health and safety of the resident, the facility staff, other residents, or visitors at risk shall:
 - A) Document the alleged risk in detail, along with a description of all nonpharmacological or alternative care options attempted and why they were unsuccessful;

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- B) Present this documentation to the resident or the resident's surrogate decision maker, to the Department, and to the Office of the State Long Term Care Ombudsman; and
- C) Inform the resident or his or her surrogate decision maker of his or her right to appeal an involuntary transfer or discharge to the Department as provided in the Act and this Part. (Section 2-106.1(b-10) of the Act)
- g) Within 100 days after January 1, 2021, all facilities shall implement written policies and procedures for compliance with Section 2-106.1 of the Act and this Section. A facility's failure to make available to the Department the documentation required under this subsection is sufficient to demonstrate its intent to not comply with Section 2-106.1 of the Act and this Section and shall be grounds for review by the Department. (Section 2-106.1(b-15) of the Act)
- h) Upon the receipt of a report of any violation of Section 2-106.1 of the Act and this Section, the Department will investigate and, upon finding sufficient evidence of a violation of Section 2-106.1 of the Act and this Section, may proceed with disciplinary action against the licensee of the facility. In any administrative disciplinary action under this subsection, the Department will have the discretion to determine the gravity of the violation and, taking into account mitigating and aggravating circumstances and facts, may adjust the disciplinary action accordingly. (Section 2-106.1(b-20) of the Act)
- i) A violation of informed consent that, for an individual resident, lasts for seven days or more under this Section is, at a minimum, a Type "B" violation. A second violation of informed consent within a year from a previous violation in the same facility regardless of the duration of the second violation is, at a minimum, a Type "B" violation. (Section 2-106.1(b-25) of the Act)
- j) Any violation of Section 2-106.1 of the Act and this Section by a facility may be enforced by an action brought by the Department in the name of the People of Illinois for injunctive relief, civil penalties, or both injunctive relief and civil penalties. The Department may initiate the action upon its own complaint or the complaint of any other interested party. (Section 2-106.1(b-30) of the Act)
- k) Any resident who has been administered a psychotropic medication in violation of

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

Section 2-106.1 of the Act and this Section may bring an action for injunctive relief, civil damages, and costs and attorney's fees against any facility responsible for the violation. (Section 2-106.1(b-35) of the Act)

- l) An action under this Section shall be filed within two years after either the date of discovery of the violation that gave rise to the claim or the last date of an instance of a noncompliant administration of psychotropic medication to the resident, whichever is later. (Section 2-106.1(b-40) of the Act)
- m) A facility subject to action under Section 2-106.1 of the Act and this Section shall be liable for damages of up to \$500 for each day, after discovery of a violation, that the facility violates the requirements of Section 2-106.1 of the Act and this Section. (Section 2-106.1(b-45) of the Act)
- n) The rights provided for in Section 2-106.1 of the Act and this Section are cumulative to existing resident rights. No part of this Section shall be interpreted as abridging, abrogating, or otherwise diminishing existing resident rights or causes of action at law or equity. (Section 2-106.1(b-55) of the Act)
- o) In addition to the penalties described in this Section and any other penalty prescribed by law, a facility that is found to have violated Section 2-106.1 of the Act and this Section, or the federal certification requirement that informed consent be obtained before administering a psychotropic medication, shall thereafter be required to obtain the signatures of two licensed health care professionals on every form purporting to give informed consent for the administration of a psychotropic medication, certifying the personal knowledge of each health care professional that the consent was obtained in compliance with the requirements of Section 2-106.1 of the Act and this Section. (Section 2-106.1(b) of the Act)

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

SUBPART F: NURSING AND PERSONAL CARE

Section 300.1230 Direct Care Staffing

- a) For purposes of the minimum staffing ratios in Section 3-202.05 of the Act and this Section, all residents shall be classified as requiring either skilled care or intermediate care. (Section 3-202.05(b-5) of the Act)

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- ba) For the purposes of this Section, the following definitions shall apply:
- 1) "Direct care" – is the provision of nursing care or personal care as defined in Section 300.330, therapies, and care provided by staff listed in subsection (i). Direct care staff are those individuals who, through interpersonal contact with residents or resident care management, provide care and services to allow residents to attain or maintain the highest practicable physical, mental and psychosocial well-being. Direct care staff does not include individuals whose primary duty is maintaining the physical environment of the facility (e.g., housekeeping).
 - 2) "Skilled care" – skilled nursing care, continuous skilled nursing observations, restorative nursing, and other services under professional direction with frequent medical supervision. (Section 3-202.05(b-5) of the Act) Skilled nursing services are those services, furnished pursuant to physician orders, that require the skills of qualified technical or professional health professionals and shall be provided directly by or under the general supervision of skilled personnel to ensure the safety of the patient and to achieve the medically desired result. Skilled nursing services are those services required by residents whose applicable Minimum Data Set (MDS) assessment indicates classification in a patient case mix group that requires at least 228 minutes of direct care per day, based upon staffing minutes in the STRIVE study analysis. Services that are characteristic of skilled care include, but are not limited to:
 - A) Intravenous or intramuscular injections and intravenous feeding;
 - B) Enteral feeding that comprises at least 26% of daily calorie requirements and provides at least 501 milliliters of fluid per day;
 - C) Naso-pharyngeal and tracheotomy aspiration;
 - D) Insertion, sterile irrigation, and replacement of suprapubic catheters;
 - E) Application of dressings involving prescription medications and aseptic techniques;

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- F) Treatment of decubitus ulcers, of a severity rated at stage 3 or worse, or a widespread skin disorder;
 - G) Heat treatments that have been specifically ordered by a physician as part of active treatment and that require observation by skilled nursing personnel to evaluate the resident's progress adequately;
 - H) Rehabilitation nursing procedures, including the related teaching and adaptive aspects of nursing, that are part of active treatment and require the presence of skilled nursing personnel; e.g., the institution and supervision of bowel and bladder training programs;
 - I) Initial phases of a regimen involving administration of medical gases such as bronchodilator therapy; and
 - J) Care of a colostomy during the early post-operative period in the presence of associated complications. The need for skilled nursing care during this period shall be justified and documented in the resident's medical record. ~~Skilled care is skilled nursing care, continuous skilled nursing observations, restorative nursing, and other services under professional direction with frequent medical supervision.~~
- 3) "Intermediate care" – basic nursing care and other restorative services under periodic medical direction. (Section 3-202.05(b-5) of the Act) Services not classified as skilled care will be classified as intermediate care. Services that are characteristic of intermediate care include, but are not limited to:
- A) Administration of routine oral medications, eye drops, and ointments;
 - B) General maintenance care of colostomy and ileostomy;
 - C) Routine services to maintain satisfactory functioning of indwelling bladder catheters, including emptying and cleaning containers and clamping the tube;
 - D) Changes of dressings for uninfected post-operative or chronic

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

conditions:

- E) Prophylactic and palliative skin care, including bathing and application of creams, or treatment of minor skin problems;
 - F) Routine care of the incontinent resident, including use of diapers and protective sheets;
 - G) General maintenance care in connection with a plaster cast (skilled supervision or observation may be required when the resident has a pre-existing skin or circulatory condition or requires adjustment of traction);
 - H) Routine care in connection with braces or similar devices;
 - I) Use of heat as a palliative and comfort measure, such as a whirlpool or steam pack;
 - J) Routine administration of medical gases after a regimen of therapy has been established; for example, administration of medical gases after the resident has been taught how to institute therapy;
 - K) Assistance in dressing, eating and going to the toilet;
 - L) Periodic turning and positioning in bed; and
 - M) General supervision of services that have been taught to the resident and the performance of repetitious exercises that do not require skilled care personnel for their performance.~~Intermediate care is basic nursing care and other restorative services under periodic medical direction.~~
- c) *A minimum of 25% of nursing and personal care time shall be provided by licensed nurses, with at least 10% of nursing and personal care time provided by registered nurses. Registered nurses and licensed practical nurses employed by a facility in excess of these requirements may be used to satisfy the remaining 75% of the nursing and personal care time requirements. (Section 3-202.05(e) of the Act)*

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- d) The minimum staffing ratios shall be 3.8 hours of nursing and personal care each day for a resident needing skilled care and 2.5 hours of nursing and personal care each day for a resident needing intermediate care. (Section 3-202.05(d) of the Act) For the purpose of this subsection, "nursing care" and "personal care" mean direct care provided by staff listed in subsection (i).
- e) The facility shall schedule nursing personnel so that the nursing needs of all residents are met.
- f) The number of staff who provide direct care who are needed at any time in the facility shall be based on the needs of the residents, and shall be determined by figuring the number of hours of direct care each resident needs ~~peron each shift of the day.~~
- e) ~~If residents participate in regularly scheduled therapeutic programs outside the facility, such as school or sheltered workshops, the minimum hours per day of direct care staffing in the facility are reduced for the hours the residents are not in the facility.~~
- gd) Each facility shall provide minimum direct care staff by complying with subsection (f) and meeting the minimum direct care staffing ratios set forth in this Section.:
- 1) ~~Determining the amount of direct care staffing needed to meet the needs of its residents; and~~
 - 2) ~~Meeting the minimum direct care staffing ratios set forth in this Section.~~
- he) The direct care staffing calculations requirements in this Section shall include only apply to the number of staffpersons actually on duty on site and not to the number of persons scheduled to be on duty. The following shall not be included in direct care staffing calculations:
- 1) Meal and break times (paid or unpaid);
 - 2) Scheduled training; and
 - 3) When a facility is utilized as a clinical site for nurse aide training, if the facility is not paying the employee for the services provided.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- ~~i~~f) For the purpose of computing staff to resident ratios, direct care staff shall include the following: ~~as long as the person is assigned to duties consistent with the identified job title and documented in employee time schedules as required by Section 300.650(i):~~
- 1) ~~Registered professional~~registered nurses;
 - 2) ~~Licensed~~licensed practical nurses;
 - 3) ~~Certified~~certified nurse assistants;
 - 4) ~~Psychiatric~~psychiatric services rehabilitation aides ~~(see Section 300.4090);~~
 - 5) ~~Rehabilitation~~rehabilitation and therapy aides;
 - 6) ~~Psychiatric~~psychiatric services rehabilitation coordinators ~~(see Section 300.4090);~~
 - 7) ~~Assistant~~assistant directors of nursing;
 - 8) 50% of the Director of Nurses' time;
 - 9) 30% of the Social Services Directors' time (Section 3-202.05 of the Act); and
 - 10) ~~Licensed~~licensed physical, occupational, speech and respiratory therapists.
- ~~j~~g) Facilities subject to Subpart S may utilize specialized clinical staff, as defined in Section 300.4090(c) and (f), to count towards the staffing ratios. (Section 3-202.05(a) of the Act)
- ~~h~~) Care Determinations
~~When differences of opinion occur between facility staff and Department surveyors regarding the care an individual resident may require, the surveyor shall determine whether the resident is receiving appropriate care. If the resident is receiving appropriate care, the surveyor will accept the facility's determination of the number of direct care hours the facility shall provide.~~

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- i) ~~The facility shall schedule nursing personnel so that the nursing needs of all residents are met.~~
- j) ~~Skilled Nursing and Intermediate Care~~
~~For the purpose of this subsection, "nursing care" and "personal care" mean direct care provided by staff listed in subsection (f).~~
- 1) ~~Effective July 1, 2010, for each resident needing skilled care, a minimum staffing ratio of 2.5 hours of nursing and personal care each day must be provided; for each resident needing intermediate care, 1.7 hours of nursing and personal care each day must be provided.~~
- 2) ~~Effective January 1, 2011, the minimum staffing ratios shall be increased to 2.7 hours of nursing and personal care each day for a resident needing skilled care and 1.9 hours of nursing and personal care each day for a resident needing intermediate care.~~
- 3) ~~Effective January 1, 2012, the minimum staffing ratios shall be increased to 3.0 hours of nursing and personal care each day for a resident needing skilled care and 2.1 hours of nursing and personal care each day for a resident needing intermediate care.~~
- 4) ~~Effective January 1, 2013, the minimum staffing ratios shall be increased to 3.4 hours of nursing and personal care each day for a resident needing skilled care and 2.3 hours of nursing and personal care each day for a resident needing intermediate care.~~
- 5) ~~Effective January 1, 2014, the minimum staffing ratios shall be increased to 3.8 hours of nursing and personal care each day for a resident needing skilled care and 2.5 hours of nursing and personal care each day for a resident needing intermediate care. (Section 3-202.05(d) of the Act)~~
- k) ~~Effective September 12, 2012, a minimum of 25% of nursing and personal care time shall be provided by licensed nurses, with at least 10% of nursing and personal care time provided by registered nurses. Registered nurses and licensed practical nurses employed by a facility in excess of these requirements may be used to satisfy the remaining 75% of the nursing and personal care time requirements. (Section 3-202.05(e) of the Act)~~

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- k) To determine the direct care staffing required to meet daily minimum staffing ratios for skilled care and intermediate care, the following staffing formula shall be used:
- 1) Determine the number of residents requiring skilled care and the number of residents requiring intermediate care.
 - 2) Calculate the total daily required nursing and personal care hours for each level of care:
 - A) The number of residents requiring skilled care shall be multiplied by the required number of hours (3.8) per resident.
 - B) The number of residents requiring intermediate care shall be multiplied by the required number of hours (2.5) per resident.
 - 3) Add the total number of hours of direct care required for each level of care to determine the total number of hours required to provide direct care for all residents in the facility.
 - 4) Multiplying the total minimum hours of direct care hours required for all residents, determined under subsection (k)(3), by 25% results in the minimum amount of licensed nurse hours that shall be provided during a 24-hour period.
 - 5) Multiplying the total minimum hours of direct care time required for all residents, determined under subsection (k)(3), by 10% results in the minimum amount of registered nurse hours that shall be provided during a 24-hour period.
 - 6) The remaining 75% of the minimum required direct care hours may also be fulfilled by other staff identified in subsection (i) as long as it can be documented that those staff provide direct care, and that nursing care and nursing delegation is in accordance with the Nurse Practice Act.
 - 7) The amount of time determined in subsections (j)(4), (5) and (6) is expressed in hours.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- 8) See Appendix A for an example of staffing calculations.
- l) A written work schedule shall be posted at least 10 days prior to the first day on the schedule. The work schedule shall be posted in a location conspicuous and accessible only to employees.
- 1) This work schedule shall contain the employee's name, job title, (identifying the duty or duties listed in subsection (i), if applicable), shift assignment, hours of work, and days off.
- 2) If an employee works in more than one job during the same week, specifically including those job duties listed in subsection (i), if applicable, the facility shall separately state the hours of work for each job duty.
- 3) The work schedule, whether a hard copy or in an electronic format, shall be kept on file in the facility in the administrator's office for a minimum of two years after the week for which the schedule was used.
- m) Time spent in scheduled breaks and mealtimes, and scheduled training, when staff are not providing direct care shall be documented.
- n) A facility operating under a waiver from the minimum registered professional nurse staffing requirements (see Section 300.1232) shall provide written documentation of the waiver to the Department upon request.
- l) ~~To determine the numbers of direct care personnel needed to staff any facility, the following procedures shall be used:~~
- 1) ~~The facility shall determine the number of residents needing skilled or intermediate care.~~
- 2) ~~The number of residents in each category shall be multiplied by the overall hours of direct care needed each day for each category.~~
- 3) ~~Adding the hours of direct care needed for the residents in each category will give the total hours of direct care needed by all residents in the facility.~~
- 4) ~~Multiplying the total minimum hours of direct care needed by 25% will~~

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

~~give the minimum amount of licensed nurse time that shall be provided during a 24-hour period. Multiplying the total minimum hours of direct care needed by 10% will give the minimum amount of registered nurse time that shall be provided during a 24-hour period.~~

5) ~~Additional Direct Care Hours Equal to at Least 75% of the Minimum Required~~

~~The remaining 75% of the minimum required direct care hours may be fulfilled by other staff identified in subsection (f) as long as it can be documented that they provide direct care and as long as nursing care is provided in accordance with the Nurse Practice Act.~~

6) ~~The amount of time determined in subsections (1)(4) and (5) is expressed in hours. Dividing the total number of hours needed by the number of hours each person works per shift (usually 7.5 or 8 hours) will give the number of persons needed to staff each shift. Calculations shall not include time for scheduled breaks or scheduled in-service training. The number of residents used to calculate staff ratios shall be based on the facility's midnight census.~~

m) ~~Example of Staffing Calculations~~

1) ~~Following is an example of this computation assuming a 100-bed Skilled Nursing Facility that has 25 residents needing skilled care and 75 residents needing intermediate care, and assuming that the identified needs of the residents have led the facility to assign 45% of the staff to the day shift; 35% to the evening shift and 20% to the night shift.~~

2) ~~Under the subsection (j) requirements for January 1, 2014, staffing would be computed as follows:~~

A) ~~Total Minimum Hours of Care Needed~~

Level of Care	# of Residents	[times]	Total Hrs. Needed/Day Per Resident	=	Total Hrs. Needed/Day Per Facility
Skilled	25	[times]	3.8	=	95.0
Intermediate	75	[times]	2.5	=	187.5

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

Total hours needed 282.5

B) ~~Minimum Total Hours Needed Per Shift~~

Shift	Total Hrs. Per Day		Minimum Percent		Total Hrs. Needed
7-3	282.5	{times}	45%	=	127.125
3-11	282.5	{times}	35%	=	98.875
11-7	282.5	{times}	20%	=	56.500
			100%		282.500

C) ~~Licensed Nurse Time Per Shift~~

Shift	Minimum Hrs. Per Shift		Minimum Percent		Minimum Lic. Nurse Hrs. Required
7-3	127.125	{times}	25%	=	31.781
3-11	98.875	{times}	25%	=	24.719
11-7	56.500	{times}	25%	=	14.125

D) ~~Licensed Nurses Required~~

Shift	Minimum Nurse Hrs. Required		Hrs. Worked Per Shift		# of Lic. Nurses Needed
7-3	31.781	{divided by}	8	=	3.973
3-11	24.719	{divided by}	8	=	3.090
11-7	14.125	{divided by}	8	=	1.766

E) ~~Registered Nurse Time~~

Shift	Minimum Registered Nurse Hrs.		Minimum Percent		Minimum Registered Nurse Hrs.
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DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

	Per Shift				Required
7-3	127.125	{times}	10%	=	12.712
3-11	98.875	{times}	10%	=	9.887
11-7	56.500	{times}	10%	=	5.650

F) Registered Nurses Required

Shift	Minimum Registered Nurse Hrs. Required		Hrs. Worked Per Shift		# of Registered Nurses Needed
7-3	12.712	{divided by}	8	=	1.589
3-11	9.887	{divided by}	8	=	1.236
11-7	5.650	{divided by}	8	=	.706

G) Additional Direct Care Hours*

Shift	Minimum Total Hrs. Needed Per Shift		Lic. Nurse Time Worked Per Shift		# of Additional Direct Care Staff Hrs.* Needed
7-3	127.125	{minus}	31.781	=	95.344
3-11	98.875	{minus}	24.719	=	74.156
11-7	56.500	{minus}	14.125	=	42.375

H) Additional Direct Care Staff* Required

Shift	Minimum Additional Direct Care Hrs. Required		Hrs. Worked Per Shift		# of Additional Direct Care Staff* Needed
7-3	95.344	{divided by}	8	=	11.918
3-11	74.156	{divided by}	8	=	9.270
11-7	42.375	{divided by}	8	=	5.300

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

~~*See subsection (1)(5).~~

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

Section 300.1231 Calculation of Direct Care Staffing During Inspections, Surveys and Evaluations

- a) Calculation of direct care staffing during inspections, surveys and evaluations will be based on the finalized working schedule and daily census report totals for the two-week period preceding the first day of the inspection. The work schedule shall be determined as outlined in Section 300.1230(k) and shall be provided upon request.
- b) For certified facilities, copies of nurse staffing information required by 42 CFR 483.35(g) for the two-week period preceding the first day of the inspection shall be provided upon request.

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

Section 300.1232 Waiver of Registered Professional Nurse Staffing Requirements

- a) Upon application by a facility, the Director may grant or renew a waiver, in whole or in part, of the registered professional nurse staffing requirements contained in Section 3-202.05(e) of the Act and Section 300.1230(c) of this Part, considering the criteria in Section 300.320, if the facility demonstrates to the Director's satisfaction that the facility is unable, despite diligent efforts, including offering wages at a competitive rate for registered professional nurses in the community, to employ the required number of registered professional nurses and that the waivers will not endanger the health or safety of residents of the facility.
- b) A facility in compliance with the terms of a waiver granted under Section 3-303.1(c) of the Act and this Section will not be subject to fines or penalties imposed by the Department for violating the registered professional nurse staffing requirements of Section 3-202.05(e) of the Act and Section 300.1230(c). Nothing in the Act or this Section allows the Director to grant or renew a waiver of the minimum registered professional nurse staffing requirements provided in 42 CFR 483.35(b) to a facility that is Medicare-certified or to a facility that is both Medicare-certified and Medicaid-certified.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- c) Waivers granted under the Act and this Section will be reviewed quarterly by the Department, including requiring a demonstration by the facility that it has continued to make diligent efforts to employ the required number of registered nurses, and shall be revoked for noncompliance with any of the following requirements:
- 1) For periods in which the number of registered professional nurses required by law is not in the facility, a physician or registered professional nurse shall respond immediately to a telephone call from the facility.
 - 2) The facility to notify the following of the waiver: the Office of the State Long Term Care Ombudsman, the residents of the facility, the residents' guardians, and the residents' representatives. (Section 3-303.1(c) of the Act)
- d) A copy of each waiver application and each waiver granted or renewed by the Department will be on file with the Department and available for public inspection. The Director will annually review the file and recommend to the Long-Term Care Facility Advisory Board any modification in this Part suggested by the number and nature of waivers requested and granted and the difficulties faced in compliance by similarly situated facilities. (Section 3-303.1(d) of the Act)
- e) If the Department grants a waiver to a facility under this Section, the facility shall immediately notify the following of the waiver:
- 1) The Office of the State Long Term Care Ombudsman;
 - 2) The residents of the facility;
 - 3) The residents' guardians;
 - 4) The residents' representatives (Section 3-303.1(c)(2) of the Act); and
 - 5) Individuals seeking information from the facility prior to admission to the facility.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- f) A facility may request a waiver only as part of its response to a licensure violation.
- g) A request for a waiver from the registered professional nurse staffing requirements shall be made in writing to the Department, specifying the following:
- 1) *A detailed explanation of why the facility is unable, despite diligent efforts, including offering wages at a competitive rate for registered professional nurses in the community, to employ the required number of registered nurses (Section 3-303.1(c) of the Act);*
 - 2) A detailed description of the programs or services offered by the facility for which the waiver is requested;
 - 3) The nature and extent of the facility's efforts to comply with the requirements from which the wavier is requested;
 - 4) *A detailed explanation of why the waiver will not endanger the health or safety of residents of the facility (Section 3-303.1(c) of the Act);*
 - 5) The facility's proposed alternatives to meet the intent of the requirements and an explanation for why granting the waiver would not adversely affect the health, safety or welfare of the facility's residents;
 - 6) The facility's staffing consideration, including, but not limited to, the facility's staff-to-resident ratio and staffing patterns, the scope of staff training, and the cost of extra or alternate staffing;
 - 7) The number of residents in the facility and the level of care they require, the location and number of ambulatory and nonambulatory residents, and residents' decision making capacity;
 - 8) A detailed description of the facility's recruitment plan to address the shortage, including any recruitment and retention activities, how the facility has implemented the recruitment plan, and for how long; and
 - 9) The time period for which the waiver is requested.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- h) The Department may revoke a waiver granted to a facility if the facility fails to comply with any of the requirements in the Act and this Section.
- i) A facility operating under a probationary license, initial license, or change of ownership shall not be eligible for a waiver of registered professional nurse staffing requirements.
- j) A facility that has been subject to any of the following actions by the Department in the three years prior to application shall not be eligible for a waiver of registered professional nurse staffing requirements:
- 1) Issuance of two or more Type AA violations if operated by the same owner at the time of the waiver application;
 - 2) Issuance of two or more Type A violations if operated by the same owner at the time of the waiver application; or
 - 3) Issuance of two consecutive standard certification surveys with substantiated substandard quality of care deficiencies.
- k) No waiver shall exceed the duration of the current license or, in the case of an application for license renewal, the duration of the renewal period. (Section 3-303.1(a) of the Act) For facilities with two-year licenses, no waiver shall be granted for a period that exceeds one year. Waivers shall not be transferable.
- l) The Department will post on its website a list of facilities with approved waivers by no later than June 30 of each year.

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

Section 300.1233 Quarterly Administrative Staffing Compliance Review

- a) The Department will determine compliance quarterly by comparing the number of hours provided per resident per day using the Centers for Medicare and Medicaid Services' payroll-based journal (PBJ) and the facility's daily census. (Section 3-202.05(f) of the Act) PBJ data that is utilized for compliance shall not be contested. For a crosswalk of job titles from Section 300.1230(i) versus PBJ job titles, see Appendix B.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- b) The quarterly deadlines for submitting PBJ data to the Department are as follows:
- 1) For the first fiscal quarter reporting period of October 1 through December 31, quarterly census data is due to the Department on March 1.
 - 2) For the second fiscal quarter reporting period of January 1 through March 31, quarterly census data is due to the Department on June 1.
 - 3) For the third fiscal quarter reporting period of April 1 through June 30, quarterly census data is due to the Department on September 1.
 - 4) For the fourth fiscal quarter reporting period of July 1 through September 30, quarterly census data is due to the Department on December 1.
- c) Licensed-only facilities are not required to submit PBJ data to the Department but shall submit quarterly staffing data to the Department in a format and manner determined by the Department, adhering to the same deadlines as in subsection (b).
- d) The facility's daily census report shall *be broken down by intermediate and skilled care.* (Section 3-202.05(f) of the Act) Required information for each day listed on the report is as follows:
- 1) The date;
 - 2) The total number of residents requiring skilled care for the date;
 - 3) The total number of residents requiring intermediate care for the date; and
 - 4) The total census for the date.
- e) Facilities shall submit to the Department's dedicated email address a separate daily census report for each day of the month of the quarter, adhering to the same deadlines as in subsection (b).
- f) Each daily census report shall be signed and dated by a facility representative having authority for submission of the daily census reports. The representative's job title shall also be reflected on the report.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- g) Failure to submit a required daily census report by the submission deadline shall result in calculations based on skilled care direct care staffing requirements for any of the missing information.

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

Section 300.1234 Penalties and Notice of Violation

- a) Notwithstanding any other provision of the Act or this Part, the Department will impose penalties for violations of the minimum staffing requirements of the Act and Section 300.1230, as follows:
- 1) No monetary penalty will be issued for noncompliance during the implementation period, which will be July 1, 2020 through September 30, 2020. If a facility is found to be noncompliant during the implementation period, the Department will provide a written notice identifying the staffing deficiencies. The facility shall provide a sufficiently detailed correction plan to meet the statutory minimum staffing levels.
 - 2) Monetary penalties will be imposed by the Department beginning no later than January 1, 2021, and quarterly thereafter, and shall be based on the latest quarter for which the Department has data.
 - 3) Monetary penalties shall be established based on a formula that calculates, on a daily basis, the cost of wages and benefits for the missing staffing hours. All notices of noncompliance issued by the Department will include the computations used to determine noncompliance and establishing the variance between minimum staffing ratios and the Department's computations.
 - 4) The penalty for the first offense shall be 125% of the cost of wages and benefits for the missing staffing hours. The penalty will increase to 150% of the cost of wages and benefits for the missing staffing hours for the second offense and 200% of the cost of wages and benefits for the missing staffing hours for the third and all subsequent offenses.
 - 5) The penalty shall be imposed regardless of whether the facility has committed other violations of the Act and this Part during the same period that the staffing offense occurred.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- 6) The penalty may not be waived, but the Department may determine the gravity of the violation in situations in which there is no more than a 10% deviation from the staffing requirements and make appropriate adjustments to the penalty.
 - 7) The Department may waive the penalty when unforeseen circumstances have occurred that resulted in call-offs of scheduled staff. This provision will be applied no more than 6 times per quarter. (Section 3-202.05(g) of the Act) For the purposes of this Section, "six times" means six days.
 - 8) The 10% deviation from staffing requirements allowed in subsection (a)(6) shall not include deviations due to a waiver granted under Section 300.1232.
- b) Nothing in the Act or this Section diminishes a facility's right to appeal a Department finding of non-compliance with Section 300.1230. (Section 3-202.05(g) of the Act)
- c) Notice of Staffing Requirement Violations
After the Department receives complete data from a facility, any facilities in violation of the staffing requirements will be informed of the violation via email and certified mail. The notice shall contain, at minimum:
- 1) The year and quarter the shortfall occurred;
 - 2) A summary breakdown of the total penalty showing results of calculations made pursuant to subsection (a)(3);
 - 3) Citations to the Act and this Part relative to the violation;
 - 4) A statement of the total amount of the fine, if any, the date by which it is due to be paid, and a description of accepted forms of payment; and
 - 5) An explanation of consequences for nonpayment, incomplete payment, or late payment.

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

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

Section 300.APPENDIX A Example of Staffing Calculations from Section 300.1230 Interpretation, Components, and Illustrative Services for Intermediate Care Facilities and Skilled Nursing Facilities: (Repealed)

A. Following is an example of staffing calculations assuming a 100-bed Skilled Nursing Facility that has 25 residents needing skilled care and 75 residents needing intermediate care.

Under Section 300.1230(d) requirements, staffing would be computed as follows:

1. Total Minimum Hours of Care Needed

<u>Level of Care</u>	<u># of Residents</u>		<u>Total Hrs. Needed Per Day Per Resident</u>		<u>Total Hrs. Needed Per Day Per Facility</u>
Skilled	25	[times]	3.8	≡	95.0
Intermediate	75	[times]	2.5	≡	187.5
					282.5
<u>Total Hours Needed</u>					

2. Licensed Practical Nurse (LPN) Hours Required

<u>Level of Care</u>	<u>Total Hrs. Needed Per Day Per Facility</u>		<u>Minimum Percent</u>		<u>Minimum LPN Hrs. Required</u>
Skilled	95.0	[times]	25%	≡	23.75
Intermediate	187.5	[times]	25%	≡	46.875
					70.625
<u>Total LPN Hours Needed</u>					

3. Registered Professional Nurse (RN) Hours Required

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

<u>Level of Care</u>	<u>Total Hrs. Needed Per Day Per Facility</u>		<u>Minimum Percent</u>		<u>Minimum RN Hrs. Required</u>
<u>Skilled</u>	<u>95.0</u>	<u>[times]</u>	<u>10%</u>	<u>≡</u>	<u>9.5</u>
<u>Intermediate</u>	<u>187.5</u>	<u>[times]</u>	<u>10%</u>	<u>≡</u>	<u>18.75</u>
<u>Total RN Hours Needed</u>					<u>28.25</u>

4. Additional Direct Care Hours*

<u>Level of Care</u>	<u>Total Hrs. Needed Per Day Per Facility</u>		<u>LPN Time Worked</u>		<u># of Additional Direct Care Staff Hrs.* Needed Per Day</u>
<u>Skilled</u>	<u>95.0</u>	<u>[minus]</u>	<u>23.75</u>	<u>≡</u>	<u>71.25</u>
<u>Intermediate</u>	<u>187.5</u>	<u>[minus]</u>	<u>46.875</u>	<u>≡</u>	<u>140.625</u>
<u>Total RN Hours Needed</u>					<u>211.875</u>

*See Section 300.1230(k).

(Source: Former Appendix A repealed at 23 Ill. Reg. 8106, effective July 15, 1999; new Appendix A added at 44 Ill. Reg. _____, effective _____)

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

Section 300.APPENDIX B Crosswalk of Nursing Home Care Act Job Descriptions and Payroll Based Journal Job Titles~~Classification of Distinct Part of a Facility for Different Levels of Service (Repealed)~~

<u>Nursing Staff</u>		
<u>Illinois Category</u> <u>Section 300.1230(h)</u>	<u>PBJ Job Title Code</u>	<u>PBJ Job Description</u>
<u>Section 300.1230(h)(1)</u> <u>Registered Nurses</u> <u>Section 300.1230(h)(7)</u> <u>Assistant Directors of</u> <u>Nursing (DON) and</u> <u>(h)(8) 50% DON</u>	<u>Job Titles 5, 7, 13 and 14</u>	<u>Registered Nurse</u> <u>Registered Nurse, DON</u> <u>Nurse Practitioner</u> <u>Clinical Nurse Specialist</u>
<u>Section 300.1230(h)(2)</u> <u>Licensed Practical Nurse</u>	<u>Job Title 9</u>	<u>Licensed Practical/Vocational</u> <u>Nurse</u>
<u>Section 300.1230(h)(3)</u> <u>Certified Nurse Assistants</u>	<u>Job Titles 10, 11 and 12</u>	<u>Certified Nurse Aide</u> <u>Nurse Aide in Training</u> <u>Medication Aide/Technician</u>

<u>Non-Nurse Direct Care Staff</u>		
<u>Illinois Category</u> <u>Section 300.1230(h)</u>	<u>PBJ Job Title Code</u>	<u>PBJ Job Description</u>
<u>Section 300.1230(h)(4)</u> <u>Psychiatric Services</u> <u>Rehabilitation Aide</u> <u>Section 300.1230(h)(6)</u> <u>Psychiatric Services</u> <u>Rehabilitation Coordinator</u>	<u>Job Title 34</u>	<u>Mental Health Service</u> <u>Worker</u>
<u>Section 300.1230(h)(5)</u> <u>Rehabilitation and Therapy</u> <u>Aides</u>	<u>Job Titles 19, 20, 22, 23, 25</u> <u>and 29</u>	<u>Occupational Therapy</u> <u>Assistant</u> <u>Occupational Therapy Aide</u> <u>Physical Therapy Assistant</u> <u>Physical Therapy Aide</u> <u>Respiratory Therapy</u> <u>Technician</u> <u>Other Activities Staff</u>
<u>Section 300.1230(h)(9)</u> <u>30% of Social Services</u>	<u>Job Titles 28 and 30</u>	<u>Qualified Activities</u> <u>Professional</u>

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

<u>Director</u>		<u>Qualified Social Worker</u>
<u>Section 300.1230(h)(10)</u> <u>Licensed Physical,</u> <u>Occupational, Speech, and</u> <u>Respiratory Therapists</u>	<u>Job Titles 18, 22, 24, 26</u>	<u>Occupational Therapist</u> <u>Physical Therapy Therapist</u> <u>Respiratory Therapist</u> <u>Speech/Language Pathologist</u>

(Source: Former Appendix B repealed at 16 Ill. Reg. 17089, effective November 3, 1992; new Appendix B added at 44 Ill. Reg. _____, effective _____)

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 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>
130.425	Amendment
130.455	Amendment
- 4) Statutory Authority: 35 ILCS 120/1; 35 ILCS 120/12; 20 ILCS 2505/2505-795
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking implements the provisions of PA 101-31 that, effective with sales made on or after January 1, 2020, imposes a \$10,000 limit on the credit allowed to reduce the taxable selling price when a first division motor vehicle is traded in on the purchase of another motor vehicle.
- 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
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part?

<u>Section Numbers:</u>	<u>Proposed Actions:</u>	<u>Illinois Register Citations:</u>
130.330	Amendment	43 Ill Reg. 13190, November 15, 2019
130.1957	New Section	43 Ill Reg. 13190, November 15, 2019
- 11) Statement of Statewide Policy Objective: This rulemaking 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 these proposed rulemakings: 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

NOTICE OF PROPOSED AMENDMENTS

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: The \$10,000 trade-in credit limit for the trade-in of first division motor vehicles imposed by PA 101-31 and implemented by this rulemaking will apply to any automobile dealerships that is a small business. It will not have a direct impact on small municipalities or not-for-profit corporations.
- B) Reporting, bookkeeping or other procedures required for compliance: This rulemaking will require only minor additional reporting, bookkeeping or other procedures related to tracking the trade-in of first division motor vehicles whose value exceeds \$10,000 by automobile dealerships.
- C) Types of professional skills necessary for compliance: Those skill consistent with completing a standard sales tax return for sales of motor vehicles.

14) Small Business Impact Analysis:

- A) Types of businesses subject to the proposed rule:

44-45 Retail Trade
- B) Categories that the agency reasonably believes the rulemaking will impact, including:
 - ii. training requirements;
 - iii. record keeping;

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

The full text of the Proposed Amendments is identical to that of the text of the Emergency Amendments for this rulemaking, and begins in this issue of the *Illinois Register* on page 552.

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Use Tax
- 2) Code Citation: 86 Ill. Adm. Code 150
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
150.201	Amendment
150.1101	Amendment
- 4) Statutory Authority: 35 ILCS 105/2; 35 ILCS 105/12; 20 ILCS 2505/2505-90
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking implements the provisions of PA 101-31 that, effective with sales made on or after January 1, 2020, imposes a \$10,000 limit on the credit allowed to reduce the taxable selling price when a first division motor vehicle is traded in on the purchase of another motor vehicle.
- 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
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: These rules do 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:

Samuel J. Moore
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield IL 62794

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

217/782-2844

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: The \$10,000 trade-in credit limit for the trade-in of first division motor vehicles imposed by PA 101-31 and implemented by this rulemaking will apply to any automobile dealerships that is a small business. It will not have a direct impact on small municipalities or not-for-profit corporations.
 - B) Reporting, bookkeeping or other procedures required for compliance: This rulemaking will require only minor additional reporting, bookkeeping or other procedures related to tracking the trade-in of first division motor vehicles whose value exceeds \$10,000 by automobile dealerships.
 - C) Types of professional skills necessary for compliance: Those skill consistent with completing a standard sales tax return for sales of motor vehicles.
- 14) Small Business Impact Analysis:
- A) Types of businesses subject to the proposed rule:
44-45 Retail Trade
 - B) Categories that the Agency reasonably believes the rulemaking will impact, including:
 - ii. training requirements;
 - iii. record keeping;
- 15) Regulatory Agenda on which this rulemaking was summarized: July 2019

The full text of the Proposed Amendments is identical to that of the text of the Emergency Amendments for this rulemaking, and begins in this issue of the *Illinois Register* on page 577.

