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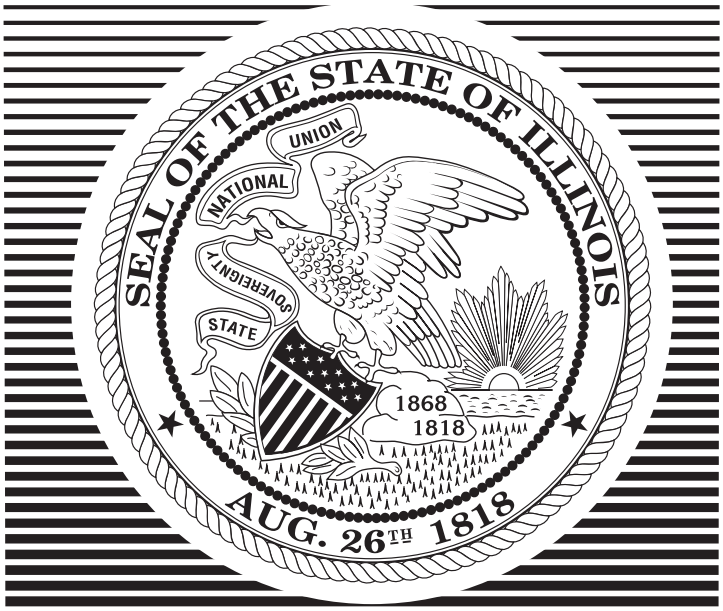

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INTRODUCTION

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

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

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

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

ILLINOIS REGISTER PUBLICATION SCHEDULE FOR 2023

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52	December 18, 2023	December 29, 2023

DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Broadband Grant Programs

2) Code Citation: 14 Ill Adm. Code 548

3)

Section Numbers:	Proposed Actions:
548.10	Amendment
548.20	Amendment
548.30	Amendment
548.35	New Section
548.90	New Section
548.100	New Section
548.110	New Section
548.120	New Section
548.130	New Section
548.140	New Section

4) Statutory Authority: Implementing Section 4-20 of the Broadband Infrastructure Advancement Act [220 ILCS 81], and Section 605-20 of the Civil Administrative Code of Illinois (Department of Commerce and Economic Opportunity Law) [20 ILCS 605].

5) A Complete Description of the Subjects and Issues Involved: This Part implements the Broadband Infrastructure Advancement Act. Investments in the State's bridges, roads, rail system, high-speed internet, and electricity are essential to the public safety, economic viability, and equity of all citizens in every part of Illinois. The persistent digital divide in Illinois is a barrier to the economic competitiveness in the economic distribution of essential public services, including health care and education. This digital divide disproportionately affects communities of color, lower-income areas, and rural areas. The purpose of the Broadband Infrastructure Advancement Act is to establish in administrative rule the Broadband Grant Programs, creating added certainty in advance of federal funding available to the State through the American Rescue Plan Act of 2021 and Infrastructure Investment and Jobs Act of 2021 (P.L. 117-58).

6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: The BEAD Funded Connect Illinois Grants utilize federal funding from the Infrastructure, Investment and Jobs Act. The BEAD NOFO was used to compose this rulemaking and ensure the program complies with federal requirements. https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf

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

DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

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

9) Does this proposed rulemaking contain incorporations by reference? No

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

11) Statement of Statewide Policy Objectives: This rulemaking will not require a local government to establish, expand, or modify its activities in such a way as to necessitate additional expenditures from local revenues.

12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments regarding these rules shall be presented in writing within 45 days after the date of this issue of the *Illinois Register* to:

Gina Arterberry
Department of Commerce & Economic Opportunity
607 E. Adams St. 12th Fl.
Springfield, IL 62701

Gina.M.Arterberry@Illinois.gov

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: None

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

C) Types of professional skills necessary for compliance: None

14) Small Business Impact Analysis: None

15) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the two most recent agendas because the Department did not anticipate the changes.

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

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NOTICE OF PROPOSED AMENDMENTS

TITLE 14: COMMERCE
SUBTITLE C: ECONOMIC DEVELOPMENT
CHAPTER I: DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

PART 548
BROADBAND GRANT PROGRAMS

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Section
548.90 Program Specific Definitions
548.100 Program Description
548.110 Eligible Project Activities
548.120 Grantee Eligibility Requirements
548.130 Administrative Requirements
548.140 Allowable Costs

AUTHORITY: Implementing Section 4-20 of the Broadband Infrastructure Advancement Act [220 ILCS 81], and Section 605-20 of the Civil Administrative Code of Illinois (Department of Commerce and Economic Opportunity) Law [20 ILCS 605].

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SOURCE: Adopted at 47 Ill. Reg. 3710, effective March 3, 2023; amended at 48 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 548.10 Purpose

This part implements the Broadband Infrastructure Advancement Act. Investments in the State's bridges, roads, rail system, high-speed internet, and electricity are essential to the public safety, economic viability, and equity of all citizens in every part of Illinois. The persistent digital divide in Illinois is a barrier to the economic competitiveness in the economic distribution of essential public services, including health care and education. This digital divide disproportionately affects communities of color, lower-income areas, and rural areas. The purpose of the Broadband Infrastructure Advancement Act is to establish in administrative rule the ~~Connect Illinois~~ Broadband Grant Programs~~Program~~, creating added certainty in advance of federal funding available to the State through the American Rescue Plan Act of 2021 and~~;~~ ~~provided however, that nothing in this Part shall apply or be constructed to apply to any broadband grant application process or broadband project for which any funding is or may be provided by or pursuant to Division F of the federal~~ Infrastructure~~,~~ Investment and Jobs Act of 2021 (P.L. 117-58).

(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 548.20 Definitions

"ARPA" means the American Rescue Plan Act of 2021, Section 9901, P.L. 117-2, 42 U.S.C. 802.

"Broadband" or "Broadband Service" has the meaning given the term "broadband internet access service" in Section 8.1(b) of title 47, Code of Federal Regulations, or any successor regulation, meaning it is a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service. This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence or that is used to evade the protections set forth in this Part.

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"Broadband DATA Maps" means the maps created by the Federal Communications Commission under Section 802(c)(1) of the Communications Act of 1934 (47 U.S.C. 642(c)(1)).

"Build Illinois" means the Build Illinois Bond Fund, section 5.160 of the State Finance Act [30 ILCS 105/5.160].

~~"Capital Improvement" means a project with a purpose to physically expand or physically improve upon infrastructure necessary for internet service delivery.~~

"DCEO" means the Department of Commerce and Economic Opportunity.

~~"Economically Distressed Area" means a census tract which meets one of the following four tests:~~

~~Poverty rate of at least 20%; or~~

~~75% or more of the children in the area are eligible to participate in the federal free lunch or reduced-price meals program; or~~

~~At least 20% of the households in the area receive assistance under the Supplemental Nutrition Assistance Program (SNAP); or~~

~~Average unemployment rate that is more than 120% of the national unemployment average, for a period of at least two (2) consecutive calendar years preceding the date of the application.~~

~~The Department maintains a map of areas that meet these qualifications on its website.~~

~~"Eligible Entities" means an incorporated business or partnership; a political subdivision; a nonprofit organization; a cooperative association; or a limited liability corporation organized for the purpose of expanding broadband access. Illinois public school districts are eligible to apply but may be encouraged to leverage other available federal or education-specific funding prior to an award.~~

"GATA" means the Grant Accountability and Transparency Act [30 ILCS 708].

"GATA Rule" means the administrative rules of the Governor's Office of

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Management and Budget found at 44 Ill. Adm. Code 7000.

"Grantee" means any applicant for a grant award under this program whose proposal is funded by the Department.

"IIJA" means the Infrastructure Investment and Jobs Act, P.L. 117-58.

"Last Mile Infrastructure" means broadband installation that serves as the final leg connecting the broadband service provider's network to the end-user customer's on-premises telecommunications equipment.

~~"Middle Mile Infrastructure" means broadband construction that links a broadband service provider's core network infrastructure to last mile infrastructure.~~

~~"Program" means the Connect Illinois Broadband Grant Program.~~

~~"Qualified Illinois City" means an Illinois city with 75,000 residents or more in population~~

~~"Rebuild Illinois" means the Rebuild Illinois Projects Fund.~~

"State" means the State of Illinois.

"Uniform Guidance" means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR 200.

~~"Underserved Area" means an applicant designated project area of Illinois in which households, businesses, or community anchor institutions have wireline broadband access of at least 25/3 Mbps but less than 100/20 Mbps, reflected in broadband mapping utilized by DCEO for the Connect Illinois program.~~

~~"Unserved Area" means an applicant designated project area of Illinois in which households, businesses, or community anchor institutions lack access to wireline broadband service of at least 25/3 Mbps, reflected in broadband mapping utilized by the DCEO for the Connect Illinois program.~~

(Source: Amended at 48 Ill. Reg. _____, effective _____)

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Section 548.30 Funding Sources

a) American Rescue Plan Act of 2021 ("ARPA") Capital Projects Fund (P.L. 117-2).

b) ~~The~~ Build Illinois Bond Act~~Fund~~ [30 ILCS 425/4 (b)].

c) The Infrastructure Investment and Jobs Act ("IIJA") Broadband Equity, Access, and Deployment (BEAD) Program (P.L. 117-58).

d~~c~~) Funding for grants may be provided by any source of funding as permitted by the State and the American Rescue Plan Act of 2021.

(Source: Amended at 48 Ill. Reg. _____, effective _____)

SUBPART B: CONNECT ILLINOIS GRANT PROGRAM

Section 548.35 Program Specific Definitions

"Capital Improvement" means a project with a purpose to physically expand or physically improve upon infrastructure necessary for internet service delivery.

"Economically Distressed Area" means a census tract which meets one of the following four tests:

Poverty rate of at least 20%; or

75% or more of the children in the area are eligible to participate in the federal free lunch or reduced-price meals program; or

At least 20% of the households in the area receive assistance under the Supplemental Nutrition Assistance Program (SNAP); or

Average unemployment rate that is more than 120% of the national unemployment average, for a period of at least two consecutive calendar years preceding the date of the application.

The Department maintains a map of areas that meet these qualifications on its website.

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"Eligible Entities" means an incorporated business or partnership; a political subdivision; a nonprofit organization; a cooperative association; or a limited liability corporation organized for the purpose of expanding broadband access. Illinois public school districts are eligible to apply but may be encouraged to leverage other available federal or education-specific funding prior to an award.

"Middle Mile Infrastructure" means broadband construction that links a broadband service provider's core network infrastructure to last mile infrastructure.

"Program" means the Connect Illinois Broadband Grant Program.

"Qualified Illinois City" means an Illinois city with 75,000 residents or more in population.

"Rebuild Illinois" means the Rebuild Illinois Projects Fund.

"Underserved Area" means an applicant designated project area of Illinois in which households, businesses, or community anchor institutions have wireline broadband access of at least 25/3 Mbps but less than 100/20 Mbps, reflected in broadband mapping utilized by DCEO for the Connect Illinois program.

"Unserved Area" means an applicant designated project area of Illinois in which households, businesses, or community anchor institutions lack access to wireline broadband service of at least 25/3 Mbps, reflected in broadband mapping utilized by the DCEO for the Connect Illinois program.

(Source: Added at 48 Ill. Reg. _____, effective _____)

SUBPART C: BEAD FUNDED CONNECT ILLINOIS GRANTS

Section 548.90 Program Specific Definitions

"BEAD NOFO" means the Broadband Equity, Access, and Deployment ("BEAD") Program Notice of Funding Opportunity posted by the National Telecommunications and Information Administration to describe the requirements under which it will award grants for the BEAD Program.

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"Community Anchor Institution" means an entity such as a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization, or community support organization that facilitates greater use of broadband service by vulnerable populations, including, but not limited to, low-income individuals, unemployed individuals, children, the incarcerated, and aged individuals. An eligible entity may propose to NTIA that additional types of institutions should qualify as CAIs within the entity's territory. If so, the eligible entity shall explain why it has determined that the institution or type of institution should be treated as such and affirm that the institution or class of institutions facilitates greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, children, the incarcerated, and aged individuals.

"Digital Equity" means the condition in which individuals and communities have the information technology capacity that is needed for full participation in the society and economy of the United States.

"Eligible Community Anchor Institution" means a community anchor institution that lacks access to Gigabit-level broadband service.

"Eligible Entities" (or "subrecipient") means an incorporated business or partnership; a political subdivision; a nonprofit organization; a cooperative association; or a limited liability corporation organized for the purpose of expanding broadband access. Illinois public school districts are eligible to apply but may be encouraged to leverage other available federal or education-specific funding prior to an award.

"Extremely High Cost Per Location Threshold" means cost per location above which the Department may decline to select a proposal if use of an alternative technology meeting the BEAD Program's technical requirements would be less expensive.

"Location" and "Broadband Serviceable Location" mean a business or residential location in the United States at which fixed broadband internet access service is, or can be, installed.

"Middle Mile Infrastructure" means:

any broadband infrastructure that does not connect directly to an end-user location, including a community anchor institution; and includes:

leased dark fiber, interoffice transport, backhaul, carrier-neutral internet exchange facilities, carrier-neutral submarine cable landing stations, undersea cables, transport connectivity to data centers, special access transport, and other similar services; and

wired or private wireless broadband infrastructure, including microwave capacity, radio tower access, and other services or infrastructure for a private wireless broadband network, such as towers, fiber, and microwave links.

"Open Access" refers to an arrangement in which the subgrantee offers nondiscriminatory access to and use of its network on a wholesale basis to other providers seeking to provide broadband service to end-user locations, at just and reasonable wholesale rates for the useful life of the subsidized network assets. For this purpose, "just and reasonable wholesale rates" means rates that include a discount from the provider's retail rates reflecting the costs that the subgrantee avoids by virtue of not providing retail service to the end user location (including, for example, marketing, billing, and collection-related costs).

"Priority Broadband Project" means a project that will provision service via end-to-end fiber-optic facilities to each end-user premises. An eligible entity may disqualify any project that might otherwise qualify as a priority broadband project from priority broadband project status, with the approval of the Assistant Secretary, on the basis that the location surpasses the eligible entity's extremely high cost per location threshold (as described in Section IV.B.7 below), or for other valid reasons subject to approval by the Assistant Secretary.

"Project" means an undertaking by a subgrantee to construct and deploy infrastructure for the provision of broadband service. A "project" may constitute a single unserved or underserved broadband-serviceable location, or a grouping of broadband-serviceable locations in which not less than 80% of broadband-serviceable locations served by the project are unserved locations or underserved locations.

"Program" means the portion of the Connect Illinois Broadband Grant Program applying federal Broadband Equity, Access, and Deployment (BEAD) dollars as a funding source.

"Reliable Broadband Service" means broadband service that the Broadband DATA Maps show is accessible to a location via:

fiber-optic technology;

cable modem/hybrid fiber-coaxial technology;

digital subscriber line (DSL) technology; or

terrestrial fixed wireless technology utilizing entirely licensed spectrum or using a hybrid of licensed and unlicensed spectrum.

"Underserved Location" means a broadband-serviceable location that is:

not an unserved location; and

that the Broadband DATA Maps show as lacking access to reliable broadband service offered with:

a speed of not less than 100 Mbps for downloads;

a speed of not less than 20 Mbps for uploads; and

latency less than or equal to 100 milliseconds.

"Underserved Service Project" means a project in which not less than 80% of broadband-serviceable locations served by the project are unserved locations or underserved locations. An "Underserved Service Project" may be as small as a single underserved broadband-serviceable location.

"Unserved Location" means a broadband-serviceable location that the Broadband DATA Maps show as:

having no access to broadband service; or

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NOTICE OF PROPOSED AMENDMENTS

lacking access to reliable broadband service offered with:

a speed of not less than 25 Mbps for downloads;

a speed of not less than 3 Mbps for uploads; and

latency less than or equal to 100 milliseconds.

"Unserved Service Project" means a project in which not less than 80% of broadband-serviceable locations served by the project are unserved locations. An "Unserved Service Project" may be as small as a single unserved broadband serviceable location.

(Source: Added at 48 Ill. Reg. _____, effective _____)

Section 548.100 Program Description

The BEAD funded Connect Illinois Broadband Grant Program focuses on deploying broadband service to unserved locations and underserved locations. In accordance with the BEAD Program, this program is designed to prioritize projects that provide fiber connectivity directly to the end user.

(Source: Added at 48 Ill. Reg. _____, effective _____)

Section 548.110 Eligible Project Activities

The Department shall make grant awards to eligible entities as described in this Part, contingent on available funds. The grants shall be made to support one or more of the following activities as permitted by the applicable Notice of Funding Opportunity and consistent with the priorities established for the BEAD Program and guidance from the National Telecommunications and Information Administration:

a) Last mile deployment projects to unserved locations;

b) Last mile deployment projects to underserved locations;

c) Deployment of gigabit connections to community anchor institutions; or

d) Digital equity initiatives.

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(Source: Added at 48 Ill. Reg. _____, effective _____)

Section 548.120 Grantee Eligibility Requirements

An eligible applicant for a grant award under Subpart C shall meet the definition of an eligible entity under Section 548.100. To be eligible for a grant award, an applicant shall have an active GATA registration and be qualified on the GATA Grantee Portal (https://grants.illinois.gov/portal/) at the time the application is submitted.

(Source: Added at 48 Ill. Reg. _____, effective _____)

Section 548.130 Administrative Requirements

Grant opportunities and awards will be administered in a manner that complies with all State and federal requirements applicable to each funding opportunity, including, but not limited to, GATA, the Uniform Guidance and all applicable State or federal laws or guidance (e.g., Broadband Equity, Access, and Deployment Program Notice of Funding Opportunity at https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf). Grant applicants and grantees shall review all application materials and grant award documents, and shall follow the requirements listed in this Section.

a) Application Process

1) The Department will post one or more Notices of Funding Opportunity (NOFO) on the GATA Grantee Portal (https://grants.illinois.gov/portal/) seeking applications from eligible entities contingent upon available funds. Funding is available for one or more of the eligible project activities listed in Section 548.120. A single NOFO may seek applications for more than one type of project. Applicants shall submit their application materials by the deadlines set by the Department in the NOFO, which will be at least 30 days after the NOFO posting.

2) As part of the application, applicants shall provide the following information about the proposed project:

A) a description of the purpose of the grant project;

B) a project dashboard summarizing key activities including a description of activities, eligible costs, communities served, technology and infrastructure metrics;

C) a description of the overall project including network design, diagram, project costs, build-out timeline and milestones for project implementation, and a capital investment schedule evidencing complete build-out and initiation of service within four years of receipt of the grant;

D) a description of the broadband related problems and challenges facing the targeted communities and customers, needs and gaps, the shortcomings of existing solutions, challenges with prior attempts to solve the problem and how the project significantly solves the problem;

E) a description of the project's solution to the broadband related problem including the network technology, internet services and business strategy to drive adoption;

F) a description of the targeted beneficiaries of the project that addresses the location of the communities, market size, economic conditions of the service areas, and targeted customer segments, including providing information on the unserved and/or underserved areas (if applicable) that will be included within the scope of the project;

G) a description of anticipated social and economic benefits that will be realized by the distinct customer segments;

H) a narrative description of the organization's mission and operating history;

I) a description of the capabilities, experiences, and track record of the organization and its partners to successfully implement, operate and sustain the project including resumes for all key management personnel;

J) a description of the projects service area including a map of the proposed project area;

K) project impact statement including, but not limited to, the number of serviceable user segments, list of premises served, and list of interconnection points;

L) a narrative description of the specific social and economic benefits of connecting the following user segments: residents, businesses, community institutions, and other internet service providers;

M) whether the project is providing broadband improvements to an economically distressed area;

N) if applicable, the non-state matching funds and demonstration of financial need;

O) evidence the organization has the financial capabilities to meet the obligations associated with a projection including certification of available funds for all project costs that exceed the amount of the grant, letters of credit, audited financial statements, and financial sustainability/pro forma analyses of the proposed project;

P) the specific activities and costs proposed for the grant;

Q) a requested budget and supporting justification of the costs requested;

R) evidence of community support for the project;

S) a detailed narrative regarding the project readiness;

T) a description of the project viability and sustainability including network capacity and scalability; and

U) pricing strategy, affordability and adoption assistance.

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3) Applications will be accepted on an ongoing basis until the funds for the program are depleted or the application period closes, whichever comes first.

b) Grant Award Selection

1) Grants will be awarded to eligible entities following a merit review of the applications as required by GATA (44 Ill. Adm. Code 7000.350) and the applicable funding source. In evaluating applications, the Department will consider the following criteria:

A) The total BEAD funding required to complete the project, accounting for both total projected cost and the applicant's proposed match;

B) The level of financial need;

C) The applicant's commitment to provide the most affordable total price to the customer;

D) The applicant's demonstrated record of and plans to be in compliance with Federal and State labor and employment laws. New entrants without a record of labor and employment law compliance may make specific, forward-looking commitments to strong labor and employment standards and protections;

E) The speed to deployment;

F) The quality of the project including speed of network and other technical capabilities;

G) The applicant's provision of open access wholesale last-mile broadband service for the life of the subsidized networks, on fair, equal, and neutral terms to all potential retail providers;

H) Level of community support and local coordination; and

I) Any additional information to demonstrate or support the information submitted by the applicant for the proposed project.