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Video Gaming (General)
- 2) Code Citation: 11 Ill. Adm. Code 1800
- 3)

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
1800.110	Amendment
1800.250	Amendment
1800.260	Amendment
1800.420	Amendment
1800.430	Amendment
1800.540	Amendment
1800.580	Amendment
1800.1810	New Section
- 4) Statutory Authority: Section 78 (a) 93) of the Video Gaming Act gives the Illinois Gaming Board power "[t]o adopt rules for the purpose of administering the provisions of this Act and to prescribe rules, regulations, and conditions under which all video gaming in the State shall be conducted. Such rules and regulations are to provide for the prevention of practices detrimental to the public interest and for the best interests of video gaming[.]"
- 5) Effective Date of Rules: December 27, 2019
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain an incorporation by reference? No
- 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 *Illinois Register*: 43 Ill. Reg. 9209; August 30, 2019
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: The final version amends the language of subsection 1800.250 (w) dealing video surveillance cameras and storage. It reduces the minimum storage period for digital surveillance recordings from 90 days to 30 days. It provides that all video surveillance data collected pursuant to this subsection shall be stored either at the video gaming location or through offsite storage, for example, cloud

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

storage or an offsite server. If the surveillance data is stored at the video gaming location, the data may not be accessed by the licensed location or any owner, person of significant influence or control, or employee of the location. The retention of backed up video surveillance data shall take place twice monthly, by the first and fifteenth of each month, into a safe and secure location that shall not be accessible except by the terminal operator or a Board agent. Lastly, the final version provides that this subsection shall become operative on July 1, 2020.

In 1800.260 (l), language is deleted allowing the Administrator to impose an automatic fine upon terminal operators who fail to inform the central communications system before clearing meters on a video gaming terminal. As originally drafted, 1800.260 (l) authorized the Administrator to impose a fine of \$250 for a first violation of this requirement and \$500 for a second or subsequent violation, with the Board not being precluded from further disciplinary action.

- 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 any emergency rule currently in effect? Yes. The rulemaking will replace emergency provisions at 43 Ill. Reg. 9261 (published August 30, 2019; effective August 13, 2019) defining "in-location bonus jackpot game," "in-location progressive game" and "progressive jackpot" in Section 1800.110, and adding Section 1800.250 (x) that requires terminal operators to create a form for the use of licensed video gaming locations as a receipt for progressive jackpot winners (the remainder of this emergency rulemaking was suspended at 43 Ill. Reg. 11061, effective September 18, 2019).
- 14) Are there any rulemakings pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Actions:</u>	<u>Illinois Register Citations:</u>
1800.1910	New Section	43 Ill. Reg. 9312, September 6, 2019
1800.1920	New Section	43 Ill. Reg. 9312, September 6, 2019
1800.1930	New Section	43 Ill. Reg. 9312, September 6, 2019
1800.1940	New Section	43 Ill. Reg. 9312, September 6, 2019
1800.2010	New Section	43 Ill. Reg. 12767, November 1, 2019
1800.2020	New Section	43 Ill. Reg. 12767, November 1, 2019
1800.2030	New Section	43 Ill. Reg. 12767, November 1, 2019
1800.2040	New Section	43 Ill. Reg. 12767, November 1, 2019
1800.2050	New Section	43 Ill. Reg. 12767, November 1, 2019

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

1800.2060	New Section	43 Ill. Reg. 12767, November 1, 2019
1800.2110	New Section	43 Ill. Reg. 13488, December 2, 2019
1800.2120	New Section	43 Ill. Reg. 13488, December 2, 2019
1800.2130	New Section	43 Ill. Reg. 13488, December 2, 2019
1800.2140	New Section	43 Ill. Reg. 13488, December 2, 2019
1800.2150	New Section	43 Ill. Reg. 13488, December 2, 2019
1800.2160	New Section	43 Ill. Reg. 13488, December 2, 2019
1800.2170	New Section	43 Ill. Reg. 13488, December 2, 2019
1800.EXHIBIT A	New Section	43 Ill. Reg. 13488, December 2, 2019
1800.EXHIBIT B	New Section	43 Ill. Reg. 13488, December 2, 2019

- 15) Summary and Purpose of Rulemaking: The rulemaking adds provisions to 11 Ill. Adm. Code 1800 (Video Gaming (General)) necessary to implement the provisions of PA 101-31, effective June 28, 2019. The rulemaking adds or amends the following definitions in 11 Ill. Adm. Code 1800.110:

"In-location bonus jackpot game" and "in-location jackpot game." Consistently with the amended statute, these terms are identically defined as a video game in which the value of the top prize increases each time the game is played and the top prize is not won.

"Licensed large truck stop establishment" is defined identically as in PA 101-0031, namely, as a facility located within 3 road miles from a freeway interchange that: (i) is at least a 3-acre facility with a convenience store, (ii) with separate diesel islands for fueling commercial motor vehicles, (iii) that sells at retail more than 50,000 gallons of diesel or biodiesel fuel per month, and (iv) has parking spaces for commercial motor vehicles.

The definition of "licensed video gaming location" is amended to include licensed large truck stop establishments.

A redundant definition of "person with significant interest or control" (PSIC) is deleted, as a definition of this term is contained in 11 Ill. Adm. Code 1800.430 (d).

"Progressive jackpot" is defined as the top prize in an in-location bonus jackpot game or in-location bonus jackpot game.

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

The title of 11 Ill. Adm. Code 1800.250 is changed from "Licensed Video Terminal Operators" to "Terminal Operators" to be consistent with the terminology of the Video Gaming Act. The following new duties are imposed on terminal operators:

Purchase keys and locks for video gaming terminals (VGTs) that are approved by the Board and are specific to the terminal operator. The keys shall be numbered, reported to the Board and available for audits. The Board shall be provided with access to the logic box of a video gaming terminal upon request. If a terminal operator's actions necessitate a rekeying, the costs of rekeying shall be at the terminal operator's expense. A terminal operator shall immediately inform the Board if a key is lost or stolen (new subsection (v)).

Install in all licensed video gaming locations, at the terminal operator's expense, digital surveillance cameras that continuously record at all times when video gaming terminals are operational. Surveillance provided by these cameras shall extend to all areas where video gaming is being conducted and vouchers are redeemed. Recorded images must display the time and date of recording. The recordings shall not be destroyed or altered, and must be retained for at least 30 days. The recordings are subject to inspection by Board agents and must be kept in a manner that allows the Board to view and obtain copies immediately upon request. The recordings must record at a minimum of 10 frames per second and at a minimum resolution of 1280 x 720 px. All video surveillance data must be stored at the video gaming location or through offsite storage (for example, cloud storage or an offsite server). If stored at the location, the data shall not be accessible to the licensed location or to an owner, person of significant influence or control, or an employee. Retention of backed up video surveillance data shall take place twice monthly, by the first and fifteenth of each month, into a safe and secure location that shall only be accessible to the terminal operator or a Board agent. The provisions of this subsection shall become operative on July 1, 2020 (new subsection (w)).

Create a form for the use of licensed video gaming locations that will be used as a receipt for progressive jackpot winners. Forms must be approved by the Administrator. The terminal operator shall distribute the approved forms to all licensed video gaming locations operating progressive games with which the terminal operator has a use agreement. The form shall have payment instructions for the winning patron, provide contact information for the terminal operator, and be capable of having the following information recorded, in triplicate:

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

Winner's name and address;

Date and time the progressive jackpot was won;

Amount of the progressive jackpot won;

Identification number and location of the video gaming terminal on which the progressive jackpot was won; and

Game outcome (for example, reel symbols, card values or suits)

(New subsection (x))

11 Ill. Adm. Code 1800.260 (Duties of Licensed Technicians and Licensed Terminal Handlers) is amended to impose the following new duties on licensed technicians and licensed terminal handlers:

Comply with all technical standards and requirements imposed by the Board (previously, this compliance requirement applied to "specifications and standards") (subsection (d)).

Comply with all requests by Board agents for identification or for access to the logic box within a video gaming terminal (new subsection (j)).

Following any access, possession or control of a video gaming terminal, provide information on a project sheet that shall include, at a minimum, the name of the licensed technician or terminal handler, time of access, possession or control, and the nature of any servicing or repairs (new subsection (k)).

Inform the central communications system before clearing meters on a video gaming terminal. (new subsection (l)).

11 Ill. Adm. Code 1800.420 (Qualifications for Licensure) is amended by adding a new subsection (b) providing that in considering applications for licenses under the Video Gaming Act, the Board shall apply the same criteria set forth in Section 9 of the Illinois Gambling Act (IGA) [230 ILCS 10/9]. If the applicant is not an individual, the Board may not license until it is satisfied that the applicant's owners and PSICs meet the requirements of Section 9 of the IGA.

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

11 Ill. Adm. Code 1800.430 (Persons with Significant Influence or Control) is amended at subsection (d) by expanding the definition of PSIC to include each person directly owning an applicant or licensee as well as each person who holds an indirect ownership interest of at least 5 percent in an applicant or licensee.

11 Ill. Adm. Code 1800.540 (Application Fees) is amended to conform with provisions in PA 100-1152 and PA 101-31 that establish a \$100 application fee for licensed establishments, licensed truck stop establishments, licensed large truck stop establishments, licensed fraternal establishments or licensed veterans establishments and raise the application fee for terminal handlers from \$50 to \$100.

11 Ill. Adm. Code 1800.580 (Renewal Fees and Dates) is amended to raise the renewal fee for terminal handlers from \$50 to \$100 as provided by PA 100-1152.

A new Subpart R is added, entitled "Implementation of Technology." This subpart gives the Administrator authority to direct and oversee the installation, maintenance or improvement of technology that, in the Administrator's discretion, is needed to implement the provisions of the Video Gaming Act or the Video Gaming (General) Part of the Illinois Administrative Code. An applicant or licensee may be billed directly or required to reimburse the Board for any expenses, including third-party expenses, associated with the testing, certification, installation, training, review or approval of video gaming-related technology or technological enhancements to a video gaming operation (new Section 1810).

16) Information regarding these adopted rules may be addressed to:

Agostino Lorenzini
General Counsel
Illinois Gaming Board
160 North LaSalle Street
Chicago IL 60601

fax: 312/814-7253

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

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

TITLE 11: ALCOHOL, HORSE RACING, LOTTERY, AND VIDEO GAMING
SUBTITLE D: VIDEO GAMING
CHAPTER I: ILLINOIS GAMING BOARD

PART 1800
VIDEO GAMING (GENERAL)

SUBPART A: GENERAL PROVISIONS

Section	
1800.110	Definitions
1800.115	Gender
1800.120	Inspection
1800.130	Board Meetings

SUBPART B: DUTIES OF LICENSEES

Section	
1800.210	General Duties of All Video Gaming Licensees
1800.220	Continuing Duty to Report Information
1800.230	Duties of Licensed Manufacturers
1800.240	Duties of Licensed Distributors
1800.250	Duties of Licensed Video Terminal Operators
1800.260	Duties of Licensed Technicians and Licensed Terminal Handlers
1800.270	Duties of Licensed Video Gaming Locations

SUBPART C: STANDARDS OF CONDUCT FOR LICENSEES

Section	
1800.310	Grounds for Disciplinary Actions
1800.320	Minimum Standards for Use Agreements
1800.330	Economic Disassociation

SUBPART D: LICENSING QUALIFICATIONS

Section	
1800.410	Coverage of Subpart
1800.420	Qualifications for Licensure
1800.430	Persons with Significant Influence or Control

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

1800.440 Undue Economic Concentration

SUBPART E: LICENSING PROCEDURES

Section

1800.510 Coverage of Subpart
1800.520 Applications
1800.530 Submission of Application
1800.540 Application Fees
1800.550 Consideration of Applications by the Board
1800.555 Withdrawal of Applications and Surrender of Licenses
1800.560 Issuance of License
1800.570 Renewal of License
1800.580 Renewal Fees and Dates
1800.590 Death and Change of Ownership of Video Gaming Licensee

SUBPART F: DENIALS OF APPLICATIONS FOR LICENSURE

Section

1800.610 Coverage of Subpart
1800.615 Requests for Hearing
1800.620 Appearances
1800.625 Appointment of Administrative Law Judge
1800.630 Discovery
1800.635 Subpoenas
1800.640 Motions for Summary Judgment
1800.650 Proceedings
1800.660 Evidence
1800.670 Prohibition on Ex Parte Communication
1800.680 Sanctions and Penalties
1800.690 Transmittal of Record and Recommendation to the Board
1800.695 Status of Applicant for Licensure Upon Filing Request for Hearing

SUBPART G: DISCIPLINARY ACTIONS AGAINST LICENSEES

Section

1800.710 Coverage of Subpart
1800.715 Notice of Proposed Disciplinary Action Against Licensees
1800.720 Hearings in Disciplinary Actions

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

1800.725	Appearances
1800.730	Appointment of Administrative Law Judge
1800.735	Discovery
1800.740	Subpoenas
1800.745	Motions for Summary Judgment
1800.750	Proceedings
1800.760	Evidence
1800.770	Prohibition on Ex Parte Communication
1800.780	Sanctions and Penalties
1800.790	Transmittal of Record and Recommendation to the Board
1800.795	Persons Subject to Proposed Orders of Economic Disassociation

SUBPART H: LOCATION OF VIDEO GAMING TERMINALS IN
LICENSED VIDEO GAMING LOCATIONS

Section

1800.810	Location and Placement of Video Gaming Terminals
1800.815	Licensed Video Gaming Locations Within Malls
1800.820	Measurement of Distances from Locations
1800.830	Waivers of Location Restrictions

SUBPART I: SECURITY INTERESTS

Section

1800.910	Approvals Required, Applicability, Scope of Approval
1800.920	Notice of Enforcement of a Security Interest
1800.930	Prior Registration

SUBPART J: TRANSPORTATION, REGISTRATION,
AND DISTRIBUTION OF VIDEO GAMING TERMINALS

Section

1800.1010	Restriction on Sale, Distribution, Transfer, Supply and Operation of Video Gaming Terminals
1800.1020	Transportation of Video Gaming Terminals into the State
1800.1030	Receipt of Video Gaming Terminals in the State
1800.1040	Transportation of Video Gaming Terminals Between Locations in the State
1800.1050	Approval to Transport Video Gaming Terminals Outside of the State
1800.1060	Placement of Video Gaming Terminals

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

- 1800.1065 Registration of Video Gaming Terminals
- 1800.1070 Disposal of Video Gaming Terminals

SUBPART K: STATE-LOCAL RELATIONS

- Section
- 1800.1110 State-Local Relations

SUBPART L: FINGERPRINTING OF APPLICANTS

- Section
- 1800.1210 Definitions
- 1800.1220 Entities Authorized to Perform Fingerprinting
- 1800.1230 Qualification as a Livescan Vendor
- 1800.1240 Fingerprinting Requirements
- 1800.1250 Fees for Fingerprinting
- 1800.1260 Grounds for Revocation, Suspension and Denial of Contract

SUBPART M: PUBLIC ACCESS TO INFORMATION

- Section
- 1800.1310 Public Requests for Information

SUBPART N: PAYOUT DEVICES AND REQUIREMENTS

- Section
- 1800.1410 Ticket Payout Devices
- 1800.1420 Redemption of Tickets Following Removal or Unavailability of Ticket Payout Devices

SUBPART O: NON-PAYMENT OF TAXES

- Section
- 1800.1510 Non-Payment of Taxes

SUBPART P: CENTRAL COMMUNICATIONS SYSTEM

- Section
- 1800.1610 Use of Gaming Device or Individual Game Performance Data

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

SUBPART Q: RESPONSIBLE GAMING

Section

1800.1710	Conversations About Responsible Gaming
1800.1720	Responsible Gaming Education Programs
1800.1730	Problem Gambling Registry
1800.1740	Utilization of Technology to Prevent Problem Gambling

SUBPART R: IMPLEMENTATION OF TECHNOLOGYSection1800.1810 Implementation of Technology

AUTHORITY: Implementing and authorized by the Video Gaming Act [230 ILCS 40].

SOURCE: Adopted by emergency rulemaking at 33 Ill. Reg. 14793, effective October 19, 2009, for a maximum of 150 days; adopted at 34 Ill. Reg. 2893, effective February 22, 2010; emergency amendment at 34 Ill. Reg. 8589, effective June 15, 2010, for a maximum of 150 days; emergency expired November 11, 2010; amended at 35 Ill. Reg. 1369, effective January 5, 2011; emergency amendment at 35 Ill. Reg. 13949, effective July 29, 2011, for a maximum of 150 days; emergency expired December 25, 2011; amended at 36 Ill. Reg. 840, effective January 6, 2012; amended by emergency rulemaking at 36 Ill. Reg. 4150, effective February 29, 2012, for a maximum of 150 days; amended at 36 Ill. Reg. 5455, effective March 21, 2012; amended at 36 Ill. Reg. 10029, effective June 28, 2012; emergency amendment at 36 Ill. Reg. 11492, effective July 6, 2012, for a maximum of 150 days; emergency expired December 2, 2012; emergency amendment at 36 Ill. Reg. 12895, effective July 24, 2012, for a maximum of 150 days; amended at 36 Ill. Reg. 13178, effective July 30, 2012; amended at 36 Ill. Reg. 15112, effective October 1, 2012; amended at 36 Ill. Reg. 17033, effective November 21, 2012; expedited correction at 39 Ill. Reg. 8183, effective November 21, 2012; amended at 36 Ill. Reg. 18550, effective December 14, 2012; amended at 37 Ill. Reg. 810, effective January 11, 2013; amended at 37 Ill. Reg. 4892, effective April 1, 2013; amended at 37 Ill. Reg. 7750, effective May 23, 2013; amended at 37 Ill. Reg. 18843, effective November 8, 2013; emergency amendment at 37 Ill. Reg. 19882, effective November 26, 2013, for a maximum of 150 days; emergency amendment suspended by the Joint Committee on Administrative Rules at 38 Ill. Reg. 3384, effective January 14, 2014; suspension withdrawn at 38 Ill. Reg. 5897; emergency repeal of emergency amendment at 38 Ill. Reg. 7337, effective March 12, 2014, for the remainder of the 150 days; amended at 38 Ill. Reg. 849, effective December 27, 2013; amended at 38 Ill. Reg. 14275, effective June 30, 2014; amended at 38 Ill. Reg. 19919, effective October 2, 2014; amended at 39 Ill. Reg. 5401, effective March

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

27, 2015; amended at 39 Ill. Reg. 5593, effective April 1, 2015; amended at 40 Ill. Reg. 2952, effective January 27, 2016; amended at 40 Ill. Reg. 8760, effective June 14, 2016; amended at 40 Ill. Reg. 12762, effective August 19, 2016; amended at 40 Ill. Reg. 15131, effective October 18, 2016; emergency amendment at 41 Ill. Reg. 2696, effective February 7, 2017, for a maximum of 150 days; amended at 41 Ill. Reg. 2939, effective February 24, 2017; amended at 41 Ill. Reg. 4499, effective April 14, 2017; amended at 41 Ill. Reg. 10300, effective July 13, 2017; amended at 42 Ill. Reg. 3126, effective February 2, 2018; amended at 42 Ill. Reg. 3735, effective February 6, 2018; emergency amendment at 43 Ill. Reg. 9261, effective August 13, 2019, for a maximum of 150 days; emergency amendment, except for the definition of "in-location bonus jackpot game" or "in-location progressive game" and the definition of "progressive jackpot" in Section 1800.110 and except for Section 1800.250(x), suspended at 43 Ill. Reg. 11061, effective September 18, 2019; emergency amendment at 43 Ill. Reg. 9788, effective August 19, 2019, for a maximum of 150 days; emergency amendment at 43 Ill. Reg. 11688, effective September 26, 2019, for a maximum of 150 days; emergency amendment at 43 Ill. Reg. 13785, effective November 7, 2019, for a maximum of 150 days; emergency amendment at 43 Ill. Reg. 13464, effective November 8, 2019, for a maximum of 150 days; emergency amendment suspended by the Joint Committee on Administrative Rules at 43 Ill. Reg. 13479, effective November 12, 2019; amended at 43 Ill. Reg. 14099, effective November 21, 2019; amended at 44 Ill. Reg. 489, effective December 27, 2019.

SUBPART A: GENERAL PROVISIONS

Section 1800.110 Definitions

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

"Act": The Video Gaming Act [230 ILCS 40].

"Adjusted gross receipts" means the gross receipts less winnings paid to wagerers. The value of expired vouchers shall be included in computing adjusted gross receipts.

"Administrator": The chief executive officer responsible for day-to-day operations of the Illinois Gaming Board.

"Affiliate": An "affiliate of", or person "affiliated with", a specified person shall mean a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such person.

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

"Affiliated entity": An "affiliated entity" of a person is any business entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person.

"Applicant": A person applying for any license under the Act.

"Application": All material submitted, including the instructions, definitions, forms and other documents issued by the Illinois Gaming Board, comprising the video gaming license application submitted to the Illinois Gaming Board.

"Associated video gaming equipment": Ticket payout systems and validation procedures; wireless, promotional and bonusing systems; kiosks; gaming-related peripherals; hardware, software and systems; and other gaming devices and equipment for compliance with:

Illinois laws, regulations and requirements as codified or otherwise set forth; and

Board-approved video gaming industry standards.

"Attributed interest": A direct or indirect interest in an enterprise deemed to be held by an individual not through the individual's actual holdings but either through the holdings of the individual's relatives or through a third party or parties on behalf of the individual pursuant to a plan, arrangement, agreement or contract.

"Board": The Illinois Gaming Board.

"Business entity" or "Business": A partnership, incorporated or unincorporated association or group, firm, corporation, limited liability company, partnership for shares, trust, sole proprietorship or other business enterprise.

"Chi-square test": A statistical test used to determine if a relationship between variables exists by comparing expected and observed cell frequencies. Specifically, a chi-square test examines the observed frequencies in a category and compares them to what would be expected by chance or would be expected if there was no relationship between variables.

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

"Control": The possession, direct or indirect, of power to direct or cause the direction of the management and policies of an applicant or licensee through the ownership of voting securities, by contract or otherwise.

"Convenience store": A retail store that is open long hours and sells motor fuel and a limited selection of snacks and general goods.

"Credit": One, five, 10 or 25 cents.

"Distributor": An individual, partnership, corporation or limited liability company licensed under the Act to buy, sell, lease or distribute video gaming terminals or major components or parts of video gaming terminals to or from terminal operators.

"Enforce a security interest": To transfer possession of ownership or title pursuant to a security interest.

"EPROM": An acronym for Erasable, Programmable, Read Only Memory, which is a microprocessor component that stores memory and affects payout percentage and/or contains a random number generator that selects the outcome of a game on a video gaming terminal.

"Facility-pay" or "facility payment" means a manual payment of currency by an authorized employee of a licensed video gaming location or an authorized employee of a terminal operator for amounts owed to a patron by a video gaming terminal when a video gaming terminal or ticket payout device has malfunctioned and is unable to produce or redeem a ticket.

"Fraternal organization": An organization or institution organized and conducted on a not-for-profit basis with no personal profit inuring to anyone as a result of the operation and that is exempt from federal income taxation under section 501(c)(8) or (c)(10) of the Internal Revenue Code (26 USC 501(c)(8) or (c)(10)).

"Game": A gambling activity that is played for money, property or anything of value, including without limitation those played with cards, chips, tokens, vouchers, dice, implements, or electronic, electrical or mechanical devices or machines.

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

"Gaming": The dealing, operating, carrying on, conducting, maintaining or exposing for play of any game.

"Gaming operation": The conducting of gaming or the providing or servicing of gaming equipment.

"Gaming property collateral": Video gaming equipment subject to a security interest.

"Illinois resident":

With respect to an individual, an individual who is either:

domiciled in Illinois or maintains a bona fide place of abode in Illinois; or

is required to file an Illinois tax return during the taxable year.

With respect to a corporation, any corporation organized under the laws of this State and any foreign corporation with a certificate of authority to transact business in Illinois. A foreign corporation not authorized to transact business in this State is a nonresident of this State.

With respect to a partnership, a partnership in which any partner is an Illinois resident, or where the partnership has an office and is doing business in Illinois.

With respect to an irrevocable trust, a trust where the grantor was an Illinois resident individual at the time the trust became irrevocable.

"In-location bonus jackpot game" or "in-location progressive game": A video game in which the value of the top prize increases each time the game is played and the top prize is not won.

"Institutional investor":

A retirement fund administered by a public agency for the exclusive benefit of federal, state or local public employees;

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

An investment company registered under section 8 of the Investment Company Act of 1940 (15 USC 80a-8);

A collective investment trust organized by a bank under Part 9 of the Rules of the Comptroller of the Currency (12 CFR 9.18);

A closed end investment trust registered with the United States Securities and Exchange Commission;

A chartered or licensed life insurance company or property and casualty insurance company;

A federal or state bank;

An investment advisor registered under the Investment Advisors Act of 1940 (15 USC 80b-1 through 80b-21); or

Such other person as the Illinois Gaming Board may determine for reasons consistent with the Act and this Part.

"License": Authorization granted by the Board permitting a licensee to engage in the defined activities of video gaming.

"Licensed establishment": Any retail establishment licensed under the Act where alcoholic liquor is drawn, poured, mixed or otherwise served for consumption on the premises. Licensed establishment does not include a facility operated by an organization licensee, an intertrack wagering licensee, or an intertrack wagering location licensee licensed under the Illinois Horse Racing Act of 1975 [230 ILCS 5] or a riverboat or casino licensed under the IllinoisRiverboat Gambling Act [230 ILCS 10].

"Licensed fraternal establishment": The location licensed under the Act where a qualified fraternal organization that derives its charter from a national fraternal organization regularly meets.

"Licensed large truck stop establishment": A facility located within 3 road miles from a freeway interchange, as measured in accordance with the Department of Transportation's rules regarding the criteria for the installation of business signs:

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

that is at least a 3-acre facility with a convenience store;

with separate diesel islands for fueling commercial motor vehicles;

that sells at retail more than 50,000 gallons of diesel or biodiesel fuel per month; and

with parking spaces for commercial motor vehicles. "Commercial motor vehicle" has the meaning ascribed at Section 18b-101 of the Illinois Vehicle Code.

The requirement of this definition may be met by showing that estimated future sales or past sales average at least 50,000 gallons per month.

"Licensed technician": An individual who is licensed under the Act to repair, service and maintain video gaming terminals. A licensed technician is not licensed under the Act to possess or control a video gaming terminal or have access to the inner workings of a video gaming terminal (i.e., the logic area maintained in a separately locked cabinet of the video gaming terminal that houses electronic components that have the potential to significantly influence the operation of the video gaming terminal).

"Licensed terminal handler": A person, including but not limited to an employee or independent contractor working for a manufacturer, distributor, supplier, technician or terminal operator, who is licensed under the Act to possess or control a video gaming terminal or to have access to the inner workings of a video gaming terminal. A licensed terminal handler does not include an individual, partnership, corporation or limited liability company defined as a manufacturer, distributor, supplier, technician or terminal operator under Section 5 of the Act.

"Licensed truck stop establishment": A facility licensed under the Act that is at least a 3-acre facility with a convenience store, that has separate diesel islands for fueling commercial motor vehicles, that sells at retail more than 10,000 gallons of diesel or biodiesel fuel per month, and that has parking spaces for commercial motor vehicles. "Commercial motor ~~vehicle~~vehicles" has the ~~same~~ meaning ~~ascribed at as defined in~~ Section 18b-101 of the Illinois Vehicle Code [625 ILCS 5/~~18b-101~~]. The 10,000 gallon requirement may be met by showing that estimated future sales or past sales average at least 10,000 gallons per month.

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

"Licensed veterans establishment": The location licensed under the Act where a qualified veterans organization that derives its charter from a national veterans organization regularly meets.

"Licensed video gaming location": A licensed establishment, licensed fraternal establishment, licensed veterans establishment, or licensed truck stop establishment, all as defined in Section 5 of the Act and this Part.

"Liquor license": A license issued by a governmental body authorizing the holder to sell and offer for sale at retail alcoholic liquor for use or consumption.

"Major components or parts": Components or parts that comprise the inner workings and peripherals of a video gaming terminal, including but not limited to the device's hardware, software, human interface devices, interface ports, power supply, ticket payout system, bill validator, printer and any component that affects or could affect the result of a game played on the device.

"Manufacturer": An individual, partnership, corporation or limited liability company that is licensed under the Act and that manufactures or assembles video gaming terminals.

"Net terminal income": Money put into a video gaming terminal minus credits paid out to players.

"Nominee": Any individual or business entity that holds as owner of record the legal title to tangible or intangible personal or real property, including without limitation any stock, bond, debenture, note, investment contract or real estate on behalf of another individual or business entity, and as such is designated and authorized to act on his, her or its behalf with respect to the property.

"Ownership interest": Includes, but is not limited to, direct, indirect, beneficial or attributed interest, or holder of stock options, convertible debt, warrants or stock appreciation rights, or holder of any beneficial ownership or leasehold interest in a business entity.

"Payout device": A device, approved by the Board and provided by a supplier or distributor, that redeems for cash tickets dispensed by a video gaming terminal in exchange for credits accumulated on a video gaming terminal.

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

"Person": Includes both individuals and business entities.

~~"Person with significant interest or control": Any of the following:~~

~~Each person in whose name the liquor license is maintained for each licensed video gaming location;~~

~~Each person who, in the opinion of the Administrator, has the ability to influence or control the activities of the applicant or licensee, or elect a majority of its board of directors, other than a bank or licensed lending institution that holds a mortgage or other lien, or any other source of funds, acquired in the ordinary course of business;~~
~~Persons having the power to exercise significant influence or control over decisions concerning any part of the applicant's or licensee's video gaming operation;~~

~~Each person who receives any net terminal income pursuant to a contractual agreement;~~

~~Any business entity that holds an option agreement to acquire an equity stake in a terminal operator licensee.~~

"Place of worship under the Religious Corporation Act": A structure belonging to, or operated by, a church, congregation or society formed for the purpose of religious worship and eligible for incorporation under the Religious Corporation Act [805 ILCS 110], provided that the structure is used primarily for purposes of religious worship and related activities.

"Problem gambling": "A repetitive set of gaming behaviors that negatively impacts someone's life.

"Progressive jackpot": The top prize in an in-location bonus jackpot game or in-location progressive game.

"Redemption period": The one-year period, starting on the date of issuance, during which a ticket dispensed by a video gaming terminal may be redeemed for cash.

"Responsible gaming" means all of the following:

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

Policies for reducing harms related to gaming;

Providing a transparent and fair game;

Playing within time and money limits; and

Gaming for entertainment and fun.

"Secured party": A person who is a lender, seller or other person who holds a valid security interest.

"Security": An ownership right or creditor relationship.

"Security agreement": An agreement that creates or provides a security interest, including but not limited to a use agreement.

"Security interest": An interest in property that secures the payment or performance of an obligation or judgment.

"Sole proprietor": An individual who in his or her own name owns 100% of the assets and who is solely liable for the debts of a business.

"Substantial interest": With respect to a partnership, a corporation, an organization, an association, a business or a limited liability company means:

When, with respect to a sole proprietorship, an individual or his or her spouse owns, operates, manages, or conducts, directly or indirectly, the organization, association or business, or any part thereof; or

When, with respect to a partnership, the individual or his or her spouse shares in any of the profits, or potential profits, of the partnership activities; or

When, with respect to a corporation, an individual or his or her spouse is an officer or director or the individual or his or her spouse is a holder, directly or beneficially, of 5% or more of any class of stock of the corporation; or

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

When, with respect to a limited liability company, an individual or his or her spouse is a member, or the individual or his or her spouse is a holder, directly or beneficially, of 5% or more of the membership interest of the limited liability company; or

When, with respect to any other organization not covered in the preceding four paragraphs, an individual or his or her spouse is an officer or manages the business affairs, or the individual or his or her spouse is the owner of, or otherwise controls, 10% or more of the assets of the organization; or

When an individual or his or her spouse furnishes 5% or more of the capital, whether in cash, goods or services, for the operation of any business, association or organization during any calendar year.

For purposes of this definition, "individual" includes all individuals or their spouses whose combined interest would qualify as a substantial interest under this definition and whose activities with respect to an organization, association, or business are so closely aligned or coordinated as to constitute the activities of a single entity.

"Supplier": An individual, partnership, corporation or limited liability company that is licensed under the Act to supply major components or parts to video gaming terminals to licensed terminal operators.

"Terminal operator": An individual, partnership, corporation or limited liability company that is licensed under the Act that owns, services, and maintains video gaming terminals for placement in licensed establishments, licensed truck stop establishments, licensed fraternal establishments or licensed veterans establishments.

"Use agreement": A contractual agreement between a licensed terminal operator and a licensed video gaming location establishing terms and conditions for placement and operation of video gaming terminals by the licensed terminal operator within the premises of the licensed video gaming location, and complying with all of the minimum standards for use agreements contained in Section 1800.320.

"Veterans organization": An organization or institution organized and conducted on a not-for-profit basis with no personal profit inuring to anyone as a result of

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

the operation and that is exempt from federal income taxation under section 501(c)(19) of the Internal Revenue Code (26 USC 501(c)(19)).

"Video gaming equipment": Video gaming terminals, associated video gaming equipment and major components or parts.

"Video gaming manager": An employee or owner or designated representative of a licensed video gaming location who manages, oversees or is responsible for video gaming operations at the location, and coordinates the video gaming operations with a terminal operator or the central communications system vendor.

"Video gaming operation": As the context requires, the conducting of video gaming and all related activities.

"Video gaming terminal": Any electronic video game machine that, upon insertion of cash, is available to play or simulate the play of a video game, including but not limited to video poker, line up and blackjack, as authorized by the Board utilizing a video display and microprocessors in which the player may receive free games or credits that can be redeemed for cash. The term does not include a machine that directly dispenses coins, cash, or tokens or is for amusement purposes only.

(Source: Amended at 44 Ill. Reg. 489, effective December 27, 2019)

SUBPART B: DUTIES OF LICENSEES

Section 1800.250 Duties of ~~Licensed Video~~ Terminal Operators

In addition to all other duties and obligations required by the Act and this Part, each licensed terminal operator has an ongoing duty to comply with the following:

- a) Assume the primary responsibility for the operation and maintenance of video gaming terminals and for payment of tax remittance to the State as required by the Act;
- b) Maintain and provide, either directly or through a licensed manufacturer, distributor, supplier, licensed technician, or licensed terminal handler, an inventory of associated video gaming equipment to ensure the timely repair and continued, approved operation and play of the video gaming terminals it operates;

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

- c) Ensure the timely repair and continued, approved operation and play of the video gaming terminals it operates;
- d) Assume responsibility for the payment of valid receipt tickets issued by video gaming terminals it operates;
- e) Maintain at all times an approved method of payout for valid receipt tickets and pay all valid receipt tickets;
- f) Assume responsibility for terminal and associated video gaming equipment malfunctions, including any claim for the payment of credits arising from malfunctions;
- g) Promptly notify the Board of electronic or mechanical malfunctions or problems experienced in a terminal that affect the integrity of terminal play;
- h) Extend no form of deferred payment for video gaming terminal play in which an individual receives something of value now and agrees to repay the lender in the future for the purpose of wagering at a video gaming terminal;
- i) Maintain a single bank account for all licensed video gaming locations with which it contracts for deposit of aggregate revenues generated from the play of video gaming terminals and allow for electronic fund transfers for tax payments;
- j) Enter into written use agreements with licensed video gaming locations that comply with the Act and this Part;
- k) Obtain and install, at no cost to the State and as required by the Board, all hardware, software and related accessories necessary to connect video gaming terminals to a central communications system;
- l) Offer or provide nothing of value to any licensed video gaming location or any agent or representative of any licensed video gaming location as an incentive or inducement to locate, keep or maintain video gaming terminals at the licensed video gaming location;

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

- m) Not own, manage or control a licensed establishment, licensed truck stop establishment, licensed large truck stop establishment, licensed fraternal establishment, or licensed veterans establishment;
- n) Conduct advertising and promotional activities in accordance with this Part and in a manner that does not reflect adversely on or that would discredit or tend to discredit the Illinois gaming industry or the State of Illinois;
- o) Respond to service calls within a reasonable time from the time of notification by the video gaming location;
- p) Immediately remove all video gaming terminals from the restricted area of play:
 - 1) upon order of the Board or an agent of the Board; or
 - 2) that have been out of service or otherwise inoperable for more than 72 hours;
- q) Provide the Board on a monthly basis a current list of video gaming terminals acquired for use in Illinois;
- r) Not install, remove or relocate any video gaming terminal without prior notification and approval of the Administrator or his designee;
- s) Provide prompt notice of an assignment of a use agreement to the Board, the affected location, and the central communications system vendor;
- t) Maintain a video gaming terminal access log for each video gaming terminal, which must be kept inside the video gaming terminal at all times, documenting all access to the video gaming terminal. The log format shall provide for the time and date of access, the persons who had access, the license number when applicable and the nature of the service or repair made during the access; ~~and~~
- u) Service, maintain or repair video gaming terminals at licensed video gaming locations only by licensed technicians or licensed terminal handlers;
- v) Purchase keys and locks for video gaming terminals that are approved by the Board and are specific to the terminal operator. All keys shall be numbered, reported to the Board and available for audits. The Board shall be provided with

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

access to the logic box of a video gaming terminal upon request. If a terminal operator's actions necessitate a rekeying, the costs of rekeying shall be at the terminal operator's expense. A terminal operator shall immediately inform the Board if a key is lost or stolen;

- w) Provide, at the terminal operator's expense, digital surveillance cameras that continuously record at all times when video gaming terminals are operational. These cameras shall be maintained at all licensed video gaming locations with which the terminal operator has entered into a use agreement. The surveillance provided by these cameras shall extend to all areas where video gaming is being conducted and video gaming vouchers are redeemed. Recorded images must clearly and accurately display the time and date. Recordings shall not be destroyed or altered and shall be retained for at least 30 days. Surveillance recordings are subject to inspection by the Board through its agents and must be kept in a manner that allows the Board to view and obtain copies of the recordings immediately upon request. All surveillance recordings must record at a minimum of 10 frames per second and at a minimum resolution of 1280 x 720 px. All video surveillance data collected pursuant to this subsection shall be stored at the video gaming location or through offsite storage (e.g., cloud storage, offsite server). If stored at the video gaming location, neither the licensed location, nor any owner, person of significant influence or control, nor any of their employees, may access the video surveillance data. The retention of backed up video surveillance data shall take place twice monthly, by the first and fifteenth of each month, into a safe and secure location that shall not be accessible except by the terminal operator or a Board agent. The provisions of this subsection shall become operative on July 1, 2020; and
- x) Create a form for the use of licensed video gaming locations as a receipt for progressive jackpot winners. After the Administrator approves that form, the terminal operator shall distribute the forms to all licensed video gaming locations operating in-location bonus jackpot games or in-location progressive games with which the terminal operator has a use agreement. The form shall have payment instructions for the winning patron, identify contact information for the terminal operator, and be capable of having the following information recorded in triplicate:
- 1) The winner's name and address;
 - 2) The date and time the progressive jackpot was won;

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

- 3) Identification number and location of the video gaming terminal on which the progressive jackpot was won; and
- 4) Game outcome (for example, reel symbols, card values or suits).