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2) The Department shall award funding in a manner that prioritizes unserved service projects. Once the Department ensures coverage of all unserved locations, it shall prioritize underserved service projects.

3) Where there are multiple proposals in a location or set of locations that constitute priority broadband projects and satisfy all other requirements, the Department will consider the following criteria in selecting a project:

A) The total BEAD funding required to complete the project, accounting for both total projected cost and the applicant's proposed match;

B) The applicant's commitment to provide the most affordable total price to the customer for 1 Gbps/1 Gbps service in the project area;

C) The applicant's demonstrated record of and plans to be in compliance with federal and State labor and employment laws. New entrants without a record of labor and employment law compliance may make specific, forward-looking commitments to strong labor and employment standards and protections;

D) The speed to deployment;

E) The speed of network and other technical capabilities;

F) The applicant's commitment to advancing equitable workforce development and job quality objectives;

G) The applicant's provision of open access wholesale last-mile broadband service for the life of the subsidized networks, on fair, equal, and neutral terms to all potential retail providers;

H) The level of Local and Tribal Government coordination.

4) The Department shall give priority to projects that include a cash match of 25% or more in nonstate funding from private and/or local sources.

c) Grant Agreements

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Any entity awarded a grant shall execute a grant agreement that sets forth the rights and responsibilities of the grantee and DCEO. The grant agreement shall reflect all applicable State and federal statutory and administrative requirements, including, but not limited to, provisions covering expenditure of grant funds and utilization of property purchased with grant funds. The Department reserves the right to suspend or terminate a grant agreement, recover grant funds received under this Part or withhold any future funding for non-compliance with the grant agreement provisions and applicable State and federal law and regulations.

d) Grant Disbursements
Disbursement of grant funds from the Department will be made in accordance with a schedule included in the grant agreement. The Department will disburse funds based on the grantee making satisfactory progress to implement grant activities.

e) Grant Performance, Monitoring and Reporting Requirements
Grantees shall comply with all State laws, as well as all GATA and Department requirements, that are set forth in the grant agreement for grant performance, administration, monitoring and reporting, including monitoring any subrecipients.

1) Grant performance goals and performance and expenditure reporting will be based on the specific grant project activities of each grant award and will follow GATA requirements (44 Ill. Adm. Code 7000.410), which include periodic financial and performance reports at least quarterly, or as required by the applicable funding source, and financial and performance close-out reports after the end of the grant term (see 44 Ill. Adm. Code 7000.440). The deadlines for all required reports will be set forth in the grant agreement.

2) Grant audits shall be based on the standards set forth in the GATA requirements (44 Ill. Adm. Code 7000.90).

3) Grantees must monitor their grant activities, and those of any subrecipients, to assure compliance with applicable State and federal requirements and to assure their performance expectations are being achieved. The Department will monitor the activities of grantees to assure compliance with all requirements and performance expectations of the award. Grantees shall timely submit all financial and performance reports, and shall supply, upon the Department's request, documents and

information relevant to the award. The Department may monitor activities through site visits.

4) Grantees shall comply with all applicable State and federal laws, including, but not limited to, the Prevailing Wage Act [820 ILCS 130], the Illinois Works Jobs Program Act [30 ILCS 559/20], the Business Enterprise Program for Minorities, Females, and Persons with Disabilities Act [30 ILCS 575], the Employment of Illinois Workers on Public Works Act [30 ILCS 570], the Environmental Protection Act [415 ILCS 5], the Illinois Endangered Species Protection Act [520 ILCS 10], the Illinois Natural Areas Preservation Act [525 ILCS 30], the Interagency Wetland Policy Act of 1989 [20 ILCS 830], and the Illinois State Agency Historic Resources Preservation Act [20 ILCS 3420].

f) Grant Extensions
Contingent upon the availability of funds and consistent with GATA as applicable, the Department may negotiate grant extensions and add funds for grant projects that were originally competitively procured and performed successfully.

g) Records Retention
Grantees shall maintain, for the period of years set forth in the GATA rules (44 Ill. Adm. Code 7000.430(a) and (b)) and grant agreement, adequate books, all financial records and supporting documents, statistical records, and all other records pertinent to the Connect Illinois Broadband Grant Program. If any litigation, claim or audit is started before the expiration of the retention period, the records must be retained until all litigation, claims or audit exceptions involving the records have been resolved and final action taken. The applicable retention period will be dependent on the source of funding for the grant award. Grantees shall be responsible for ensuring that contractors and subrecipients comply with the retention requirements.

(Source: Added at 48 Ill. Reg. _____, effective _____)

Section 548.140 Allowable Costs

Grant expenditures must comply with GATA, the Uniform Guidance and any applicable funding source, be reasonable and necessary, and support one of the eligible project activities set forth in

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Section 548.120. Specific allowable grant costs will be set forth in the applicable NOFO, based on the types of projects which are available for funding per the funding source.

a) Eligible deployment uses of funding for unserved, underserved, and community anchor institution locations include the following:

1) Construction, improvement, and/or acquisition of facilities and telecommunications equipment required to provide qualifying broadband service, including infrastructure for backhaul, middle- and last-mile networks, and multi-tenant buildings;

2) Long-term leases (for terms greater than one year) of facilities required to provide qualifying broadband service, including indefeasible right-of-use (IRU) agreements;

3) Deployment of internet and Wi-Fi infrastructure within an eligible multi-family residential building;

4) Engineering design, permitting, and work related to environmental, historical and cultural reviews;

5) Personnel costs, including salaries and fringe benefits for staff and consultants providing services directly connected to the implementation of the BEAD Program (such as project managers, program directors, and subject matter experts);

6) Network software upgrades, including, but not limited to, cybersecurity solutions;

7) Training for cybersecurity professionals who will be working on BEAD-funded networks;

8) Workforce development, including registered apprenticeships and pre-apprenticeships, and community college and/or vocational training for broadband-related occupations to support deployment, maintenance, and upgrades.

b) Eligible non-deployment uses of funding for digital equity initiatives, include the following:

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1) User training with respect to cybersecurity, privacy, and other digital safety matters;

2) Remote learning or telehealth services/facilities;

3) Digital literacy/upskilling (from beginner-level to advanced);

4) Computer science, coding and cybersecurity education programs;

5) Implementation of eligible entity digital equity plans (to supplement, but not to duplicate or supplant, planning grant funds received by the eligible entity in connection with the Digital Equity Act of 2021);

6) Broadband sign-up assistance and programs that provide technology support;

7) Multi-lingual outreach to support adoption and digital literacy;

8) Prisoner education to promote pre-release digital literacy, job skills, and online job acquisition skills;

9) Digital navigators;

10) Direct subsidies for use toward broadband subscription, where the eligible entity shows the subsidies will improve affordability for the end user population (and to supplement, but not to duplicate or supplant, the subsidies provided by the Affordable Connectivity Program);

11) Costs associated with stakeholder engagement, including travel, capacity-building, or contract support;

12) Other allowable costs necessary to carrying out programmatic activities of an award, not to include ineligible costs per the BEAD NOFO.

(Source: Added at 48 Ill. Reg. _____, effective _____)

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1) Heading of the Part: Grocery Store Initiative Grant Program

2) Code Citation: 14 Ill Adm. Code 645

3)

Section Numbers:	Proposed Actions:
645.10	New Section
645.20	New Section
645.30	New Section
645.40	New Section

4) Statutory Authority: Grocery Initiative Act [20 ILCS 750] and Section 605-55 of the Civil Administrative Code of Illinois (Department of Commerce and Economic Opportunity Law) [20 ILCS 605].

5) A Complete Description of the Subjects and Issues Involved: The Department shall provide grants and other forms of financial assistance to eligible applicants for the purpose of expanding access to healthy foods in food deserts and areas at risk of becoming food deserts in Illinois.

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

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

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

9) Does this proposed rulemaking contain incorporations by reference? No

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

11) Statement of Statewide Policy Objectives: The Department shall provide grants and other forms of financial assistance to eligible applicants for the purpose of expanding access to healthy foods in food deserts and areas at risk of becoming food deserts in Illinois.

12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: A 45-day written comment period will begin on the day the Notice of Proposed Amendments appears in the *Illinois Register*. Please mail written comments on the proposed rulemaking to the attention of:

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Gina Arterberry
Department of Commerce & Economic Opportunity
607 E. Adams St. 12th Fl.
Springfield, IL 62701

Gina.M.Arterberry@Illinois.gov

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: Grocery stores, municipalities interested in establishing publicly owned grocery stores in food deserts, NFPs interested in establishing grocery stores in food deserts.

B) Reporting, bookkeeping or other procedures required for compliance: Applicants will need to submit basic identifying information, financial information, and a financial plan; grantees must comply with GATA.

C) Types of professional skills necessary for compliance: Basic bookkeeping and record retention.

14) Small Business Impact Analysis:

A) Types of businesses subject to the proposed rule:

72 Accommodation and Food Services
92 Public Administration

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

i. hiring and additional staffing
vi. equipment and material needs
viii. record keeping
x. other potential impacted categories

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15) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent agendas because the agency did not anticipate the change.

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

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NOTICE OF PROPOSED RULES

TITLE 14: COMMERCE
SUBTITLE C: ECONOMIC DEVELOPMENT
CHAPTER I: DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

PART 645
GROCERY STORE INITIATIVE GRANT PROGRAM

Section

AUTHORITY: Implementing and authorized by the Grocery Initiative Act [20 ILCS 750] and Section 605-55 of the Civil Administrative Code of Illinois (Department of Commerce and Economic Opportunity Law) [20 ILCS 605].

SOURCE: Adopted at 48 Ill. Reg. _____, effective _____.

Section 645.10 Purpose

The Department shall provide grants and other forms of financial assistance to eligible applicants for the purpose of expanding access to healthy foods in food deserts and areas at risk of becoming food deserts in Illinois.

Section 645.20 Definitions

The following definitions are applicable to this Part.

"Act" means the Grocery Initiative Act [20 ILCS 750].

"Agreement" means a grant agreement between an applicant and the Department pursuant to Section 645.70.

"Applicant" means a Unit of Local Government, Co-operative, Not-For-Profit Corporation, or for-profit entity.

"Co-operative" means an organization that is organized according to the Co-operative Act [805 ILCS 310].

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"Department" means the Department of Commerce and Economic Opportunity.

"Energy efficient" means reducing the amount of energy needed to achieve a given end use or uses, or reducing the amount of electricity or natural gas needed to achieve that end use or uses.

"Food desert" means a census tract that:

meets one of the following poverty standards:

the census tract has a poverty rate of at least 20%; or

the census tract is not located within a metropolitan statistical area and has a median family income that is less than or equal to 80% of the statewide median household income; or

the census tract is located within a metropolitan statistical area and has a median family income that is less than or equal to 80% of the greater of

the statewide median household income; or

the metropolitan area median family income; and

meets one of the following population density and food accessibility standards:

the census tract is a rural tract, and at least 33% of the population of the tract or at least 500 residents in the tract reside more than 10 miles from the nearest grocery store; or

the census tract is an urban tract, and at least 33% of the population of the tract or at least 500 residents in the tract reside more than one-half mile from the nearest grocery store.

The Department may also designate an area that does not meet the standards set forth in this Section *as a food desert if the designation is made using data such as poverty metrics and access to existing stores.*

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"Grocery store" means an existing or planned retail establishment that:

has or will have a primary business of selling a variety of grocery products, including fresh produce;

derives or will derive no more than 30% of its revenue from sales of tobacco and alcohol in any given year;

is or will be classified as a supermarket or other grocery retailer in the 2022 North American Industry Classification System under code 445110, a meat retailer under code 44524, a fruit and vegetable retailer under code 44523, or a fish and seafood retailer under 44525;

accepts or will accept Supplemental Nutrition Assistance Program benefits and Special Supplemental Nutrition Program for Women, Infants, and Children benefits; and

provides or will contribute to the greater availability *of a substantial variety of perishable foods, including fresh or frozen dairy products, fresh produce, and fresh meats, poultry, and fish.*

"Independently owned" means an applicant that owns no more than 5 grocery stores in the State of Illinois.

"Locally owned" means that primary ownership is located within the State of Illinois.

"Local governmental unit" means any county, municipality, township, special district, or unit that is designated as a unit of local government by law and exercises limited governmental powers or powers in respect to limited governmental subjects. "Local governmental unit" also includes any school district or community college district.

"Not-for-profit corporation" means an organization or institution that is 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 organized according to the General Not For Profit Corporation Act of 1986.

"Project Labor Agreement" has the same meaning as used in the Project Labor Agreements Act [30 ILCS 571].

"Rural tract" means a census tract that is not an urban tract.

"Urban tract" means a census tract having its geographic centroid in an urban area, as defined by the Bureau of the Census for the most recent year in which all relevant data to identify food deserts is available. [20 ILCS 750/5]

Section 645.30 Eligible Applicants and Projects

a) Applicant shall own and operate a grocery store, seek to acquire a grocery store, or establish a grocery store.

b) *The Department may award grants or provide loans* to an applicant establishing a new grocery store in a food desert *for any one or more of the following:*

1) *market and site feasibility studies, promotional materials, and marketing;*

2) *salaries and benefits for workers;*

3) *rent or a down payment to acquire a facility;*

4) *purchase of ownership of a grocery store as part of establishing a new grocery store;*

5) *capital improvements, planning, renovations, land acquisition, demolition, durable and non-durable equipment purchases; or*

6) *other costs as determined eligible by the Department.* [20 ILCS 750/15]

c) In addition to the eligible uses listed in subsection (b), the Department may award a grant to an applicant that is a cooperative, non-for-profit corporation, or for-profit corporation for *equipment upgrades focused on providing access to equipment that is energy efficient. The Department shall use no more than 20% of total program funding for this purpose.* [20 ILCS 750/15(b)]

Section 645.40 Administrative Requirements

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Grant opportunities and awards will be administered in a manner that complies with all State requirements applicable to each funding opportunity, including, but not limited to, GATA and all applicable State laws. Applicants and grant recipients shall review all application materials and grant award documents which will include the specific applicable requirements for the grant opportunity. The Department reserves the right to suspend or terminate a grant agreement or withhold any future year funding for non-compliance with these provisions.

a) Application Process

1) The Department will post one or more NOFO on the GATA Grantee Portal seeking applications contingent upon available funds. Applicants shall submit their application materials by the deadlines set forth by DCEO in the NOFO which will be at least 30 days after posting the NOFO.

2) The applicants will be required to submit an application package, which will include the following:

A) the name of the applicant;

B) whether the applicant is a unit of local government, independently owned for-profit grocery store, cooperative grocery store, or not-for-profit grocery store;

C) the operating name of the grocery store;

D) the location of the grocery store;

E) a detailed explanation of how the grocery store proposes to use any award;

F) for an applicant seeking a grant or other financial assistance for equipment upgrades for an independently owned for-profit grocery store, cooperative grocery store, or not-for-profit grocery store, as described in Section 645.30(c), the applicant should submit the following detailed financial information:

i) Documentation of the amount and sources of outside investment in the grocery store; and

ii) Documentation of the grocery store's long-term assets and debts; and

G) A detailed financial plan that includes:

i) The grocery store's projected costs, revenues, and profits;

ii) The amount and sources of other investments in the planned grocery store;

iii) The long-term assets, including but not limited to real property and equipment, that the grocery store has already secured or still needs; and

iv) The projected number of employees of the grocery store.

H) for an independently owned for-profit grocery store, cooperative grocery store, municipally owned grocery store, or not-for-profit grocery store, a detailed explanation of the ownership and operation structure, including the location of all primary owners.

b) Grant Award Selection

1) Grants will be awarded by DCEO to grantees following a merit review by DCEO pursuant to GATA requirements (44 Ill. Adm. Code 7000.350). In evaluating applications, the Department will consider all requirements as set forth in the NOFO.

2) In reviewing applications, the Department may prioritize applicants that:

A) are units of local government;

B) are seeking to establish, or have already established and are operating, grocery stores with local ownership;

C) are seeking to establish, or have already established and are operating, grocery stores with less than $5 million in annual revenue;

D) are seeking to establish grocery stores or operate existing grocery stores in areas of higher poverty;

E) are seeking to establish grocery stores or operate existing grocery stores in areas of lower income; or

F) are seeking to establish grocery stores or operate existing grocery stores in areas geographically further away from the next nearest grocery store, or with larger shares of the population residing further away from the nearest grocery store.

c) Grant Disbursements
Disbursement of grant funds from the Department will be made in accordance with a schedule included in the grant agreement. The Department may disburse funds based on the outcomes outlined in the grant agreement.

d) Grant Performance, Monitoring and Reporting Requirements
Grant recipient shall comply with all GATA and Department requirements for grant performance, administration, monitoring and reporting, including monitoring any subrecipients.

e) Grant Extensions
Contingent upon the availability of funds and consistent with GATA as applicable, the Department may negotiate grant extensions and add funds for grant projects that were originally competitively procured and performed successfully.

f) Records Retention
A grant recipient shall maintain, for the period of time set forth in the GATA rules (44 Ill. Adm. Code 430(a) and (b)), adequate books, all financial records and supporting documents, statistical records, and all other records pertinent to the program. If any litigation, claim, or audit is started before the expiration of the retention period, the records must be retained until all litigation, claims or audit exceptions involving the records have been resolved and final action taken. Grant recipients shall be responsible for ensuring that contractors and subrecipients comply with the retention requirements.

g) Project Labor Agreement

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Pursuant to the Project Labor Agreements Act [30 ILCS 571] and Executive Order 02-19, the Department will evaluate each application to determine if a project labor agreement would advance the State's interests of cost, efficiency, quality, safety, timeliness, skilled labor force, labor stability, or the State's policy to advance minority-owned and women-owned businesses and minority and female employment. If a project labor agreement would advance those interests, then the Department may require one as part of the grant.

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1) Heading of the Part: Energy Transition Community Grant Program

2) Code Citation: 14 Ill Adm. Code 810

3)

Section Numbers:	Proposed Actions:
810.10	New Section
810.20	New Section
810.30	New Section
810.40	New Section
810.50	New Section
810.60	New Section
810.70	New Section

4) Statutory Authority: Implementing Section 10-20 of the Energy Community Reinvestment Act [20 ILCS 735] and authorized by Section 605-95 of the Civil Administrative Code of Illinois (Department of Commerce and Economic Opportunity Law) [20 ILCS 605].

5) A Complete Description of the Subjects and Issues Involved: The purpose of the Energy Transition Community Grant Program is to award grants to promote economic development in communities that are in an area with a closure or reduced operation of a fossil fuel power plant, coal mine or nuclear plant.

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

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

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

9) Does this proposed rulemaking contain incorporations by reference? No

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

11) Statement of Statewide Policy Objectives: To address the economic and social impact on the surrounding community or region when a fossil fuel plant is retired or transitioned to lesser capacity.

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12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: A 45-day written comment period will begin on the day the Notice of Proposed Amendments appears in the *Illinois Register*. Please mail written comments on the proposed rulemaking to the attention of:

Gina Arterberry
Department of Commerce & Economic Opportunity
607 E. Adams St. 12th Fl.
Springfield, IL 62701

Gina.M.Arterberry@Illinois.gov

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: No direct impact on small businesses, small municipalities, or not for profit corporations. Grants under this program will be available to units of local government, economic development organizations, local educational institutions, and community-based groups.

B) Reporting, bookkeeping or other procedures required for compliance: Grantees will have reporting requirements per Grant Accountability and Transparency Act [30 ILCS 708] and the associated Rules.

C) Types of professional skills necessary for compliance: None necessary.

14) Small Business Impact Analysis:

A) Types of businesses subject to the proposed rule:

81 Other Services (except Public Administration)
92 Public Administration

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

i. hiring and additional staffing;
vii. training requirements;
viii. record keeping;

ix. compensation and benefits; or
x. other potential impacted categories.

15) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent agendas because the Department did not anticipate the change.

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

DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

NOTICE OF PROPOSED RULES

TITLE 14: COMMERCE
SUBTITLE C: ECONOMIC DEVELOPMENT
CHAPTER I: DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

PART 810
ENERGY TRANSITION COMMUNITY GRANT PROGRAM

Section

AUTHORITY: Implementing Section 10-20 of the Energy Community Reinvestment Act [20 ILCS 735] and authorized by Section 605-95 of the Civil Administrative Code of Illinois (Department of Commerce and Economic Opportunity Law) [20 ILCS 605].

SOURCE: Adopted at 48 Ill. Reg. _____, effective _____.

Section 810.10 Purpose

The purpose of the Energy Transition Community Grant Program is to award grants to promote economic development in communities that are in an area with a closure or reduced operation of a fossil fuel power plant, coal mine or nuclear plant.