(Source: Amended at 44 Ill. Reg. 489, effective December 27, 2019)

Section 1800.260 Duties of Licensed Technicians and Licensed Terminal Handlers

In addition to all other duties and obligations required by the Act and this Part, each licensed technician and licensed terminal handler has an ongoing duty to comply with the following:

- a) Promptly notify the Board of electronic or mechanical malfunctions or problems experienced in a terminal that affect the integrity of terminal play;
- b) Promptly notify the Board of any unauthorized or illegal video gaming location or any video gaming terminal that is in violation of Section 35 of the Act;
- c) Ensure that every video gaming terminal is licensed by the Board before any service, maintenance or repair is performed;
- d) Comply with all ~~specifications and~~ technical standards and requirements issued by the Board;
- e) Carry and display identification issued by the Board when working on video gaming terminals and associated video gaming equipment;
- f) For each video gaming terminal accessed by a licensed terminal handler, record in each video gaming terminal access log the time and date of access, the person, and his or her license number, who had access, and the nature of the service or repair made during the access;
- g) Pay a fee of \$10 to the Board for any necessary replacement of identification;
- h) Return identification to the Board upon resignation or termination of employment;
~~and~~
- i) Not play any video gaming terminal for recreational purposes; ~~;~~

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

- j) Comply with all requests by Board agents for identification or for access to the logic box within a video gaming terminal;
- k) Following any access, possession or control of a video gaming terminal, provide information on a project sheet that shall include, at a minimum, the name of the licensed technician or licensed terminal handler, time during which the video gaming terminal was accessed, possessed or controlled, and nature of any servicing or repairs; and
- l) Inform the central communications system before clearing meters on a video gaming terminal.

(Source: Amended at 44 Ill. Reg. 489, effective December 27, 2019)

SUBPART D: LICENSING QUALIFICATIONS

Section 1800.420 Qualifications for Licensure

- a) In addition to the qualifications required in the Act, the Board may not grant any video gaming license until the Board is satisfied that the applicant has disclosed all persons with significant influence or control over the applicant or licensee and is:
 - 1) A person of good character, honesty and integrity;
 - 2) A person whose background, including criminal record, reputation and associations, is not injurious to the public health, safety, morals, good order and general welfare of the people of the State of Illinois;
 - 3) A person whose background, including criminal record, reputation and associations, does not discredit or tend to discredit the Illinois gaming industry or the State of Illinois;
 - 4) A person whose background, including criminal record, reputation, habits, social or business associations does not adversely affect public confidence and trust in gaming or pose a threat to the public interests of the State or to the security and integrity of video gaming;

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

- 5) A person who does not create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of video gaming;
 - 6) A person who does not present questionable business practices and financial arrangements incidental to the conduct of video gaming activities or otherwise;
 - 7) A person who, either individually or through employees, demonstrates business ability and experience to establish, operate and maintain a business for the type of license for which application is made;
 - 8) A person who does not associate with, either socially or in business affairs, or employ persons of notorious or unsavory reputation or who have extensive police records, or who have failed to cooperate with any officially constituted investigatory or administrative body; and
 - 9) A person who has not had a gaming license revoked in any other jurisdiction.
- b) In considering applications for licenses issued under the Act, the Board shall apply the same criteria as set forth in Section 9 of the Illinois Gambling Act [230 ILCS 10]. If the applicant is not an individual, the Board may not license an applicant until it is satisfied that the applicant's owners and persons of significant interest or control are licensable using the same criteria as set forth in Section 9 of the Illinois Gambling Act.
- ~~c)~~ In addition to all other qualifications required in the Act and this Part, the Board may not grant a video terminal operator license until the Board is satisfied that the applicant is a person who demonstrates adequate financing for the business proposed. The Board shall consider whether any financing is from a source that meets the qualifications in subsection (a) and is in an amount sufficient to ensure the likelihood of success in the performance of the licensee's duties and responsibilities under the Act and this Part.:
- 1) ~~Is a person who demonstrates adequate financing for the business proposed. The Board shall consider whether any financing is from a source that meets the qualifications in subsections (a)(1) through (9) of this Section and is in an amount sufficient to ensure the likelihood of~~

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

~~success in the performance of the licensee's duties and responsibilities pursuant to the Act and this Part; and~~

- ~~2) Has disclosed all persons with significant influence or control over the applicant or licensee.~~

de) Past Participation in Video Gaming

- 1) The Board shall not grant a license to a person who has facilitated, enabled or participated in the use of coin-operated amusement devices for gambling purposes on or after December 16, 2009, or who is under the significant influence or control of such a person.
- 2) The Board has discretion not to grant a license to a person who, before December 16, 2009, has facilitated, enabled or participated in the use of coin-operated amusement devices for gambling purposes, or who is under the significant influence or control of such a person.

ed) The Board shall have discretion to deny a license application on the basis that one of the following persons has placed himself or herself on the Self-Exclusion List established by 86 Ill. Adm. Code 3000.750:

- 1) The applicant;
- 2) A person with significant influence or control over the applicant;
- 3) A person with an ownership interest in the applicant of 5% or more; or
- 4) A person involved in the operation or management of the applicant's business related to video gaming.

(Source: Amended at 44 Ill. Reg. 489, effective December 27, 2019)

Section 1800.430 Persons with Significant Influence or Control

- a) The Administrator shall identify each person that holds a position or level of influence over or control in each applicant or licensee that is significant to the regulatory concerns and obligations of the Board for the specified applicant or licensee.

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

- b) Each person identified as a person with significant influence or control shall comply with the following:
- 1) Cooperate fully with any investigation conducted by or on behalf of the Board;
 - 2) Comply with the Act and this Part; and
 - 3) Submit initial and annual disclosure information on forms provided by the Board.
- c) An owner or person with significant influence or control of a terminal operator shall not play any video gaming terminal owned or leased by the terminal operator at any operating licensed location for recreational purposes.
- d) Persons with significant influence or control include, but are not limited, to the following:
- 1) Each person in whose name the liquor license is maintained for each licensed video gaming location;
 - 2) Each person directly owning an applicant or licensee;
 - 3) Each person who holds an indirect ownership interest of at least 5 percent in an applicant or licensee;
 - ~~42)~~ Each person who, in the opinion of the Administrator, has the ability to influence or control the activities of the applicant or licensee or elect a majority of its board of directors, other than a bank or other licensed lending institution that holds a mortgage or other lien, or any other source of funds, acquired in the ordinary course of business;
 - ~~53)~~ Persons having the power to exercise significant influence or control over decisions concerning any part of the applicant's or licensee's video gaming operation;
 - ~~64)~~ Any person or business entity receiving any net terminal income pursuant to a contractual agreement;

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

- 75) Any person or business entity holding an option agreement to acquire an equity stake in a terminal operator licensee.
- e) The prohibition against gaming by persons with significant influence or control in a licensed nonprofit establishment, licensed fraternal establishment or licensed veterans establishment does not apply unless the person with significant influence or control directly manages the establishment's video gaming operation.

(Source: Amended at 44 Ill. Reg. 489, effective December 27, 2019)

SUBPART E: LICENSING PROCEDURES

Section 1800.540 Application Fees

All applicants for a license issued by the Board shall pay the following application fees, as applicable, at the time of filing their application:

- a) Manufacturer – \$5,000
- b) Distributor – \$5,000
- c) Terminal Operator – \$5,000
- d) Supplier – \$2,500
- e) Technician – \$100
- f) Terminal Handler – ~~\$10050~~
- g) Licensed establishment, licensed truck stop establishment, licensed large truck stop establishment, licensed fraternal establishment, or licensed veterans establishment – \$100

(Source: Amended at 44 Ill. Reg. 489, effective December 27, 2019)

Section 1800.580 Renewal Fees and Dates

A licensee shall pay the following license fees annually, as applicable:

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

- a) Manufacturer – \$10,000
- b) Distributor – \$10,000
- c) Terminal Operator – \$5,000
- d) Supplier – \$2,000
- e) Technician – \$100
- f) Licensed establishment, licensed truck stop establishment, [licensed large truck stop establishment](#), licensed fraternal establishment, or licensed veterans establishment – \$100
- g) Video gaming terminal – \$100
- h) Terminal Handler – ~~\$100~~⁵⁰

(Source: Amended at 44 Ill. Reg. 489, effective December 27, 2019)

SUBPART R: IMPLEMENTATION OF TECHNOLOGY

Section 1800.1810 Implementation of Technology

- a) The Administrator shall have the authority to direct and oversee installation of technology into video gaming terminals, and the maintenance and improvement of that technology, designed to allow the Board to collect data from, and inspect, those terminals.
- b) An applicant or licensee may be billed directly or be required to reimburse the Board for any expenses, including third-party expenses, associated with the testing, certification, installation, training, review or approval of video gaming-related technology or technological enhancements to a video gaming operation.

(Source: Added at 44 Ill. Reg. 489, effective December 27, 2019)

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Riverboat Gambling
- 2) Code Citation: 86 Ill. Adm. Code 3000
- 3)

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
3000.287	New Section
3000.288	New Section
- 4) Statutory Authority: The rulemaking implements the provisions of Section 5 (a) (7.5) of the Illinois Gambling Act [230 ILCS 10/5 (a) (7.5)] that require the Board to utilize the services of accredited independent outside testing laboratories.

Authority for the rulemaking comes from Section 5 (c) (3) of the Illinois Gambling Act (IGA) [230 ILCS 10/5 (c) (3)]. This paragraph gives the Illinois Gaming Board (IGB) comprehensive rulemaking authority in relation to casino gaming, providing in part that the IGB shall have the power to "promulgate rules and regulations for the purpose of administering the provisions of this Act and to prescribe rules, regulations and conditions under which all riverboat gambling in the State shall be conducted. Such rules and regulations are to provide for the prevention of practices detrimental to the public interest and for the best interests of riverboat gambling[.]"

- 5) Effective Date of Rules: December 30, 2019
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain an incorporation by reference? No
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the principal office and is available for public inspection.
- 9) Notice of Proposal published in *Illinois Register*: 43 Ill. Reg. 9315; September 6, 2019
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: Substantive changes from the originally proposed rulemaking are the following:

A "gaming jurisdiction comparable to Illinois" (formerly, "...similar to Illinois") is defined as a jurisdiction with more than one casino that operates a mix of slot machines

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

and table games approved by the regulator. For purposes of this definition, "slot machines" and "table games" have the meanings ascribed in Section 4 of the Illinois Gambling Act.

Section 3000.288 (Minimum Duties of Independent Outside Testing Laboratories) is amended by adding a definition of "Critical Program Storage Media" (3000.288 (a) (5)) and specifying the types of software that are included in "program storage media" (3000.288 (a) (5) (A)). The Critical Program Storage Media shall be verified utilizing an external third-party methodology approved by the Administrator (3000.288 (a) (C) (5) (B)), and may be required, as determined by the Administrator, to have security seals attached (3000.288 (a) (C) (5) (C)).

- 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 any emergency rulemaking currently in effect? Yes. The rulemaking will replace an emergency rulemaking effective August 19, 2019 and published at 43 Ill. Reg. 9801 (September 6, 2019).
- 14) Are there any rulemakings pending on this part? Yes

<u>Section Numbers:</u>	<u>Proposed Actions:</u>	<u>Illinois Register Citations:</u>
3000.100	Amendment	43 Ill. Reg. 12784; November 1, 2019
3000.190	New Section	43 Ill. Reg. 12784; November 1, 2019
3000.200	Amendment	43 Ill. Reg. 12784; November 1, 2019
3000.201	New Section	43 Ill. Reg. 12784; November 1, 2019
3000.606	Amendment	43 Ill. Reg. 12784; November 1, 2019
3000.930	Amendment	43 Ill. Reg. 12784; November 1, 2019

- 15) Summary and Purpose of Rulemaking: This rulemaking implements a provision in PA 101-31, effective June 28, 2019, that amends the Illinois Gambling Act by changing the way the Board obtains independent testing laboratory services. Despite the fact that the cost of these services was passed on to the licensees, the IGB was required before the enactment of this public act to contract with one or more testing labs through the State's procurement process. Pursuant to new statutory language contained in Section 5 (a) (7.5) of the Illinois Gambling Act [230 ICLS 10/5 (a) (7.5)], the rulemaking provides that any independent outside testing laboratory that holds an accreditation in accordance with ISO/IEC 17025 by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Agreement, and is authorized

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

to perform independent testing laboratory services in a gaming jurisdiction comparable to Illinois (as defined in new Section 3000.287 (a)), is licensed to perform independent testing laboratory services in Illinois, subject to the requirements of Subpart B (Licenses) of the Riverboat Gambling Part. The rulemaking establishes licensing criteria, application procedures and duties of a licensed independent testing laboratory.

- 16) Information and questions regarding these adopted rules may be addressed to:

Agostino Lorenzini
General Counsel
Illinois Gaming Board
160 North LaSalle Street
Chicago IL 60601

fax: 312/814-7253

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

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

TITLE 86: REVENUE
CHAPTER IV: ILLINOIS GAMING BOARDPART 3000
RIVERBOAT GAMBLING

SUBPART A: GENERAL PROVISIONS

Section	
3000.100	Definitions
3000.101	Invalidity
3000.102	Public Inquiries
3000.103	Organization of the Illinois Gaming Board
3000.104	Rulemaking Procedures
3000.105	Board Meetings
3000.110	Disciplinary Actions
3000.115	Records Retention
3000.120	Place to Submit Materials
3000.130	No Opinion or Approval of the Board
3000.140	Duty to Disclose Changes in Information
3000.141	Applicant/Licensee Disclosure of Agents
3000.150	Owner's and Supplier's Duty to Investigate
3000.155	Investigatory Proceedings
3000.160	Duty to Report Misconduct
3000.161	Communication with Other Agencies
3000.165	Participation in Games by Owners, Directors, Officers, Key Persons or Gaming Employees
3000.170	Fair Market Value of Contracts
3000.180	Weapons on Riverboat

SUBPART B: LICENSES

Section	
3000.200	Classification of Licenses
3000.210	Fees and Bonds
3000.220	Applications
3000.221	Other Required Forms
3000.222	Identification and Requirements of Key Persons
3000.223	Disclosure of Ownership and Control

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

3000.224	Economic Disassociation
3000.225	Business Entity and Personal Disclosure Filings
3000.230	Owner's Licenses
3000.231	Distributions
3000.232	Undue Economic Concentration
3000.234	Acquisition of Ownership Interest By Institutional Investors
3000.235	Transferability of Ownership Interest
3000.236	Owner's License Renewal
3000.237	Renewed Owner's Licenses, Term and Restrictions
3000.238	Appointment of Receiver for an Owner's License
3000.240	Supplier's Licenses
3000.241	Renewal of Supplier's License
3000.242	Amendment to Supplier's Product List
3000.243	Bankruptcy or Change in Ownership of Supplier
3000.244	Surrender of Supplier's License
3000.245	Occupational Licenses
3000.250	Transferability of Licenses
3000.260	Waiver of Requirements
3000.270	Certification and Registration of Electronic Gaming Devices
3000.271	Analysis of Questioned Electronic Gaming Devices
3000.272	Certification of Voucher Systems
3000.280	Registration of All Gaming Devices
3000.281	Transfer of Registration (Repealed)
3000.282	Seizure of Gaming Devices (Repealed)
3000.283	Analysis of Questioned Electronic Gaming Devices (Repealed)
3000.284	Disposal of Gaming Devices
3000.285	Certification and Registration of Voucher Validation Terminals
3000.286	Contracting Goals for Owners Licensees
3000.287	Independent Outside Testing Laboratories
3000.288	Minimum Duties of Independent Outside Testing Laboratories

SUBPART C: OWNER'S INTERNAL CONTROL SYSTEM

Section	
3000.300	General Requirements – Internal Control System
3000.310	Approval of Internal Control System
3000.320	Minimum Standards for Internal Control Systems
3000.330	Review of Procedures (Repealed)
3000.340	Operating Procedures (Repealed)

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

3000.350 Modifications (Repealed)

SUBPART D: HEARINGS ON NOTICE OF DENIAL,
RESTRICTION OF LICENSE, PLACEMENT ON BOARD EXCLUSION LIST OR
REMOVAL FROM BOARD EXCLUSION LIST OR SELF-EXCLUSION LIST

Section

3000.400 Coverage of Subpart
3000.405 Requests for Hearings
3000.410 Appearances
3000.415 Discovery
3000.420 Motions for Summary Judgment
3000.424 Subpoena of Witnesses
3000.425 Proceedings
3000.430 Evidence
3000.431 Prohibition on Ex Parte Communication
3000.435 Sanctions and Penalties
3000.440 Transmittal of Record and Recommendation to the Board
3000.445 Status of Applicant for Licensure or Transfer Upon Filing Request for Hearing

SUBPART E: CRUISING

Section

3000.500 Riverboat Cruises
3000.510 Cancelled or Disrupted Cruises

SUBPART F: CONDUCT OF GAMING

Section

3000.600 Wagering Only with Electronic Credits, Approved Chips, Tokens and Electronic Cards
3000.602 Disposition of Unauthorized Winnings
3000.605 Authorized Games
3000.606 Gaming Positions
3000.610 Publication of Rules and Payout Ratio for Live Gaming Devices
3000.614 Tournaments, Enhanced Payouts and Give-aways
3000.615 Payout Percentage for Electronic Gaming Devices
3000.616 Cashing-In
3000.620 Submission of Chips for Review and Approval

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

3000.625	Chip Specifications
3000.630	Primary, Secondary and Reserve Sets of Gaming Chips
3000.631	Tournament Chips
3000.635	Issuance and Use of Tokens for Gaming
3000.636	Distribution of Coupons for Complimentary Chips, Tokens, Vouchers, Cash and Electronic Credits
3000.640	Exchange of Chips, Tokens, and Vouchers
3000.645	Receipt of Gaming Chips or Tokens from Manufacturer or Distributor
3000.650	Inventory of Chips
3000.655	Destruction of Chips, Tokens, and Vouchers
3000.660	Minimum Standards for Electronic Gaming Devices
3000.661	Minimum Standards for Voucher Systems
3000.665	Integrity of Electronic Gaming Devices
3000.666	Bill Validator Requirements
3000.667	Integrity of Voucher Systems
3000.670	Computer Monitoring Requirements of Electronic Gaming Devices
3000.671	Computer Monitoring Requirements of Voucher Systems

SUBPART G: EXCLUSION OF PERSONS

Section	
3000.700	Organization of Subpart
3000.701	Duty to Exclude
3000.705	Voluntary Self-Exclusion Policy (Repealed)
3000.710	Distribution and Availability of Board Exclusion List
3000.720	Criteria for Exclusion or Ejection and Placement on the Board Exclusion List
3000.725	Duty of Licensees
3000.730	Procedure for Entry of Names
3000.740	Petition for Removal from the Board Exclusion List
3000.745	Voluntary Self-Exclusion Policy
3000.750	Establishment of a Self-Exclusion List
3000.751	Locations to Execute Self-Exclusion Forms
3000.755	Information Required for Placement on the Self-Exclusion List
3000.756	Stipulated Sanctions for Failure to Adhere to Voluntary Self-Exclusion
3000.760	Distribution and Availability of Confidential Self-Exclusion List
3000.770	Duties of Licensees
3000.780	Request for Removal from the IGB Self-Exclusion List
3000.782	Required Information, Recommendations, Forms and Interviews
3000.785	Appeal of a Notice of Denial of Removal

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

3000.786	Duties of Owner Licensees to Persons Removed from the Self-Exclusion List
3000.787	Placement on the Self-Exclusion List Following Removal
3000.790	Duties of the Board

SUBPART H: SURVEILLANCE AND SECURITY

Section	
3000.800	Required Surveillance Equipment
3000.810	Riverboat and Board Surveillance Room Requirements
3000.820	Segregated Telephone Communication
3000.830	Surveillance Logs
3000.840	Storage and Retrieval
3000.850	Dock Site Board Facility
3000.860	Maintenance and Testing

SUBPART I: LIQUOR LICENSES

Section	
3000.900	Liquor Control Commission
3000.910	Liquor Licenses
3000.920	Disciplinary Action
3000.930	Hours of Sale

SUBPART J: OWNERSHIP AND ACCOUNTING RECORDS AND PROCEDURES

Section	
3000.1000	Ownership Records
3000.1010	Accounting Records
3000.1020	Standard Financial and Statistical Records
3000.1030	Annual and Special Audits and Other Reporting Requirements
3000.1040	Accounting Controls Within the Cashier's Cage
3000.1050	Procedures for Exchange of Checks Submitted by Gaming Patrons and Granting Credit
3000.1060	Handling of Cash at Gaming Tables
3000.1070	Tips or Gratuities
3000.1071	Admission Tax and Wagering Tax
3000.1072	Cash Reserve Requirements

SUBPART K: SEIZURE AND DISCIPLINARY HEARINGS

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

Section

3000.1100	Coverage of Subpart
3000.1105	Duty to Maintain Suitability
3000.1110	Board Action Against License or Licensee
3000.1115	Complaint
3000.1120	Appearances
3000.1125	Answer
3000.1126	Appointment of Hearing Officer
3000.1130	Discovery
3000.1135	Motions for Summary Disposition
3000.1139	Subpoena of Witnesses
3000.1140	Proceedings
3000.1145	Evidence
3000.1146	Prohibition of Ex Parte Communication
3000.1150	Sanctions and Penalties
3000.1155	Transmittal of Record and Recommendation to the Board

AUTHORITY: Implementing and authorized by the Riverboat Gambling Act [230 ILCS 10].

SOURCE: Emergency rule adopted at 15 Ill. Reg. 11252, effective August 5, 1991, for a maximum of 150 days; adopted at 15 Ill. Reg. 18263, effective December 10, 1991; amended at 16 Ill. Reg. 13310, effective August 17, 1992; amended at 17 Ill. Reg. 11510, effective July 9, 1993; amended at 20 Ill. Reg. 5814, effective April 9, 1996; amended at 20 Ill. Reg. 6280, effective April 22, 1996; emergency amendment at 20 Ill. Reg. 8051, effective June 3, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 14765, effective October 31, 1996; amended at 21 Ill. Reg. 4642, effective April 1, 1997; emergency amendment at 21 Ill. Reg. 14566, effective October 22, 1997, for a maximum of 150 days; emergency amendment at 22 Ill. Reg. 978, effective December 29, 1997, for a maximum of 150 days; amended at 22 Ill. Reg. 4390, effective February 20, 1998; amended at 22 Ill. Reg. 10449, effective May 27, 1998; amended at 22 Ill. Reg. 17324, effective September 21, 1998; amended at 22 Ill. Reg. 19541, effective October 23, 1998; emergency amendment at 23 Ill. Reg. 8191, effective July 2, 1999 for a maximum of 150 days; emergency expired November 28, 1999; amended at 23 Ill. Reg. 8996, effective August 2, 1999; amended at 24 Ill. Reg. 1037, effective January 10, 2000; amended at 25 Ill. Reg. 94, effective January 8, 2001; amended at 25 Ill. Reg. 13292, effective October 5, 2001; proposed amended at 26 Ill. Reg. 9307, effective June 14, 2002; emergency amendment adopted at 26 Ill. Reg. 10984, effective July 1, 2002, for a maximum of 150 days; adopted at 26 Ill. Reg. 15296, effective October 11, 2002; amended at 26 Ill. Reg. 17408, effective November 22, 2002; emergency amendment at 27 Ill. Reg. 10503, effective June 30, 2003, for a maximum

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

of 150 days; amended at 27 Ill. Reg. 15793, effective September 25, 2003; amended at 27 Ill. Reg. 18595, effective November 25, 2003; amended at 28 Ill. Reg. 12824, effective August 31, 2004; amended at 31 Ill. Reg. 8098, effective June 14, 2007; amended at 32 Ill. Reg. 2967, effective February 15, 2008; amended at 32 Ill. Reg. 3275, effective February 19, 2008; amended at 32 Ill. Reg. 7357, effective April 28, 2008; amended at 32 Ill. Reg. 8592, effective May 29, 2008; amended at 32 Ill. Reg. 8931, effective June 4, 2008; amended at 32 Ill. Reg. 13200, effective July 22, 2008; amended at 32 Ill. Reg. 17418, effective October 23, 2008; amended at 32 Ill. Reg. 17759, effective October 28, 2008; amended at 32 Ill. Reg. 17946, effective November 5, 2008; amended at 34 Ill. Reg. 3285, effective February 26, 2010; amended at 34 Ill. Reg. 3748, effective March 11, 2010; amended at 34 Ill. Reg. 4768, effective March 16, 2010; amended at 34 Ill. Reg. 5200, effective March 24, 2010; amended at 34 Ill. Reg. 15386, effective September 23, 2010; amended at 36 Ill. Reg. 13199, effective July 31, 2012; amended at 37 Ill. Reg. 12050, effective July 9, 2013; amended at 37 Ill. Reg. 18255, effective November 1, 2013; amended at 38 Ill. Reg. 2808, effective January 8, 2014; amended at 38 Ill. Reg. 21471, effective October 29, 2014; amended at 39 Ill. Reg. 4362, effective March 10, 2015; amended at 39 Ill. Reg. 12312, effective August 18, 2015; amended at 40 Ill. Reg. 12776, effective August 19, 2016; amended at 41 Ill. Reg. 380, effective December 29, 2016; amended at 41 Ill. Reg. 12840, effective September 28, 2017; emergency amendment at 43 Ill. Reg. 9801, effective August 23, 2019, for a maximum of 150 days; emergency amendment at 43 Ill. Reg. 10512, effective September 5, 2019, for a maximum of 150 days; emergency amendment at 43 Ill. Reg. 10733, effective September 13, 2019, for a maximum of 150 days; amended at 44 Ill. Reg. 521, effective December 30, 2019.

SUBPART B: LICENSES

Section 3000.287 Independent Outside Testing Laboratories

- a) Any independent outside testing laboratory that holds an accreditation in accordance with ISO/IEC 17025 by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Agreement and is authorized to perform independent testing laboratory services in a gaming jurisdiction comparable to Illinois is licensed to perform independent testing laboratory services in Illinois, subject to the requirements of this Subpart.

- b) A "gaming jurisdiction comparable to Illinois" means a jurisdiction with more than one casino that operates a mix of slot machines and table games approved by the regulator. For purposes of this subsection, "slot machines" and "table games" shall have the meanings ascribed in Section 4 of the Illinois Gambling Act.

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

- c) Any independent outside testing laboratory may apply by submitting to the Administrator its accreditations and the jurisdictions in which it is authorized to perform independent testing laboratory services.
- d) The Administrator shall determine whether the jurisdictions in which the applicant independent outside testing laboratory is licensed to perform independent testing laboratory services is a gaming jurisdiction comparable to Illinois.
- e) The Administrator shall provide a written determination whether the applicant independent outside testing laboratory meets the criteria in subsection (a).
- f) If the Administrator determines that the applicant independent outside testing laboratory does not meet the criteria in subsection (a), the applicant may request a determination by the Board, in writing, within 21 days after the date of service of the Administrator's determination.

(Source: Added at 44 Ill. Reg. 521, effective December 30, 2019)

Section 3000.288 Minimum Duties of Independent Outside Testing Laboratories

- a) As a condition of licensure, a licensed independent outside testing laboratory is obligated to do the following:
 - 1) Provide support contacts to the Board who are available 24 hours per day, seven days per week.
 - 2) Provide written reports regarding casino testing and test results submitted, which include, at a minimum:
 - A) All testing performed;
 - B) A description of the products tested;
 - C) The unique identification code or signature, as approved by the Administrator, assigned to the product;
 - D) A secure hash using a cryptographic function designated by the Administrator;

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

- E) A list of pay tables or other settings on the tested product, if applicable;
 - F) A description of the modifications between the tested product and previous versions of the tested product, if applicable; and
 - G) A list of components with which the product was verified to be compatible.
- 3) Provide the Board and its staff with real-time online access to all casino testing services, reports and documents via secure communication protocol and allow the Board to view updated reports of all pending, approved and obsolete video gaming terminals and any terminals for which the Administrator's approval has been revoked (see 11 Ill. Adm. Code 1800.940(d)).
- 4) Disclose all locations of any laboratory or factory at which independent outside testing services may be conducted. Upon request of the Board, the licensed independent outside testing laboratory shall reimburse the Board for all travel costs, in accordance with CMS travel regulations (80 Ill. Adm. Code 1800), incurred by up to two Board employees to inspect each laboratory or facility annually.
- 5) Assign a unique identification code or signature, as approved by the Administrator, and a secure hash using a cryptographic function designated by the Administrator to all Critical Program Storage Media upon testing. For purposes of this subsection (a)(5), "Critical Program Storage Media" means any program storage media containing software that is involved in, or that significantly influences, the operation and calculation of game play, game display, game result determination, game accounting, revenue or security.
- A) Software in program storage media includes, but is not limited to:
 - i) game accounting software;
 - ii) system software; and

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

- iii) peripheral firmware devices.
- B) Critical Program Storage Media shall be verified utilizing an external third-party methodology approved by the Administrator.
- C) Critical Program Storage Media may be required, as determined by the Administrator, to have security seals attached.
- 6) Conduct its operations in a manner that does not reflect adversely on the security or integrity of gaming in the State of Illinois.
- 7) Conduct its operations in a manner that deals fairly with other licensees of the Board.
- 8) Conduct its operations in accordance with Section 3000.110.
- b) In addition to the violations in Section 3000.110, any violation of the requirements of this Section may result in discipline in accordance with Section 3000.110.
- c) Any licensed independent outside testing laboratory that fails to maintain its accreditation in accordance with Section 3000.287(a) shall have its license suspended until such time as the independent outside testing laboratory reobtains its qualifications.

(Source: Added at 44 Ill. Reg. 521, effective December 30, 2019)

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: The Administration and Operation of the State Employees' Retirement System of Illinois
- 2) Code Citation: 80 Ill. Adm. Code 1540
- 3) Section Numbers: Adopted Actions:
 1540.80 Amendment
 1540.90 Amendment
 1540.400 New Section
- 4) Statutory Authority: 40 ILCS 5/14-123; 40 ILCS 5/14-123.1; 40 ILCS 5/14-124; 40 ILCS 5/14-135.03
- 5) Effective Date of Rules: December 27, 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 rules, including any material incorporated by reference, is on file in the Agency's principal office is available for public inspection.
- 9) Notice of Proposal published in *Illinois Register*: 43 Ill. Reg. 10771; October 4, 2019
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: Technical changes recommended by JCAR were included.
- 12) Have all the changes agree 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 any emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Actions:</u>	<u>Illinois Register Citations:</u>
1540.80	Amendment	43 Ill. Reg. 13769; December 2, 2019
1540.125	New Section	43 Ill. Reg. 13769; December 2, 2019

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

NOTICE OF ADOPTED AMENDMENTS

1540.395 Amendment 43 Ill. Reg. 13769; December 2, 2019

- 15) Summary and Purpose of Rulemaking: PA 101-54 was signed into law on July 12, 2019 and modernizes the disability program administered by SERS. Many of the adopted rules are revisory corrections to update the related administrative rules. The adopted rule changes references to dated Social Security age references in the disability benefit sections. The current references use the actual number of 65, but the Federal Social Security has been amended to increase such age for younger citizens. By removing the actual number and replacing it with the term "Social Security full retirement age", the age referenced in the SERS plan will adjust in step with changes to the Social Security full retirement age. The reference deals with off-setting disability benefits by the amount a member is eligible to receive from Social Security.

The adopted rules eliminate two benefit offset provisions that are no longer applied at the administrative level.

The adopted rules reflect a change provided by PA 101-54, which allows for other licensed healthcare professionals to authorize medical reports.

In addition, the adopted rules increase the quarterly external earnings threshold from \$2,490 to \$3,660. As you know, the current limitation was implemented back in 2005. The adopted amount of \$3,660 reflects the current limitation for the Social Security Disability Income program.

Finally, the adopted rules clarify that if there are two or more eligible survivors for a Tier 2 member, then the survivor benefits would be divided proportionally between the eligible survivors. Finally, the adopted rules would apply the gainful employment standard to adult dependent survivors.

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

Jeff Houch
Assistant to the Executive Secretary
State Employees' Retirement System
2101 South Veterans Parkway
Springfield IL 62794
jeff.houch@srs.illinois.gov

217/524-8105

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

NOTICE OF ADOPTED AMENDMENTS

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

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

NOTICE OF ADOPTED AMENDMENTS

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES

SUBTITLE D: RETIREMENT SYSTEMS

CHAPTER I: STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

PART 1540

THE ADMINISTRATION AND OPERATION OF THE
STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

Section

1540.5	Introduction (Repealed)
1540.10	Appointment of Retirement System Coordinator
1540.20	Member's Contribution and Service Credit
1540.30	Determination of Rate of Compensation
1540.40	Prior Service Credit
1540.50	Credit for Service for Which Contributions are Permitted
1540.60	Severance of Employment – A Condition to the Payment of a Refund or Retirement Annuity
1540.70	Death Benefits
1540.80	Disability Claims
1540.90	Benefit Offset
1540.100	Birth Date Verification
1540.110	Marriage Verification
1540.120	Level Income Option
1540.130	Pension Credit for Unused Sick Leave
1540.140	Removal of Children from Care of Surviving Spouse
1540.150	Proof of Dependency
1540.160	Investigations of Benefit Recipients
1540.170	Interest on Member Contributions
1540.180	Date of Application – Retirement Annuity, Occupational and Nonoccupational and Temporary Disability Benefits, and Resignation Refund Payments
1540.190	Lump Sum Salary Payments
1540.195	Mandatory Distributions Pursuant to Section 401(a)(9) of the Internal Revenue Code
1540.200	Removal from the Payroll
1540.210	Latest Date of Membership
1540.220	Period for Payment and Amount of Payment of Contributions
1540.230	Contributions by the State (Repealed)
1540.240	Actuarially Funded Basis (Repealed)
1540.250	Payments to Establish Credit for Service for Which Contributions are Permitted

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

NOTICE OF ADOPTED AMENDMENTS

- 1540.255 Pick-up Option for Optional Service Contributions
1540.260 Contributions and Service Credit During Nonwork Periods
1540.270 Written Appeals and Hearings
1540.280 Availability for Public Inspection (Recodified)
1540.290 Procedure for Submission, Consideration and Disposition of Petitions Seeking the Promulgation, Amendment or Repeal of these Rules and Regulations (Recodified)
1540.300 Organization of the State Employees' Retirement System (Recodified)
1540.310 Amendments
1540.320 Optional Forms of Benefits – Basis of Computation
1540.330 Board Elections
1540.340 Excess Benefit Arrangement
1540.350 Qualified Illinois Domestic Relations Orders (QILDRO)
1540.360 Election to be an Employee under Section 14-103.05(b)(3) of the Illinois Pension Code
1540.370 Americans With Disabilities Act
1540.380 Correction of Mistakes in Benefit Payments
1540.385 Suspension of Benefits from Uncashed Warrants
1540.390 Freedom of Information Act
1540.395 Accelerated Pension Benefit Payment Program
[1540.400 Multiple Survivors of a Tier 2 Member](#)
- 1540.APPENDIX A Grievance Form
1540.TABLE A Optional Forms of Benefits – Basis of Computation

AUTHORITY: Implementing and authorized by Article 14 of the Illinois Pension Code [40 ILCS 5].

SOURCE: Filed December 20, 1977, effective December 31, 1977; filed and effective February 28, 1978; emergency rule at 4 Ill. Reg. 2, page 246, effective January 1, 1980; amended at 4 Ill. Reg. 12, pages 530, 532, 534, effective March 11, 1980; emergency rule at 4 Ill. Reg. 46, page 1300, effective November 1, 1980; amended at 5 Ill. Reg. 3454, effective March 19, 1981; amended at 5 Ill. Reg. 7225, effective July 1, 1981; amended at 5 Ill. Reg. 12846, effective October 30, 1981; amended at 6 Ill. Reg. 2114, effective January 29, 1982; amended at 6 Ill. Reg. 5505, effective April 16, 1982; codified at 6 Ill. Reg. 10935; emergency amendment at 6 Ill. Reg. 11084, effective August 31, 1982, for a maximum of 150 days; amended at 7 Ill. Reg. 677, effective December 30, 1982; amended at 7 Ill. Reg. 8831, effective July 15, 1983; emergency amendment at 8 Ill. Reg. 359, effective January 1, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 4144, effective March 26, 1984; Sections 1540.280, 1540.290 and 1540.300 recodified to 2 Ill. Adm. Code 2375 at 8 Ill. Reg. 15902; amended at 9 Ill. Reg. 12375, effective

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

NOTICE OF ADOPTED AMENDMENTS

July 30, 1985; emergency amendment at 9 Ill. Reg. 19752, effective December 5, 1985, for a maximum of 150 days; amended at 10 Ill. Reg. 8889, effective May 14, 1986; amended at 11 Ill. Reg. 11155, effective June 15, 1987; amended at 14 Ill. Reg. 10498, effective June 19, 1990; amended at 15 Ill. Reg. 7379, effective April 26, 1991; amended at 16 Ill. Reg. 14407, effective September 4, 1992; amended at 20 Ill. Reg. 8033, effective June 15, 1996; emergency amendment at 21 Ill. Reg. 476, effective January 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 4992, effective April 1, 1997; emergency amendment at 21 Ill. Reg. 13187, effective September 15, 1997, for a maximum of 150 days; amended at 22 Ill. Reg. 967, effective December 22, 1997; amended at 22 Ill. Reg. 15363, effective August 10, 1998; amended at 23 Ill. Reg. 3824, effective March 9, 1999; amended at 23 Ill. Reg. 11313, effective September 1, 1999; amended at 24 Ill. Reg. 6975, effective April 20, 2000; amended at 24 Ill. Reg. 18090, effective December 1, 2000; amended at 25 Ill. Reg. 5632, effective April 4, 2001; emergency amendment at 26 Ill. Reg. 11133, effective June 28, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 16575, effective October 22, 2002; emergency amendment at 28 Ill. Reg. 8775, effective July 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 15628, effective November 18, 2004; amended at 29 Ill. Reg. 15554, effective October 1, 2005; amended at 30 Ill. Reg. 12303, effective July 1, 2006; amended at 31 Ill. Reg. 211, effective December 21, 2006; amended at 32 Ill. Reg. 17779, effective October 29, 2008; emergency amendment at 33 Ill. Reg. 9449, effective June 19, 2009, for a maximum of 150 days; emergency expired November 15, 2009; amended at 34 Ill. Reg. 285, effective December 15, 2009; amended at 34 Ill. Reg. 8313, effective June 10, 2010; amended at 38 Ill. Reg. 4023, effective January 24, 2014; emergency amendment at 39 Ill. Reg. 2792, effective February 6, 2015, for a maximum of 150 days; emergency amendment modified in response to Joint Committee on Administrative Rules Objection at 39 Ill. Adm. Code 5626, effective April 7, 2015, for the remainder of the 150 days; amended at 39 Ill. Reg. 9582, effective June 26, 2015; amended at 41 Ill. Reg. 4217, effective March 22, 2017; amended at 42 Ill. Reg. 9568, effective May 29, 2018; emergency amendment at 42 Ill. Reg. 21436, effective November 13, 2018, for a maximum of 150 days; amended at 43 Ill. Reg. 768, effective December 19, 2018; amended at 43 Ill. Reg. 3965, effective March 18, 2019; amended at 43 Ill. Reg. 9252, effective August 16, 2019; amended at 44 Ill. Reg. 534, effective December 27, 2019.