Section 810.20 Definitions

"Act" means the Energy Community Reinvestment Act.

"Closure" means the permanent shutdown of an electric generating unit or coal mine.

"Community" means a geographic area that has been impacted by the reduction of service or closure of a fossil or nuclear power plant or a coal mine.

"Decommissioned" means a nuclear power plant that has submitted a Certification of Permanent Cessation of Operation to the United States Nuclear Regulatory Commission as is required by 10 CFR 50.82(a)(1)(i).

"Department" means the Department of Commerce and Economic Opportunity.

"Eligible Area" is a community that meets one or more of the following:

the area contains a fossil fuel or nuclear power plant that was retired from service or has significantly reduced service within six years before the application for designation or will be retired or have service significantly reduced within six years following the application for designation;

the area contains a coal mine that was closed or had operations significantly reduced within six years before the application for designation or is anticipated to be closed or have operations significantly reduced within six years following the application for designation;

the area contains a nuclear power plant that was decommissioned, but continued storing nuclear waste before the effective date of the Act. [20 ILCS 735/10-20(c)]

"GATA" means Grant Accountability and Transparency Act [30 ILCS 708].

"Grantee" means an applicant for a grant award under this program whose proposal is funded by the Department.

"Primary Applicant" means local unit or units of government, including municipalities, counties, school districts, and other taxing districts within the eligible area.

"Retired From Service" means a fossil fuel or nuclear power plant that is no longer in service.

"Secondary Applicant" means an *economic development organization, local educational institutions, community-based groups* joining with a primary applicant.

"Significantly Reduced Operations" for a coal mine means a workforce that is reduced by 20% or 25 jobs, whichever is greater.

"Significantly Reduced Service" means a fossil fuel or nuclear power plant that has ceased operations of one or more generating units at the plant and/or converted to a different type of plant, resulting in fewer on-site employees.

Section 810.30 Funding Source

The grant awards described in this Part are contingent upon the availability of funding in the Energy Transition Assistance Fund [20 ILCS 605/605-1075] *for costs related to Energy Transition Community Support Grants, up to $40,000,000 annually*. [20 ILCS 605/605-1075(b)(9)]

Section 810.40 Grantee Eligibility

a) Local units of government within an eligible community may apply for a grant under the Energy Transition Assistance Community Grant Program as a primary applicant. Primary applicants *may join with any other local unit of government, economic development organization, local educational institutions, community-based groups, or with any number or combination thereof* as secondary applicants.

b) *Units of local government that are taxing authorities for a nuclear plant that was decommissioned before January 1, 2021* may annually apply for a grant under the Energy Transition Assistance Community Grant Program for amounts proportional to the volume of nuclear fuel stored at eligible sites and loss of property tax payments collected for the site of the decommissioned nuclear plant.

c) Eligible Applicants must have an active GATA registration and is qualified on the GATA grantee portal (https://grants.illinois.gov/portal/) at the time the application is submitted.

Section 810.50 Eligible Uses

Grants must be used to plan for or address the economic and social impact on the community or region of plant retirement or transition. [20 ILCS 735/10-20(g)]

a) Eligible uses for grant funds include, but are not limited to:

1) Research, analysis, and planning regarding economic impact reduced or ceased operations of the regional facility;

2) Environmental remediation of sites of closed facilities and other local infrastructure improvements;

3) Marketing of tourist and recreation opportunities;

4) Business development initiatives to attract, expand, or retain employers;

5) Workforce development and support for individuals displaced by closures or reduced operations, including training for skilled trades in regional industries;

6) Investment for construction or improvement in local job training facilities;

7) Financial assistance for unemployed, underemployed, and/or low-income residents;

8) Public health initiatives; and

9) Other initiatives to address the economic and social impact of reduced production or closure of regional facilities.

b) *Third-party vendors for grant writing and implementation costs, including for guidance and opportunities to apply for additional federal, State, local, and private funding resources. If the application is approved for pre-award, one-time reimbursable costs to apply for the Energy Transition Community Grant are authorized up to 3% of the award.*

Section 810.60 Applications

To receive grant funds, an eligible community must submit an application to the Department, using a form developed by the Department. Applications will be accepted in two phases as follows:

a) Phase 1:

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1) The Department will publish a Phase 1 Notice of Funding Opportunity ("NOFO") with Phase 1 application form and application for at least 30 days.

2) The applicant will submit:

A) A signed Uniform Grant Agreement;

B) A Conflict of Interest disclosure;

C) Mandatory disclosures; and

D) A statement detailing:

i) Name of local government or organization(s), specifying primary applicant and any secondary applicants;

ii) List of parcels that the qualifying physical plant or mine are located on, as well as property tax revenue collected for each of those parcels by each local government entity with jurisdiction in the most recent year available, and in the year six years prior;

iii) Letter of support from any applicable host city, village, or county.

3) The Department will evaluate the submissions and notify applicants of its determination of eligibility. The Phase 1 determination of eligibility may be appealed through the process afforded in the Department's Administrative Hearing Rules set forth at 56 Ill. Adm. Code 2605.

b) Phase 2:

1) The Department will publish a Phase 2 NOFO with a Phase 2 application form, guidelines for supporting documentation, and application for at least 30 days.

2) Primary applicants shall submit an application which includes, but is not limited to, the following:

A) A cover page including the name of primary applicant and any secondary applicants;

B) A detailed project narrative including, but not limited to:

i) A description of what the project will entail and which entity will be responsible for the administration and implementation of the project;

ii) How the project will address the economic and social impacts of the closure and support economic development in the affected area;

iii) The timeline for implementation;

iv) A description of community involvement in planning and implementing the project; and

v) A description of the economic impact of the plant closure or reduction in service; and

C) A uniform budget template.

NOTE: Any additional information and documentation that supports the applicant's project.

3) The Department will evaluate the submissions and determine funding amounts.

c) *Units of local government that are taxing authorities for a nuclear plant that was decommissioned before January 1, 2021* may submit applications as outlined in this subsection, including, but not limited to, the following:

1) A cover page including the name of applicant;

2) A signed Uniform Grant application;

3) A Conflict of Interest disclosure;

4) Mandatory disclosures;

5) A detailed project narrative including the scope of the project;

6) A description of community involvement in planning and implementing the project;

7) A uniform budget template; and

8) Any additional information and documentation that supports the applicant.

Section 810.70 Grant Award Determination

a) Grants will be awarded by the Department to grantees following a merit review by DCEO and pursuant to GATA requirements (44 Ill. Adm. Code 7000.350).

b) Applicants approved through the selection process described in 810.60(a) and (b) shall receive grants in proportional amounts based on employment reduction levels and the loss of property taxes or PILOT revenue corresponding with the closure or reduction of operations of the fossil fuel power plant or coal mine. When more than one government entity is included in an application, this amount will be calculated for each distinct entity and then aggregated across those entities.

c) Approved applicants meeting the criteria described in 810.60(c) *shall receive grants in proportional shares of $15 per kilogram of spent nuclear fuel stored at such a facility, less any payments made to such communities from the federal government based on the amount of waste stored at a decommissioned nuclear plant and any property tax payments*.

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

1) Heading of the Part: Video Gaming (General)

2) Code Citation: 11 Ill. Adm. Code 1800

3) Section Number: 1800.370 — Proposed Action: New Section

4) Statutory Authority: Authorized by Section 78 (a) (3) and (b) of the Video Gaming Act [230 ILCS 40].

5) A Complete Description of the Subjects and Issues Involved: The proposed rulemaking adds a new Section 1800.370 ("Deactivation of Video Gaming Terminals"). The Section authorizes the Administrator of the Illinois Gaming Board ("Board") to deactivate the video gaming terminals ("VGTs") of a licensed video gaming location ("location") if the location fails to fulfill its duties under the Video Gaming Act [230 ILCS 40] or the Video Gaming (General) Part of the Illinois Administrative Code. Circumstances in which the Administrator may deactivate the VGTs of a location under this rulemaking include, without limitation:

Failure to timely pay a sum owed to the Board;

Lapse, expiration or inactivity of a liquor license;

Failure to comply with a valid Board order; or

A Board investigation that reveals the location to be ineligible by statute or rule to operate VGTs.

As a condition for reactivation, locations whose VGTs have been deactivated shall pay an administrative fee of $150 per video gaming terminal.

The purpose of the rulemaking is to provide the Board with an additional option of deactivation in regulating locations that have not fulfilled their duties and obligations but whose conduct does not rise to a level of a revocation. In these instances, the rulemaking will conserve staff resources by not requiring issuance of disciplinary complaints to achieve compliance.

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

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7) Will this proposed rulemaking replace an emergency rule already in effect? No

8) Does this proposed rulemaking contain an automatic repeal date? No

9) Does this rulemaking contain incorporations by reference? No

10) Are there any rulemakings pending on this Part? Yes

Section Numbers:	Proposed Actions:	*Illinois Register* Citations:
1800.322	Amendment	47 Ill. Reg. 2540; February 24, 2023
1800.430	Amendment	47 Ill. Reg. 2540; February 24, 2023
1800.450	Amendment	47 Ill. Reg. 2540; February 24, 2023

11) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate under 30 ILCS 805.

12) Time, place and manner in which interested persons may comment on this proposed rulemaking: Any interested person may submit comments in writing concerning this proposed rulemaking not later than 45 days after publication of this notice in the *Illinois Register* to:

Daniel Gerber
General Counsel
Illinois Gaming Board
160 North LaSalle Street
Chicago, Illinois 60601

Fax No.: (312) 814-7253
IGB.RuleComments@illinois.gov

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: The rulemaking will apply to all licensed video gaming locations which qualify as small businesses.

B) Reporting, bookkeeping or other procedures required for compliance: The Board will be required to notify affected licensed video gaming locations of the video

gaming terminal deactivations and reactivation fees provided by this rulemaking and record these actions.

C) Types of professional skills necessary for compliance: The proposed rulemaking will impose no additional requirements.

14) Small business impact analysis:

A) Types of businesses subject to the proposed rule:

55 Management of Companies and Enterprises
71 Arts, Entertainment, and Recreation

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

ii. regulatory requirements

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

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

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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

SUBPART B: DUTIES OF LICENSEES

SUBPART C: STANDARDS OF CONDUCT FOR LICENSEES

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SUBPART D: LICENSING QUALIFICATIONS

SUBPART E: LICENSING PROCEDURES

SUBPART F: DENIALS OF APPLICATIONS FOR LICENSURE

ILLINOIS GAMING BOARD

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AND DISTRIBUTION OF VIDEO GAMING TERMINALS

ILLINOIS GAMING BOARD

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ILLINOIS GAMING BOARD

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SUBPART U: UNDERAGE GAMBLING COMPLIANCE

AUTHORITY: Implementing and authorized by Section 78(a)(3) of the Video Gaming Act [230 ILCS 40/78(a)(3)].

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.

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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 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; amended at 44 Ill. Reg. 489, effective December 27, 2019; emergency amendment at 43 Ill. Reg. 9788, effective August 19, 2019, for a maximum of 150 days; amended at 44 Ill. Reg. 1961, effective December 31, 2019; emergency amendment at 43 Ill. Reg. 11688, effective September 26, 2019, for a maximum of 150 days; amended at 44 Ill. Reg. 3205, effective February 7, 2020; 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; suspension withdrawn at 44 Ill. Reg. 3583; emergency amendment to emergency rule at 44 Ill. Reg. 3568, effective February 21, 2020, for the remainder of the 150 days; amended at 44 Ill. Reg. 10891, effective June 10, 2020; amended at 43 Ill. Reg. 14099, effective November 21, 2019; emergency amendment at 44 Ill. Reg. 10193, effective May 27, 2020, for a maximum of 150 days; amended at 44 Ill. Reg. 16454, effective September 25, 2020; emergency amendment at 44 Ill. Reg. 11104, effective June 15, 2020, for a maximum of 150 days; emergency expired November 11, 2020; amended at 44 Ill. Reg. 11134, effective June 22, 2020; emergency amendment at 44 Ill. Reg. 13463, effective July 28, 2020, for a maximum of 150 days; emergency expired December 24, 2020; amended at 45 Ill. Reg. 3424, effective March 8, 2021; amended at 45 Ill. Reg. 5375, effective April 12, 2021; amended at 45 Ill. Reg. 9971, effective July 20, 2021; emergency amendment at 45 Ill. Reg. 10074, effective July 26, 2021, for a maximum of 150 days; emergency expired December 22, 2021; amended at 46 Ill. Reg. 5530, effective March 16, 2022; amended at 46 Ill. Reg. 6916, effective April 25, 2022; amended at 46 Ill. Reg. 17107, effective September 28, 2022; amended at 46 Ill. Reg. 18049, effective October

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31, 2022; amended at 47 Ill. Reg. 2682, effective February 10, 2023; amended at 47 Ill. Reg. 16355, effective November 1, 2023; amended at 48 Ill. Reg. _____, effective _____.

SUBPART C: STANDARDS OF CONDUCT FOR LICENSEES

Section 1800.370 Deactivation of Video Gaming Terminals

a) The Administrator may deactivate a licensed video gaming location's video gaming terminals if that licensed video gaming location fails to fulfill its duties and obligations under the Act and this Part. Circumstances in which the Administrator, or his or her designee, may deactivate a licensed video gaming location's video gaming terminals include, without limitation:

1) The licensed video gaming location failed to timely pay a sum owed to the Board;

2) A liquor license issued to a licensed video gaming location lapsed, expired, or is otherwise inactive;

3) The licensed video gaming location failed to comply with a valid Board order; or

4) A Board investigation revealed that the licensed video gaming location is not eligible by statute or rule to operate video gaming terminals.

b) If a licensed video gaming location has its video gaming terminals deactivated under subsection (a), an administrative fee of $150 per terminal shall be assessed. The video gaming terminals shall not be reactivated until the administrative fee is paid.

(Source: Added at 48 Ill. Reg. _____, effective _____)

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1) Heading of the Part: Premium Increase Justification and Reporting

2) Code Citation: 50 Ill. Adm. Code 2026

3)

Section Numbers:	Proposed Actions:
2026.5	Amendment
2026.10	Amendment
2026.20	Amendment
2026.30	Amendment
2026.40	Amendment
2026.50	Amendment
2026.60	Amendment
2026.70	New Section
2026.80	New Section
2026.90	New Section
2026.100	New Section

4) Statutory Authority: Implementing Section 355 of the Illinois Insurance Code [215 ILCS 5], Section 28 of the Dental Service Plan Act [215 ILCS 110], Section 4-12 of the Health Maintenance Organization Act [215 ILCS 125], Section 3006 of the Limited Health Service Organization Act [215 ILCS 3006], and Section 13 of the Voluntary Health Services Plans Act [215 ILCS 165], and authorized by Section 401 of the Illinois Insurance Code; 42 USC 300gg-22; and 45 CFR 150.101(b)(2) and 150.201.

5) A Complete Description of the Subjects and Issues Involved: Public Act 103-0106, which was signed into law on June 27, 2023 and takes effect January 1, 2024, specifically gives the Department approval authority over health insurance premium rates beginning for Plan Year 2026 for non-grandfathered individual and small group plans and adds a new standard for review (Inadequate) in addition to the existing standard (Not Excessive, Unjustified, or Unfairly Discriminatory). It also contains new requirements beginning for Plan Year 2025 related to public posting of rate filing summaries, public comments, and rate filing approval decisions. Part 2026 will be amended to implement these changes.

Amendments also will address the initial posting of proposed rates for public comment, and clarify the applicability of the Public Act's plain language summary requirement to the publicly posted Part II of the rate filing justification. They will describe the contents of the Director's decision to approve, disapprove, or modify the proposed rates and will identify the requirements for the formal hearing process for any issuer whose rates were disapproved or instructed to be modified. They will also clarify that, after rates are

approved for a plan year, the Director may not disapprove or modify those rates based solely on information available to the Director when the initial approval was made. Amendments also address the relationship between 215 ILCS 5/355(i) and other laws applicable to types of coverage that are not subject to the Effective Rate Review Program.

Part 2026 will be renamed as "Health Insurance Rate Review" to reflect the rule's general scope differentiating the types of rate review that the Department conducts for different types and markets of health insurance coverage.

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

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

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

9) Does this proposed rulemaking contain incorporations by reference? Yes

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

11) Statement of Statewide Policy Objectives: This rulemaking will not require a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.

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

Robert Planthold	or	Susan Anders
Deputy General Counsel		Rules Coordinator
Illinois Department of Insurance		Illinois Department of Insurance
122 S. Michigan Ave., 19th Floor		320 W. Washington St., 4th Floor
Chicago, IL 60603		Springfield, IL 62767
(312) 814-5445		(217) 558-0957
robert.planthold@illinois.gov		sue.anders@illinois.gov

13) Initial Regulatory Flexibility Analysis:

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A) Types of small businesses, small municipalities and not for profit corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance: Continue submitting Rate Filing Justifications.

C) Types of professional skills necessary for compliance: Actuarial

14) Small Business Impact Analysis: The Department determined that the rulemaking will not have an adverse impact on small businesses.

15) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the two most recent agendas because it was not anticipated within that time period.

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

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NOTICE OF PROPOSED AMENDMENTS

TITLE 50: INSURANCE
CHAPTER I: DEPARTMENT OF INSURANCE
SUBCHAPTER z: ACCIDENT AND HEALTH INSURANCE

PART 2026
HEALTH INSURANCE RATE REVIEW~~PREMIUM INCREASE JUSTIFICATION AND REPORTING~~

Section

AUTHORITY: Implementing Section 355 of the Illinois Insurance Code [215 ILCS 5], Section 28 of the Dental Service Plan Act [215 ILCS 110], Section 4-12 of the Health Maintenance Organization Act [215 ILCS 125], Section 3006 of the Limited Health Service Organization Act [215 ILCS 3006], and Section 13 of the Voluntary Health Services Plans Act [215 ILCS 165], and authorized by Section 401 of the Illinois Insurance Code; 42 U.S.C. 300gg-22; and 45 CFR 150.101(b)(2) and 150.201.

SOURCE: Adopted at 38 Ill. Reg. 2213, effective January 2, 2014; amended at 48 Ill. Reg. _____, effective _____.

Section 2026.5 Purpose~~ and Scope~~

~~a)~~ ~~Purpose~~
This Part describes the Director's authority and timelines to review, approve, modify, or disapprove rate filings pursuant to Section 355 of the ~~Illinois Insurance~~ Code.

~~b)~~ ~~Scope~~

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~~This Part establishes the requirements for health insurance issuers offering health insurance coverage in the small group or individual markets to report information concerning unreasonable rate increases to the Director. This Part further establishes the process by which it will be determined whether the rate increases are unreasonable rate increases as defined in this Part.~~

(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 2026.10 Definitions

"Affordable Care Act" or "ACA" means the Patient Protection and Affordable Care Act (42 U.S.C.~~USC~~ 18001 et seq.).

"Code" means the Illinois Insurance Code [215 ILCS 5].

"Department" means the Illinois Department of Insurance.

"Director" means the Director of the ~~Illinois~~ Department ~~of Insurance~~.

"CMMS" means the Centers for Medicare and Medicaid Services.

"Excepted benefits" has the meaning ascribed in 42 U.S.C. 300gg-91(c).

"Federal medical loss ratio standard~~Medical Loss Ratio Standard~~" means the applicable medical loss ratio standard for the State and market segment involved, determined under subpart B of 45 CFR 158.

"Grandfathered health plan" has the meaning ascribed in 45 CFR 147.140 (Dec. 15, 2020) (no later editions or amendments).

"Health insurance coverage~~Insurance Coverage~~" has the meaning ascribed in 42 U.S.C. 300gg-91(b)(1) ~~given that term in PHS Act section 2791(b)(1)~~.

"Health insurance issuer~~Insurance Issuer~~" has the meaning ascribed in 42 U.S.C. 300gg-91(b)(2) ~~given that term in PHS Act section 2791(b)(2)~~.

"Inadequate rate" means a rate:

that is insufficient to sustain projected losses and expenses to which the rate applies; and

the continued use of which endangers the solvency of a health insurance issuer *using that rate*. (Section 355(a) of the Code)

"Individual market~~Market~~" has the meaning ascribed in 42 U.S.C. 300gg-91(e)(1)(A)~~given in PHS Act section 2791(e)(1)(A)~~. Coverage that would be regulated as individual market coverage under that definition~~, as defined in PHS Act section 2791(e)(1)(A)~~, if it were not sold through an association, is subject to rate review as individual market coverage.

~~"PHS Act" means the Public Health Service Act (42 USC 201 et seq.).~~

"Plain language" or "plain writing" *has the meaning provided* for "plain writing" *in the federal Plain Writing Act of 2010* (Pub. Law 111-274) *and subsequent guidance documents, including the "Federal Plain Language Guidelines"* published by the Plain Language Action and Information Network with support from the United States General Services Administration, 1800 F Street, NW, Washington, DC 20405 (rev. 1, May 2011) (no later editions or amendments), available online at: https://www.plainlanguage.gov/media/FederalPLGuidelines.pdf. (Section 355(a) of the Code)

"Product" has the meaning ascribed in 45 CFR 144.103 (May 6, 2022) (no later editions or amendments)~~means a package of health insurance coverage benefits with a discrete set of rating and pricing methodologies that a health insurance issuer offers in a state~~.