Section 1540.80 Disability Claims

- a) Nonoccupational Disability and Temporary Disability
 - 1) Any member of the Retirement System claiming benefits for nonoccupational disability or temporary disability shall file at the Springfield Office of the System a written application on forms prescribed by the Board.

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

NOTICE OF ADOPTED AMENDMENTS

- 2) If a member makes a payment of contributions to the System in order to establish sufficient credit to qualify for a nonoccupational disability benefit, payment of the benefit shall accrue as of the latter of the 31st day of absence from work (including any periods of such absence for which sick pay was received), the day after the member is last entitled to receive compensation (including any sick pay), or the date of payment to the System. The date of payment of the required contributions shall be determined in accordance with the provisions of Section 1540.220(a) (Period for Payment). If a member is receiving a nonoccupational disability benefit, and incurs a concurrent sickness or condition that is severe enough to disable the member past the period in which the member is disabled from the original sickness or condition, the nonoccupational benefit would continue uninterrupted and the member would not be required to obtain a new leave of absence or incur a new 30 day waiting period. A benefit will continue uninterrupted in the manner described only if the member is otherwise eligible for the benefit and a physician's report is provided and supports the disabling sickness or condition.
 - 3) If a member makes a payment of contributions to the System in order to establish sufficient credit to qualify for a temporary disability benefit, payment of the benefit shall accrue as of the latter of the 31st day after the member is last entitled to receive compensation or the date of payment to the System. The date of payment of the required contributions shall be determined in accordance with the provisions of Section 1540.220(a) (Period for Payment).
 - 4) If a member who is receiving a nonoccupational or temporary disability benefit wishes to make a payment of contributions to extend the period of eligibility for receipt of the benefit, the request to make the payment must be received at the Springfield Office of the System before the period of eligibility terminates and the date of payment of the required contributions shall be determined in accordance with the provisions of Section 1540.220(a) (Period for Payment).
- b) Occupational Disability
Any member of the Retirement System claiming benefits for occupational disability shall file at the Springfield Office of the System a written application on forms prescribed by the Board.

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

NOTICE OF ADOPTED AMENDMENTS

- c) Licensed Healthcare Professionals~~Physicians~~
- 1) Before an occupational, nonoccupational or temporary disability benefit can be approved, one statement must be received from a licensed healthcare professional~~physician~~ attesting to the disability. An additional statement from a second licensed healthcare professional~~physician~~ may be required by the disability examiner assigned to the case, depending on the nature of the disabling condition.
 - 2) The term "licensed healthcare professional~~physician~~" shall mean any individual defined as a "licensed healthcare professional" by Section 14-103.42 of the Code who has obtained a license through the Department of Financial and Professional Regulation as described in Section 11(A) of the Medical Practice Act of 1987 [225 ILCS 60/11(A)]. All licensed physicians must submit their registration number on all reports submitted to the Retirement System.
- d) Report of Licensed Healthcare Professionals~~Physicians~~
- 1) All licensed healthcare professional~~physician's~~ reports shall contain, among other things, the date and place of the first examination, the cause and nature of the disability, information regarding surgical work or laboratory tests, the date of last examination, prognosis regarding the member's disability, and an estimate of the probable length of disability.
 - 2) All licensed healthcare professional~~physician's~~ reports shall be signed by a licensed practicing healthcare professional~~physician~~ or by medical records personnel of a licensed clinic.
- e) Gainful Employment
- In the case of occupational, nonoccupational or temporary disability, an individual who is found to be gainfully employed shall have the benefit terminated. The term "gainfully employed" shall ~~be construed to~~ mean either of the following:
- 1) Any employment by or for the State of Illinois.
 - 2) Effective January 1, 2019~~October 1, 2005~~, any individual who exceeds \$3,660~~2490~~ in remuneration in any calendar quarter (the "calendar quarter

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

NOTICE OF ADOPTED AMENDMENTS

limitation") will have his or her benefit suspended at the end of the quarter when the calendar quarter limitation was exceeded. The individual may appeal the suspension of benefits to the Executive Committee. If the Executive Committee determines that the individual exceeded the calendar quarter limitation, SERS will recover the dollar amount of the earnings that exceeded the calendar quarter limitation. ~~In addition, the~~The individual must sign an agreement not to exceed the calendar quarter limitation in the future and to acknowledge that termination of benefits shall occur if a second violation occurs. Any individual who exceeds the calendar quarter limitation a second time will have his or her benefit suspended at the end of the quarter when the calendar quarter limitation was exceeded. The individual may appeal this suspension of benefits to the Executive Committee. If the Executive Committee determines that the individual exceeded the calendar quarter limitation a second time, the individual will be considered gainfully employed and benefits will be terminated as of the date of suspension. Any overpayment of benefits due to the termination will be recovered in full.

- A) For ~~purposes~~~~purpose~~ of this Section, "remuneration" shall ~~be defined to~~ mean:
- i) any compensation for personal services, including fees, wages, salary, commissions, and similar items;
 - ii) any income derived from the participation in a business activity, ~~as opposed to a passive investment~~, through the performance of physical and/or mental activities generally performed for the production of income.
- B) For purposes of this Section, remuneration shall be computed on a gross rather than net basis (i.e., no deductions of any kind including but not limited to deductions for losses, expenses, taxes or withholding, will be considered in such computation). Remuneration shall also include the fair market value of goods or services received, which if received in money would otherwise constitute remuneration. Remuneration representing gain from the sale, exchange or other disposition of goods or other property shall be equal to, the sum of the amount of money and the fair market value of any property received on such sale, exchange, or

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

NOTICE OF ADOPTED AMENDMENTS

disposition, less the amount representing the cost to the seller in acquiring the goods or other property which is sold, exchanged, or disposed of. In applying this Section, the System shall consider the date on which the remuneration was earned rather than when it was received. For purposes of this Section, remuneration may be earned through either self-employment or employment by others.

C) Gainful employment shall not include remuneration from income producing opportunities or activities created by the member prior to the onset of the disability, except to the extent that the remuneration level has increased through the performance of physical and/or mental activities.

D) A dependent unmarried child over age 18 who is receiving a survivor's annuity shall be considered to be engaged in substantial gainful activity if he or she is gainfully employed as defined in this subsection (e).

f) Investigation of Claims

- 1) The Board of Trustees of the State Employees' Retirement System (SERS) recognizes its obligation to provide a systematic program for the continued investigation, control and supervision of disability claims.
- 2) Each disability benefit recipient is required to provide a current medical examination report each 6 months to substantiate continued disability. In order to substantiate the member's continued eligibility for disability benefits, the Disability Claims Examiner may require that the member submit to independent medical examinations and may request additional medical statements; hospital records; activity inspection reports; Department of Employment Security Earning Statements; Social Security benefit payment information; income tax records; or other pertinent information, all as deemed reasonable and necessary by the Examiner. The System will pay for independent medical examinations, hospital records, and activity inspection reports that it requires. The System may waive the medical examination report requirement for cases in which the evidence supports that a member is permanently disabled and that the member will never be able to return to his or her former position.

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

NOTICE OF ADOPTED AMENDMENTS

- 3) Failure of a disability benefit recipient to submit to an independent medical examination, to cooperate with an activity inspection, or to provide the information required shall result in suspension of benefit payments.
- 4) Any benefit suspended as a result of a medical examination will be suspended on the last day of the month in which the claim is reviewed by the Executive Committee.
- g) Definition of Phrase "The Duties of the Member's Position"
The phrase, "The duties of the member's position" shall mean the duties of the member's position as of the date the member's name is removed from the payroll without regard to subsequent changes in the duties of the position, availability of the position, or the member's right to return to the position.
- h) Member Definition
"Member", for purposes of Sections 14-123, 14-123.1, and 14-124 of the Code, means an employee in active service at the time of incurring a disabling condition.

(Source: Amended at 44 Ill. Reg. 534, effective December 27, 2019)

Section 1540.90 Benefit Offset

- a) Occupational Disability and Occupational Death
Benefits received under Workers' Compensation Act [820 ILCS 305] or Workers' Occupational Diseases Act [820 ILCS 310] with respect to disability or death of a member shall be applied as an offset against any occupational disability or death benefit provided under the Retirement System with respect to the same disability or death. The Workers' Compensation average weekly wage will be converted to a monthly rate for use as an offset to the Retirement System monthly benefit.
 - 1) If the amount of compensation received is less than the monthly benefit provided under the Pension Code, only the amount of the excess of ~~thatsueh~~ monthly benefit over the amount of ~~the sueh~~ compensation shall be payable by the Retirement System, subject, in the case of occupational death, to any minimum benefit provided by ~~Sections~~~~Section~~ 14-103.18 and ~~Section~~ 14-121(h) of the Pension Code. If the amount of compensation received equals or exceeds the monthly benefit provided under the Pension Code, no benefit shall be payable by the Retirement

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

NOTICE OF ADOPTED AMENDMENTS

System during the period compensation is paid under the Workers' Compensation Act or Workers' Occupational Diseases Act.

- 2) If the compensation for disability or death is received in a commuted lump sum or partly in a commuted lump sum and partly in monthly or weekly sums, the Retirement System shall, for offset purposes, consider the compensation as if it had been paid using the average weekly wage as prescribed under the Workers' Compensation Act or Workers' Occupational Diseases Act. Salary or wages paid beyond date of disability shall not be considered part of the Workers' Compensation offset.
- 3) In the event the whole or any part of the benefits received under the Workers' Compensation Act or Workers' Occupational Diseases Act is commuted into one sum, the aggregate sum of the benefits so commuted and not the commuted value thereof shall be used for purposes of ascertaining the amount of offset.
- 4) No such offset or compensation shall be made after retirement of a member of a retirement annuity.
- 5) The amount considered for offset purposes shall be reduced by any legal expenses granted in the award.
- 6) No offset shall be made with respect to amounts received or paid under the Workers' Compensation Act or Workers' Occupational Diseases Act for medical, hospital, or burial expenses.
- 7) That portion of the occupational death benefit consisting of accumulated contributions of a member shall not be subject to any offset mentioned in this section.
- 8) The termination of death benefits under the Workers' Compensation Act or Workers' Occupational Diseases Act due to remarriage of the benefit recipient shall cause the offset to the Occupational Death Benefit applicable to the remarried benefit recipient to terminate effective with the last month of eligibility represented in the final benefit payment under the Workers' Compensation Act or Workers' Occupational Diseases Act.

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

NOTICE OF ADOPTED AMENDMENTS

- 9) In those cases ~~in which~~~~where~~ the injury or death, for which an occupational disability or death benefit is payable, creates a legal liability for damages on the part of some person other than the employer to pay damages, the Workers' Compensation offset shall be applied as follows:
- A) Any amounts paid under the Workers' Compensation Act or Workers' Occupational Diseases Act are subject to the offset provisions of Article 14 of the Pension Code [40 ILCS 5/~~Art. 14~~] and this Part, even though ~~those~~~~such~~ amounts are recoverable under ~~the subrogation~~ Section 5(b) of the Workers' Compensation Act (subrogation).
- B) In the event that benefits due under the Workers' Compensation Act or Workers' Occupational Diseases Act are commuted into one sum or waived in lieu of the member seeking recovery against a third party, the System shall use the amount of any judgment, settlement or payment for ~~the~~~~such~~ injury by the third party as a credit against any benefits paid or payable by the System.
- 10) Any periods of disability for which payment under the Workers' Compensation Act is denied, due to the failure of the individual to comply with that Act, ~~that~~~~which~~ result in a period of noncompensability under the Workers' Compensation Act will not be considered for Occupational Disability until the entire Workers' Compensation case has been finalized through the Illinois Workers' Compensation Commission.
- b) Nonoccupational Disability and Temporary Disability
As used in this Section, "full retirement age" means the age at which an individual is eligible to receive full Social Security retirement benefits.
- 1) The nonoccupational and temporary disability benefit payable to a covered member shall be offset before the full retirement age ~~65~~ by the amount of Social Security disability benefit payable prior to the member attaining the full retirement age ~~65~~ and after the full retirement age ~~65~~ by the amount of the Social Security retirement benefit for which the individual is first eligible on or after attaining the full retirement age ~~65~~ less legal expenses paid by the member to obtain the award up to the maximum allowed by the Social Security Administration.

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

NOTICE OF ADOPTED AMENDMENTS

- 2) The Social Security retirement benefit offset will be applied as follows, at the full retirement age ~~age 65~~:
 - A) For a disability benefit recipient who received Social Security disability benefits before attaining the full retirement age 65, the Social Security disability benefit payment applied as the offset prior to attaining the full retirement age 65 will remain in effect as the Social Security retirement benefit offset on or after attaining the full retirement age 65.
 - B) ~~For a disability benefit recipient who did not receive Social Security disability benefits before age 65, the Social Security disability benefit amount that would have been payable by the Social Security Administration had the disability benefit recipient been disabled for the purpose of Social Security will be used as the Social Security retirement benefit offset at age 65 regardless of acceptance of a Social Security retirement benefit before age 65.~~
 - C) ~~When a Social Security disability benefit amount is not provided by the Social Security Administration because the individual is not eligible for a disability benefit for a reason other than not being disabled, the Social Security retirement benefit determined at the date of disability for which the individual is eligible at age 65 will be used for offset purposes at age 65.~~
 - 3) Disability benefits payable from the System commencing after the full retirement age 65 will be offset by Social Security retirement benefits for which the individual is eligible on the commencement of disability.
- c) Social Security Benefit Offset to Widow's and Survivor's Annuities
- 1) Beginning July 1, 2009, the Social Security survivor benefit offset (offset) shall not apply to any widow's or survivor's annuity of any person who began receiving a retirement annuity or a survivor's or widow's annuity prior to January 1, 1998.
 - 2) Beginning July 1, 2009, the offset shall not apply to the widow's or survivor's annuity of any person who began receiving a widow's or survivor's annuity on or after January 1, 1998 and prior to July 1, 2009.

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

NOTICE OF ADOPTED AMENDMENTS

- 3) If the widow's or survivor's annuity is payable based on a coordinated employee's death in service, the offset shall not be applied to the widow's or survivor's annuity.
- 4) Any person who began receiving a retirement annuity after January 1, 1998 and before July 1, 2009 may make a one-time election before July 1, 2009 to reduce the monthly retirement annuity payable by 3.825% in exchange for not having the offset applied to any survivor's annuity payable.
- 5) Any employee with a retirement annuity effective date on or later than July 1, 2009 may, at the time of retirement, elect to reduce the monthly retirement annuity payable by 3.825% in exchange for not having the offset applied to any survivor's annuity payable.
- 6) For a person on the level income option under Section 14-112 of the Illinois Pension Code who makes an election under subsection (c)(4) or (c)(5) ~~of this Section~~, the reduction shall be computed based on the reduced amount of the retirement annuity to be paid after the person has become eligible for old age payments under the federal Social Security Act plus any automatic annual increases received as of the date of the election.
- 7) For a member whose accrued benefits are payable, in whole or in part, to an alternate payee pursuant to a QILDRO, as established by Section 1-119 of the Illinois Pension Code, any reduction due to an election made by the member under subsection (c)(4) or (c)(5) ~~of this Section~~ shall be computed based on the total amount of the member's retirement annuity prior to and without giving effect to any QILDRO reduction for amounts payable to an alternate payee. However, the actual reduction under subsection (c)(4) or (c)(5) shall be applied exclusively to the member's retirement annuity and not to any payment to an alternate payee.
- 8) If a coordinated employee does not elect to reduce the retirement annuity in exchange for not applying the offset to the SERS survivor's annuity, the survivor's annuity shall be reduced by one-half of any Social Security survivor's benefits for which all beneficiaries included in the widow's or survivor's annuity are eligible. The offset shall not reduce any survivor's or widow's benefit by more than 50%. If a coordinated employee does not

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

NOTICE OF ADOPTED AMENDMENTS

elect to reduce the retirement annuity in exchange for not applying the offset to the SERS survivor's annuity, the offset will commence on the date the beneficiaries first become eligible to receive any portion of the Social Security benefit, regardless of whether the beneficiaries elect to accept the Social Security benefit on that date or if the beneficiaries' own earnings preclude payment of Social Security survivor's benefits.

- 9) If an annuitant who elected to have the retirement annuity reduced 3.825% to prevent an offset from taking place to any survivor benefits payable has a change in marital status due to death or divorce, that annuitant may make an irrevocable election to prospectively discontinue the reduction. However, no reimbursement of prior reductions will be made.
- 10) If, at the time the offset is to be commenced, the survivor is eligible to receive a monthly benefit amount from the Social Security Administration based on his/her own Primary Insurance Amount, that amount shall be deducted from the amount of survivor's benefit payable by Social Security and the offset computed on the difference. If the survivor is eligible to receive a monthly benefit amount based on his/her own Primary Insurance Amount and a governmental pension offset would have been applied to the Social Security survivor's benefit, that amount shall be deducted from the amount of the survivor's benefit payable by Social Security and the offset computed on the difference.
- 11) The Social Security reduction amount once established shall remain constant except for the following conditions:
 - A) If a survivor under age 50 previously receiving the survivor's benefit because of minor children becomes a deferred annuitant, the offset amount will be recomputed when he or she first becomes eligible for Social Security survivor's benefits. The offset amount will be based on the original widow's or widower's Social Security survivor's amount, ignoring subsequent increases to the deceased's Primary Insurance Amount. The recomputed offset amount shall be the balance of the Social Security survivor's benefit minus the governmental pension offset, if any.
 - B) The offset amount will be adjusted when a child is removed from consideration for the System's annuity.

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

NOTICE OF ADOPTED AMENDMENTS

- C) The offset amount will be adjusted when any benefit recipients become ineligible for Social Security benefits.
- D) Beginning July 1, 2009, if a survivor under age 62 receiving a survivor's benefit subject to the Social Security offset becomes eligible to receive a monthly benefit amount based on a Primary Insurance Amount on his or her own record, the offset will be recomputed when he or she first becomes eligible to receive his or her own Primary Insurance Amount. The offset amount will be based on the estimated widow's or widower's Social Security survivor's amount determined at the date of death of the member less the estimated monthly benefit amount based on the Primary Insurance Amount of the survivor determined at the date of death of member, and the government pension offset, if any, ignoring any subsequent increases to the deceased Primary Insurance Amount or the survivor's Primary Insurance Amount. The monthly benefit amount based on the primary insurance amount of the survivor shall be determined from the Social Security Administration's Personal Earnings and Benefit Estimate Statement, including any adjustment due to the application of the Windfall Elimination Provision.
- d) Retirement Annuity
Pursuant to Section 14-108(f) of the Pension Code, for members under age 65, the primary insurance benefit payable to the member upon attainment of age 65 shall, at the date of acceptance of a retirement annuity, be determined from the Social Security Administration's Personal Earnings and Benefit Estimate Statement, including any adjustments due to the application of the Windfall Elimination Provision. For members over age 65, the primary insurance benefit shall be the amount of Social Security benefits payable at the date of retirement with the State Employees' Retirement System.

(Source: Amended at 44 Ill. Reg. 534, effective December 27, 2019)

Section 1540.400 Multiple Survivors of a Tier 2 Member

- a) If 2 or more persons are eligible to receive survivor's annuities, as provided under either Section 1-160(f) or 1-161(i) of the Code, based on the same deceased Tier 2

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

NOTICE OF ADOPTED AMENDMENTS

member, then the calculation of the survivors' annuities shall be based on the total amount of the survivors' annuity divided by the number of persons eligible to receive the benefit.

- b) For purposes of this Section, "Tier 2 Member" means a member of the System who is subject to the provisions of Sections 1-160 and 1-161 of the Illinois Pension Code.

(Source: Added at 44 Ill. Reg. 534, effective December 27, 2019)

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

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

<u>Section Numbers:</u>	<u>Emergency Actions:</u>
130.425	Amendment
130.455	Amendment
- 4) Statutory Authority: 35 ILCS 120/1; 35 ILCS 120/12; 20 ILCS 2505/2505-795
- 5) Effective Date of Emergency Amendments: December 27, 2019
- 6) If these Emergency Amendments are to expire before the end of the 150-day period, please specify the date on which they are to expire: There is no specific date on which the Emergency Amendments will expire before the end of the 150-day period.
- 7) Date Filed with the Index Department: December 27, 2019
- 8) A copy of the emergency amendments, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Reason for Emergency: The guidance provided in the emergency amendment regarding the trade-in credit limitation on the trade-in of first division motor vehicles applies to sales of motor vehicles beginning on January 1, 2020. Although the Department of Revenue published Informational Bulletin FY 2020-1 in September 2019 regarding this issue, an organization representing automobile dealers as well as the Illinois Secretary of State's Office recently had additional inquiries and it became clear that the Department could not rely on existing information about vehicle registrations to delineate which vehicles are subject to the trade-in credit limitation, but must itself provide specific guidance on what constitutes a first division motor vehicle subject to the limitation. As a result of these inquiries, the Department posted a "Frequently Asked Questions" document on its website on December 20, 2019 and is filing this emergency rulemaking in order to put in place binding guidance on this issue that both taxpayers and Department employees can rely on.
- 10) A Complete Description of the Subjects and Issues Involved: This rulemaking implements the provisions of PA 101-31 that, effective with sales made on or after January 1, 2020, imposes a \$10,000 limit on the credit allowed to reduce the taxable

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

selling price when a first division motor vehicle is traded in on the purchase of another motor vehicle.

- 11) Are there any rulemakings to this Part pending? Yes

<u>Section Numbers:</u>	<u>Proposed Actions:</u>	<u>Illinois Register Citations:</u>
130.330	Amendment	43 Ill Reg. 13190, November 15, 2019
130.1957	New Section	43 Ill Reg. 13190, November 15, 2019

- 12) Statement of Statewide Policy Objectives: This rulemaking does not create or enlarge a mandate as described in Section 3(b) of the State Mandates Act.

- 13) Information and questions regarding these emergency rules shall be directed to:

Samuel J. Moore
Illinois Department of Revenue
101 West Jefferson
Springfield IL 62794

217/782-2844

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

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 130
RETAILERS' OCCUPATION TAX

SUBPART A: NATURE OF TAX

Section

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

SUBPART B: SALE AT RETAIL

Section

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

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

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

EMERGENCY

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

EMERGENCY

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

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

130.525	Who May Sign Returns
130.530	Returns Covering More Than One Location Under Same Registration – Separate 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

Section	
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

Section	
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
130.715	Sub-Certificates of Registration
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

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

- 130.810 Records Required to Support Deductions
- 130.815 Preservation and Retention of Records
- 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

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

SUBPART N: SALES FOR RESALE

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

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

SUBPART S: SPECIFIC APPLICATIONS

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
130.1960	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

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

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

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

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

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

AUTHORITY: Implementing the Illinois Retailers' Occupation Tax Act [35 ILCS 120] and authorized by Section 2505-25 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-25].

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.

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

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; 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,

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

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, 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; emergency amendment at 44 Ill. Reg. 552, effective December 27, 2019, for a maximum of 150 days.

SUBPART D: GROSS RECEIPTS

Section 130.425 Traded-In Property**EMERGENCY**

- a) "Gross receipts" means the "selling price" or "amount of sale". "Selling price" or the "amount of sale" means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property other than as hereinafter provided, and services, but, prior to January 1, 2020, not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold; beginning January 1, 2020, "selling price" includes the portion of the value of or credit given for traded-in motor vehicles of the first division as defined in Section 1-146 of the Illinois Vehicle Code of like kind and character as that which is being sold that exceeds \$10,000. "Selling price", ~~and~~ shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever. "Selling price" does not include charges that are added to prices by sellers on account of the seller's tax liability under any local occupation tax administered by the Department, or on account of the seller's duty to collect, from the purchasers, the tax that is imposed under any local use tax administered by the Department [35 ILCS 120/1]. Local occupation and use taxes administered by the Department include, but are not limited to, the Retailers' Occupation Tax Act, or on account of the seller's duty to collect, from the purchaser, the tax that is imposed by the Use Tax Act, or on account of the seller's tax liability under the Home Rule Municipal

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

Retailers' Occupation Tax Act [65 ILCS 5/8-11-1], the Non-Home Rule Municipal Retailers' Occupation Tax Act [65 ILCS 5/8-11-1.3], the Home Rule County Retailers' Occupation Tax Act [55 ILCS 5/5-1006], Section 4 of the Water Commission Act of 1985 [70 ILCS 3720/4], Section 5.01 of the Local Mass Transit District Act [70 ILCS 3610/5.01] and Section 4.03 of the Regional Transportation Authority Act [70 ILCS 3615/4.03].

- b) The phrase "like kind and character" includes, but is not limited to, the trading of any kind of motor vehicle on the purchase of any kind of motor vehicle, or the trading of any kind of farm implement on the purchase of any kind of farm implement, while not including a kind of item which, if sold at retail by that retailer, would be exempt from Retailers' Occupation Tax and Use Tax as an isolated or occasional sale.
- c) A motor vehicle traded to a farm implement dealer for a farm implement would not qualify for the exemption unless such farm implement dealer is also a motor vehicle dealer because the farm implement dealer's sale of the motor vehicle would be exempt as an isolated or occasional sale. A farm implement traded to a motor vehicle dealer for a motor vehicle would not qualify for the exemption unless such dealer is also a farm implement dealer because the motor vehicle dealer's sale of the farm implement would be an exempt isolated or occasional sale. A farm implement traded for a motor vehicle, or a motor vehicle traded for a farm implement, would qualify for the exemption if the seller is engaged in business both as a motor vehicle dealer and a farm implement dealer. Agricultural produce or animals traded for a motor vehicle or for a farm implement would not qualify for the exemption.
- d) The real test is whether the retail sale of the traded-in tangible personal property by the person who accepts it in trade would be subject to Retailers' Occupation Tax, or whether such sale would be exempt as an isolated or occasional sale (see Section 130.110). In the former event, the tangible personal property qualifies for the trade-in exemption. In the latter event, it does not.
- e) Except for first division motor vehicles, as discussed in subsection (j), the The value of tangible personal property taken by a seller in trade as all or a part of the consideration for a sale, where the item that is traded-in is of like kind and character as that which is being sold, shall not be considered to be "gross receipts" subject to the Retailers' Occupation Tax and need not be included in the seller's return, or may be deducted in the return from gross receipts if included in gross

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

receipts as reported in the return. The value of traded-in real estate or intangible personal property is not deductible from gross receipts in computing Retailers' Occupation Tax liability.

- f) The Retailers' Occupation Tax applies to the business of selling tangible personal property at retail in this State whether such property is new or used and regardless of how the seller may have acquired such property (i.e., by way of purchase, as a trade-in or in some other manner).
- g) No trade-in credit may be taken for amounts representing the proceeds due or paid under an insurance contract if title to missing, damaged or destroyed property is transferred to an insurer by operation of law or contract, i.e., the insurance claim value of property may not be used as a trade-in credit when an insured purchases tangible personal property to replace property which has been lost or destroyed.
- h) No trade-in credit may be taken for that portion of the purchase price of a new automobile representing a settlement which the purchaser has obtained from an automobile manufacturer pursuant to the New Vehicle Buyer Protection Act [815 ILCS 380].
- i) When tangible personal property is sold that is covered by a "core charge," the full retail selling price of such property, including the core charge, is subject to Retailers' Occupation Tax. The fact that a component of the gross receipts from the sale of the tangible personal property is labeled a "core charge" does not change the taxable nature of the transaction. A core charge is regarded as a predetermined trade-in value. Tax should be charged on the core charge, but a deduction may be taken for the traded-in tangible personal property actually received after the date of sale if books and records clearly relate the trade-in to the sales transaction. Such a situation would occur when the replacement property is purchased prior to the time the used property is returned. If, on the other hand, the used property is traded in at the time of purchase, tax is due on the purchase price, less the allowance for the trade-in.
- j) Traded-in first division motor vehicles. *Beginning January 1, 2020, the trade-in credit may not be taken for that portion of the value of or credit given for a traded-in motor vehicle of the first division, as defined in Section 1-146 of the Illinois Vehicle Code, of like kind and character as that which is being sold that exceeds \$10,000 [35 ILCS 120/1]. This means that \$10,000 is the maximum credit a retailer may take on the return to reduce the taxable selling price of a*

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

motor vehicle when he or she accepts the trade-in of a first division motor vehicle in the transaction, regardless of the value of or credit given for the trade-in. This does not prohibit the retailer from reducing the price of the vehicle being sold by the value of or credit given for the traded-in motor vehicle. It only limits the credit the retailer may take on the return for that trade-in.

- 1) Definitions. For purposes of this subsection (j),
 - A) "Vehicle" means every device (i) in, upon, or by which any person or property is or may be transported or drawn upon a highway or (ii) requiring a certificate of title under Section 3-101(d) of the Illinois Vehicle Code. However, "vehicle" does not include junk vehicles, devices otherwise prescribed in the Illinois Vehicle Code, devices moved by human power, devices used exclusively upon stationary rails or tracks, or snowmobiles as defined in the Snowmobile Registration and Safety Act [625 ILCS 5/1-217].
 - B) "Devices requiring a certificate of title under Section 3-101(d) of the Illinois Vehicle Code" means all-terrain vehicles and off-highway motorcycles purchased on or after January 1, 1998 [625 ILCS 5/3-101(d)].
 - C) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, except for vehicles moved solely by human power, motorized wheelchairs, low-speed electric bicycles, and low-speed gas bicycles. Motor vehicles are divided into two divisions: first division and second division [625 ILCS 5/1-146].
 - D) "First division motor vehicle" means a motor vehicle that is designed for the carrying of not more than 10 persons [625 ILCS 5/1-146].
 - E) "Second division motor vehicle" means: (i) a motor vehicle designed for carrying more than 10 persons, (ii) a motor vehicle designed or used for living quarters, (iii) a motor vehicle designed for pulling or carrying freight, cargo, or implements of husbandry,

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

and (iv) a motor vehicle of the first division remodeled for use and used as a motor vehicle of the second division [625 ILCS 5/1-146].

- 2) Items that are first division motor vehicles. Traded-in first division motor vehicles are subject to the \$10,000 limit on the trade-in credit. First division motor vehicles generally consist of most standard passenger cars. This includes most sport utility vehicles ("SUVs") that are enclosed and designed primarily for passengers, regardless of whether the SUV is registered as a passenger vehicle, registered as a Class B vehicle under Section 3-815 of the Illinois Vehicle Code, or registered in some other way. In addition, devices requiring a certificate of title, such as all-terrain vehicles ("ATVs") and off-highway motorcycles are first division motor vehicles. To aid in the determination of whether a traded-in motor vehicle is a first division motor vehicle, the following is a non-exhaustive list of first division motor vehicles:
- A) Motor vehicles designed for carrying not more than 10 persons. This category includes motor vehicles designed as passenger vehicles, but whose seats have been removed, such as a minivan with the seats removed. This is in contrast to a motor vehicle that is designed for pulling or carrying property, freight, or cargo, such as a panel van, which is a second division motor vehicle.
 - B) SUVs designed for carrying not more than 10 persons.
 - C) Motorcycles, both on-road and off-road.
 - D) ATVs.
- 3) Items that are second division motor vehicles. Second division motor vehicles that are traded in are not subject to the \$10,000 limit on the trade-in credit. Second division motor vehicles generally include open-bed vehicles (such as pickup trucks) and enclosed vehicles designed to carry cargo (such as panel vans). To aid in the determination of whether a traded-in motor vehicle is a second division motor vehicle, the following is a non-exhaustive list of second division motor vehicles:

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

- A) Motor vehicles designed for carrying more than 10 persons, including limousines, SUVs, transport vehicles, and any other passenger vehicle designed for carrying more than 10 passengers.
 - B) Motor vehicles designed or used for living quarters, such as RVs (recreational vehicles).
 - C) Motor vehicles designed for pulling or carrying property, freight, or cargo. This category includes open-bed vehicles, including, but not limited to, pickup trucks (even if the bed has been covered by a top of any kind) and side by side vehicles, also known as UTVs (utility vehicles), ROVs (recreational off-highway vehicles), and MOHUVs (multi-purpose off-highway utility vehicles), if they have an open bed (even if the bed has been covered by a top of any kind) or are otherwise designed for carrying property, freight, or cargo. This category also includes enclosed vehicles typically used commercially, such as panel vans or cargo vans.
 - D) School buses, including vehicles of the first division used and registered as school buses.
 - E) Ambulances, medical carriers, and hearses.
- 4) Examples. The following examples illustrate the trade-in credit allowed for the trade-in of the following vehicles.

EXAMPLE 1

A motor vehicle retailer sells a new car for \$40,000 and allows \$30,000 for the trade-in of a sport utility vehicle that seats 8 passengers. Since a sport utility vehicle that seats 8 passengers is a first division motor vehicle, the credit that the retailer may take on the return for the traded-in sport utility vehicle is \$10,000.

EXAMPLE 2

A motor vehicle retailer sells a new car for \$40,000 and allows \$30,000 for the trade-in of a pickup truck. Since a pickup truck is a second division motor vehicle, the credit that the retailer may take on the return for the traded-in pickup truck is \$30,000.

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

EXAMPLE 3:

A motor vehicle retailer sells a new motorcycle for \$30,000 and allows \$20,000 for the trade-in of a motorcycle. Since a motorcycle is a first division motor vehicle, the credit that the retailer may take on the return for the traded-in motorcycle is \$10,000.

EXAMPLE 4:

A motor vehicle retailer sells a new limousine for \$60,000 and allows \$30,000 for the trade-in of a limousine that seats 10 passengers. Since a limousine that seats 10 passengers or less is a first division motor vehicle, the credit that the retailer may take on the return for the traded-in limousine is \$10,000.

EXAMPLE 5:

A motor vehicle retailer sells a new limousine for \$60,000 and allows \$30,000 for the trade-in of a limousine that seats 11 passengers. Since a limousine that seats 11 passengers or more is a second division motor vehicle, the credit that the retailer may take on the return for the traded-in limousine is \$30,000.

(Source: Amended by emergency rulemaking at 44 Ill. Reg. 552, effective December 27, 2019, for a maximum of 150 days)

Section 130.455 Motor Vehicle Leasing and Trade-In Allowances**EMERGENCY**

a) Definitions

"Advance Trade Credit" means a trade-in credit earned as the result of the trade-in of a vehicle on the future purchase of a vehicle where the purchaser is contractually obligated to make a purchase within 9 months after the advance trade.

"Dealer" means any person engaged in the business of selling vehicles at retail.

"Dealer Credit" means an advance trade credit maintained on the books of the dealer where the purchaser is contractually obligated to make a purchase within 9 months after the advance trade.

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

"Lease" means a true lease of a vehicle for a term of more than one year.

"Lessee" means any person that acquires possession of a vehicle pursuant to a lease.

"Lessor" means any person engaged in the business of leasing vehicles to other persons.

"Purchaser" means any person, whether an individual consumer or a lessor, that purchases a vehicle from a dealer.

b) Valuation of Traded-in Vehicles; \$10,000 Limit on Credit Allowed for Traded-in Motor Vehicles of the First Division

1) Except for traded-in motor vehicles of the first division as provided in subsection (b)(3), the The selling price of a vehicle does not include *the value of or credit given* for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold. *The value of* a traded-in vehicle is the amount of value assigned to the vehicle without regard for outstanding debt owed on the traded-in vehicle by any party. (Section 1 of the Act)

2) Except for traded-in motor vehicles of the first division as provided in subsection (b)(3), the The amount of *credit given* for a traded-in vehicle is the value assigned to the vehicle, reduced by any cash payments received by the purchaser or title holder of the traded-in vehicle. The reduction of the value by offsetting cash payments results in the actual *credit given* for the traded-in vehicle. Where cash payment is made to the purchaser or the title holder of the traded-in vehicle, the trade-in credit is equal to the actual *credit given* for the vehicle. (Section 1 of the Act)

Example:

	Value of Trade-In	Credit Given	Trade-In Credit
Trade-In Vehicle	\$10,000		\$10,000

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

With \$3,000 Lien	\$10,000		\$10,000
With \$2,000 Cash Back to Purchaser	\$10,000	\$8,000	\$8,000

3) Notwithstanding subsections (b)(1) and (b)(2), beginning January 1, 2020, "selling price" includes the portion of the value of or credit given for traded-in motor vehicles of the First Division as defined in Section 1-146 of the Illinois Vehicle Code of like kind and character as that which is being sold that exceeds \$10,000. (Section 1 of the Act) On and after January 1, 2020, the full value of any trade-in may still be used to reduce the price of an item purchased; however, the trade-in credit taken on the return for the trade in of a first division motor vehicle is limited to \$10,000.