"Rate increase~~Increase~~" means any increase of the premium rates for a specific product~~ offered in the individual or small group market~~.

~~"Rate Increase Subject to Review" means a rate increase that meets the criteria set forth in Section 2026.30.~~

"Secretary" means the Secretary of the United States Department of Health and Human Services.

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"Short-term, limited-duration health insurance coverage" has the meaning ascribed in Section 5 of the Short-Term, Limited-Duration Health Insurance Coverage Act.

"Small group market~~Group Market~~" has the meaning ascribed in 42 U.S.C. 300gg-91(e)(5)~~PHS Act section 2791(e)(5); provided, however, that for the purpose of this definition, "50" employees applies in place of "100" employees in the definition of "small employer" in section 2791(e)(4)~~. ~~"~~Coverage~~"~~ that would be regulated as small group market coverage under that definition,~~(as defined in section 2791(e)(5))~~ if it were not sold through an association, is subject to rate review as small group market coverage.

"Student health insurance coverage" has the meaning ascribed in 45 CFR 147.145 (March 8, 2016) (no later editions or amendments).

"*Unreasonable rate increase*~~Rate Increase~~" *means a rate increase that the Director determines* ~~under Section 2026.40~~ *to be excessive, unjustified, or unfairly discriminatory in accordance with 45 CFR 154.205* (May 23, 2011) (no later editions or amendments). (Section 355(a) of the Code)

(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 2026.20 Applicability

~~a)~~ ~~In General~~

The requirements of this Part apply to health insurance issuers offering health insurance coverage that is subject to Section 355 of the Code~~in the individual market and small group market, as defined in 45 CFR 154.103~~.

~~b)~~ ~~Exceptions~~

~~The requirements of this Part do not apply to grandfathered health plan coverage as defined in 45 CFR 147.140 or to excepted benefits as described in PHS Act section 2791(c).~~

(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 2026.30 Rates~~Rate Increases~~ Subject to Review or Prior Approval

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a) All rates and classifications of risks in the individual or small group market, other than for grandfathered health plans, excepted benefits, student health insurance coverage, or short-term, limited-duration health insurance coverage,~~A rate increase filed~~ on or after January 1, 2014, or effective on or after January 1, 2014 and taking effect no later than December 31, 2025, are~~is~~ subject to review under applicable law and Department rules, including, but not limited to, Part 916, as well as:

1) the public posting and public comment period described in Section 355(d) and (e) of the Code; and

2) review for unreasonable rate increases through the implementation under Section 355 of the Code of an Effective Rate Review Program described in 45 CFR 154.301 (April 17, 2018) (no later editions or amendments) if~~, as required by 45 CFR 154.200~~:

A~~a~~) the~~The~~ rate represents a rate increase of~~is~~ 10 percent or more and applies~~applicable~~ to a 12-month period as calculated under subsection (a)(2)(B)~~(b)~~.

B~~b~~) a~~A~~ rate increase meets or exceeds the applicable threshold set forth in subsection (a)(2)(A) if the average increase for all enrollees weighted by premium volume meets or exceeds the applicable threshold.

C~~c~~) if~~If~~ a rate increase that does not otherwise meet or exceed the threshold under subsection (a)(2)(B)~~(b)~~ meets or exceeds the threshold when combined with a previous increase or increases during the 12-month period preceding the date on which the rate increase would become effective, then the rate increase must be considered to meet or exceed the threshold and is subject to review. The review shall include a review of the aggregate rate increases during the applicable 12-month period.

b) All rates and classifications of risks effective on or after January 1, 2026 in the individual and small group markets, other than for grandfathered health plans, excepted benefits, student health insurance coverage, or short-term, limited-duration health insurance coverage, are subject to the Director's prior approval

under the State's implementation of an Effective Rate Review Program described in 45 CFR 154.301 and State standards for inadequate rates.

c) All rates and classifications of risks not described in subsections (a) or (b) must be filed for the Director's review under applicable law and Department rules, including, but not limited to, Part 916. The rates and classifications of risks are not subject to the Director's prior approval unless specifically provided by applicable law.

d) For all rates described in subsection (a) or (b), and to the extent applicable to rate filings described in subsection (c):

1) a rate sheet must be filed as a separate document that includes either all finally proposed rates or all finally proposed base rates and all factors used to calculate the final rates, which must be marked for public access in SERFF; and

2) the maximum, overall, and minimum rate changes, overall rate impact, written premium for the program, written premium change for the program, and number of affected policyholders must be specified in SERFF and marked for public access.

(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 2026.40 Unreasonable Rate Increases

a) When the Director reviews a rate increase for any rate described in Section 2026.30(a)(2) or (b), the Director~~he or she~~ will determine that the rate increase is an unreasonable rate increase if the increase is an excessive rate increase, an unjustified rate increase, or an unfairly discriminatory rate increase, as required and defined by 45 CFR 154.205.

b) The rate increase is an excessive rate increase if the increase causes the premium charged for the health insurance coverage to be unreasonably high in relation to the benefits provided under the coverage (see 45 CFR 154.205(b)). In determining whether the rate increase causes the premium charged to be unreasonably high in relationship to the benefits provided, the Director will consider:

1) Whether the rate increase results in a projected medical loss ratio below

the federal medical loss ratio standard in the applicable market to which the rate increase applies, after accounting for any adjustments allowable under federal law;

2) Whether one or more of the assumptions on which the rate increase is based is not supported by substantial evidence; and

3) Whether the choice of assumptions or combination of assumptions on which the rate increase is based is unreasonable.

c) The rate increase is an unjustified rate increase (as defined in 45 CFR 154.205(c)) if the health insurance issuer provides data or documentation to the Director in connection with the increase that is incomplete, inadequate or otherwise does not provide a basis upon which the reasonableness of an increase may be determined.

d) The rate increase is an unfairly discriminatory rate increase (as defined in 45 CFR 154.205(d)) if the increase results in premium differences between insureds within similar risk categories that do not reasonably correspond to differences in expected costs or otherwise are not permissible under applicable State law.

(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 2026.50 Submission of Rate Filing Justification

a) For all rates described in Section 2026.30(a) and (b)~~If any product is subject to a rate increase~~, a health insurance issuer must submit a Rate Filing Justification for all products in the single risk pool, including new or discontinuing products, to the Director on a form and in a manner prescribed by the Secretary in 45 CFR 154.215(a) (April 17, 2018) (no later editions or amendments) and as further provided in this Section.

b) The Rate Filing Justification must consist of the following Parts (as required in 45 CFR 154.205(b) and pursuant to Section 355 of the Code):

1) Unified rate review template (Part I), as described in subsection (d).

2) Written description justifying the rate increase (Part II), as described in subsection (e).

3) Rating filing documentation (Part III), as described in subsection (f).

c) Circumstances for Required Parts

1) For all rate increases regardless of the amount, a~~A~~ health insurance issuer must complete and submit Parts I and III of the Rate Filing Justification described in subsections (b)(1) and (b)(3) to the Director as required by 45 CFR 154.215(c). If the health insurance issuer deems any information contained in either Part I or III to be proprietary, privileged, or confidential such that disclosure of the information would cause competitive harm to the issuer, the health insurance issuer must file both an unredacted version and a version with the deemed confidential information redacted that is separately marked for public access in SERFF. Additionally, to qualify for ongoing exemption from production under Section 7(1)(g) of the Freedom of Information Act [5 ILCS 140], proprietary, privileged, or confidential information must be furnished to the Department with the explicit claim that the disclosure of the information would cause competitive harm to the health insurance issuer. The health insurance issuer must furnish that claim in a letter separate from but contemporaneously with the Part I and III documents. This subsection supersedes any conflicting provisions of 50 Ill. Adm. Code 4521.60.

2) For all rates regardless of any increase, decrease, or continuation~~If a rate increase is subject to review~~, the health insurance issuer must ~~also~~ complete and submit to the Director Part II of the Rate Filing Justification described in subsection (b)(2) that is marked for public access in SERFF. This subsection supersedes any conflicting provisions of 50 Ill. Adm. Code 4521.60.

d) Content of unified rate review template (Part I): The unified rate review template must include the following, as determined appropriate by the Director and in accordance with 45 CFR 154.215(d):

1) Historical and projected claims experience.

2) Trend projections related to utilization, and service or unit cost.

3) Any claims assumptions related to benefit changes.

4) Allocation of the overall rate increase to claims and non-claims costs.

5) Per enrollee per month allocation of current and projected premium.

6) Three year history of rate increases for the product associated with the rate increase.

e) Content of written description justifying the rate increase (Part II): The written description of the rate increase must include a simple and brief narrative in plain writing describing the data and assumptions that were used to develop the rate increase and must include the following as required by 45 CFR 154.215(e) and Section 355(d) of the Code. The entirety of this document will be included in the posting of the rate filing to the Department's public website under Section 355(d):

1) Explanation of the most significant factors causing the rate increase, including a brief description of the relevant claims and non-claims expense increases reported in the rate increase summary; ~~and~~

2) Brief description of the overall experience of the policy, including historical and projected claim and administrative expenses, ~~and~~ loss ratios, number of historical and projected covered lives, and assumed medical trends; and

3) Notification of the public comment period described in Section 355(e) of the Code.

f) Content of rate filing documentation (Part III) as required by 45 CFR 154.215(f): The rate filing documentation must include an actuarial memorandum that contains the reasoning and assumptions supporting the data contained in Part I of the Rate Filing Justification. Parts I and III must be sufficient to conduct an examination satisfying the requirements of 45 CFR 154.301(a)(3) and (4) and to determine whether the rate increase is an unreasonable increase.

g) If the level of detail provided by the issuer for the information under subsections (d) and (f) does not provide sufficient basis for the Director to determine whether the rate increase is an unreasonable rate increase, the Director will request the additional information necessary to make a determination, as allowed by 45 CFR 154.215(g).