Example:

	<u>Value of Traded-In First Division Motor Vehicle</u>	<u>Credit Given</u>	<u>Trade-In Credit</u>
<u>Trade-In Vehicle</u>	<u>\$20,000</u>	<u>\$20,000</u>	<u>\$10,000</u>
<u>With \$3,000 Lien</u>	<u>\$20,000</u>	<u>\$20,000</u>	<u>\$10,000</u>
<u>With \$2,000 Cash Back to Purchaser</u>	<u>\$20,000</u>	<u>\$18,000</u>	<u>\$10,000</u>

c) Use of Trade-in Credits

1) Subject to the \$10,000 limit on the reduction allowed for the trade in of a

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

first division motor vehicle (see subsection (b)(3)), aA dealer may reduce his gross receipts by the *value of or credit given* for a traded-in motor vehicle where: (Section 1 of the Act)

- A) An individual trades a motor vehicle he owns on the purchase of a new or used motor vehicle;
 - B) A lessor trades a motor vehicle he owns on the purchase of a new or used motor vehicle for subsequent lease;
 - C) A lessor or other purchaser trades a motor vehicle owned by a prospective lessee or a third party where the prospective lessee or third party assigns the vehicle to the dealer and provides written authorization for the trade to the dealer, for the benefit of the lessor or other purchaser. The written authorization provided by the prospective lessee or third party should be specific to the immediate transaction, identifying the vehicle to be purchased by the lessor or other purchaser. A prospective lessee or third party trade-in authorization may not be used in conjunction with an advance trade transaction; or
 - D) A motor vehicle is traded-in as described in subsection (c)(1)(B) or (c)(1)(C) of this Section, and the dealer executes the lease but assigns the lease to a purchasing lessor, if the following requirements are part of the transaction:
 - i) the lease agreement states that the lease and vehicle will be assigned to the lessor making the trade of the motor vehicle, and
 - ii) title is issued directly to the lessor making the trade of the motor vehicle and not to the dealer so that the dealer remains outside the chain of title.
- 2) A dealer may not reduce his gross receipts by the *value of or credit given* for a traded-in motor vehicle where: (Section 1 of the Act)
- A) The dealer is the owner (meaning the dealer holds either title or certificate of origin) of the traded-in motor vehicle;

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

- B) The trade-in vehicle was disposed of in a sales transaction predating the trade but was not identified by contract or written agreement as an advance trade-in vehicle as required in subsection (d) of this Section; or
- C) The party holding title and offering the vehicle or vehicles for trade on behalf of another purchaser or lessor, as described in subsection (c)(1)(C) of this Section, would not be entitled to the isolated or occasional sale exemption if such vehicle or vehicles were sold by that party, rather than traded.
- d) **Advance Trade-Ins**
A transaction may constitute an advance trade-in if, at the time the vehicle is traded to the dealer, the purchaser becomes contractually obligated to purchase one or more vehicles from the dealer within 9 months after the date of the advance trade-in transaction. Advance trade credits not used within the time specified expire and may not be used subsequent to the 9 month credit period. Advance trade credits are non-transferable.
- 1) In order to apply the trade-in credit ~~to reduce toward~~ the taxable selling price of a vehicle, the documents recording the purchaser's contractual obligation to purchase need not specify the make, model or purchase price of a vehicle to be purchased, only that the purchaser is under an obligation to purchase within the specified amount of time.
- 2) Advance trade-in credit given by the dealer to the purchaser in the amount of the *value of or credit given* for a traded-in vehicle at the time of the advance trade-in may be in the form of dealer credit or cash, and will not affect the purchaser's ability to apply the advance trade credit ~~to reduce toward~~ the taxable selling price of one or more vehicles (subject to the \$10,000 limit on the reduction allowed for the advance trade-in of a first division motor vehicle (see subsection (b)(3)), so long as the purchaser is contractually obligated to purchase a vehicle from the dealer within the time specified. In completing the transaction, the purchaser may pay the dealer cash or other consideration for the purchase price of a vehicle or vehicles purchased. (Section 1 of the Act)
- 3) Documentation evidencing an advance trade-in transaction must include

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

the following: the contract establishing the *value of or credit given* for a traded-in vehicle, the obligation to purchase a vehicle, and the date of expiration of the advance trade-in credit; the bill of sale for the traded-in vehicle; and the appropriate sales or use tax return evidencing the purchase of the new or used vehicle and recording the application of the advance trade-in credit. Advance trade-in transactions may not be structured so that the purchaser is not the owner of the automobile offered for trade. (Section 1 of the Act)

- e) **Deferred Trade-Ins**
No trade-in credit may be used in a transaction where the sales or use tax return does not reflect that a trade was offered at the time of the sales transaction. The appropriate sales or use tax return cannot be amended to reflect the *value of or credit given* for a vehicle offered for trade subsequent to the completion of the sales transaction. (Section 1 of the Act)
- f) **Multiple and Split Trade-in Transactions**
- 1) **Multiple Trade-In Transactions**
A purchaser may utilize a trade-in credit when trading in more than one vehicle to a dealer on the purchase of a single new or used vehicle. The dealer may use the cumulative trade-in credits from the traded-in vehicles to reduce gross receipts from the sale of the newly purchased vehicle so long as the trade-ins and sale are recorded as a single transaction (subject to the \$10,000 limit on the reduction in gross receipts allowed for the trade in of each first division motor vehicle (see subsection (b)(3)).
- EXAMPLE (trade-in of multiple first division motor vehicles)
A motor vehicle retailer sells a new car for \$60,000 and allows \$50,000 for the trade-in of 2 vehicles on the transaction: \$30,000 for the trade-in of one first division motor vehicle and \$20,000 for the trade-in of another first division motor vehicle. The credit that the retailer may take on the return for the traded-in first division motor vehicles is \$20,000 (\$10,000 for each vehicle).
- 2) **Split Trade-In Transactions**
A purchaser may utilize a trade-in credit when trading in a single vehicle to a dealer on the purchase of more than one new vehicle. The dealer may split the amount of the trade-in credit from the traded-in vehicle, and apply

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

it toward the purchase price of one or more new vehicles so long as the trade-in and purchases are recorded as a single transaction. The amount of trade-in credit to be applied to each new vehicle will be determined by the dealer and purchaser (subject to the \$10,000 limit on the aggregate reduction in gross receipts allowed for the trade in of each first division motor vehicle (see subsection (b)(3)).

EXAMPLE (split trade-in of first division motor vehicle)

A motor vehicle retailer sells 2 new cars to the same purchaser, each for \$7,000, and allows \$12,000 for the trade-in of one first division motor vehicle. The aggregate credit that the retailer may take on both returns for the traded-in first division motor vehicle is \$10,000. The retailer may split the credit and apply it to each return (e.g., \$5,000 to each return or \$7,000 to one return and \$3,000 to the other), but the credit may not exceed \$10,000 in the aggregate for both returns.

3) Combined Transactions

A multiple trade-in transaction or split trade-in transaction may only be used in conjunction with an advance trade-in transaction if the transfer of all vehicles involved in the trade are recorded as a single transaction and the purchaser is contractually obligated to purchase a vehicle from the dealer within the specified period of time.

g) Documentation of Trade-in Credits

Documentation and records evidencing a trade-in credit utilized for a particular transaction must be retained by the dealer and the purchaser and shall be made available to the Department for inspection or audit. With the exception of advance trade-in transactions, where a vehicle is offered for trade by a person other than the purchaser for the benefit of the purchaser, the owner of the vehicle must give written authorization that the vehicle is being offered for trade for the benefit of the purchaser. The written authorization must be specific to the transaction and must identify the vehicle for which the owner's vehicle is being traded.

(Source: Amended by emergency rulemaking at 44 Ill. Reg. 552, effective December 27, 2019, for a maximum of 150 days)

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

- 1) Heading of the Part: Use Tax
- 2) Code Citation: 86 Ill. Adm. Code 150
- 3)

<u>Section Numbers:</u>	<u>Emergency Actions:</u>
150.201	Amendment
150.1101	Amendment
- 4) Statutory Authority: 35 ILCS 105/2; 35 ILCS 105/12; 20 ILCS 2505/2505-90
- 5) Effective Date of Emergency Amendment: December 27, 2019
- 6) If this Emergency Amendment is to expire before the end of the 150-day period, please specify the date on which it is to expire: There is no specific date on which the Emergency Amendments will expire before the end of the 150-day period.
- 7) Date Filed with the Index Department: December 27, 2019
- 8) A copy of the emergency amendment, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Reason for Emergency: The guidance provided in the emergency amendment regarding the trade-in credit limitation on the trade-in of first division motor vehicles applies to sales of motor vehicles beginning on January 1, 2020. Although the Department of Revenue published Informational Bulletin FY 2020-1 in September 2019 regarding this issue, an organization representing automobile dealers as well as the Illinois Secretary of State's Office recently had additional inquiries and it became clear that the Department could not rely on existing information about vehicle registrations to delineate which vehicles are subject to the trade-in credit limitation, but must itself provide specific guidance on what constitutes a first division motor vehicle subject to the limitation. As a result of these inquiries, the Department posted a "Frequently Asked Questions" document on its website on December 20, 2019 and is filing this emergency rulemaking in order to put in place binding guidance on this issue that both taxpayers and Department employees can rely on.
- 10) A Complete Description of the Subjects and Issues Involved: This rulemaking implements the provisions of PA 101-31 that, effective with sales made on or after January 1, 2020, imposes a \$10,000 limit on the credit allowed to reduce the taxable

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

selling price when a first division motor vehicle is traded in on the purchase of another motor vehicle.

- 11) Are there any rulemakings to this Part pending? No
- 12) Statement of Statewide Policy Objective: This rulemaking neither imposes a State mandate, nor modifies an existing mandate.
- 13) Information and questions regarding these emergency rules shall be directed to:

Samuel J. Moore
Illinois Department of Revenue
101 West Jefferson
Springfield IL 62794

217/782-2844

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

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

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

[EMERGENCY](#)

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

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

- 150.335 Game or Game Birds Purchased at Game Breeding and Hunting Areas or Exotic 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 2 $\frac{1}{4}$ % Rate of Tax (Repealed)
- 150.415 Tax Collection Brackets for a 2 $\frac{1}{2}$ % Rate of Tax (Repealed)
- 150.420 Tax Collection Brackets for a 2 $\frac{3}{4}$ % Rate of Tax (Repealed)
- 150.425 Tax Collection Brackets for a 3% Rate of Tax (Repealed)
- 150.430 Tax Collection Brackets for a 3 $\frac{1}{8}$ % Rate of Tax (Repealed)
- 150.435 Tax Collection Brackets for a 3 $\frac{1}{4}$ % Rate of Tax (Repealed)
- 150.440 Tax Collection Brackets for a 3 $\frac{1}{2}$ % Rate of Tax (Repealed)
- 150.445 Tax Collection Brackets for a 3 $\frac{3}{4}$ % Rate of Tax (Repealed)
- 150.450 Tax Collection Brackets for a 4% Rate of Tax (Repealed)
- 150.455 Tax Collection Brackets for a 4 $\frac{1}{8}$ % Rate of Tax (Repealed)
- 150.460 Tax Collection Brackets for a 4 $\frac{1}{4}$ % Rate of Tax (Repealed)
- 150.465 Tax Collection Brackets for a 4 $\frac{1}{2}$ % Rate of Tax (Repealed)
- 150.470 Tax Collection Brackets for a 4 $\frac{3}{4}$ % Rate of Tax (Repealed)
- 150.475 Tax Collection Brackets for a 5% Rate of Tax (Repealed)
- 150.480 Tax Collection Brackets for a 5 $\frac{1}{8}$ % Rate of Tax (Repealed)
- 150.485 Tax Collection Brackets for a 5 $\frac{1}{4}$ % Rate of Tax (Repealed)
- 150.490 Tax Collection Brackets for a 5 $\frac{1}{2}$ % Rate of Tax (Repealed)
- 150.495 Tax Collection Brackets for a 5 $\frac{3}{4}$ % 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

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

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

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

Section
150.1001 General Information

SUBPART J: TRADED-IN PROPERTY

Section
150.1101 General Information
EMERGENCY

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].

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

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 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; emergency amendment at 44 Ill. Reg. 383, effective December 23, 2019, for a maximum of 150 days; emergency amendment at 44 Ill. Reg. 577, effective December 27, 2019, for a maximum of 150 days.

SUBPART B: DEFINITIONS

Section 150.201 General Definitions**EMERGENCY**

"Act" means the Use Tax Act [35 ILCS 105].

"Department" means the Department of Revenue.

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

"Person" means any natural individual, firm, partnership, association, joint stock company, joint adventure, public or private corporation, or a receiver, executor, trustee, conservator or other representative appointed by order of any court.

"Purchase at retail" means the acquisition of the ownership of, or title to, tangible personal property through a sale at retail.

"Purchaser" means anyone who, through a sale at retail, acquires the ownership of tangible personal property for a valuable consideration.

"Retailer" means and includes every person engaged in the business of selling tangible personal property for use, and not for resale in any form. Effective October 1, 1974, a person who is the recipient of a grant or contract under Title VII of the Older Americans Act of 1965 (42 USC 3001 et seq.) and serves meals to participants in the Federal Nutrition Program for the Elderly in return for contributions established in amount by the individual participant pursuant to a schedule of suggested fees as provided for in the Federal Act is not a retailer under the Use Tax Act with respect to those transactions.

Nonprofit Sellers

A person whose activities are organized and conducted primarily as a not-for-profit service enterprise, and who engages in selling tangible personal property at retail (whether to the public or merely to members and their guests), shall be deemed to be a retailer with respect to those transactions, excepting only a person organized and operated exclusively for charitable, religious or educational purposes to the extent of sales by that person to its members, students, patients or inmates of tangible personal property to be used primarily for the purposes of that person, or to the extent of sales by that person of tangible personal property that is not sold or offered for sale by persons organized for profit.

Special Order Sales

A person who holds himself or herself out as being engaged (or who habitually engages) in selling tangible personal property at retail shall be deemed to be a retailer under this definition with respect to those sales (and not primarily in a service occupation), notwithstanding the fact that the person designs and produces that tangible personal property on special order for the purchaser and in such a way as to render the property of

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

value only to that purchaser, if the tangible personal property so produced on special order serves substantially the same function as stock or standard items of tangible personal property that are sold at retail.

When Construction Contractor or Real Estate Developer is a Retailer
A construction contractor or real estate developer is a retailer under the Use Tax Act to the same extent to which he or she is a retailer under the Retailers' Occupation Tax Act, as described in 86 Ill. Adm. Code 130.1940.

"Retailer maintaining a place of business in this State", or any like term, shall mean and include any retailer:

Having or maintaining within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether that place of business or agent or other representative is located here permanently or temporarily, or whether the retailer or subsidiary is licensed to do business in this State;

Beginning July 1, 2011, having a contract with a person located in this State under which:

the retailer sells the same or substantially similar line of products as the person located in this State and does so using an identical or substantially similar name, trade name, or trademark as the person located in this State; and

the retailer provides a commission or other consideration to the person located in this State based upon the sale of tangible personal property by the retailer.

The provisions of this paragraph shall apply only if the cumulative gross receipts from sales of tangible personal property by the retailer to customers in this State under all such contracts exceed \$10,000 during the preceding 4 quarterly periods ending on the last day of March, June, September, and December (Section 2 of the Act,

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

definition of "retailer maintaining a place of business in this State", subparagraph 1.2);

Beginning January 1, 2015, *having a contract with a person located in this State under which the person, for a commission or other consideration based upon the sale of tangible personal property by the retailer, directly or indirectly refers potential customers to the retailer by providing to the potential customers a promotional code or other mechanism that allows the retailer to track purchases referred by such persons. Examples of mechanisms that allow the retailer to track purchases referred by such persons include but are not limited to the use of a link on the person's Internet website, promotional codes distributed through the person's hand-delivered or mailed material, and promotional codes distributed by the person through radio or other broadcast media. The provisions of this paragraph shall apply only if the cumulative gross receipts from sales of tangible personal property by the retailer to customers who are referred to the retailer by all persons in this State under such contracts exceed \$10,000 during the preceding 4 quarterly periods ending on the last day of March, June, September, and December. Although a retailer meeting the requirements set forth in Section 2 of the Act, definition of "retailer maintaining a place of business in this State", subparagraph 1.1, is presumed to be a retailer maintaining a place of business in Illinois, a retailer may rebut this presumption by maintaining in its records documentation that shows that persons with whom the retailer has agreements have not engaged in solicitation activities on behalf of the retailer in Illinois that are sufficient to meet the nexus standards of the United States Constitution during the preceding 4 quarterly periods.* (Section 2 of the Act, definition of "retailer maintaining a place of business in this State", subparagraph 1.1) The following documentation is required in order to rebut this presumption:

Retailer Agreement. The retailer must have an agreement that prohibits persons operating under the agreement from engaging in any solicitation activities in Illinois that refer potential customers to the retailer, including, but not limited to, distributing flyers, coupons, newsletters and other printed promotional materials or electronic equivalents, verbal soliciting, initiating telephone calls, and sending e-mails or text messages. If the person in Illinois with whom the retailer has an agreement is an organization or

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

corporation, such as a club or nonprofit group, the agreement must provide that the organization will maintain on its website information alerting its members to the prohibition against each of the solicitation activities described in this paragraph. The agreement must be maintained in the retailer's records and shall be made available to the Department for inspection or audit.

Annual Certification. The person or persons operating under the agreement in Illinois shall certify by January 1 of each year, under penalty of perjury, that they have not engaged in any prohibited solicitation activities in Illinois at any time during the previous year. If the person in Illinois with whom the retailer has an agreement is an organization or corporation, the annual certification shall also include a statement from the organization or corporation, signed by an officer of the organization or corporation, certifying that its website includes information directed at its members alerting them to the prohibition against the solicitation activities described in this paragraph. The certification should be made on forms prescribed by the Department, must be completed and provided to the retailer, must be maintained in the retailer's records, and shall be made available to the Department for inspection or audit. If the retailer accepts a properly and timely completed certification in good faith and the retailer does not know or have reason to know that the certification is false or fraudulent, that certification will be conclusive proof that the person that provided the certification was in compliance with the agreement for the year covered by the certification. If the retailer fails to obtain the certifications from all persons operating under the agreements and fails to make those records available upon the Department's request, the presumption that the retailer is maintaining a place of business in Illinois will not be rebutted.

For the purposes of this definition, "advertisement" means a written, verbal, pictorial, or graphic announcement of goods or services for sale, employing leased or purchased space or time in print or electronic media, which is intended to communicate that information to the general public. Online advertising generated as a result of generic algorithmic functions that is anonymous and passive in nature (the advertisement is not directed to a specific person or intended to incite a person or persons to purchase tangible

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

personal property from a specific retailer or retailers), such as ads tied to Internet search engines, banner ads, click-through ads, Cost Per Action ads, links to retailers' websites, and similar online advertising services, are advertisements and not solicitations.

For the purposes of this definition, "solicitation" means a direct or indirect communication to a specific person or persons, including emails or text messages, done in a manner that is intended and calculated to incite a person or persons to purchase tangible personal property from a specific retailer or retailers. Solicitation does not mean or include advertising.

EXAMPLE 1: Corporation X is physically located in Illinois and maintains a website. Corporation X enters into agreements with one or more hiking gear and accessories retailers under which Corporation X maintains click-through advertisements or links to each retailer's website on Corporation X's website www.corporationx.com and Corporation X's webpage at www.socialnetwork.com/corporationx in return for commissions based upon the retailers' completed sales made to customers who click-through the ads or links on Corporation X's website and webpage. Corporation X also posts reviews at www.corporationx.com of the products sold through the click-through ads and links on its website and webpage. However, Corporation X does not engage in any solicitation activities in Illinois that refer potential customers to the retailer or retailers who have click-through ads or links on its website or webpage. Therefore, the retailer may successfully rebut the presumption that the retailer is maintaining a place of business in Illinois if all other qualifications in this definition are met.

EXAMPLE 2: Assume the same facts as Example 1, except that an individual representative of Corporation X or any other individual acting on behalf of Corporation X, including, but not limited to, an employee or independent contractor of Corporation X, engages in solicitation activities, such as soliciting customers in person, soliciting customers on the telephone, handing out flyers that are solicitations, or sending emails that are solicitations, while physically present in Illinois that refer potential Illinois customers to a retailer who has a link or other promotional code on Corporation X's website or webpage pursuant to Corporation X's agreement with that retailer. Therefore, the rebuttable presumption that the retailer is maintaining a place of business in Illinois applies to

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

Corporation X's agreement if all other criteria are met, and the retailer will be required to collect tax.

Soliciting orders for tangible personal property by means of a telecommunication or television shopping system (which utilizes toll free numbers) which is intended by the retailer to be broadcast by cable television or other means of broadcasting, to consumers located in this State.

Pursuant to a contract with a broadcaster or publisher located in this State, soliciting orders for tangible personal property by means of advertising which is disseminated primarily to consumers located in this State and only secondarily to bordering jurisdictions;

Soliciting orders for tangible personal property by mail if the solicitations are substantial and recurring and if the retailer benefits from any banking, financing, debt collection, telecommunication, or marketing activities occurring in this State or benefits from the location in this State of authorized installation, servicing, or repair facilities;

Being owned or controlled by the same interests which own or control any retailer engaging in business in the same or similar line of business in this State;

Having a franchisee or licensee operating under its trade name if the franchisee or licensee is required to collect the tax under this Section;

Pursuant to a contract with a cable television operator located in this State, soliciting orders for tangible personal property by means of advertising which is transmitted or distributed over a cable television system in this State; or

Engaging in activities in Illinois, which activities in the state in which the retail business engaging in such activities is located would constitute maintaining a place of business in that state. (Section 2 of the Use Tax Act) For the purpose of determining the state of domicile, the Department will look to the place at which the selling activity takes place.

It does not matter that an agent may engage in business on his or her own account in other transactions, nor that the agent may act as agent for other

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

persons in other transactions, nor that the agent is not an employee but is an independent contractor acting as agent. The term "agent" is broader than the term "employee". "Agent" includes anyone acting under the principal's authority in an agency capacity.

"Sale at retail" means any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use, and not for the purpose of resale in any form as tangible personal property to the extent not first subjected to a use for which it was purchased, for a valuable consideration; provided that the property purchased is deemed to be purchased for the purpose of resale, despite first being used, to the extent to which it is resold as an ingredient of an intentionally produced product or by-product of manufacturing. For this purpose, slag produced as an incident to manufacturing pig iron or steel and sold is considered to be an intentionally produced by-product of manufacturing. "Sale at retail" includes any such transfer made for resale unless made in compliance with Section 2c of the Retailers' Occupation Tax Act [35 ILCS 120], as incorporated by reference into Section 12 of the Use Tax Act [35 ILCS 105]. Transactions whereby the possession of the property is transferred but the seller retains the title as security for payment of the selling price are sales.

"Selling price" means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property other than as provided in this definition, and services, but, prior to January 1, 2020, not including the value of or credit given for traded-in tangible personal property when the item that is traded-in is of like kind and character as that which is being sold; beginning January 1, 2020, "selling price" includes the portion of the value of or credit given for traded-in motor vehicles of the first division, as defined in Section 1-146 of the Illinois Vehicle Code, of like kind and character as that which is being sold that exceeds \$10,000. "Selling price", ~~and~~ shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever. "Selling price" does not include interest or finance charges that appear as separate items on the bill of sale or sales contract nor charges that are added to prices by sellers on account of the seller's tax liability under the Retailers' Occupation Tax Act, or on account of the seller's duty to collect, from the purchaser, the tax that is imposed by the Use Tax Act, or except as otherwise provided with respect to any cigarette tax imposed by a home rule unit, on account of the seller's tax liability under any local occupation tax administered by the Department, or, except as otherwise provided with respect to any cigarette tax imposed by a home rule unit on account

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

of the seller's duty to collect from the purchasers, the tax that is imposed under any local use tax administered by the Department. "Selling price" shall include charges that are added to prices by sellers on account of the seller's liability under the Cigarette Tax Act on account of the seller's duty to collect, from the purchaser, the tax imposed under the Cigarette Use Tax Act and on account of the seller's duty to collect, from the purchaser, any cigarette tax imposed by a home rule unit. The phrase "like kind and character" shall be liberally construed (including but not limited to any form of motor vehicle for any form of motor vehicle, or any kind of farm or agricultural implement for any other kind of farm or agricultural implement), while not including a kind of item which, if sold at retail by that retailer, would be exempt from Retailers' Occupation Tax and Use Tax as an isolated or occasional sale.

"Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, except that it does not include the sale of the property in any form as tangible personal property in the regular course of business to the extent that the property is not first subjected to a use for which it was purchased, and does not include the use of that property by its owner for demonstration purposes; provided that the property purchased is deemed to be purchased for the purpose of resale, despite first being used, to the extent to which it is resold as an ingredient of an intentionally produced product or by-product of manufacturing. "Use" does not mean the interim use of tangible personal property by a retailer before he or she sells such tangible personal property and does not mean the physical incorporation of tangible personal property, to the extent not first subjected to a use for which it was purchased, as an ingredient or constituent, into other tangible personal property:

that is sold in the regular course of business; or

that the person incorporating the ingredient or constituent therein has undertaken at the time of purchase to cause to be transported in interstate commerce to destinations outside the State of Illinois; provided that the property purchased is deemed to be purchased for the purpose of resale, despite first being used, to the extent to which it is resold as an ingredient of an intentionally produced product or by-product of manufacturing.

(Source: Amended by emergency rulemaking at 44 Ill. Reg. 577, effective December 27, 2019, for a maximum of 150 days)

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

SUBPART J: TRADED-IN PROPERTY

Section 150.1101 General Information**EMERGENCY**

- a) The "selling price", which is subject to the Use Tax when a sale at retail is made, includes the consideration for the sale valued in money whether received in money or otherwise, including cash, credits, property other than as hereinafter provided, and services, but, prior to January 1, 2020, not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold; beginning January 1, 2020, "selling price" includes the portion of the value of or credit given for traded-in motor vehicles of the first division, as defined in Section 1-146 of the Illinois Vehicle Code, of like kind and character as that which is being sold that exceeds \$10,000. "Selling price",~~and~~ shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever. "Selling price" does not include charges that are added to prices by sellers on account of the seller's tax liability under the Retailers' Occupation Tax Act, or on account of the seller's duty to collect, from the purchaser, the tax that is imposed by the Use Tax Act, or on account of the seller's tax liability under the Non-Home Rule Municipal Retailers' Occupation Tax, the Home Rule Municipal Retailers' Occupation Tax, the Home Rule County Retailers' Occupation Tax, Metro East Mass Transit District Retailers' Occupation Tax, County Water Commission Retailers' Occupation Tax or Regional Transportation Authority Retailers' Occupation Tax.
- b) The phrase "like kind and character" includes, but is not limited to, the trading of any kind of motor vehicle on the purchase of any kind of motor vehicle, or the trading of any kind of farm implement on the purchase of any kind of farm implement, while not including a kind of item which, if sold at retail by that retailer, would be exempt from Retailers' Occupation Tax and Use Tax as an isolated or occasional sale.
- c) A motor vehicle traded to a farm implement dealer for a farm implement would not qualify for the exemption unless such farm implement dealer is also a motor vehicle dealer because the farm implement dealer's sale of the motor vehicle would be exempt as an isolated or occasional sale. A farm implement traded to a motor vehicle dealer for a motor vehicle would not qualify for the exemption unless such dealer is also a farm implement dealer because the motor vehicle

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY AMENDMENTS

dealer's sale of the farm implement would be an exempt isolated or occasional sale. A farm implement traded for a motor vehicle, or a motor vehicle traded for a farm implement, would qualify for the exemption if the seller is engaged in business both as a motor vehicle dealer and a farm implement dealer. Agricultural produce or animals traded for a motor vehicle or for a farm implement would not qualify for the exemption.

- d) The real test is whether the retail sale of the traded-in tangible personal property by the person who accepted it in trade would be subject to Use Tax, or whether such sale would be exempt as an isolated or occasional sale. In the former event, the tangible personal property qualifies for the trade-in exemption. In the latter event, it does not.
- e) No purchase of tangible personal property at retail from a person engaged in the business of selling that kind of property shall be deemed to be exempt from the Use Tax by reason of the fact that the tangible personal property which is being purchased was acquired by the seller as a trade-in, rather than being purchased by the seller. The Use Tax applies to used tangible personal property (however acquired by the seller who is engaged in the business of selling that kind of property), as well as to new tangible personal property, as long as the sale is being made at retail by a person engaged in the business of selling that kind of property.

(Source: Amended by emergency rulemaking at 44 Ill. Reg. 577, effective December 27, 2019, for a maximum of 150 days)

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

- 1) Heading of the Part: Cannabis Cultivation Privilege Tax
- 2) Code Citation: 86 Ill. Adm. Code 422
- 3)

<u>Section Numbers:</u>	<u>Emergency Actions:</u>
422.100	New Section
422.105	New Section
422.110	New Section
422.115	New Section
422.120	New Section
422.125	New Section
422.130	New Section
422.135	New Section
422.140	New Section
422.145	New Section
422.150	New Section
- 4) Statutory Authority: 410 ILCS 705/60-45
- 5) Effective Date of Emergency Rules: December 27, 2019
- 6) If the Emergency Rules are to expire before the end of the 150-day period, please specify the date on which they are to expire: The Emergency Rules expire 180 days after the effective date. Pursuant to Section 900-5 of PA 101-27, Section 5-45 of the Illinois Administrative Procedure Act is amended to provide that the Department of Revenue may adopt emergency rules to implement the Cannabis Regulation and Tax Act (which includes the Cannabis Cultivation Privilege Tax), and the rules are effective for 180 days. 5 ILCS 100/5-45(gg).
- 7) Date Filed with the Index Department: December 27, 2019
- 8) A copy of the emergency amendment, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Reason for Emergency: PA 101-27 enacted the Cannabis Regulation and Tax Act. 410 ILCS 705/. The Act permits the cultivation and sale of adult cannabis to cannabis dispensaries beginning September 1, 2019. The first sale of adult cannabis by cultivators is subject to the Cannabis Cultivation Privilege Tax. 410 ILCS 705/60-10. The Emergency Amendments implement the Cannabis Cultivation Privilege Tax. In order to

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

provide for the expeditious and timely implementation of the Cannabis Regulation and Tax Act and PA 101-27 (including the Cannabis Cultivation Privilege Tax), the Department of Revenue is authorized to adopt emergency rules. The adoption of emergency rules authorized by PA 101-27 is deemed to be necessary for the public interest, safety, and welfare. See Section 900-5 of PA 101-27 and 5 ILCS 100/5-45(gg).

- 10) A Complete Description of the Subjects and Issues Involved: The rulemaking implements PA 101-27, codified at 410 ILCS 705/. Beginning September 1, 2019, a tax is imposed upon the privilege of cultivating cannabis at the rate of 7% of the gross receipts from the first sale of cannabis by a cultivator to a cultivator, craft grower, infuser or dispensing organization. The sale of any product that contains any amount of cannabis or any derivative thereof is subject to the tax on the full selling price of the product.
- 11) Are there any rules to this Part pending? No
- 12) Statement of Statewide Policy Objective: This rulemaking neither imposes a State mandate, nor modifies an existing mandate.
- 13) Information and questions regarding these emergency rules shall be directed to:

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

217/782-2844

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

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 422
CANNABIS CULTIVATION PRIVILEGE TAX

Section

422.100 Nature of the Tax

EMERGENCY

422.105 Definitions

EMERGENCY

422.110 Tax Imposed

EMERGENCY

422.115 Returns and Payment of Tax

EMERGENCY

422.120 Infuser Information Returns and Books and Records

EMERGENCY

422.125 Registration of Cultivators

EMERGENCY

422.130 Revocation of Certificate of Registration

EMERGENCY

422.135 Books and Records

EMERGENCY

422.140 Invoices Issued by a Cultivator

EMERGENCY

422.145 Penalties and Interest

EMERGENCY

422.150 Administration and Enforcement; Incorporation by Reference

EMERGENCY

AUTHORITY: Implementing the Cannabis Cultivation Privilege Tax Law [410 ILCS 705/Art. 60].

SOURCE: Emergency rules adopted at 44 Ill. Reg. 594, effective December 27, 2019, for a maximum of 180 days.

Section 422.100 Nature of the Tax
EMERGENCY

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

- a) *Beginning September 1, 2019, the Cannabis Cultivation Privilege Tax Law imposes a tax on the privilege of cultivating cannabis in this State at the rate of 7% of gross receipts received from the first sale of cannabis by the cultivator. [410 ILCS 705/60-10(a)]*
- b) *The tax is imposed upon cultivation centers and craft growers growing cannabis for sale to cannabis business establishments. The Cannabis Cultivation Privilege Tax imposed under Section 422.110 is imposed only upon a cultivation center or craft grower who makes the first sale and is not imposed upon a subsequent purchaser, a dispensing organization, or an infuser. Persons subject to the tax imposed under the Law may, however, reimburse themselves for their tax liability by separately stating reimbursement for their tax liability as an additional charge. [410 ILCS 705/60-10(b)]*

**Section 422.105 Definitions
EMERGENCY**

"Act" means the Cannabis Regulation and Tax Act [410 ILCS 705].

"Cannabis" means marijuana, hashish, and other substances that are identified as including any parts of the plant Cannabis sativa and including derivatives or subspecies, such as indica, of all strains of cannabis, whether growing or not; the seeds thereof, the resin extracted from any part of the plant; and any compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin, including tetrahydrocannabinol (THC) and all other naturally produced cannabinol derivatives, whether produced directly or indirectly by extraction; however, "cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted from it), fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination. "Cannabis" does not include industrial hemp as defined and authorized under the Industrial Hemp Act and cannabis that is subject to tax under the Compassionate Use of Medical Cannabis Program Act. "Cannabis" also means cannabis flower, concentrate, and cannabis-infused products. [410 ILCS 705/1-10 and 705/60-5]

"Cannabis business establishment" means a cultivation center, craft grower, processing organization, infuser organization, dispensing organization, or transporting organization. [410 ILCS 705/1-10]

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

"Cannabis concentrate" means a product

derived from cannabis that is produced by extracting cannabinoids, including tetrahydrocannabinol (THC), from the plant through the use of

propylene glycol, glycerin, butter, olive oil or other typical cooking fats;

water, ice, or dry ice; or

butane, propane, CO₂, ethanol, or isopropanol

and with the intended use of smoking or making a cannabis-infused product. [410 ILCS 705/1-10]

"Cannabis flower" means marijuana, hashish, and other substances that are identified as including any parts of the plant Cannabis sativa and including derivatives or subspecies, such as indica, of all strains of cannabis; including raw kief leaves, and buds, but not resin that has been extracted from any part of such plant; nor any compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin. [410 ILCS 705/1-10]

"Cannabis-infused product" means a beverage, food, oil, ointment, tincture, topical formulation, or another product containing cannabis or cannabis concentrate that is not intended to be smoked. [410 ILCS 705/1-10]

"Craft grower" means a facility operated by an organization or business that is licensed by the Department of Agriculture to cultivate, dry, cure, and package cannabis and perform other necessary activities to make cannabis available for sale at a dispensing organization or use at a processing organization. A craft grower may contain up to 5,000 square feet of canopy space on its premises for plants in the flowering state. The Department of Agriculture may authorize an increase or decrease of flowering stage cultivation space in increments of 3,000 square feet by rule based on market need, craft grower capacity, and the licensee's history of compliance or noncompliance, with a maximum space of 14,000 square feet for cultivating plants in the flowering stage, which must be cultivated in all stages of growth in an enclosed and secure area. A craft grower may share premises with a processing organization or a dispensing organization,

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

or both, provided each licensee stores currency and cannabis or cannabis-infused products in a separate secured vault to which the other licensee does not have access or all licensees sharing a vault share more than 50% of the same ownership. [410 ILCS 705/1-10]

"Cultivation center" means a facility operated by an organization or business that is licensed by the Department of Agriculture to cultivate, process, transport (unless otherwise limited by the Act), and perform other necessary activities to provide cannabis and cannabis-infused products to cannabis business establishments. [410 ILCS 705/1-10]

"Cultivator" or "taxpayer" means a cultivation center or craft grower who is subject to tax under this Part. [410 ILCS 705/60-5]

"Department" means the Department of Revenue. [410 ILCS 705/60-5]

"Director" means the Director of Revenue. [410 ILCS 705/60-5]

"Dispensary" means a facility operated by a dispensing organization at which activities licensed by the Act may occur. [410 ILCS 705/1-10]

"Dispensing organization" means a facility operated by an organization or business that is licensed by the Department of Financial and Professional Regulation to acquire cannabis from a cultivation center, craft grower, processing organization, infuser, or another dispensary for the purpose of selling or dispensing cannabis, cannabis-infused products, cannabis seeds, paraphernalia, or related supplies under the Act to purchasers or to qualified registered medical cannabis patients and caregivers. As used in the Act, dispensing organization includes a registered medical cannabis organization as defined in the Compassionate Use of Medical Cannabis Program Act or its successor Act that has obtained an Early Approval Adult Use Dispensing Organization License. [410 ILCS 705/1-10]

"Gross receipts" from the sales of cannabis by a cultivator means the total selling price or the amount of such sales, as defined in this Section. In the case of charges and time sales, the amount thereof shall be included only when payments are received by the cultivator. [410 ILCS 705/60-5]

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

"Infuser organization" or "infuser" means a facility operated by an organization or business that is licensed by the Department of Agriculture to directly incorporate cannabis or cannabis concentrate into a product formulation to produce a cannabis-infused product. [410 ILCS 705/1-10]

"Law" means the Cannabis Cultivation Privilege Tax Law [410 ILCS 705/Art. 60].

"Person" means

a natural individual, firm, partnership, association, joint stock company, joint adventure, public or private corporation, limited liability company, or

a receiver, executor, trustee, guardian, or other representative appointed by order of any court. [410 ILCS 705/60-5]

"Selling price" or "amount of sale" means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property, and services, and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost, or any other expense whatsoever, but does not include separately stated charges identified on the invoice by cultivators to reimburse themselves for their tax liability under the Law. [410 ILCS 705/60-5]

**Section 422.110 Tax Imposed
EMERGENCY**

- a) *Beginning September 1, 2019, a tax is imposed upon the privilege of cultivating cannabis at the rate of 7% of the gross receipts from the first sale of cannabis by a cultivator. [410 ILCS 705/60-10(a)]*

EXAMPLE 1: A cultivator grows cannabis and sells the grown cannabis to an infuser for \$200. The cultivator owes \$14 in tax on the cannabis sold to the infuser.

EXAMPLE 2: A craft grower grows cannabis and sells 100 quarter ounces of the grown cannabis to a cultivator for \$5000. The craft grower is liable for tax in the amount of \$350. The cultivator subsequently sells 50 quarter ounces of this

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

cannabis to a dispensary for \$55 per quarter ounce. The cultivator has no tax liability on the sale of cannabis to the dispensary.

- b) *The sale of any product by a cultivator that contains any amount of cannabis or any derivative thereof is subject to the tax under the Law on the full selling price of the product. [410 ILCS 705/60-10(a)]*

EXAMPLE 1: A cultivator grows cannabis and sells the cannabis for \$200 to an infuser. The cultivator has \$14 in tax liability on the sale of the cannabis to the infuser. The infuser creates cannabis-infused products and sells the products to a dispensary. The infuser has no tax liability.

EXAMPLE 2: A cultivator grows cannabis, processes a pound of cannabis into cannabis-infused products and sells the cannabis-infused products to a dispensary for \$500. It normally sells the cannabis at wholesale for \$200 an ounce. The cultivator has \$35 ($\$500 \times .07$) in tax liability on the sale of the cannabis-infused products to the dispensary.

- c) It shall be presumed that all sales of cannabis are subject to tax under the Law until the contrary is established, and the burden of proving that a transaction is not taxable shall be upon the cultivator.
- d) In computing Cannabis Cultivation Privilege Tax liability, no deductions shall be made by a taxpayer from gross receipts or selling prices on account of the cost of property sold, the cost of materials used, labor or service costs, incoming freight or transportation costs, overhead costs, processing charges, salesmen's commissions, interest paid by the taxpayer, or any other expenses whatsoever. Costs of doing business are an element of the cultivator's gross receipts and are subject to tax even if separately stated on the bill to the customer. See 86 Ill. Adm. Code 130.415 for rules regarding the treatment of transportation and delivery charges.

EXAMPLE: A cultivation center sells 500 ounces of cannabis to a dispensing organization for \$100,000 plus a delivery charge of \$250 and a fuel surcharge of \$50. The fuel surcharge is a cost of doing business and is part of the "selling price". The cultivation center delivers the cannabis to the dispensing organization. The cultivation center does not provide the dispensing organization with the option to pick up the cannabis. As a result, the cost of the delivery

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

service is part of the "selling price" of the cannabis. The selling price for purposes of determining the tax is \$100,300.

- e) The tax is computed on the selling price of the cannabis after the application of any applicable discounts.

EXAMPLE: A cultivation center sells 500 ounces of cannabis to a dispensing organization for \$200 an ounce. The cultivation center provides a nondiscriminatory 10% discount for sales over 300 ounces. The total price with the discount is \$90,000. The tax is computed on the gross receipts of \$90,000.

- f) *The Department may determine the selling price of the cannabis when the seller and purchaser are affiliated persons, when the sale and purchase of cannabis is not an arm's length transaction, or when cannabis is transferred by a cultivator to the cultivator's dispensing organization or infuser and a value is not established for the cannabis. The value determined by the Department shall be commensurate with the actual price received for products of like quality, character, and use in the area. If there are no sales of cannabis of like quality, character, and use in the same area, then the Department shall establish a reasonable value based on sales of products of like quality, character, and use in other areas of the State, taking into consideration any other relevant factors. [410 ILCS 705/60-10(a)]*
- g) *The Cannabis Cultivation Privilege Tax imposed under the Law is solely the responsibility of the cultivator who makes the first sale and is not the responsibility of a subsequent purchaser, a dispensing organization, or an infuser. Cultivators subject to the tax imposed under the Law may, however, reimburse themselves for their tax liability hereunder by separately stating reimbursement for their tax liability as an additional charge. [410 ILCS 705/60-10(b)] The charge for reimbursement may not be identified on the invoice as a tax.*
- h) *A cultivator may not either directly or indirectly discriminate in price between different cannabis business establishments that are purchasing a like grade, strain, brand, and quality of cannabis or cannabis-infused product. Nothing in this subsection (h) prevents a cultivator from pricing cannabis differently based on differences in the cost of manufacturing or processing, the quantities sold, such as volume discounts, or the way the products are delivered. [410 ILCS 705/20-30(e) and 30-30(f)]*

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

- i) *The tax imposed under the Law shall be in addition to all other occupation, privilege, or excise taxes imposed by the State of Illinois or by any unit of local government. [410 ILCS 705/60-10(c)]*

**Section 422.115 Returns and Payment of Tax
EMERGENCY**

- a) *Each person who is required to pay the tax imposed by the Law shall make a return to the Department on or before the 20th day of each month for the preceding calendar month stating the following:*
- 1) *the taxpayer's name;*
 - 2) *the address of the taxpayer's principal place of business and the address of the principal place of business (if that is a different address) from which the taxpayer is engaged in the business of cultivating cannabis subject to tax under the Law;*
 - 3) *the total amount of receipts received by the taxpayer during the preceding calendar month from sales of cannabis subject to tax under the Law by the taxpayer during the preceding calendar month;*
 - 4) *the total amount received by the taxpayer during the preceding calendar month on charge and time sales of cannabis subject to tax imposed under the Law by the taxpayer before the month for which the return is filed;*
 - 5) *deductions allowed by law;*
 - 6) *gross receipts that were received by the taxpayer during the preceding calendar month and upon the basis of which the tax is imposed;*
 - 7) *the amount of tax due;*
 - 8) *the signature of the taxpayer; and*
 - 9) *any other information the Department may reasonably require.*

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

- b) *All returns required to be filed and payments required to be made under the Law shall be by electronic means. Taxpayers who demonstrate hardship in paying electronically may petition the Department to waive the electronic payment requirement. Taxpayers may not petition the Department for a waiver of the requirement to file all returns by electronic means.*
- c) *The taxpayer making the return provided for in this Section shall also pay to the Department, in accordance with this Section, the amount of tax imposed by the Law, less a discount of 1.75%, but not to exceed \$1,000 per return period, which is allowed to reimburse the taxpayer for the expenses incurred in keeping records, collecting tax, preparing and filing returns, remitting the tax, and supplying data to the Department upon request. No discount may be claimed by a taxpayer on returns not timely filed and for taxes not timely remitted. No discount may be claimed by a taxpayer for any return that is not filed electronically. No discount may be claimed by a taxpayer for any payment that is not made electronically, unless a waiver has been granted under this Section.*
- d) *Any amount that is required to be shown or reported on any return or other document under the Law shall, if the amount is not a whole-dollar amount, be increased to the nearest whole-dollar amount if the fractional part of a dollar is \$0.50 or more and decreased to the nearest whole-dollar amount if the fractional part of a dollar is less than \$0.50. If a total amount of less than \$1 is payable, refundable, or creditable, the amount shall be disregarded if it is less than \$0.50 and shall be increased to \$1 if it is \$0.50 or more.*
- e) *Notwithstanding any other provision of the Law concerning the time within which a taxpayer may file a return, any such taxpayer who ceases to engage in the kind of business that makes the person responsible for filing returns under the Law shall file a final return under the Law with the Department within one month after discontinuing such business.*
- f) *Each taxpayer under the Law shall make estimated payments to the Department on or before the 7th, 15th, 22nd, and last day of the month during which tax liability to the Department is incurred. The payments shall be in an amount not less than the lower of either 22.5% of the taxpayer's actual tax liability for the month or 25% of the taxpayer's actual tax 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. If any quarter-monthly payment is not paid at the time or in the amount required by this*

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

Section, then the taxpayer shall be liable for penalties and interest on the difference between the minimum amount due as a payment and the amount of the quarter-monthly payment actually and timely paid, except insofar as the taxpayer has previously made payments for that month to the Department in excess of the minimum payments previously due as provided in this Section.

- g) *If any payment provided for in this Section exceeds the taxpayer's liabilities under the Law, as shown on an original monthly return, the Department shall, if requested by the taxpayer, issue to the taxpayer a credit memorandum no later than 30 days after the date of payment. The credit evidenced by the credit memorandum may be assigned by the taxpayer to a similar taxpayer under the Law, in accordance with 86 Ill. Adm. Code 130.1505. If no such request is made, the taxpayer may credit the excess payment against tax liability subsequently to be remitted to the Department under the Law. 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, if necessary, to reflect the difference between the credit taken and that actually due, and that taxpayer shall be liable for penalties and interest on the difference.*
- h) *If a taxpayer fails to sign a return within 30 days after the proper notice and demand for signature by the Department is received by the taxpayer, the return shall be considered valid and any amount shown to be due on the return shall be deemed assessed. [410 ILCS 705/60-20]*

**Section 422.120 Infuser Information Returns and Books and Records
EMERGENCY**

- a) Upon request of the Department, an infuser shall file an information return with the Department, no later than the 20th day of the month for the preceding month, by electronic means and in a format prescribed by the Department, showing the names of the suppliers of cannabis and cannabis concentrates, the suppliers' license numbers issued by the Department of Agriculture, the quantities purchased from suppliers, and amounts paid for cannabis and cannabis concentrate during the preceding month, and such other information as is reasonably required by the Department.
- b) Upon request of the Department, an infuser shall file an information return with the Department, no later than the 20th day of the month for the preceding month, by electronic means, showing the total amount of cannabis-infused products sold

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

to dispensaries, the gross receipts from the sale of cannabis-infused products sold to dispensaries during the preceding month; the identities of the dispensaries to whom it was sold; the dispensaries' license numbers issued by the Department of Financial and Professional Regulation; and such other information reasonably required by the Department.

- c) Every infuser shall keep books and records of all purchases of cannabis and cannabis concentrate, all sales of cannabis-infused products, together with invoices, bills of lading, sales records, copies of bills of sale, monthly inventories, inventories prepared as of December 31 of each year, and other pertinent papers and documents.
- d) All books and records and other papers and documents that are required to be maintained by this Section 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.

Section 422.125 Registration of Cultivators
EMERGENCY

- a) It shall be unlawful for any cultivator to engage in the business of selling cannabis to cannabis business establishments in this State without a certificate of registration from the Department. *Every cultivator and craft grower subject to the tax under the Law shall apply to the Department for a certificate of registration under the Law. All applications for registration under the Law shall be made by electronic means. [35 ILCS 705/60-15]*
- b) Each application shall be signed and verified and shall state:
 - 1) the name and social security number of the applicant;
 - 2) the address of the cultivator's principal place of business;
 - 3) the address of the place of business from which the cultivator engages in the business of selling cannabis in this State and the addresses of all other places of business, if any (enumerating such addresses, if any, in a separate list attached to and made a part of the application), from which the cultivator engages in the business of selling cannabis in this State;

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

- 4) the name and address of the person or persons who will be responsible for filing returns and payment of taxes due under the Law (See 35 ILCS 735/3-7);
 - 5) in the case of a publicly traded corporation, the name and title of the Chief Financial Officer, Chief Operating Officer, and any other officer or employee with responsibility for preparing tax returns under the Law; and, in the case of all other corporations, the name, title and, social security number of each corporate officer;
 - 6) in the case of a limited liability company, the name, social security number, and FEIN of each manager and member; and
 - 7) such other information as the Department may reasonably require.
- c) Upon completion of the application for certificate of registration in proper form, the Department shall issue to the applicant a certificate of registration that shall permit the person to whom it is issued to engage in business as a cultivator of cannabis in this State. If an applicant engages in the business of cultivating cannabis at another location in this State, the Department shall furnish him or her with a sub-certificate of registration for that place of business, and the applicant shall display the appropriate sub-certificate of registration at that place of business. The sub-certificate of registration shall bear the same registration number as that appearing upon the certificate of registration to which the sub-certificate relates. *No certificate of registration shall be issued under the Law unless the applicant has obtained a license from the Department of Agriculture under the Act.* [35 ILCS 705/60-15]
- d) A certificate of registration shall automatically be renewed, subject to revocation as provided by the Law and subsection (g), for an additional 1 year from the date of its expiration, unless otherwise notified by the Department as provided by this Section.
- e) The Department may require an applicant for a certificate of registration, at the time of filing the application, to furnish a bond. No certificate of registration under the Law will be issued by the Department until the applicant provides the Department with satisfactory security, if required.

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

- f) *The Department may refuse to issue, reissue, or renew a certificate of registration authorized to be issued by the Department if a person who is named as the owner, a partner, a corporate officer, or, in the case of a limited liability company, a manager or member, of the applicant on the application for the certificate of registration is or has been named as the owner, a partner, a corporate officer, or in the case of a limited liability company, a manager or member, on the application for the certificate of registration of a person that is in default for moneys due under the Law or any other tax or fee Act administered by the Department. For purposes of this Section only, in determining whether a person is in default for moneys due, the Department shall include only amounts established as a final liability within the 20 years prior to the date of the Department's notice of refusal to issue or reissue the certificate of registration, permit, or license. [20 ILCS 2505/2505-380(b)]*
- g) When a taxpayer to whom a certificate of registration is issued under the Law is in default to the State of Illinois for delinquent returns or for moneys due under the Law or any other State tax law or municipal or county ordinance administered or enforced by the Department, the Department shall, not less than 60 days before the expiration of the certificate of registration, give notice to the taxpayer to whom the certificate was issued of the account period of the delinquent returns, the amount of tax, penalty and interest due and owing from the taxpayer, and that the certificate of registration shall not be automatically renewed upon its expiration date unless the taxpayer, on or before the date of expiration, has filed and paid the delinquent returns or paid the defaulted amount in full.
- h) The Department may, in its discretion, approve renewal by a taxpayer who is in default if, at the time of renewal, the taxpayer files all of the delinquent returns or pays to the Department the percentage of the defaulted amount as may be determined by the Department and agrees in writing to a payment plan for paying the balance of the defaulted amount.
- i) Any person aggrieved by any decision of the Department under this Section may, within 20 days after notice of the decision, protest and request a hearing. After receipt of the request for a hearing, the Department shall give notice to the person of the time and place fixed for the hearing, shall hold a hearing, and shall issue its final administrative decision in the matter to the person. In the absence of a protest within 20 days, the Department's decision shall become final without any further determination being made or notice given.

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

- j) The Department shall notify the Department of Agriculture upon a decision not to issue, reissue or renew a certificate of registration to a cultivator under the Law.

**Section 422.130 Revocation of Certificate of Registration
EMERGENCY**

- a) *The Department has the power, after notice and an opportunity for a hearing, to revoke a certificate of registration issued by the Department if the holder of the certificate of registration fails to file a return, or to pay the tax, fee, penalty, or interest shown in a filed return, or to pay any final assessment of tax, fee, penalty, or interest, as required by the Law or any other tax or fee Act administered by the Department. [20 ILCS 2505/2505-380(a)]*
- b) The Department, after notice and hearing, shall revoke the certificate of registration (including all sub-certificates of registration, if any, issued hereunder) of any cultivator who violates any of the provisions of the Law or this Part. Before revocation of a certificate of registration the Department shall, within 90 days after non-compliance and at least 7 days prior to the date of the hearing, give the cultivator 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 such 90-day period shall not preclude the Department from conducting revocation proceedings at a later date if necessary.
- c) The Department shall notify the Department of Agriculture upon revocation of a certificate of registration issued to a cultivator.
- d) *No certificate of registration can be issued under the Law unless the cultivator is licensed by the Department of Agriculture under the Act. [410 ILCS 705/60-15]. If the Department receives notice that a license issued to a cultivator by the Department of Agriculture under the Act has been revoked, the Department shall commence proceedings to revoke the cultivator's certificate of registration*

**Section 422.135 Books and Records
EMERGENCY**

- a) *Every cultivator shall keep books and records of all sales of cannabis, together with invoices, bills of lading, sales records, copies of bills of sale, monthly inventories, inventories prepared as of December 31 of each year, and other pertinent papers and documents. [35 ILCS 120/7]*

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

- b) *All books and records and other papers and documents that are required by this Section and the Law 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. [35 ILCS 120/7]* Records shall be maintained at the physical location of the cultivator. All books and records kept by a cultivator pursuant to rules adopted by the Department of Agriculture to implement the Act shall, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. The Department shall also have access to the cultivator's automated data processing and/or point of sale system.
- c) *Books and records and other papers reflecting gross receipts received during any period with respect to which the Department is authorized to issue notices of tax liability shall, for purposes of this Part, be preserved until the expiration of that period unless the Department, in writing, authorizes their destruction or disposal prior to that expiration. The Department may not issue a notice of tax liability on and after each July 1 and January 1 covering gross receipts received during any month or period of time more than 3 years prior to such July 1 and January 1, respectively. [35 ILCS 120/7]* However, if the Department allows a cultivator to destroy books and records prior to the expiration of the preservation period, the cultivator is not relieved of any obligation to maintain books and records under any rule or regulation adopted by another State agency to implement the Act.
- d) *Any cultivator 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 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 as required by this Section. The penalties imposed under this Section shall not apply if the taxpayer shows that he or she acted with ordinary business care and prudence. [35 ILCS 120/7]*

**Section 422.140 Invoices Issued by a Cultivator
EMERGENCY**

Every sales invoice for cannabis issued by a cultivator to a cannabis business establishment

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

shall contain the cultivator's certificate of registration number assigned under the Law, date, invoice number, purchaser's name and address, selling price, and the amount of cannabis, concentrate, or cannabis-infused product. Cultivators shall retain a copy of the invoices for inspection by the Department. [410 ILCS 705/60-40]

**Section 422.145 Penalties and Interest
EMERGENCY**

- a) All provisions of the Uniform Penalty and Interest Act [35 ILCS 735] that are not inconsistent with the Law shall apply.
- b) The penalties contained in Section 13 of the Retailers' Occupation Tax Act that are not inconsistent with the Law shall apply.

**Section 422.150 Administration and Enforcement; Incorporation by Reference
EMERGENCY**

- a) *The Department shall have full power to administer and enforce the Law, to collect all taxes, penalties, and interest due under the Law, to dispose of taxes, penalties and interest so collected in the manner provided, and to determine all rights to credit memoranda, arising on account of the erroneous payment of tax, penalty, or interest hereunder.*
- b) *In the administration of, and compliance with, the Law, the Department and persons who are subject to the Law shall have the same rights, remedies, privileges, immunities, powers, and duties, and be subject to the same conditions, restrictions, limitations, penalties, and definitions of terms, and employ the same modes of procedure, as are prescribed in Sections 1, 2-40, 2a, 2b, 2i, 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5i, 5j, 6, 6a, 6b, 6c, 6d, 7, 8, 9, 10, 11, 11a, 12, and 13 of the Retailers' Occupation Tax Act and all of the provisions of the Uniform Penalty and Interest Act, which are not inconsistent with this Article, as fully as if those provisions were set forth herein. For purposes of this Section, references in the Retailers' Occupation Tax Act to a "sale of tangible personal property at retail" mean the "sale of cannabis by a cultivator". [410 ILCS 705/60-35]*
- c) To avoid needless repetition, the substance and provisions of all Retailers' Occupation Tax Regulations (86 Ill. Adm. Code 130) which are not incompatible with the Law or any special rules that may be promulgated by the Department under the Law, are incorporated herein by reference and made a part hereof.

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

- 1) Heading of the Part: Cannabis Purchaser Excise Tax
- 2) Code Citation: 86 Ill. Adm. Code 423
- 3)

<u>Section Numbers:</u>	<u>Emergency Actions:</u>
423.100	New Section
423.105	New Section
423.110	New Section
423.115	New Section
423.120	New Section
423.125	New Section
423.130	New Section
423.135	New Section
423.140	New Section
423.145	New Section
423.150	New Section
423.155	New Section
423.160	New Section
423.165	New Section
423.170	New Section
423.175	New Section
- 4) Statutory Authority: 410 ILCS 705/65-50
- 5) Effective Date of Emergency Rules: December 27, 2019
- 6) If the emergency rules are to expire before the end of the 150-day period, please specify the date on which they are to expire: The emergency rules expire 180 days after the effective date. Pursuant to Section 900-5 of PA 101-27, Section 5-45 of the Illinois Administrative Procedure Act is amended to provide that the Department of Revenue may adopt emergency rules to implement the Cannabis Regulation and Tax Act (which includes the Cannabis Purchaser Excise Tax), and the rules are effective for 150 days. 5 ILCS 100/5-45(gg).
- 7) Date Filed with the Index Department: December 27, 2019
- 8) A copy of the emergency rules, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

- 9) Reason for Emergency: PA 101-27 enacted the Cannabis Regulation and Tax Act. 410 ILCS 705. The Act permits the sale of adult cannabis to purchasers beginning January 1, 2020. The sale of adult cannabis by dispensaries is subject to the Cannabis Purchaser Excise Tax [410 ILCS 705/65-10]. The Emergency Amendments implement the Cannabis Purchaser Excise Tax. In order to provide for the expeditious and timely implementation of the Cannabis Regulation and Tax Act and PA 101-27 (including the Cannabis Purchaser Excise Tax), the Department of Revenue is authorized to adopt emergency rules. The adoption of emergency rules authorized by PA 101-27 is deemed to be necessary for the public interest, safety, and welfare. See Section 900-5 of PA 101-27 and 5 ILCS 100/5-45(gg).
- 10) A Complete Description of the Subjects and Issues Involved: The rulemaking implements PA 101-27, codified at 410 ILCS 705. Beginning January 1, 2020, a tax is imposed upon purchasers for the privilege of using cannabis at the following rates: 1) any cannabis, other than a cannabis-infused product, with an adjusted delta-9-tetrahydrocannabinol level at or below 35% shall be taxed at a rate of 10% of the purchase price; 2) any cannabis, other than a cannabis-infused product, with an adjusted delta-9-tetrahydrocannabinol level above 35% shall be taxed at a rate of 25% of the purchase price; and 3) a cannabis-infused product shall be taxed at a rate of 20% of the purchase price.
- 11) Are there any other rules to this Part pending? No
- 12) Statement of Statewide Policy Objective: This rulemaking neither imposes a State mandate, nor modifies an existing mandate.
- 13) Information and questions regarding the emergency rules shall be directed to:

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

217/782-2844

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

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 423
CANNABIS PURCHASER EXCISE TAX

Section

- 423.100 Nature of the Tax
EMERGENCY
- 423.105 Definitions
EMERGENCY
- 423.110 Tax Imposed
EMERGENCY
- 423.115 Bundling of Taxable and Nontaxable Items; Prohibition; Taxation
EMERGENCY
- 423.120 Collection of Tax
EMERGENCY
- 423.125 Tax Collected as a Debt Owed the State
EMERGENCY
- 423.130 Return and Payment of Tax by Cannabis Retailer
EMERGENCY
- 423.135 Registration of Cannabis Retailers
EMERGENCY
- 423.140 Revocation of Certificate of Registration
EMERGENCY
- 423.145 Books and Records
EMERGENCY
- 423.150 Arrest; Search and Seizure Without a Warrant
EMERGENCY
- 423.155 Seizure and Forfeiture
EMERGENCY
- 423.160 Search Warrant; Issuance and Return; Process; Confiscation of Cannabis;
Forfeitures
EMERGENCY
- 423.165 Violations and Penalties; Interest
EMERGENCY
- 423.170 Cannabis Retailers; Purchase and Possession of Cannabis
EMERGENCY
- 423.175 Administration and Enforcement; Incorporation by Reference

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

EMERGENCY

AUTHORITY: Implementing the Cannabis Purchaser Excise Tax Law [410 ILCS 705/Art. 65].

SOURCE: Emergency rules adopted at 44 Ill. Reg. 612, effective December 27, 2019, for a maximum of 180 days.

Section 423.100 Nature of the Tax**EMERGENCY**

- a) *Beginning January 1, 2020, the Cannabis Purchaser Excise Tax Law imposes a tax on the privilege of using cannabis in this State based on the purchase price of cannabis sold by a dispensary to a purchaser for use and consumption. [410 ILCS 705/65-10(a)] The tax imposed by the Law is collected from the purchaser by the cannabis retailer. The tax imposed by the Law shall be stated on the invoice as a distinct item separate and apart from the purchase price of the cannabis.*
- b) *The tax imposed under the Law is in addition to all other occupation, privilege, or excise taxes imposed by the State of Illinois or by any municipal corporation or political subdivision thereof. [410 ILCS 705/65-10(d)]*

Section 423.105 Definitions**EMERGENCY**

"Act" means the Cannabis Regulation and Tax Act [410 ILCS 705].

"Adjusted delta-9-tetrahydrocannabinol level" means, for a delta-9-tetrahydrocannabinol dominant product, the sum of the percentage of delta-9-tetrahydrocannabinol plus .877 multiplied by the percentage of tetrahydrocannabinolic acid. [410 ILCS 705/65-5]

"Automated sales suppression device" or "zapper" means a software program that falsifies the electronic records of an electronic cash register or other point-of-sale system, including, but not limited to, transaction data and transaction reports. The term includes the software program, any device that carries the software program, or an Internet link to the software program. [410 ILCS 705/65-38]

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

"Cannabis" means marijuana, hashish, and other substances that are identified as including any parts of the plant Cannabis sativa and including derivatives or subspecies, such as indica, of all strains of cannabis, whether growing or not; the seeds thereof, the resin extracted from any part of the plant; and any compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin, including tetrahydrocannabinol (THC) and all other naturally produced cannabinol derivatives, whether produced directly or indirectly by extraction; however, "cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted from it), fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination. "Cannabis" does not include industrial hemp as defined and authorized under the Industrial Hemp Act and cannabis that is subject to tax under the Compassionate Use of Medical Cannabis Program Act. "Cannabis" also means cannabis flower, concentrate, and cannabis-infused products. [410 ILCS 705/1-10]

"Cannabis business establishment" means a cultivation center, craft grower, infuser organization, processing organization, dispensing organization, or transporting organization. [410 ILCS 705/1-10]

"Cannabis concentrate" means a product

derived from cannabis that is produced by extracting cannabinoids, including tetrahydrocannabinol (THC), from the plant through the use of

propylene glycol, glycerin, butter, olive oil or other typical cooking fats; water, ice, or dry ice; or

butane, propane, CO₂, ethanol, or isopropanol and

with the intended use of smoking or making a cannabis-infused product. [410 ILCS 705/1-10]

"Cannabis flower" means marijuana, hashish, and other substances that are identified as including any parts of the plant Cannabis sativa and including derivatives or subspecies, such as indica, of all strains of cannabis; including raw kief leaves, and buds, but not resin that has been extracted from any part of such

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

plant; nor any compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin. [410 ILCS 705/1-10]

"Cannabis-infused product" means beverage food, oils, ointments, tincture, topical formulation, or another product containing cannabis that is not intended to be smoked. [410 ILCS 705/65-5]

"Craft grower" means a facility operated by an organization or business that is licensed by the Department of Agriculture to cultivate, dry, cure, and package cannabis and perform other necessary activities to make cannabis available for sale at a dispensing organization or use at a processing organization. A craft grower may contain up to 5,000 square feet of canopy space on its premises for plants in the flowering state. The Department of Agriculture may authorize an increase or decrease of flowering stage cultivation space in increments of 3,000 square feet by rule based on market need, craft grower capacity, and the licensee's history of compliance or noncompliance, with a maximum space of 14,000 square feet for cultivating plants in the flowering stage, which must be cultivated in all stages of growth in an enclosed and secure area. A craft grower may share premises with a processing organization or a dispensing organization, or both, provided each licensee stores currency and cannabis or cannabis-infused products in a separate secured vault to which the other licensee does not have access or all licensees sharing a vault share more than 50% of the same ownership. [410 ILCS 705/1-10]

"Cannabis retailer" means a dispensing organization that sells cannabis for use and not for resale. [410 ILCS 705/65-5]

"Department" means the Department of Revenue. [410 ILCS 705/65-5]

"Dispensary" means a facility operated by a dispensing organization at which activities licensed by the Act may occur. [410 ILCS 705/1-10]

"Dispensing organization" means a facility operated by an organization or business that is licensed by the Department of Financial and Professional Regulation to acquire cannabis from a cultivation center, craft grower, processing organization, infuser, or another dispensary for the purpose of selling or dispensing cannabis, cannabis-infused products, cannabis seeds, paraphernalia, or related supplies under the Act to purchasers or to qualified registered medical cannabis patients and caregivers. As used in the Act,

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

dispensing organization includes a registered medical cannabis organization as defined in the Compassionate Use of Medical Cannabis Program Act or its successor Act that has obtained an Early Approval Adult Use Dispensing Organization License. [410 ILCS 705/1-10]

"Electronic cash register" means a device that keeps a register or supporting documents through the use of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data in any manner. [410 ILCS 705/65-38]

"Infuser organization" or "infuser" means a facility operated by an organization or business that is licensed by the Department of Agriculture to directly incorporate cannabis or cannabis concentrate into a product formulation to produce a cannabis-infused product. [410 ILCS 705/65-5]

"Law" means the Cannabis Purchaser Excise Tax Law [410 ILCS 705/Art. 65].

"Person" means

a natural individual, firm, partnership, association, joint stock company, joint adventure, public or private corporation, limited liability company, or

a receiver, executor, trustee, guardian, or other representative appointed by order of any court. [410 ILCS 705/65-5]

"Phantom-ware" means a hidden programming option embedded in the operating system of an electronic cash register or hardwired into an electronic cash register that can be used to create a second set of records or that can eliminate or manipulate transaction records in an electronic cash register. [410 ILCS 705/65-38]

"Purchase price"

means the consideration paid for a purchase of cannabis, valued in money, whether received in money or otherwise, including cash, gift cards, credits, and property and

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

shall be determined without any deduction on account of the cost of materials used, labor or service costs, or any other expense whatsoever. However, "purchase price" does not include consideration paid for:

any charge for a payment that is not honored by a financial institution;

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

any amounts added to a purchaser's bill because of charges made under the tax imposed by the Law, the Municipal Cannabis Retailers' Occupation Tax Law, the County Cannabis Retailers' Occupation Tax Law, the Retailers' Occupation Tax Act, the Use Tax Act, the Service Occupation Tax Act, the Service Use Tax Act, or any locally imposed occupation or use tax. [410 ILCS 705/65-5]

"Purchaser" means a person who acquires cannabis for a valuable consideration.

"Taxpayer" means a cannabis retailer who is required to collect the tax imposed under the Law. [410 ILCS 705/65-5]

"Transaction data" includes:

items purchased by a purchaser;

the price of each item;

a taxability determination for each item;

a segregated tax amount for each taxed item;

the amount of cash or credit tendered;

the net amount returned to the customer in change;

the date and time of the purchase;

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

the name, address, and identification number of the vendor; and

the receipt or invoice number of the transaction. [410 ILCS 705/65-38]

"Transaction report" means a report that documents, without limitation, the sales, taxes, or fees collected, media totals, and discount voids at an electronic cash register and that is printed on a cash register tape at the end of a day or shift, or a report that documents every action at an electronic cash register and is stored electronically. [410 ILCS 705/65-38]

**Section 423.110 Tax Imposed
EMERGENCY**

- a) *Beginning January 1, 2020, a tax is imposed upon purchasers for the privilege of using cannabis at the following rates:*
- 1) *Any cannabis, other than a cannabis-infused product, with an adjusted delta-9-tetrahydrocannabinol level at or below 35% shall be taxed at a rate of 10% of the purchase price;*
 - 2) *Any cannabis, other than a cannabis-infused product, with an adjusted delta-9-tetrahydrocannabinol level above 35% shall be taxed at a rate of 25% of the purchase price; and*
 - 3) *A cannabis-infused product shall be taxed at a rate of 20% of the purchase price.* [410 ILCS 705/65-10]
- b) *The purchase of any product that contains any amount of cannabis or any derivative thereof is subject to the tax under subsection (a) of this Section on the full purchase price of the product.* [410 ILCS 705/65-10]

EXAMPLE: A dispensary sells a cannabis-infused product that contains 1/8th ounce of cannabis for \$80. One-eighth of an ounce of cannabis normally sells for \$30. The dispensary must collect \$16 in privilege tax on the sales price of the infused product ($\$80 \times .2 = \16).

- c) *The tax imposed under this Section is not imposed on cannabis that is subject to tax under the Compassionate Use of Medical Cannabis Program Act.* [410 ILCS 705/65-10]

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

- d) *The tax imposed by this Section is not imposed with respect to any transaction in interstate commerce, to the extent the transaction may not, under the Constitution and statutes of the United States, be made the subject of taxation by this State. [410 ILCS 705/65-10]*
- e) *The tax imposed under the Law shall not be imposed on any purchase by a purchaser if the cannabis retailer is prohibited by federal or State Constitution, treaty, convention, statute, or court decision from collecting the tax from the purchaser. [410 ILCS 705/65-10]*

**Section 423.115 Bundling of Taxable and Nontaxable Items; Prohibition; Taxation
EMERGENCY**

- a) *The Act prohibits dispensing organizations from selling cannabis, cannabis-infused products and concentrates in combination or bundled with each other or any other items for one price. [410 ILCS 705/15-70(p)(17)] If a cannabis retailer sells cannabis, concentrate, or cannabis-infused products in combination or bundled with items that are not subject to tax under the Law for one price in violation of the prohibition on this activity under Section 15-70 of the Act, then the tax under the Law is imposed on the purchase price of the entire bundled product. [410 ILCS 705/65-11]*

EXAMPLE: A dispensary makes gift baskets that contain a quarter ounce of cannabis with less than with less than 35% THC that normally sells for \$60, a pipe that normally sells for \$20, 4 cannabis-infused pods that normally sell for \$40, and an electronic device the pods can be used with that normally sells for \$45. The dispensary offers the basket for \$135. The tax under the Law is imposed at the rate of 20% on the purchase price of \$135.

- b) *Each item of cannabis, concentrate and cannabis-infused product must be separately identified by quantity and price on the receipt. [410 ILCS 705/15-70(p)(17)]*

**Section 423.120 Collection of Tax
EMERGENCY**

- a) *The tax imposed by the Law shall be collected from the purchaser by the cannabis retailer at the rate stated in Section 423.110 with respect to cannabis sold by the*

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

cannabis retailer to the purchaser, and shall be remitted to the Department as provided in Section 423.130. All sales to a purchaser who is not a cardholder under the Compassionate Use of Medical Cannabis Program Act [410 ILCS 130] are presumed subject to tax collection. Cannabis retailers shall collect the tax from purchasers by adding the tax to the amount of the purchase price received from the purchaser for selling cannabis to the purchaser.

- b) When a cannabis retailer collects the tax from the purchaser, the cannabis retailer shall give the purchaser a receipt. The receipt must show the name and address of the cannabis retailer, the date of the purchase, a brief description of the property sold, the amount of the purchase price on which the tax is based, and the amount of tax collected stated as a distinct item separate and apart from the purchase price of the property sold.
- c) *If a cannabis retailer collects Cannabis Purchaser Excise Tax measured by a purchase price that is not subject to Cannabis Purchaser Excise Tax, or if a cannabis retailer, in collecting Cannabis Purchaser Excise Tax measured by a purchase price that is subject to tax under the Law, collects more from the purchaser than the required amount of the Cannabis Purchaser Excise Tax on the transaction, the purchaser shall have a legal right to claim a refund of that amount from the cannabis retailer. If, however, that amount is not refunded to the purchaser for any reason, the cannabis retailer is liable to pay that amount to the Department.*
- d) *Any person purchasing cannabis subject to tax under the Law as to which there has been no charge made to him or her of the tax imposed by Section 423.110 shall make payment of the tax imposed by Section 423.110 in the form and manner provided by the Department not later than the 20th day of the month following the month of purchase of the cannabis. [410 ILCS 705/65-15]*

**Section 423.125 Tax Collected as Debt Owed the State
EMERGENCY**

Any cannabis retailer required to collect the tax imposed by the Law shall be liable to the Department for the tax, whether or not the tax has been collected by the cannabis retailer, and any such tax shall constitute a debt owed by the cannabis retailer to this State. To the extent that a cannabis retailer required to collect the tax imposed by the Law has actually collected that tax, the tax is held in trust for the benefit of the Department. [410 ILCS 705/65-25]

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

**Section 423.130 Return and Payment of Tax by Cannabis Retailer
EMERGENCY**

- a) *Each cannabis retailer that is required or authorized to collect the tax imposed by the Law shall make a return to the Department, by electronic means, on or before the 20th day of each month for the preceding calendar month stating the following:*
- 1) *the cannabis retailer's name;*
 - 2) *the address of the cannabis retailer's principal place of business and the address of the principal place of business (if that is a different address) from which the cannabis retailer engaged in the business of selling cannabis subject to tax under the Law;*
 - 3) *the total purchase price received by the cannabis retailer for cannabis subject to tax under the Law;*
 - 4) *the amount of tax due at each rate;*
 - 5) *the signature of the cannabis retailer; and*
 - 6) *any other information as the Department may reasonably require.*
- b) *All returns required to be filed and payments required to be made under the Law shall be by electronic means. Cannabis retailers who demonstrate hardship in paying electronically may petition the Department to waive the electronic payment requirement. Taxpayers may not petition the Department for a waiver of the requirement to file all returns by electronic means.*
- c) *Any amount that is required to be shown or reported on any return or other document under the Law shall, if the amount is not a whole-dollar amount, be increased to the nearest whole-dollar amount if the fractional part of a dollar is \$0.50 or more and decreased to the nearest whole-dollar amount if the fractional part of a dollar is less than \$0.50. If a total amount of less than \$1 is payable, refundable, or creditable, the amount shall be disregarded if it is less than \$0.50 and shall be increased to \$1 if it is \$0.50 or more.*

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

- d) *The cannabis retailer making the return provided for in this Section shall also pay to the Department, in accordance with this Section, the amount of tax imposed by the Law, less a discount of 1.75%, but not to exceed \$1,000 per return period, which is allowed to reimburse the cannabis retailer for the expenses incurred in keeping records, collecting tax, preparing and filing returns, remitting the tax, and supplying data to the Department upon request. No discount may be claimed by a cannabis retailer on returns not timely filed and for taxes not timely remitted. No discount may be claimed by a taxpayer for any return that is not filed electronically. No discount may be claimed by a taxpayer for any payment that is not made electronically, unless a waiver has been granted under this Section.*
- e) *Notwithstanding any other provision of the Law concerning the time within which a cannabis retailer may file a return, any such cannabis retailer who ceases to engage in the kind of business that makes the person responsible for filing returns under the Law shall file a final return under the Law with the Department within one month after discontinuing the business.*
- f) *Each cannabis retailer shall make estimated payments to the Department on or before the 7th, 15th, 22nd, and last day of the month during which tax liability to the Department is incurred. The payments shall be in an amount not less than the lower of either 22.5% of the cannabis retailer's actual tax liability for the month or 25% of the cannabis retailer's actual tax 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 cannabis retailer's return for that month. If any such quarter-monthly payment is not paid at the time or in the amount required by this Section, then the cannabis retailer shall be liable for penalties and interest on the difference between the minimum amount due as a payment and the amount of the quarter-monthly payment actually and timely paid, except insofar as the cannabis retailer has previously made payments for that month to the Department in excess of the minimum payments previously due as provided in this Section.*
- g) *If any payment provided for in this Section exceeds the taxpayer's liabilities under the Law, as shown on an original monthly return, the Department shall, if requested by the taxpayer, issue to the taxpayer a credit memorandum no later than 30 days after the date of payment. The credit evidenced by the credit memorandum may be assigned by the taxpayer to a similar taxpayer under the Law, in accordance with reasonable rules to be prescribed by the Department. If no such request is made, the taxpayer may credit the excess payment against tax*

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

liability subsequently to be remitted to the Department under the Law, in accordance with reasonable rules prescribed by the Department. 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, if necessary, to reflect the difference between the credit taken and that actually due, and that taxpayer shall be liable for penalties and interest on the difference. If a cannabis retailer fails to sign a return within 30 days after the proper notice and demand for signature by the Department is received by the cannabis retailer, the return shall be considered valid and any amount shown to be due on the return shall be deemed assessed. [410 ILCS 705/65-30]

**Section 423.135 Registration of Cannabis Retailers
EMERGENCY**

- a) It shall be unlawful for any cannabis retailer to engage in the business of selling cannabis at retail in this State without a certificate of registration from the Department. *Every cannabis retailer subject to the tax under the Law shall apply to the Department for a certificate of registration under the Law. All applications for registration under the Law shall be made by electronic means. [410 ILCS 705/65-20]*
- b) Each application shall be signed and verified and shall state:
 - 1) the name and social security number of the applicant;
 - 2) the address of the cannabis retailer's principal place of business;
 - 3) the address of the place of business from which the cannabis retailer engages in the business of selling cannabis at retail in this State and the addresses of all other places of business, if any (enumerating such addresses, if any, in a separate list attached to and made a part of the application), from which the cannabis retailer engages in the business of selling cannabis at retail in this State;
 - 4) the name and address of the person or persons who will be responsible for filing returns and payment of taxes due under the Law (See 35 ILCS 735/3-7);

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

- 5) in the case of a publicly traded corporation, the name and title of the Chief Financial Officer, Chief Operating Officer, and any other officer or employee with responsibility for preparing tax returns under the Law; and, in the case of all other corporations, the name, title and, social security number of each corporate officer;
 - 6) in the case of a limited liability company, the name, social security number, and FEIN of each manager and member; and
 - 7) any other information as the Department may reasonably require.
- c) Upon completion of the application for certificate of registration in proper form, the Department shall issue to the applicant a certificate of registration that shall permit the person to whom it is issued to engage in the business as a retailer of cannabis in this State. If an applicant engages in the business of selling cannabis at retail at another location in this State, the Department shall furnish him or her with a sub-certificate of registration for that place of business, and the applicant shall display the appropriate sub-certificate of registration at that place of business. The sub-certificate of registration shall bear the same registration number as that appearing upon the certificate of registration to which the sub-certificate relates. *No certificate of registration shall be issued under the Law unless the applicant has obtained a license from the Department Financial and Professional Regulation under the Act.* [35 ILCS 705/65-20]
- d) A certificate of registration shall automatically be renewed, subject to revocation as provided by the Law, for an additional 1 year from the date of its expiration, unless otherwise notified by the Department as provided by this Section.
- e) The Department may require an applicant for a certificate of registration to furnish a bond at the time of filing the application. The certificate of registration will not be issued by the Department until the applicant provides the Department with satisfactory security, if required.
- f) *The Department may refuse to issue, reissue, or renew a certificate of registration authorized to be issued by the Department if a person who is named as the owner, a partner, a corporate officer, or, in the case of a limited liability company, a manager or member, of the applicant on the application for the certificate of registration is or has been named as the owner, a partner, a corporate officer, or in the case of a limited liability company, a manager or member, on the*

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

application for the certificate of registration of a person that is in default for moneys due under the Law or any other tax or fee Act administered by the Department. For purposes of this Section only, in determining whether a person is in default for moneys due, the Department shall include only amounts established as a final liability within the 20 years prior to the date of the Department's notice of refusal to issue or reissue the certificate of registration, permit, or license. [20 ILCS 2505/2505-380(b)]

- g) When a taxpayer to whom a certificate of registration is issued under the Law is in default to the State of Illinois for delinquent returns or for moneys due under the Law or any other State tax law or municipal or county ordinance administered or enforced by the Department, the Department shall, not less than 60 days before the expiration of the certificate of registration, give notice to the taxpayer to whom the certificate was issued of the account period of the delinquent returns, the amount of tax, penalty and interest due and owing from the taxpayer, and that the certificate of registration shall not be automatically renewed upon its expiration date unless the taxpayer, on or before the date of expiration, has filed and paid the delinquent returns or paid the defaulted amount in full.
- h) The Department may, in its discretion, approve renewal by a taxpayer who is in default if, at the time of renewal, the taxpayer files all of the delinquent returns or pays to the Department the percentage of the defaulted amount as may be determined by the Department and agrees in writing to a payment plan for paying the balance of the defaulted amount.
- i) Any person aggrieved by any decision of the Department under this Section may, within 20 days after notice of the decision, protest and request a hearing. After receipt of the request for a hearing, the Department shall give notice to the person of the time and place fixed for the hearing, shall hold a hearing, and shall issue its final administrative decision in the matter to the person. In the absence of a protest within 20 days, the Department's decision shall become final without any further determination being made or notice given.
- j) The Department shall notify the Department of Financial and Professional Regulation upon a decision not to issue, reissue or renew a certificate of registration to a cannabis retailer under the Law.

**Section 423.140 Revocation of Certificate of Registration
EMERGENCY**

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

- a) *The Department has the power, after notice and an opportunity for a hearing, to revoke a certificate of registration issued by the Department if the holder of the certificate of registration fails to file a return, or to pay the tax, fee, penalty, or interest shown in a filed return, or to pay any final assessment of tax, fee, penalty, or interest, as required by the Law or any other tax or fee Act administered by the Department. [20 ILCS 2505/2505-380(a)]*
- b) The Department, after notice and hearing, shall revoke the certificate of registration (including all sub-certificates of registration, if any, issued hereunder) of any cannabis retailer who violates any of the provisions of the Law. Before revocation of a certificate of registration the Department shall, within 90 days after non-compliance and at least 7 days prior to the date of the hearing, give the cannabis retailer 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 such 90-day period shall not preclude the Department from conducting revocation proceedings at a later date if necessary.
- c) The Department shall notify the Department of Financial and Professional Regulation upon revocation of a certificate of registration issued to a cannabis retailer.

**Section 423.145 Books and Records
EMERGENCY**

- a) *Every retailer of cannabis, whether or not the retailer has obtained a certificate of registration under Section 423.135, shall keep complete and accurate records of cannabis held, purchased, sold, or otherwise disposed of, and shall preserve and keep all invoices, bills of lading, sales records, and copies of bills of sale, returns, and other pertinent papers and documents relating to the purchase, sale, or disposition of cannabis. Such records need not be maintained on the licensed premises but must be maintained in the State of Illinois. However, all original invoices or copies thereof covering purchases of cannabis must be retained on the licensed premises for a period of 90 days after such purchase, unless the Department has granted a waiver in response to a written request in cases where records are kept at a central business location within the State of Illinois. [410 ILCS 705/65-36(a)] If a waiver is granted, the taxpayer must, within a reasonable time after notification by the Department, make all pertinent books, records,*

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

papers and documents available at a location within Illinois for the purpose of inspection or audit as the Department may deem necessary.

- b) The Department will grant a written waiver under subsection (a) when the cannabis retailer submits a letter to the Department containing:
- 1) the cannabis retailer's license number and FEIN;
 - 2) the address or addresses of the licensed premises where records are currently maintained;
 - 3) the address of the central location where the cannabis retailer intends to maintain the records; and
 - 4) an acknowledgement by the cannabis retailer that the Department, upon 30 days written notice, may revoke the waiver of the cannabis retailer for one or more licensed premises if the retailer:
 - A) fails to make records available in accordance with the requirements of this Section and the written waiver; or
 - B) transfers or sells the licensed premises to another person.
- c) *Books, records, papers, and documents that are required by the Law to be kept, shall be kept in the English language and shall, at all times during the usual business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. The books, records, papers, and documents for any period with respect to which the Department is authorized to issue a notice of tax liability shall be preserved until the expiration of that period. [410 ILCS 705/65-36(b)]*
- d) All books and records kept by a cannabis retailer pursuant to rules adopted by the Department of Financial and Professional Regulation to implement the Act shall, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. The Department shall also have access to the cannabis retailer's automated data processing and/or point of sale system.

Section 423.150 Arrest; Search and Seizure Without a Warrant

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

EMERGENCY

Any duly authorized employee of the Department: (i) may arrest without warrant any person committing in his or her presence a violation of any of the provisions of the Law; (ii) may without a search warrant inspect all cannabis located in any place of business; (iii) may seize any cannabis in the possession of the cannabis retailer in violation of the Act or the Law; and (iv) may seize any cannabis on which the tax imposed by Section 423.110 this Section has not been paid. The cannabis so seized is subject to confiscation and forfeiture as provided in Sections 423.155 and 423.160. [410 ILCS 705/65-41]

Section 423.155 Seizure and Forfeiture**EMERGENCY**

- a) *After seizing any cannabis as provided in Section 423.150, the Department must hold a hearing and determine whether the retailer was properly registered to sell the cannabis at the time of its seizure by the Department. The Department shall give not less than 20 days' notice of the time and place of the hearing to the owner of the cannabis, if the owner is known, and also to the person in whose possession the cannabis was found, if that person is known and if the person in possession is not the owner of the cannabis. If neither the owner nor the person in possession of the cannabis is known, the Department must cause publication of the time and place of the hearing to be made at least once in each week for 3 weeks successively in a newspaper of general circulation in the county where the hearing is to be held.*
- b) *If, as the result of the hearing, the Department determines that the retailer was not properly registered at the time the cannabis was seized, the Department must enter an order declaring the cannabis confiscated and forfeited to the State, to be held by the Department for disposal by it as provided in Section 423.160. The Department must give notice of the order to the owner of the cannabis, if the owner is known, and also to the person in whose possession the cannabis was found, if that person is known and if the person in possession is not the owner of the cannabis. If neither the owner nor the person in possession of the cannabis is known, the Department must cause publication of the order to be made at least once in each week for 3 weeks successively in a newspaper of general circulation in the county where the hearing was held. [410 ILCS 705/65-42]*

Section 423.160 Search Warrant; Issuance and Return; Process; Confiscation of Cannabis; Forfeitures

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

EMERGENCY

- a) *If a peace officer of this State or any duly authorized officer or employee of the Department has reason to believe that any violation of the Law or this Part has occurred and that the person violating the law or this Part has in that person's possession any cannabis in violation of the Law or this Part, that peace officer or officer or employee of the Department may file or cause to be filed his or her complaint in writing, verified by affidavit, with any court within whose jurisdiction the premises to be searched are situated, stating the facts upon which the belief is founded, the premises to be searched, and the property to be seized, and procure a search warrant and execute that warrant.*
- b) *Upon the execution of the search warrant, the peace officer, or officer or employee of the Department executing the search warrant shall make due return of the warrant to the court issuing the warrant, together with an inventory of the property taken under the warrant. The court must then issue process against the owner of the property if the owner is known; otherwise, process must be issued against the person in whose possession the property is found, if that person is known. In case of inability to serve process upon the owner or the person in possession of the property at the time of its seizure, notice of the proceedings before the court must be given in the same manner as required by the law governing cases of attachment. Upon the return of the process duly served or upon the posting or publishing of notice made, as appropriate, the court or jury, if a jury is demanded, shall proceed to determine whether the property so seized was held or possessed in violation of the Law or this Part. If a violation is found, judgment shall be entered confiscating the property and forfeiting it to the State and ordering its delivery to the Department. In addition, the court may tax and assess the costs of the proceedings.*
- c) *When any cannabis has been declared forfeited to the State by the Department, as provided in Section 423.155 and this Section, and when all proceedings for the judicial review of the Department's decision have terminated, the Department shall, to the extent that its decision is sustained on review, destroy or maintain and use such cannabis in an undercover capacity.*
- d) *The Department may, before any destruction of cannabis, permit the true holder of trademark rights in the cannabis to inspect such cannabis in order to assist the Department in any investigation regarding such cannabis. [410 ILCS 705/65-43]*

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

**Section 423.165 Violations and Penalties; Interest
EMERGENCY**

- a) *When the amount due is under \$300, any retailer of cannabis who fails to file a return, willfully fails or refuses to make any payment to the Department of the tax imposed by the Law, or files a fraudulent return, or any officer or agent of a corporation engaged in the business of selling cannabis to purchasers located in this State who signs a fraudulent return filed on behalf of the corporation, or any accountant or other agent who knowingly enters false information on the return of any taxpayer under the Law is guilty of a Class 4 felony.*
- b) *When the amount due is \$300 or more, any retailer of cannabis who files, or causes to be filed, a fraudulent return, or any officer or agent of a corporation engaged in the business of selling cannabis to purchasers located in this State who files or causes to be filed or signs or causes to be signed a fraudulent return filed on behalf of the corporation, or any accountant or other agent who knowingly enters false information on the return of any taxpayer under this Article is guilty of a Class 3 felony.*
- c) *Any person who violates any provision of Section 423.135, fails to keep books and records as required under the Law and this Part, or willfully violates this Part is guilty of a Class 4 felony. A person commits a separate offense on each day that he or she engages in business in violation of Section 423.135. If a person fails to produce the books and records for inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep books and records as required under the Law and this Part. A person who is unable to rebut this presumption is in violation of the Article and this Part and is subject to the penalties provided in this Section.*
- d) *Any person who violates any provision of Section 423.135, fails to keep books and records as required under the Law, or willfully violates a rule of the Department for the administration and enforcement of the Law, is guilty of a business offense and may be fined up to \$5,000. If a person fails to produce books and records for inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep books and records as required under the Law and this Part. A person who is unable to rebut this presumption is in violation of the Law and this Part and is subject to the penalties provided in this Section. A person commits a separate offense on each day that he or she engages in business in violation of Section 423.135.*

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

- e) *Any taxpayer or agent of a taxpayer who with the intent to defraud purports to make a payment due to the Department by issuing or delivering a check or other order upon a real or fictitious depository for the payment of money, knowing that it will not be paid by the depository, is guilty of a deceptive practice in violation of Section 17-1 of the Criminal Code of 2012.*
- f) *Any person who fails to keep books and records or fails to produce books and records for inspection, as required by Section 423.145, is liable to pay to the Department, for deposit in the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first failure to keep books and records or failure to produce books and records for inspection, as required by Section 423.145, and \$3,000 for each subsequent failure to keep books and records or failure to produce books and records for inspection, as required by Section 423.145.*
- g) *Any person who knowingly acts as a retailer of cannabis in this State without first having obtained a certificate of registration to do so in compliance with Section 423.135 shall be guilty of a Class 4 felony.*
- h) *A person commits the offense of tax evasion under the Law when he or she knowingly attempts in any manner to evade or defeat the tax imposed on him or her or on any other person, or the payment thereof, and he or she commits an affirmative act in furtherance of the evasion. As used in this Section, "affirmative act in furtherance of the evasion" means an act designed in whole or in part to (i) conceal, misrepresent, falsify, or manipulate any material fact or (ii) tamper with or destroy documents or materials related to a person's tax liability under the Law. Two or more acts of tax evasion may be charged as a single count in any indictment, information, or complaint and the amount of tax deficiency may be aggregated for purposes of determining the amount of tax that is attempted to be or is evaded and the period between the first and last acts may be alleged as the date of the offense.*
- 1) *When the amount of tax, the assessment or payment of which is attempted to be or is evaded is less than \$500, a person is guilty of a Class 4 felony.*
 - 2) *When the amount of tax, the assessment or payment of which is attempted to be or is evaded is \$500 or more but less than \$10,000, a person is guilty of a Class 3 felony.*

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

- 3) *When the amount of tax, the assessment or payment of which is attempted to be or is evaded is \$10,000 or more but less than \$100,000, a person is guilty of a Class 2 felony.*
- 4) *When the amount of tax, the assessment or payment of which is attempted to be or is evaded is \$100,000 or more, a person is guilty of a Class 1 felony.*
- i) *Any person who knowingly sells, purchases, installs, transfers, possesses, uses, or accesses any automated sales suppression device, zapper, or phantom-ware in this State is guilty of a Class 3 felony.*
- j) *A prosecution for any act in violation of subsection (h) may be commenced at any time within 5 years of the commission of that act.*
- k) *Any person whose principal place of business is in this State and who is charged with a violation under this Section shall be tried in the county where his or her principal place of business is located unless he or she asserts a right to be tried in another venue.*
- l) *Except as otherwise provided in subsection (h), a prosecution for a violation described in this Section may be commenced within 3 years after the commission of the act constituting the violation. [410 ILCS 705/65-38]*
- m) *All provisions of the Uniform Penalty and Interest Act [35 ILCS 735] that are not inconsistent with the Law shall apply.*

**Section 423.170 Cannabis Retailers; Purchase and Possession of Cannabis
EMERGENCY**

Cannabis retailers shall purchase cannabis for resale only from cannabis business establishments. [410 ILCS 705/65-45]

**Section 423.175 Administration and Enforcement; Incorporation by Reference
EMERGENCY**

- a) *The Department shall have full power to administer and enforce the Law, to collect all taxes and penalties due hereunder, to dispose of taxes and penalties so collected in the manner hereinafter provided, and to determine all rights to credit*

DEPARTMENT OF REVENUE

NOTICE OF EMERGENCY RULES

memoranda, arising on account of the erroneous payment of tax or penalty hereunder.

- b) *In the administration of, and compliance with, the Law, the Department and persons who are subject to the Law shall have the same rights, remedies, privileges, immunities, powers, and duties, and be subject to the same conditions, restrictions, limitations, penalties, and definitions of terms, and employ the same modes of procedure, as are prescribed in Sections 2, 3-55, 3a, 4, 5, 7, 10a, 11, 12a, 12b, 14, 15, 19, 20, 21, and 22 of the Use Tax Act and Sections 1, 2-12, 2b, 4 (except that the time limitation provisions shall run from the date when the tax is due rather than from the date when gross receipts are received), 5 (except that the time limitation provisions on the issuance of notices of tax liability shall run from the date when the tax is due rather than from the date when gross receipts are received and except that in the case of a failure to file a return required by this Act, no notice of tax liability shall be issued on and after each July 1 and January 1 covering tax due with that return during any month or period more than 6 years before that July 1 or January 1, respectively), 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5j, 6d, 7, 8, 9, 10, 11, and 12 of the Retailers' Occupation Tax Act and all of the provisions of the Uniform Penalty and Interest Act, which are not inconsistent with the Law, as fully as if those provisions were set forth herein. References in the incorporated Sections of the Retailers' Occupation Tax Act and the Use Tax Act to retailers, to sellers, or to persons engaged in the business of selling tangible personal property mean cannabis retailers when used in the Law. References in the incorporated Sections to sales of tangible personal property mean sales of cannabis subject to tax under the Law when used in the Law. [410 ILCS 705/65-40]*
- c) To avoid needless repetition, the substance and provisions of all Use Tax Regulations (86 Ill. Adm. Code 150) and all Retailers' Occupation Tax Regulations (86 Ill. Adm. Code 130) which are not incompatible with the Cannabis Purchaser Excise Tax Law or any special rules that may be promulgated by the Department under the Law, are incorporated herein by reference and made a part hereof.

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

NOTICE OF CORRECTION TO NOTICE ONLY

- 1) Heading of the Part: The Administration and Operation of the State Employees' Retirement System of Illinois
- 2) Code Citation: 80 Ill. Adm. Code 1540
- 3) The Notice of Proposed Amendments appeared at: 43 Ill. Reg. 13769; December 2, 2019
- 4) The information being corrected is as follows: The following information should not have been contained in item 5: A Complete Description of the Subject and Issues Involved:
 - 5) A Complete Description of the Subject and Issues Involved: In addition, the proposed rules increase the quarterly external earnings threshold from \$2,490 to \$3,660. The current limitation was implemented back in 2005. The proposed amount of \$3,660 reflects the current limitation for the Social Security Disability Income program.

The proposed rules provide that earnings derived from income producing activities created by the member prior to the onset of the disability shall be excluded for purposes of determining gainful employment. In addition, the proposed rules clarify that income produced from passive investment activities shall be excluded for purposes of determining gainful employment.

JOINT COMMITTEE ON ADMINISTRATIVE RULES

SECOND NOTICES RECEIVED

The following second notices were received during the period of December 23, 2019 through December 30, 2019. The rulemakings are scheduled for the January 14, 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
2/6/20	<u>Healthcare and Family Services</u> , Hospital Services (89 Ill. Adm. Code 148)	9/6/19 43 Ill. Reg. 9318	1/14/20
2/6/20	<u>Human Services</u> , Centers for Independent Living (89 Ill. Adm. Code 886)	2/15/19 43 Ill. Reg. 2196	1/14/20
2/6/20	<u>State Police Merit Board</u> , Procedures for the Department of State Police Merit Board (80 Ill. Adm. Code 150)	11/8/19 43 Ill. Reg. 12971	1/14/20
2/12/20	<u>Gaming Board</u> , Video Gaming (General) (11 Ill. Adm. Code 1800)	11/1/19 43 Ill. Reg. 12767	1/14/20
2/12/20	<u>Emergency Management Agency</u> , Accrediting Persons in the Practice of Medical Radiation (32 Ill. Adm. Code 401)	11/8/19 43 Ill. Reg. 12939	1/14/20

HEALTH FACILITIES AND SERVICES REVIEW BOARD

JANUARY 2020 REGULATORY AGENDA

- a) Part (Heading and Code Citation): Health Facilities and Services Operational Rules (77 Ill. Adm. Code 1130)
- 1) Rulemaking:
- A) Description: This Part will be updated to reflect changes resulting from PA 101-83.
- B) Statutory Authority: 20 ILCS 3960
- C) Scheduled meeting/hearing dates: There are no meetings or hearings scheduled.
- D) Date Agency anticipates First Notice: The Board has not determined a date at this time.
- E) Effect on small businesses, small municipalities or not-for-profit corporations: This rulemaking may affect units of small businesses, small municipalities and not-for-profit corporations that own or operate health care facilities such as hospitals, ambulatory surgical treatment centers, long-term care facilities, end stage renal dialysis facilities, freestanding emergency centers, and freestanding birth centers.
- F) Agency contact person for information:
- Ann Guild
Health Facilities and Services Review Board
69 West Washington Street
Suite 3501
Chicago IL 60602
- 312/814-6226
ann.guild@illinois.gov
- G) Related rulemakings and other pertinent information: None

BOARD OF HIGHER EDUCATION

JANUARY 2020 REGULATORY AGENDA

- a) Part (Heading and Code Citation): Diversifying Higher Education Faculty in Illinois Program (23 Ill. Adm. Code 1080)
- 1) Rulemaking:
- A) Description: The Board will review this Part in 2020 since PA 101-354 reduced the number of Program Board members from 21 to 11. Findings of the review may result in proposed amendments.
- B) Statutory Authority: Diversifying Higher Education Faculty in Illinois Act [110 ILCS 930].
- C) Schedule meeting/hearing dates: No meetings or hearings have been scheduled.
- D) Date Agency anticipates First Notice: Undetermined
- E) Effect on small businesses, small municipalities or not-for-profit corporations: None
- F) Agency contact person for information:
- Karen Helland, Administrative Rules Coordinator
Illinois Board of Higher Education
1 N. Old State Capitol Plaza, Suite 333
Springfield IL 62701-1377
- 217/557-7358
helland@ibhe.org
fax: 217/782-8548
- G) Related rulemakings and other pertinent information: None

DEPARTMENT OF HUMAN SERVICES

JANUARY 2020 REGULATORY AGENDA

- a) Part (Heading and Code Citation): Medicaid Home and Community-Based Services Waiver Program for Individuals with Developmental Disabilities (59 Ill. Adm. Code 120)

1) Rulemaking:

- A) Description: This rulemaking updates the language to be consistent with new federal HCBS waiver regulations which add flexibility to help increase integration into community-based day programs.
- B) Statutory Authority: Implementing Section 3 of the Community Services Act [405 ILCS 30/3] and Sections 5-1 through 5-11 of the Public Aid Code [305 ILCS 5/5-1 through 5-11] and authorized by Section 5-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-104] and Section 5 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705/5]; 42 CFR 441.301.
- C) Scheduled Meeting/Hearing Date: The public will have an opportunity to comment on these rules during the First Notice Period. Hearings will be held if necessary as required by the Illinois Administrative Procedure Act [5 ILCS 100].
- D) Date Agency anticipates First Notice: June 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: Yes, this rulemaking will affect small businesses and not-for-profit corporations that provide services in community-based residential settings.
- F) Agency contact person for information:

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

217/785-9772
- G) Related rulemakings and other pertinent information: None

DEPARTMENT OF HUMAN SERVICES

JANUARY 2020 REGULATORY AGENDA

b) Part (Heading and Code Citation): Child Care (89 Ill. Adm. Code 50)1) Rulemaking:A) Description: This rulemaking will revise the following:

- Add license-exempt home child care providers to the 80% Attendance Rule which delinks a provider's payment from a child's occasional absence.
- Establish 2 categories of Protective Services Child Care which provides eligibility exceptions for families experiencing homelessness and/or families transitioning out of the IDCFS Intact Families program within 6 months of exiting that program.
- Allow IDHS to pay annual registration fees to providers for families approved for the Child Care Assistance Program.
- Provide language to authorize child care providers to file an appeal concerning payments from the Child Care Assistance Program

B) Statutory Authority: Implementing Articles I through IXA and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IXA and 12-13].C) Scheduled Meeting/Hearing Date: The public will have an opportunity to comment on these rules during the First Notice Period. Hearings will be held if necessary as required by the Illinois Administrative Procedure Act [5 ILCS 100].D) Date Agency anticipates First Notice: March 2020E) Effect on small businesses, small municipalities or not-for-profit corporations: Yes, this rulemaking will affect small businesses and not-for-profit corporations that provide child care services.F) Agency contact person for information:

Tracie Drew, Bureau Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue, East

DEPARTMENT OF HUMAN SERVICES

JANUARY 2020 REGULATORY AGENDA

Springfield IL 62762

217/785-9772

G) Related rulemakings and other pertinent information: None2) Rulemaking:

- A) Description: This rulemaking will increase the maximum hourly salary from \$15 to \$18, shorten the length of employment eligibility from 12 months to 6 months for individuals working in a Silver or Gold ExceleRate program, and remove date reference of 2001.
- B) Statutory Authority: Implementing Articles I through IXA and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IXA and 12-13]
- C) Scheduled Meeting/Hearing Date: The public will have an opportunity to comment on these rules during the First Notice Period. Hearings will be held if necessary as required by the Illinois Administrative Procedure Act [5 ILCS 100].
- D) Date Agency anticipates First Notice: March 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: Yes, this rulemaking will affect small businesses and not-for-profit corporations that provide child care services.
- F) Agency contact person for information:

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

217/785-9772

G) Related rulemakings and other pertinent information: None

DEPARTMENT OF HUMAN SERVICES

JANUARY 2020 REGULATORY AGENDA

3) Rulemaking:

- A) Description: This rulemaking will amend language for child care centers not licensed by the State of Illinois to demonstrate that they meet the criteria for exemptions claimed. It will remove references to the Illinois Department of Children and Family Services Rule 89 Ill Adm. Code 377 and replace them with language appropriately referencing PA 99-699 and 225 ILCS 10/2.09, also referred to as the Child Care Act of 1969. It will also remove language regarding completion and submission of a License Exempt Day Care Center Self Certification Form. PA 99-699 requires centers to submit documentation to the DCFS for review and determination of each of the exemptions itemized in the statute.
- B) Statutory Authority: Implementing Articles I through IXA and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IXA and 12-13].
- C) Scheduled Meeting/Hearing Date: The public will have an opportunity to comment on these rules during the First Notice Period. Hearings will be held if necessary as required by the Illinois Administrative Procedure Act [5 ILCS 100].
- D) Date Agency anticipates First Notice: March 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: Yes, this rulemaking will affect small businesses and not-for-profit corporations that provide child care services.
- F) Agency contact person for information:

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

217/785-9772

DEPARTMENT OF HUMAN SERVICES

JANUARY 2020 REGULATORY AGENDA

G) Related rulemakings and other pertinent information: None

4) Rulemaking:

A) Description: This rulemaking will amend language regarding reporting requirements for additional income, loss of employment, or departure from an approved education and training activity. Under the federal guidelines for 12-Month Eligibility, the State must restrict reporting requirements that negatively impact family eligibility and may not redetermine families at a minimum of 12 months. The amendment will include, but not be limited to, the following changes that the parent(s) and/or guardian(s) are required to report within thirty (30) calendar days of the change under the provisions of 12-Month Eligibility:

- Change in family income where the income is at or above 85% SMI for a minimum of the two most recent consecutive pay periods.
- Change in activity that is not temporary (i.e., 90-calendar days or more) (e.g., loss of employment, stops attending school or training activity, or graduation from school or training activity).
- Request for change in child care provider.
- There is no longer a need for CCAP.
- Family moves out of the state of Illinois.
- Change in contact information (e.g., phone number, e-mail address, mailing address).
- Change in head of household.

B) Statutory Authority: Implementing Articles I through IXA and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IXA and 12-13].

C) Scheduled Meeting/Hearing Date: The public will have an opportunity to comment on these rules during the First Notice Period. Hearings will be held if necessary as required by the Illinois Administrative Procedure Act [5 ILCS 100].

D) Date Agency anticipates First Notice: March 2020

DEPARTMENT OF HUMAN SERVICES

JANUARY 2020 REGULATORY AGENDA

- E) Effect on small businesses, small municipalities or not-for-profit corporations: Yes, this rulemaking will affect small businesses and not-for-profit corporations that provide child care services.
- F) Agency contact person for information:
- Tracie Drew, Bureau Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue, East
Springfield IL 62762
- 217/785-9772
- G) Related rulemakings and other pertinent information: None
- 5) Rulemaking:
- A) Description: This rulemaking will amend language regarding the Department or its agents referencing 45 days from the date the application is received. Removing this language is consistent with contracts, deliverables and CCAP policies and procedures.
- B) Statutory Authority: Implementing Articles I through IXA and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IXA and 12-13]; 45 CFR 98.
- C) Scheduled Meeting/Hearing Date: The public will have an opportunity to comment on these rules during the First Notice Period. Hearings will be held if necessary as required by the Illinois Administrative Procedure Act [5 ILCS 100].
- D) Date Agency anticipates First Notice: March 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: Yes, this rulemaking will affect small businesses and not-for-profit corporations that provide child care services.
- F) Agency contact person for information:

DEPARTMENT OF HUMAN SERVICES

JANUARY 2020 REGULATORY AGENDA

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

217/785-9772

G) Related rulemakings and other pertinent information: None

6) Rulemaking:

- A) Description: This rulemaking will delete language regarding the following two methods: direct payment to the clients for child care costs and arranging with other agencies and community volunteer groups for non-reimbursed child care. Neither method offers the Department the ability to ensure that the selected provider will meet the health and safety standards and training requirement of the program.
- B) Statutory Authority: Implementing Articles I through IXA and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IXA and 12-13]; 20 ILCS 1305/10-22.
- C) Scheduled Meeting/Hearing Date: The public will have an opportunity to comment on these rules during the First Notice Period. Hearings will be held if necessary as required by the Illinois Administrative Procedure Act [5 ILCS 100].
- D) Date Agency anticipates First Notice: March 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: Yes, this rulemaking will affect small businesses and not-for-profit corporations that provide child care services.
- F) Agency contact person for information:

Tracie Drew, Bureau Chief
Bureau of Administrative Rules and Procedures

DEPARTMENT OF HUMAN SERVICES

JANUARY 2020 REGULATORY AGENDA

Department of Human Services
100 South Grand Avenue, East
Springfield IL 62762

217/785-9772

G) Related rulemakings and other pertinent information: None

7) Rulemaking:

- A) Description: This rulemaking will amend language regarding a family's requirement to report changes due to loss of employment or cessation in education and training activity within 30 days.
- B) Statutory Authority: Implementing Articles I through IXA and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IXA and 12-13].
- C) Scheduled Meeting/Hearing Date: The public will have an opportunity to comment on these rules during the First Notice Period. Hearings will be held if necessary as required by the Illinois Administrative Procedure Act [5 ILCS 100].
- D) Date Agency anticipates First Notice: March 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: Yes, this rulemaking will affect small businesses and not-for-profit corporations that provide child care services.
- F) Agency contact person for information:

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

217/785-9772

DEPARTMENT OF HUMAN SERVICES

JANUARY 2020 REGULATORY AGENDA

G) Related rulemakings and other pertinent information: None

8) Rulemaking:

A) Description: This rulemaking will amend language related to the definition of school-age and reference the citation for the definition found in 50.105.

B) Statutory Authority: Implementing Articles I through IXA and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IXA and 12-13].

C) Scheduled Meeting/Hearing Date: The public will have an opportunity to comment on these rules during the First Notice Period. Hearings will be held if necessary as required by the Illinois Administrative Procedure Act [5 ILCS 100].

D) Date Agency anticipates First Notice: April 2020

E) Effect on small businesses, small municipalities or not-for-profit corporations: Yes, this rulemaking will affect small businesses and not-for-profit corporations that provide child care services.

F) Agency contact person for information:

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

217/785-9772

G) Related rulemakings and other pertinent information: None

9) Rulemaking:

DEPARTMENT OF HUMAN SERVICES

JANUARY 2020 REGULATORY AGENDA

- A) Description: This rulemaking will simplify language regarding the requirement for background checks and delete language related to pending charges.
- B) Statutory Authority: Implementing Articles I through IXA and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IXA and 12-13].
- C) Scheduled Meeting/Hearing Date: The public will have an opportunity to comment on these rules during the First Notice Period. Hearings will be held if necessary as required by the Illinois Administrative Procedure Act [5 ILCS 100].
- D) Date Agency anticipates First Notice: April 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: Yes, this rulemaking will affect small businesses and not-for-profit corporations that provide child care services.
- F) Agency contact person for information:

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

217/785-9772

- G) Related rulemakings and other pertinent information: None

10) Rulemaking:

- A) Description: This rulemaking will amend language regarding the completion of training and monitoring requirements that are related to health, safety, and child development for early childhood care and education for providers receiving CCDF Funding. The amendment also clarifies the capacity or limit on the number of children that a license-exempt provider may be assigned to provide care.

DEPARTMENT OF HUMAN SERVICES

JANUARY 2020 REGULATORY AGENDA

- B) Statutory Authority: Implementing Articles I through IXA and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IXA and 12-13].
- C) Scheduled Meeting/Hearing Date: The public will have an opportunity to comment on these rules during the First Notice Period. Hearings will be held if necessary as required by the Illinois Administrative Procedure Act [5 ILCS 100].
- D) Date Agency anticipates First Notice: May 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: Yes, this rulemaking will affect small businesses and not-for-profit corporations that provide child care services.
- F) Agency contact person for information:
- Tracie Drew, Bureau Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue, East
Springfield IL 62762
- 217/785-9772
- G) Related rulemakings and other pertinent information: None

11) Rulemaking:

- A) Description: This rulemaking will amend language regarding the requirements of 45 CFR 98, the frequency of comprehensive background checks (not less than once during each five-year period), and the expeditious processing of requests for background checks (within 45 days).
- B) Statutory Authority: Implementing Articles I through IXA and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IXA and 12-13].

DEPARTMENT OF HUMAN SERVICES

JANUARY 2020 REGULATORY AGENDA

- C) Scheduled Meeting/Hearing Date: The public will have an opportunity to comment on these rules during the First Notice Period. Hearings will be held if necessary as required by the Illinois Administrative Procedure Act [5 ILCS 100].
- D) Date Agency anticipates First Notice: May 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: Yes, this rulemaking will affect small businesses and not-for-profit corporations that provide child care services.
- F) Agency contact person for information:

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

217/785-9772

- G) Related rulemakings and other pertinent information: None

12) Rulemaking:

- A) Description: This rulemaking will amend language regarding client and provider sanctions and disqualifications.
- B) Statutory Authority: Implementing Articles I through IXA and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IXA and 12-13].
- C) Scheduled Meeting/Hearing Date: The public will have an opportunity to comment on these rules during the First Notice Period. Hearings will be held if necessary as required by the Illinois Administrative Procedure Act [5 ILCS 100].
- D) Date Agency anticipates First Notice: May 2020

DEPARTMENT OF HUMAN SERVICES

JANUARY 2020 REGULATORY AGENDA

- E) Effect on small businesses, small municipalities or not-for-profit corporations: Yes, this rulemaking will affect small businesses and not-for-profit corporations that provide child care services.
- F) Agency contact person for information:
- Tracie Drew, Bureau Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue, East
Springfield IL 62762
- 217/785-9772
- G) Related rulemakings and other pertinent information: None
- 13) Rulemaking:
- A) Description: This rulemaking will update and re-index the Maximum Income and Parent Fee by Family Size and Income Level based on the most recent Federal Poverty Levels.
- B) Statutory Authority: Implementing Articles I through IXA and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IXA and 12-13].
- C) Scheduled Meeting/Hearing Date: The public will have an opportunity to comment on these rules during the First Notice Period. Hearings will be held if necessary as required by the Illinois Administrative Procedure Act [5 ILCS 100].
- D) Date Agency anticipates First Notice: June 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: Yes, this rulemaking will affect small businesses and not-for-profit corporations that provide child care services.
- F) Agency contact person for information:

DEPARTMENT OF HUMAN SERVICES

JANUARY 2020 REGULATORY AGENDA

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

217/785-9772

G) Related rulemakings and other pertinent information: None

c) Part (Heading and Code Citation): Supplemental Nutrition Assistance Program (SNAP)
(89 Ill. Adm. Code 121)

1) Rulemaking:

A) Description: This rulemaking will revise work requirements and time-limited benefits for abled-bodied adults without dependents (ABAWD).

B) Statutory Authority: Implementing and authorized by Sections 12-4.4 through 12-4.6 and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-4.4 through 12-4.6 and 12-13].

C) Scheduled Meeting/Hearing Date: The public will have an opportunity to comment on these rules during the First Notice Period. Hearings will be held if necessary as required by the Illinois Administrative Procedure Act [5 ILCS 100].

D) Date Agency anticipates First Notice: May 2020

E) Effect on small businesses, small municipalities or not-for-profit corporations: This rulemaking will not have an effect on small businesses, small municipalities, or not-for-profit corporations.

F) Agency contact person for information:

Tracie Drew, Bureau Chief
Bureau of Administrative Rules and Procedures
Department of Human Services

DEPARTMENT OF HUMAN SERVICES

JANUARY 2020 REGULATORY AGENDA

100 South Grand Avenue, East
Springfield IL 62762

217/785-9772

G) Related rulemakings and other pertinent information: None

d) Part (Heading and Code Citation): Medicaid Community Mental Health Services Program (59 Ill. Adm. Code 132)

1) Rulemaking:

A) Description: This rulemaking is necessary to clarify the purpose of the program, to improve functionality, and to promote a streamlined process for provider certification.

B) Statutory Authority: Implementing and authorized by the Community Services Act [405 ILCS 30] and Section 15.3 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705].

C) Scheduled Meeting/Hearing Date: The public will have an opportunity to comment on these rules during the First Notice Period. Hearings will be held if necessary as required by the Illinois Administrative Procedure Act [5 ILCS 100].

D) Date Agency anticipates First Notice: June 2020

E) Effect on small businesses, small municipalities or not-for-profit corporations: This rulemaking will affect small businesses and not-for-profit corporations that provide community based mental health services.

F) Agency contact person for information:

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

DEPARTMENT OF HUMAN SERVICES

JANUARY 2020 REGULATORY AGENDA

217/785-9772

G) Related rulemakings and other pertinent information: Nonee) Part (Heading and Code Citation): Early Intervention Program (89 Ill. Adm. Code 500)1) Rulemaking:

- A) Description: This rulemaking is necessary to align the rule with PA 101-10. The amendments will expand the list of automatically eligible conditions for Early Intervention participants to include lead poisoning.
- B) Statutory Authority: Implementing and authorized by the Early Intervention Services System Act [325 ILCS 20] and Part C of the Individuals with Disabilities Education Act (IDEA) (20 USC 1400 et seq., as amended in 1997); PA 101-10.
- C) Scheduled Meeting/Hearing Date: The public will have an opportunity to comment on these rules during the First Notice Period. Hearings will be held if necessary as required by the Illinois Administrative Procedure Act [5 ILCS 100].
- D) Date Agency anticipates First Notice: June 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: This rulemaking will not have an effect on small businesses, small municipalities or not-for-profit corporations.
- F) Agency contact person for information:

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

217/785-9772

G) Related rulemakings and other pertinent information: None

DEPARTMENT OF HUMAN SERVICES

JANUARY 2020 REGULATORY AGENDA

f) Part (Heading and Code Citation): Authorizations (89 Ill. Adm. Code 520)1) Rulemaking:

- A) Description: This rulemaking is necessary to clarify the process for issuing authorizations.
- B) Statutory Authority: Implementing and authorized by Section 3(k) of the Disabled Persons Rehabilitation Act [20 ILCS 2405/3(k)]; 29 U.S.C. 709.
- C) Scheduled Meeting/Hearing Date: The public will have an opportunity to comment on these rules during the First Notice Period. Hearings will be held if necessary as required by the Illinois Administrative Procedure Act [5 ILCS 100].
- D) Date Agency anticipates First Notice: June 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: This rulemaking will not have an effect on small businesses, small municipalities or not-for-profit corporations.
- F) Agency contact person for information:

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

217/785-9772

- G) Related rulemakings and other pertinent information: None

g) Part (Heading and Code Citation): Criteria for the Evaluation of Programs and Services in Community Rehabilitation Agencies (89 Ill. Adm. Code 530)1) Rulemaking:

DEPARTMENT OF HUMAN SERVICES

JANUARY 2020 REGULATORY AGENDA

- A) Description: This rulemaking will amend language regarding applicable standards, evaluation procedures, programs and services, disposition of referrals, outcomes, contracts, and fiscal and administration standards and will remove language regarding organization and administration, safety, and designated program week.
- B) Statutory Authority: Implementing Section 3 of the Disabled Persons Rehabilitation Act [20 ILCS 2405/3] and authorized by Section 5-625 of the Civil Administrative Code of Illinois [20 ILCS 5/5-625]; 29 U.S.C. 709.
- C) Scheduled Meeting/Hearing Date: The public will have an opportunity to comment on these rules during the First Notice Period. Hearings will be held if necessary as required by the Illinois Administrative Procedure Act [5 ILCS 100].
- D) Date Agency anticipates First Notice: June 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: This rulemaking will not have an effect on small businesses, small municipalities or not-for-profit corporations.
- F) Agency contact person for information:
- Tracie Drew, Bureau Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue, East
Springfield IL 62762
- 217/785-9772
- G) Related rulemakings and other pertinent information: None
- h) Part (Heading and Code Citation): Role of Residential Educational Facilities Operated by the Illinois Department of Human Services (89 Ill. Adm. Code 750)
- 1) Rulemaking:

DEPARTMENT OF HUMAN SERVICES

JANUARY 2020 REGULATORY AGENDA

- A) Description: ICRE-R provides transition, independent living, and related services to transition-aged students. Currently, the rule is written to provide these services to students beginning at age 14.5 through 21. This rulemaking needs to be amended to change the beginning age to 17 to reflect the current student population.
- B) Statutory Authority: Implementing Sections 3, 10, 11 and 13 and authorized by Section 3 of the Disabled Persons Rehabilitation Act [20 ILCS 2405/3, 10, 11 and 13].
- C) Scheduled Meeting/Hearing Date: The public will have an opportunity to comment on these rules during the First Notice Period. Hearings will be held if necessary as required by the Illinois Administrative Procedure Act [5 ILCS 100].
- D) Date Agency anticipates First Notice: June 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: This rulemaking will not have an effect on small businesses, small municipalities or not-for-profit corporations.
- F) Agency contact person for information:

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

217/785-9772

- G) Related rulemakings and other pertinent information: None
- i) Part (Heading and Code Citation): Rules of Conduct, Discipline, Suspension and Discharge Procedures (89 Ill. Adm. Code 827)
- 1) Rulemaking:

DEPARTMENT OF HUMAN SERVICES

JANUARY 2020 REGULATORY AGENDA

- A) Description: This rule needs to be amended to make the rule consistent with PA 99-456 regarding student discipline and to reflect current program practices.
- B) Statutory Authority: Implementing Sections 10 and 11 and authorized by Section 3(f) of the Disabled Persons Rehabilitation Act [20 ILCS 2405/10, 11 and 3(f)]; PA 99-456.
- C) Scheduled Meeting/Hearing Date: The public will have an opportunity to comment on these rules during the First Notice Period. Hearings will be held if necessary as required by the Illinois Administrative Procedure Act [5 ILCS 100].
- D) Date Agency anticipates First Notice: June 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: This rulemaking will not have an effect on small businesses, small municipalities or not-for-profit corporations.
- F) Agency contact person for information:

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

217/785-9772

- G) Related rulemakings and other pertinent information: None

j) Part (Heading and Code Citation): Impartial Due Process Hearing (89 Ill. Adm. Code 828)

1) Rulemaking:

- A) Description: This rule sets forth the procedures for appealing decisions made by the schools and the rights of the students and other involved

DEPARTMENT OF HUMAN SERVICES

JANUARY 2020 REGULATORY AGENDA

parties. This rulemaking is being done to align the rule with current State and federal legislation regarding due process.

- B) Statutory Authority: Implementing Sections 10 and 11 and authorized by Section 3(f) of the Disabled Persons Rehabilitation Act [20 ILCS 2405/10, 11 and 3(f)].
- C) Scheduled Meeting/Hearing Date: The public will have an opportunity to comment on these rules during the First Notice Period. Hearings will be held if necessary as required by the Illinois Administrative Procedure Act [5 ILCS 100].
- D) Date Agency anticipates First Notice: June 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: This rulemaking will not have an effect on small businesses, small municipalities or not-for-profit corporations.
- F) Agency contact person for information:

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- G) Related rulemakings and other pertinent information: None

k) Part (Heading and Code Citation): Non-Academic Programs and Policies (89 Ill. Adm. Code 830)

1) Rulemaking:

- A) Description: This rule will be amended to reflect current program practices regarding health services.

DEPARTMENT OF HUMAN SERVICES

JANUARY 2020 REGULATORY AGENDA

- B) Statutory Authority: Implementing Sections 10 and 11 and authorized by Section 3(f) of the Disabled Persons Rehabilitation Act [20 ILCS 2405/10, 11 and 3(f)].
- C) Scheduled Meeting/Hearing Date: The public will have an opportunity to comment on these rules during the First Notice Period. Hearings will be held if necessary as required by the Illinois Administrative Procedure Act [5 ILCS 100].
- D) Date Agency anticipates First Notice: June 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: This rulemaking will not have an effect on small businesses, small municipalities or not-for-profit corporations.
- F) Agency contact person for information:
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- G) Related rulemakings and other pertinent information: None

DEPARTMENT OF PUBLIC HEALTH

JANUARY 2020 REGULATORY AGENDA

- a) Part (Heading and Code Citation): Ambulatory Surgical Treatment Center Licensing Requirements (77 Ill. Adm. Code 205)

1) Rulemaking:

- A) Description: This rulemaking will implement PA 101-323 to allow dentists to have privileges at ASTC facilities when their patients require sedation beyond the dentist's training if the dentist meets certain criteria and PA 101-13 by repealing Section 205.710 Pregnancy Termination Specialty Centers as these facilities are no longer required to be licensed under the ASTC Licensing Requirements. The rulemaking will also amend Section 205.110 to update the definition of what is not included as an ASTC.

In addition to these statutory updates, this rulemaking will also amend Sections 205.320 and 205.610, at the request of industry providers, to clarify the conditions under which a physician is not required to be on-site and the requirements for staffing at an ASTC when a physician is not physically present at a facility and updates the clinical record and report requirements to add a new provision regarding minimum record retention requirements.

- B) Statutory Authority: Ambulatory Surgical Treatment Center Act [210 ILCS 5]
- C) Scheduled meeting/hearing dates: February 2020
- D) Date Agency anticipates First Notice: March 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: None
- F) Agency contact person for information:

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JANUARY 2020 REGULATORY AGENDA

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G) Related rulemakings and other pertinent information: None

b) Part (Heading and Code Citation): Hospital Licensing Requirements (77 Ill. Adm. Code 250)

1) Rulemaking:

A) Description: This rulemaking will implement PA 101-91 and 101-445; update language to rules regarding requirements that hospitals have proper instruments available for taking a pregnant woman's blood pressure and that hospitals comply with information-posting requirements of the Medical Patients Rights Act regarding women's rights during pregnancy and childbirth. The rulemaking will also include amendments to obstetric discharge procedures to clarify that hospitals must require a government-issued photo ID as proof of identify for anyone, other than the biological mother, to whom a newborn is discharged. This rulemaking will also include statutory updates to bring the rule into compliance with the Hospital Licensing Act.

B) Statutory Authority: Hospital Licensing Act [210 ILCS 85]

C) Scheduled meeting/hearing dates: February 2020

D) Date Agency anticipates First Notice: March 2020

E) Effect on small businesses, small municipalities or not-for-profit corporations: Hospitals will need to comply with new requirements.

F) Agency contact person for information:

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JANUARY 2020 REGULATORY AGENDA

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G) Related rulemakings and other pertinent information: Nonec) Part (Heading and Code Citation): Hospital Licensing Requirements (77 Ill. Adm. Code 250)1) Rulemaking:A) Description: This rulemaking will implement PA 101-165, which requires hospitals to identify all single-occupancy restrooms in a place of public accommodation as "all-gender" and designated for use by no more than one person at a time or for family or assisted use. This rulemaking will include signage requirements for these restrooms, pursuant to PA 101-165.B) Statutory Authority: Hospital Licensing Act [210 ILCS 85]C) Scheduled meeting/hearing dates: February 2020D) Date Agency anticipates First Notice: March 2020E) Effect on small businesses, small municipalities or not-for-profit corporations: Hospitals will need to comply with new requirements.F) Agency contact person for information:

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JANUARY 2020 REGULATORY AGENDA

G) Related rulemakings and other pertinent information: None

d) Part (Heading and Code Citation): Children's Community-Based Health Care Center Code (77 Ill. Adm. Code 260)

1) Rulemaking:

A) Description: This rulemaking will implement new Centers for Medicaid Services (CMS) requirements regarding compliance with the 2012 edition of the National Fire Protection Association 101 Life Safety Code. In addition to these updates, the rulemaking will make a number of changes requested by the industry to clarify rules and align with current industry practices.

B) Statutory Authority: Alternative Health Care Delivery Act [210 ILCS 3]

C) Scheduled meeting/hearing dates: February 2020

D) Date Agency anticipates First Notice: March 2020

E) Effect on small businesses, small municipalities or not-for-profit corporations: Facilities will be required to comply with the updated requirements.

F) Agency contact person for information:

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G) Related rulemakings and other pertinent information: None

DEPARTMENT OF PUBLIC HEALTH

JANUARY 2020 REGULATORY AGENDA

- e) Part (Heading and Code Citation): Assisted Living and Shared Housing Establishment Code (77 Ill. Adm. Code 295)
- 1) Rulemaking:
- A) Description: This rulemaking will increase licensing fees for assisted living and shared housing establishments to address steadily increasing demands on the Department's Assisted Living Division Staff. Assisted living establishments continue to outgrow skilled nursing facilities by well over a two-to-one margin. Increasing licensing fees will allow the Department to meet increasing demands for survey and complaint investigations.
- B) Statutory Authority: Implementing and authorized by the Assisted Living and Shared Housing Act [210 ILCS 9].
- C) Scheduled meeting/hearing dates: February 2020
- D) Date Agency anticipates First Notice: March 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: None
- F) Agency contact person for information:
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- G) Related rulemakings and other pertinent information: None
- f) Part (Heading and Code Citation): Skilled Nursing and Intermediate Care Facilities Code (77 Ill. Adm. Code 300)

DEPARTMENT OF PUBLIC HEALTH

JANUARY 2020 REGULATORY AGENDA

- 1) Rulemaking:
 - A) Description: This rulemaking will address statutory updates regarding Consumer Choice Information Reports, vaccinations, and infection control and will include technical cleanup to the rule.
 - B) Statutory Authority: Nursing Home Care Act [210 ILCS 45]
 - C) Scheduled meeting/hearing dates: February 2020
 - D) Date Agency anticipates First Notice: March 2020
 - E) Effect on small businesses, small municipalities or not-for-profit corporations: Facilities will need to comply with updated statutory requirements regarding reports, vaccinations, and infection control.
 - F) Agency contact person for information:

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 - G) Related rulemakings and other pertinent information: None
- 2) Rulemaking:
 - A) Description: This rulemaking will update the code to align with state and federal requirements for nonemergency and emergency use of physical restraints on residents.
 - B) Statutory Authority: Nursing Home Care Act [210 ILCS 45]

DEPARTMENT OF PUBLIC HEALTH

JANUARY 2020 REGULATORY AGENDA

- C) Scheduled meeting/hearing dates: February 2020
- D) Date Agency anticipates First Notice: March 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: Facilities will need to comply with updated requirements regarding the use of restraints on residents.
- F) Agency contact person for information:

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- G) Related rulemakings and other pertinent information: Similar rulemakings will be drafted for facilities licensed under the MC/DD and ID/DD Community Care Acts.

g) Part (Heading and Code Citation): Sheltered Care Facilities Code (77 Ill. Adm. Code 330)

1) Rulemaking:

- A) Description: This rulemaking will update the code to align with state and federal requirements for nonemergency and emergency use of physical restraints on residents.
- B) Statutory Authority: Nursing Home Care Act [210 ILCS 45]
- C) Scheduled meeting/hearing dates: February 2020
- D) Date Agency anticipates First Notice: March 2020

DEPARTMENT OF PUBLIC HEALTH

JANUARY 2020 REGULATORY AGENDA

- E) Effect on small businesses, small municipalities or not-for-profit corporations: Facilities will need to comply with updated requirements regarding the use of restraints on residents.
- F) Agency contact person for information:
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- G) Related rulemakings and other pertinent information: Similar rulemakings will be drafted for facilities licensed under the MC/DD and ID/DD Community Care Acts.
- h) Part (Heading and Code Citation): Illinois Veterans' Homes Code (77 Ill. Adm. Code 340)
- 1) Rulemaking:
- A) Description: This rulemaking will update the code to align with state and federal requirements for nonemergency and emergency use of physical restraints on residents.
- B) Statutory Authority: Nursing Home Care Act [210 ILCS 45]
- C) Scheduled meeting/hearing dates: February 2020
- D) Date Agency anticipates First Notice: March 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: Facilities will need to comply with updated requirements regarding the use of restraints on residents.

DEPARTMENT OF PUBLIC HEALTH

JANUARY 2020 REGULATORY AGENDA

F) Agency contact person for information:

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G) Related rulemakings and other pertinent information: Similar rulemakings will be drafted for facilities licensed under the MC/DD and ID/DD Community Care Acts.i) Part (Heading and Code Citation): Illinois Veterans' Homes Code (77 Ill. Adm. Code 340)1) Rulemaking:

A) Description: This rulemaking will implement PA 101-1051 regarding requirements for veterans' homes to develop workplace violence prevention programs that comply with OSHA guidelines for preventing workplace violence for health care and social services workers.

B) Statutory Authority: Nursing Home Care Act [210 ILCS 45]

C) Scheduled meeting/hearing dates: February 2020

D) Date Agency anticipates First Notice: March 2020

E) Effect on small businesses, small municipalities or not-for-profit corporations: Facilities will need to comply with new requirements regarding development of violence prevention program and the Health Care Violence Prevention Act.

F) Agency contact person for information:

DEPARTMENT OF PUBLIC HEALTH

JANUARY 2020 REGULATORY AGENDA

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G) Related rulemakings and other pertinent information: None

j) Part (Heading and Code Citation): Intermediate Care for the Developmentally Disabled Facilities Code (77 Ill. Adm. Code 350)

1) Rulemaking:

A) Description: This rulemaking will implement PA 100-754 and 100-432 regarding updates to the requirements for individuals listed on the Health Care Worker Registry and will include technical clean up.

B) Statutory Authority: ID/DD Community Care Act [210 ILCS 47]

C) Scheduled meeting/hearing dates: February 2020

D) Date Agency anticipates First Notice: March 2020

E) Effect on small businesses, small municipalities or not-for-profit corporations: DD facilities will need to comply with new requirements regarding information to be made available to the public and posted in the facility pursuant to Section 2-200(a) of the Mental Health and Developmental Disabilities Code.

F) Agency contact person for information:

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- G) Related rulemakings and other pertinent information: None
- k) Part (Heading and Code Citation): Intermediate Care for the Developmentally Disabled Facilities Code (77 Ill. Adm. Code 350)
- 1) Rulemaking:
- A) Description: This rulemaking will update the Intermediate Care for the Developmentally Disabled Facilities Code to include statutory requirements for distressed facilities, will provide a methodology for how a facility is to be added to the Department's quarterly list of distressed facilities, and will include the requirements for plans of correction, installing an independent consultant or temporary manager, and additional staff training for facilities designated as distressed. The rulemaking will include requirements for removal from the distressed facilities list.
- B) Statutory Authority: ID/DD Community Care Act [210 ILCS 47]
- C) Scheduled meeting/hearing dates: February 2020
- D) Date Agency anticipates First Notice: March 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: DD facilities will need to comply with new requirements regarding information to be made available to the public and posted in the facility pursuant to Section 2-200(a) of the Mental Health and Developmental Disabilities Code.
- F) Agency contact person for information:

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JANUARY 2020 REGULATORY AGENDA

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G) Related rulemakings and other pertinent information: None

l) Part (Heading and Code Citation): Intermediate Care for the Developmentally Disabled Facilities Code (77 Ill. Adm. Code 350)

1) Rulemaking:

A) Description: This rulemaking will update the code to align with state and federal requirements for nonemergency and emergency use of physical restraints on residents.

B) Statutory Authority: Nursing Home Care Act [210 ILCS 45]

C) Scheduled meeting/hearing dates: February 2020

D) Date Agency anticipates First Notice: March 2020

E) Effect on small businesses, small municipalities or not-for-profit corporations: Facilities will need to comply with updated requirements regarding the use of restraints on residents.

F) Agency contact person for information:

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DEPARTMENT OF PUBLIC HEALTH

JANUARY 2020 REGULATORY AGENDA

- G) Related rulemakings and other pertinent information: Similar rulemakings will be drafted for facilities licensed under the MC/DD and Nursing Home Care Acts.
- m) Part (Heading and Code Citation): Specialized Mental Health Rehabilitation Facilities Code (77 Ill. Adm. Code 380)
- 1) Rulemaking:
- A) Description: This rulemaking will include clarification and technical clean up.
- B) Statutory Authority: Specialized Mental Health Rehabilitation Act of 2013 [210 ILCS 49]
- C) Scheduled meeting/hearing dates: November 2019/February 2020
- D) Date Agency anticipates First Notice: January 2020/May 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: SMHRFs licensed under the SMHRF Act of 2013 may be affected financially if more resources are needed to comply with requirements.
- F) Agency contact person for information:
- Erin Conley
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- G) Related rulemakings and other pertinent information: None

DEPARTMENT OF PUBLIC HEALTH

JANUARY 2020 REGULATORY AGENDA

n) Part (Heading and Code Citation): Medically Complex for the Developmentally Disabled Facilities Code (77 Ill. Adm. Code 390)

1) Rulemaking:

- A) Description: This rulemaking will update the Medically Complex for the Developmentally Disabled Facilities Code to include statutory requirements for distressed facilities, will provide a methodology for how a facility is to be added to the Department's quarterly list of distressed facilities, and will include the requirements for plans of correction, installing an independent consultant or temporary manager, and additional staff training for facilities designated as distressed. The rulemaking will include requirements for removal from the distressed facilities list.

This rulemaking will also amend provisions to comply with the MC/DD Act regarding a de-identified database of residents who have injured facility staff, visitors or other residents for purpose of evaluating and improving resident pre-screening and assessment procedures.

- B) Statutory Authority: MC/DD Act [210 ILCS 46]
- C) Scheduled meeting/hearing dates: February 2020
- D) Date Agency anticipates First Notice: March 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: Medically complex for the developmentally disabled facilities will be required to comply with statutory requirements regarding distressed facilities and pre-screening and assessment procedures regarding residents who have injured staff, visitors, or other residents.
- F) Agency contact person for information:

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JANUARY 2020 REGULATORY AGENDA

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G) Related rulemakings and other pertinent information: Noneo) Part (Heading and Code Citation): Medically Complex for the Developmentally Disabled Facilities Code (77 Ill. Adm. Code 390)1) Rulemaking:

- A) Description: This rulemaking will update the code to align with state and federal requirements for nonemergency and emergency use of physical restraints on residents and will include clarification and technical clean up.
- B) Statutory Authority: Nursing Home Care Act [210 ILCS 45]
- C) Scheduled meeting/hearing dates: February 2020
- D) Date Agency anticipates First Notice: March 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: Facilities will need to comply with updated requirements regarding the use of restraints on residents.
- F) Agency contact person for information:

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JANUARY 2020 REGULATORY AGENDA

- G) Related rulemakings and other pertinent information: Similar rulemakings will be drafted for facilities licensed under the ID/DD Community Care and Nursing Home Care Acts.
- p) Part (Heading and Code Citation): Illinois Vital Records Code (77 Ill. Adm. Code 500)
- 1) Rulemaking:
- A) Description: The Illinois Vital Records Code is being amended to update language, add definitions, clarify drug overdose reporting requirements for coroners and medical examiners, and to include clarifying language regarding researchers' access to vital records data.
- B) Statutory Authority: Illinois Vital Records Act [410 ILCS 535]
- C) Scheduled meeting/hearing dates: February 2020
- D) Date Agency anticipates First Notice: April 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: County Clerks and/or Local Registrars will lose revenue on the certificates provided at no cost to inmates, youth in care and homeless individuals.
- F) Agency contact person for information:
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- G) Related rulemakings and other pertinent information: None

DEPARTMENT OF PUBLIC HEALTH

JANUARY 2020 REGULATORY AGENDA

q) Part (Heading and Code Citation): Sexual Assault Survivors Emergency Treatment Code (77 Ill. Adm. Code 545)

1) Rulemaking:

A) Description: This rulemaking will implement PA 101-377 regarding compliance with rules relating to the collection and tracking of sexual assault evidence adopted by the Department of State Police and requires treatment hospitals, those with approved pediatric transfer, and out-of-state hospitals approved by the Department to receive transfers, or approved pediatric healthcare facilities to participate in the sexual assault evidence tracking system created by the Department of State Police.

B) Statutory Authority: Sexual Assault Survivors Emergency Treatment Act [410 ILCS 70]

C) Scheduled meeting/hearing dates: February 2020

D) Date Agency anticipates First Notice: March 2020

E) Effect on small businesses, small municipalities or not-for-profit corporations: May increase administrative costs for hospitals and other health care facilities.

F) Agency contact person for information:

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G) Related rulemakings and other pertinent information: None

DEPARTMENT OF PUBLIC HEALTH

JANUARY 2020 REGULATORY AGENDA

- r) Part (Heading and Code Citation): AIDS Drug Assistance Program (77 Ill. Adm. Code 692)
- 1) Rulemaking:
- A) Description: This rulemaking updates Appendix A with respect to the federal poverty level changing from the 2019 federal poverty level to the 2020 federal poverty level.
- B) Statutory Authority: Ryan White HIV/AIDS Treatment Extension Act of 2009 [Public Law 111-87]; Section 314 of the Civil Administrative Code of Illinois [20 ILCS 2310/315]
- C) Scheduled meeting/hearing dates: None
- D) Date Agency anticipates First Notice: Winter 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: None
- F) Agency contact person for information:
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- G) Related rulemakings and other pertinent information: None
- s) Part (Heading and Code Citation): Control of Sexually Transmissible Infections Code, 77 Ill. Adm. Code 693)
- 1) Rulemaking:

DEPARTMENT OF PUBLIC HEALTH

JANUARY 2020 REGULATORY AGENDA

- A) Description: This rulemaking updates the Administrative Code to allow IDPH to match data under the STD code with other State agency databases for treatment, care, prevention, or partner services purposes.
- B) Statutory Authority: Illinois Sexually Transmissible Disease Control Act [410 ILCS 325]
- C) Scheduled meeting/hearing dates: None
- D) Date Agency anticipates First Notice: April 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: None
- F) Agency contact person for information:

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- G) Related rulemakings and other pertinent information: None
- t) Part (Heading and Code Citation): HIV/AIDS Confidentiality and Testing Code (77 Ill. Adm. Code 697)
- 1) Rulemaking:
- A) Description: This rulemaking updates the Administrative Code to allow IDPH to release of HIV/AIDS Registry data for the purposes of treatment, care, prevention, or partner services purposes to federal, State, and local public health authorities in a manner that protects the confidentiality of protective health information.

DEPARTMENT OF PUBLIC HEALTH

JANUARY 2020 REGULATORY AGENDA

- B) Statutory Authority: HIV/AIDS Registry Act [410 ILCS 310]
- C) Scheduled meeting/hearing dates: None
- D) Date Agency anticipates First Notice: April 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: None
- F) Agency contact person for information:

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- G) Related rulemakings and other pertinent information: None

u) Part (Heading and Code Citation): Control of Communicable Diseases Code (77 Ill. Adm. Code 690)

1) Rulemaking:

- A) Description: Updates to disease-specific language needed for control and containment purposes
- B) Statutory Authority: Communicable Disease Report Act [745 ILCS 45]
- C) Scheduled meeting/hearing dates: None
- D) Date Agency anticipates First Notice: April 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: None anticipated

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JANUARY 2020 REGULATORY AGENDA

F) Agency contact person for information:

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G) Related rulemakings and other pertinent information: Nonev) Part (Heading and Code Citation): Health and Hazardous Substances Registry Code (77 Ill. Adm. Code 840)1) Rulemaking:A) Description: Subpart A: General Registry Provisions, Section 840.10 Definitions, Section 840.30 Availability of Registry Information. Amendments include removal, addition, and clarification of definitions, and modifications to the way data can be released.

Subpart C: Adverse Pregnancy Outcomes Reporting System, all sections. This subpart provides details on the case criterion for reporting adverse pregnancy outcomes, what data should be reported and where referrals should be made. Amendments include adding exposure to cannabis, hepatitis C, and human immunodeficiency virus (HIV) as conditions reportable to the Adverse Pregnancy Outcomes Reporting System. Referrals of hepatitis C and HIV exposure to the Illinois Department of Public Health's Division of Infectious Diseases are included, together with corrections and clarifications to existing code

Subpart D: Occupational Disease Registry, Section 840.310 Methods of Reporting Occupational Disease. Amendments include the conversion of ICD-9-CM codes, to ICD-10 codes.

DEPARTMENT OF PUBLIC HEALTH

JANUARY 2020 REGULATORY AGENDA

- B) Statutory Authority: Illinois Health and Illinois Health and Hazardous Substances Registry Act [410 ILCS 525]
- C) Scheduled meeting/hearing dates: None
- D) Date Agency anticipates First Notice: Spring 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: Not-for-profit hospitals serving newborns will have to report additional cases to the APORS programs.
- F) Agency contact person for information:
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- G) Related rulemakings and other pertinent information: None
- w) Part (Heading and Code Citation): Health Care Worker Background Check Code (77 Ill. Adm. Code 955)
- 1) Rulemaking:
- A) Description: This rulemaking implements PA 101-176 to allow workforce intermediaries and organizations providing pro bono legal services to initiate a fingerprint-based criminal history records checks for individuals who have disqualifying conditions and who are receiving services from the workforce intermediary or organization.
- B) Statutory Authority: Health Care Worker Background Check Code [225 ILCS 46]

DEPARTMENT OF PUBLIC HEALTH

JANUARY 2020 REGULATORY AGENDA

- C) Scheduled meeting/hearing dates: February 2020
- D) Date Agency anticipates First Notice: March 2020
- E) Effect on small businesses, small municipalities or not-for-profit corporations: None
- F) Agency contact person for information:
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- G) Related rulemakings and other pertinent information: None

PROCLAMATIONS

**2019-242
COPD Awareness Month**

WHEREAS, COPD is a term used to refer to a group of diseases that cause airflow obstruction and breathing related problems, including emphysema, chronic bronchitis, and in some cases, asthma and severe bronchiectasis; and,

WHEREAS, about 160,000 people die each year from COPD, making it the 4th leading cause of death in the United States; and,

WHEREAS, COPD is a chronic and progressive disease that affects 16 million adults and millions more who have symptoms but are undiagnosed; and,

WHEREAS, COPD is a leading cause of disability in the U.S., with two thirds of diagnosed adults under the age of 65; and,

WHEREAS, smoking is the primary risk factor for COPD, other risk factors include environmental and occupational exposure to air pollution, second hand smoke, and genetics such as alpha-1 antitrypsin deficiency; and,

WHEREAS, nationwide, the cost of COPD is between \$40-70 billion including healthcare services, indirect costs through loss of productivity, and the deterioration of personal health; and,

WHEREAS, the first ever COPD National Action Plan was released by the National Heart, Lung and Blood Institute in 2017 to provide a framework for a multi-stakeholder, public and private response to lower the burden of COPD in the U.S.; and,

WHEREAS, there is no cure for COPD, but increased awareness, earlier detection, proper treatment, and management can slow the progression of the disease and lead to reduced costs, improved quality of life and self-sufficiency for our residents;

THEREFORE, I, JB Pritzker, Governor of the State of Illinois, do hereby designate November 2019 as COPD Awareness Month in Illinois and encourage all residents to learn more about the prevention, diagnosis, and treatment of COPD.

Issued by the Governor November 4, 2019

Filed by the Secretary of State December 30, 2019

**2019-243
School Psychology Week**

PROCLAMATIONS

WHEREAS, all children and youth learn better when they are healthy and supported, receiving an education that enables them to strive, grow, and thrive academically, socially and emotionally; and,

WHEREAS, schools can more effectively ensure all students are able to learn when they meet the needs of the whole child and provide integrated multi-tiered support; and,

WHEREAS, children's mental health is directly linked to their learning and development, and their learning environment provides an optimal context to promote good mental health; and,

WHEREAS, sound psychological principles are integral to instruction and learning, social and emotional development, prevention and early intervention and safety as well as supporting culturally diverse student population; and,

WHEREAS, school psychology has more than 60 years of well established, widely recognized, and highly effective practices and standards that are included in the National Association for School Psychologists Model for Comprehensive and Integrated School Psychology Services; and,

WHEREAS, school psychologists are especially trained to deliver a continuum of mental health services and academic supports that lower barriers to teaching and learning; and,

WHEREAS, school psychologists help children thrive by nurturing their individual strengths across both personal and academic endeavors; and,

WHEREAS, school psychologists are trained to assess student and school-based barriers to learning, utilize data-based decision making, implement research-driven prevention and intervention strategies, evaluate outcomes, and improve accountability; and,

WHEREAS, it is important that the citizens of the State of Illinois recognize the vital role that school psychologists play in the personal and academic development of our children;

THEREFORE, I, JB Pritzker, Governor of the State of Illinois, do hereby proclaim November 11-15, 2019 as School Psychology Awareness Week in Illinois.

Issued by the Governor November 4, 2019

Filed by the Secretary of State December 30, 2019

2019-244
Veterans Day

PROCLAMATIONS

WHEREAS, the guns of World War I fell silent with the 1918 Armistice at the eleventh hour of the eleventh day of the eleventh month; and,

WHEREAS, November 11th is forever consecrated as the day we remember the sacrifice of our military veterans and their families, especially those who made the supreme sacrifice of their lives in defense of the Nation; and,

WHEREAS, Illinois citizens have been among those serving their country during times of war and times of peace since the American Revolution; and,

WHEREAS, we owe our respect and gratitude to those men and women who gave of themselves and who continue to give so we can enjoy the continuing peace and prosperity that comes from living in a free Nation;

THEREFORE, I, JB Pritzker, Governor of the State of Illinois, do hereby proclaim November 11, 2019, Veterans Day in Illinois and encourage all citizens to show respect and gratitude to all veterans, living and deceased.

Issued by the Governor November 8, 2019

Filed by the Secretary of State December 30, 2019

2019-245**Prematurity Awareness Month**

WHEREAS, Illinoisans across the state are raising awareness regarding prematernal and infant health; and,

WHEREAS, Illinoisans are committed to addressing the racial disparities and inequities in prematernal health and births; and,

WHEREAS, the state of Illinois works with stakeholders, residents, and advocates to address social and structural determinants of prematernal health, while identifying solutions to eliminate negative impacts of such inequities; and,

WHEREAS, babies born before the 37-week mark are considered premature and the preterm birth rate among black women is 52 percent higher than the rate among all other women in Illinois; and,

WHEREAS, on a national level the rate of preterm birth among non-Hispanic Black women, at 14 percent, was about 50 percent higher than the rate of preterm birth among non-Hispanic White women at nine percent; and,

PROCLAMATIONS

WHEREAS, Illinois is committed to improving prematernal health among women and babies of color in Illinois through education to mothers of the risk factors; and,

WHEREAS, the sole purpose of Prematurity Awareness Month is to reduce the number of inequalities in premature births to ensure a state of healthy moms and strong babies;

THEREFORE, I, JB Pritzker, Governor of the State of Illinois, am committed to helping moms and babies have a fair chance at full-term birth and long term maternal health; and hereby designate November 2019 as PREMATURETY AWARENESS MONTH in Illinois.

Issued by the Governor November 12, 2019

Filed by the Secretary of State December 30, 2019

2019-246**Family Caregivers Month**

WHEREAS, family caregivers are essential to the health and the well-being of Illinoisans of any age, especially those living with Alzheimer's disease and other dementias; and,

WHEREAS, an estimated 5.8 million people nationally are living with Alzheimer's disease including 230,000 in Illinois; and,

WHEREAS, according to the Alzheimer's Association's Facts and Figures report, the direct costs of caring for those with Alzheimer's to American society is valued at nearly \$234 billion, and more than 16 million caregivers provide 18.5 billion hours of unpaid care to those with Alzheimer's or other dementias; and,

WHEREAS, in Illinois, 588,000 family members and friends cared for people with Alzheimer's and other dementias, providing 670 million hours of unpaid care, with the annual value of this caregiving totaling nearly \$8.5 billion; and,

WHEREAS, positive impacts of family caregiving include closer ties to loved ones, increased access to services in community settings, and the peace of mind knowing quality care is being provided; and,

WHEREAS, the joy and rewards of caregiving are equally met with challenges that impact a caregiver's physical and mental health; and,

PROCLAMATIONS

WHEREAS, through their tireless support and love, family caregivers help thousands of older people and individuals with illnesses and disabilities to live and thrive in their communities, enabling them to continue sharing their experience, knowledge, and advice; and,

WHEREAS, during the month of November, it is important to recognize the many contributions of family caregivers and encourage our communities, health providers, employers, and others to support their efforts;

THEREFORE, I, JB Pritzker, Governor of the State of Illinois, do hereby proclaim November 2019 as Family Caregivers Month in the State of Illinois, and urge all residents to join me in honoring the strength, passion, and endurance of caregivers.

Issued by the Governor November 13, 2019

Filed by the Secretary of State December 30, 2019

2019-247**Native American Heritage Month**

WHEREAS, the original stewards of the land we now call Illinois are the Council of the Three Fires: The Odawa, Ojibwe and Potawatomi Nations, along with the Miami, Ho-Chunk, Menominee, Sac, Fox, and many other Tribes; Illinois currently enjoys the sixth largest Urban Indian population in the United States with over 100 Tribal Nations; the largest Native American population in the Midwest is located in Chicago with the first American Indian Center in the country, according to a University of Illinois at Chicago's Institute for Research on Race and Public Policy June 2019 report; and,

WHEREAS, Illinois has drawn upon and benefited from the profound influence of various Native American cultures and wisdom on our food, science, arts, military, and much more, which has strengthened and improved the world we know today; and,

WHEREAS, Illinois' history, and that of the nation, reflects generations of cruelty, tragedy, and injustice actively directed toward Native Americans; Illinoisans must recognize and learn from our history if we are to properly embody the values of freedom and equality we hold dear; and,

WHEREAS, my administration is dedicated to confronting our history through the expansion of opportunity and access for Native Americans, having signed the historic Native American Employment Plan Act to improve delivery of State services, increase employment and promotion opportunities for Native Americans, establish the State's first Native American Employment Plan Advisory Council, and direct the Department of Central Management Services to draft annual Native American Employment Plans to the General Assembly;

PROCLAMATIONS

THEREFORE, I, JB Pritzker, Governor of the State of Illinois, do hereby proclaim November 2019 as National Native American Heritage Month in Illinois to recognize the rich contributions and tragic sacrifices of Native Americans and urge employers, schools, community organizations, and all the people of Illinois to learn more about the cultures that emerged from the land we now call Illinois.

Issued by the Governor November 13, 2019

Filed by the Secretary of State December 30, 2019

2019-248**Epilepsy Awareness Month**

WHEREAS, epilepsy is one of the most common neurological conditions, estimated to affect nearly 140,000 Illinoisans, over 3.4 million people in the United States, and 65 million people worldwide; and,

WHEREAS, epilepsy is a disorder of the central nervous system in which brain activity becomes abnormal causing seizures; and,

WHEREAS, a person is considered to have epilepsy if they have at least two unprovoked seizures occurring more than 24 hours apart, they have one unprovoked seizure and a high probability of further seizures, or a diagnosis of an epilepsy syndrome; and,

WHEREAS, features of an epilepsy syndrome may include: the type or types of seizures seen, the age at which seizures began, the cause of the seizures, the part of the brain involved, and genetic information; and,

WHEREAS, there are over 40 different types of seizures; and,

WHEREAS, seizures can be identified by any of the following signs but are not limited to these signs and symptoms: temporary confusion, a staring spell, uncontrollable jerking movements of the arms and legs, loss of consciousness or awareness, psychic symptoms such as fear, anxiety, or déjà vu; and,

WHEREAS, epilepsy can start at any age, but is most commonly diagnosed in individuals under 20 and individuals over 65; and,

WHEREAS, for nearly 70 percent of the population with epilepsy, the condition has no identifiable cause; and,

PROCLAMATIONS

WHEREAS, for the portion of the population with epilepsy, the condition can be caused by various factors including genetic influence, head trauma, brain infections, infectious diseases, prenatal injury, or developmental disorders; and,

THEREFORE, I, JB Pritzker, Governor of the State of Illinois, do hereby proclaim November 2019 as Epilepsy Awareness Month in Illinois, in support of the effort to raise awareness of epilepsy.

Issued by the Governor November 26, 2019

Filed by the Secretary of State December 30, 2019

ILLINOIS ADMINISTRATIVE CODE
Issue Index - With Effective Dates

Rules acted upon in Volume 44, Issue 2 are listed in the Issues Index by Title number, Part number, Volume and Issue. Inquiries about the Issue Index may be directed to the Administrative Code Division at (217) 782-7017/18.

PROPOSED RULES

77 - 300	.....	435
86 - 130	.....	485
86 - 150	.....	487

ADOPTED RULES

11 - 1800	12/27/2019	.....	489
86 - 3000	12/30/2019	.....	521
80 - 1540	12/27/2019	.....	534

EMERGENCY RULES

86 - 130	12/27/2019	.....	552
86 - 150	12/27/2019	.....	577
86 - 422	12/27/2019	.....	594
86 - 423	12/27/2019	.....	612

**EXECUTIVE ORDERS AND
PROCLAMATIONS**

19 - 242	11/4/2019	.....	685
19 - 243	11/4/2019	.....	685
19 - 244	11/8/2019	.....	686
19 - 245	11/12/2019	.....	687
19 - 246	11/13/2019	.....	688
19 - 247	11/13/2019	.....	689
19 - 248	11/26/2019	.....	690

REGULATORY AGENDA

77 - 1130	.....	638
23 - 1080	.....	639
59 - 120	.....	640
77 - 205	.....	662