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(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 2026.60 Determination of an Unreasonable Rate Increase or Inadequate Rate

a) When~~As required by 45 CFR 154.225(a), when~~ the Director receives a Rate Filing Justification for a rate ~~increase~~ subject to review under Section 2026.30(a)(2) or (b) and the Director reviews the rate ~~increase~~, the Director will make a timely determination whether:

1) for any rate increase subject to review under Section 2026.30(a)(2) or prior approval under Section 2026.30(b), the rate increase is an unreasonable rate increase, and submit that decision to CMMS within 5 business days following the final determination as required by 45 CFR 154.210(b)(2) (May 23, 2011) (no later editions or amendments); and

2) for rates described in Section 2026.30(b), the rate is inadequate.

b) If the Director determines that the rate increase is unreasonable or the rate is inadequate, then:

1) For rate increases described in Section 2026.30(a)(2) that the Director determines to be unreasonable, CMMS will provide the Director's final determination and brief explanation to the health insurance issuer within 5~~five~~ business days following CMMS' receipt of the final determination as described in 45 CFR 154.225(c) (February 27, 2013) (no later editions or amendments).

2) For rates described in Section 2026.30(b), the Director will notify the health insurance issuer of the decision to disapprove or modify the rate as an unreasonable rate increase or inadequate rate within 60 days after the close of the public comment period described in Section 355(e) of the Code. If the Director does not notify the health insurance issuer within 60 days, the rates will automatically be deemed approved.

c) The Director's rate review process includes an examination of the following as required by 45 CFR 154.301(a)(3) for unreasonable rate increases, which the Director also will apply to the review for inadequate rates:

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1) The reasonableness of the assumptions used by the health insurance issuer to develop the proposed rate increase and the validity of the historical data underlying the assumptions;

2) The health insurance issuer's data related to past projections and actual experience;

3) The reasonableness of assumptions used by the health insurance issuer to estimate the rate impact of the reinsurance and risk adjustment programs under sections 1341 and 1343 of the Affordable Care Act (42 U.S.C. 18061 and 18063); and

4) The health insurance issuer's data related to implementation and ongoing utilization of a market-wide single risk pool, essential health benefits, actuarial values and other market reform rules as required by the ACA.

d) As required by 45 CFR 154.301(a)(4) for unreasonable rate increases, the examination must take into consideration the following factors, to the extent applicable to the filing under review, which the Director also will apply to the review for inadequate rates:

1) The impact of medical trend changes by major service categories;

2) The impact of utilization changes by major service categories;

3) The impact of cost-sharing changes by major service categories, including actuarial values;

4) The impact of benefit changes, including essential health benefits and non-essential health benefits;

5) The impact of changes in enrollee risk profile and pricing, including rating limitations for age and tobacco use under 42 U.S.C. 300gg ~~PHS Act section 2701~~;

6) The impact of any overestimate or underestimate of medical trends for prior year periods related to the rate increase;

7) The impact of changes in reserve needs;

8) The impact of changes in administrative costs related to programs that improve health care quality;

9) The impact of changes in other administrative costs;

10) The impact of changes in applicable taxes, licensing or regulatory fees;

11) Medical loss ratio;

12) The health insurance issuer's capital and surplus;

13) The impacts of geographic factors and variations;

14) The impact of changes within a single risk pool to all products or plans within the risk pool; and

15) The impact of reinsurance and risk adjustment payments and charges under sections 1341 and 1343 of the ACA (42 U.S.C. 18061 and 18063).

e) For rates described in Section 2026.30(a)(2) and (b), the Director will take into account information contained in public comments submitted under Section 355(e) of the Code, along with the actuarial justifications submitted by the health insurance issuer, for the purpose of determining whether the rate is an unreasonable rate increase or an inadequate rate as defined in this Part, including the examination described in subsections (c) and (d) of this Section.

(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 2026.70 Public Comment

All rate filings and summaries in the individual or small group markets that will be effective on or after January 1, 2025, other than grandfathered health plans, excepted benefits, student health insurance coverage, or short-term, limited-duration health insurance coverage, will be posted to the Department's website within 5 business days after the rate filing deadline set by the Department in annual guidance as described in Section 355(d) of the Code and will be open to public comment under Section 355(e) of the Code even if the rates are not subject to review for an unreasonable rate increase or inadequate rates. Information not subject to public disclosure when the health insurance issuer meets the criteria in Section 7(1)(g) of the Freedom of

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Information Act [5 ILCS 140], and health insurance issuer information deemed confidential under any other applicable law or regulation, will not be posted to the Department's public website. *The Department* will *post all of the comments received to the Department's website within 5 business days after the comment period ends.* (Section 355(e) of the Code)

(Source: Added at 48 Ill. Reg. _____, effective _____)

Section 2026.80 Prior Approval, Disapproval, or Modification of Rates

When the Director approves, disapproves, or modifies a rate described in Section 2026.30(b), the Director, within 60 days after the close of the public comment period, will *notify the health insurance issuer of the decision, make the decision available to the public by posting it on the Department's website, and include an explanation of the findings, actuarial justifications, and rationale that are the basis for the decision.* Any notice of modification or disapproval will state that the *health insurance issuer whose rate has been modified or disapproved may request a hearing within 10 days after* the Department issues the notice to the health insurance issuer. (Section 355(f) of the Code) Hearings will be conducted in accordance with Part 2402, and costs of the hearing may be assessed against the health insurance issuer under Section 408(5) of the Code and 50 Ill. Adm. Code 2402.270.

(Source: Added at 48 Ill. Reg. _____, effective _____)

Section 2026.90 Material Changes to the Director's Decision After Approving Rates

If, following the issuance of a decision but before the effective date of the premium rates approved by the decision, an event occurs that materially affects the Director's decision to approve, deny, or modify the rates described in Section 2026.30(b), *the Director may consider supplemental facts or data reasonably related to the event.* (Section 355(g) of the Code) The Director will issue a new decision rescinding the prior decision and notifying the health insurance issuer of the disapproval or modification of rates in accordance with Section 2026.80. After approval has been expressly given or automatically deemed by law, the Director will not disapprove or modify rates based solely on analysis or reconsideration of information already submitted to the Director by the health insurance issuer or in public comments before the approval decision was finalized.

(Source: Added at 48 Ill. Reg. _____, effective _____)

Section 2026.100 Review of Rates Not Subject to the Effective Rate Review Program

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The Director's review of any rate or classification of risks described in Section 2026.30(c) is subject to Section 355(i) of the Code in addition to any other law or rule applicable to the type of coverage.

(Source: Added at 48 Ill. Reg. _____, effective _____)

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1) Heading of the Part: Representation Procedures

2) Code Citation: 80 Ill. Adm. Code 1110

3)

Section Numbers:	Adopted Actions:
1110.80	Amendment
1110.105	Amendment
1110.190	New Section

4) Statutory Authority: Implementing and authorized by Sections 5(i) and 9 of the Illinois Educational Labor Relations Act [115 ILCS 5/5(i) and 9].

5) Effective Date of Rule: December 21, 2023

6) Does this rulemaking contain an automatic repeal date: No

7) Does this proposed rulemaking contain incorporations by reference? No

8) A copy of the Adopted Rule, including any material incorporated by reference, is on file in the Agency's principal office and is available for inspection.

9) Notice of Proposal Published in the *Illinois Register*: 47 Ill Reg. 11509; August 4, 2023

10) Has JCAR issued a Statement of Objection to this rulemaking? No

11) Differences between Proposed and Final Version: The adopted rules have some nonsubstantive, grammatical and/or technical changes; and additional clarifications were made, as follows:

Section 1110.105(x), last line, add "Where a labor organization is the bargaining representative of employees in a unit that has historically combined professional and nonprofessional employees, that historical representation shall constitute evidence that a majority of the existing bargaining unit desires a unit combining professional and nonprofessional employees." after "status."

Section 1110.190(d), add "Bargaining unit members may object to the petition. The employer may object to the petition if the collective bargaining agreement has not expired." before "Objections".

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Section 1110.190(e), before "If the petition", add "The Executive Director shall approve the petition if the disclaimer is made in good faith, is clear and leaves no doubt that a matter relating to the employee organization's representation does not exist with respect to the bargaining unit."

Section 1110.190(f), after last sentence add "If no exceptions have been filed within the 14 day period, the parties will be deemed to have waived their exceptions. If a party has filed exceptions, the Board will review the Executive Director's recommendation and will issue and serve upon the parties a written decision giving its reasons for its decision. The Board's decision will be a final order."

12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

13) Will this rulemaking replace any emergency rule currently in effect: No

14) Are there any other rulemakings pending on this Part: No

15) Summary and Purpose of Rulemaking: This rulemaking will effectuate an amendment to the Illinois Educational Labor Relations Act that allows for the use of electronic authorization cards and signatures to demonstrate a showing of interest, clarify the Illinois Educational Labor Relations Board's procedure regarding representation petitions involving combined bargaining units and create a procedure for unions to relinquish their status as exclusive bargaining representatives.

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

Ellen Maureen Strizak
General Counsel
Illinois Educational Labor Relations Board
160 N. LaSalle Street, Suite N-400
Chicago, Illinois 60601-3103

(312) 793-3170
Email: ellen.strizak@illinois.gov

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

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TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES
SUBTITLE C: LABOR RELATIONS
CHAPTER III: ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

PART 1110
REPRESENTATION PROCEDURES

Section

AUTHORITY: Implementing and authorized by Sections 5(i) and 9 of the Illinois Educational Labor Relations Act [115 ILCS 5/5(i) and 9].

SOURCE: Emergency rules adopted at 8 Ill. Reg. 4526, effective March 26, 1984, for a maximum of 150 days; adopted at 8 Ill. Reg. 16300, effective August 27, 1984; amended at 14 Ill. Reg. 1297, effective January 5, 1990; emergency amendment at 28 Ill. Reg. 975, effective January 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 7938, effective May 28,

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2004; amended at 35 Ill. Reg. 14447, effective August 12, 2011; amended at 38 Ill. Reg. 8375, effective April 1, 2014; amended at 41 Ill. Reg. 10587, effective August 1, 2017; amended at 47 Ill. Reg. 19307, effective December 21, 2023.

Section 1110.80 Showing of Interest

a) Representation petitions filed by employees, groups of employees and employee organizations that seek an election and all decertification petitions must be accompanied by a 30 percent showing of interest. Majority interest petitions must be accompanied by a showing of majority interest.

1) The showing of interest in support of a representation petition seeking an election shall consist of authorization cards, petitions, or other evidence which demonstrates that at least 30 percent of the employees in the proposed bargaining unit desire to be represented for collective bargaining by the petitioned for or petitioning employee organization.

2) The showing of interest in support of a decertification petition shall consist only of cards or petitions clearly stating that the employee does not want the incumbent employee organization to continue serving as exclusive representative.

3) The showing of interest in support of a majority interest petition shall consist of current dues deduction authorizations, authorization cards, petitions, or other evidence that demonstrates that more than 50 percent of the employees wish to be represented for collective bargaining by the petitioned for or petitioning employee organization. An authorization card including the information in Appendix A ~~of this Part~~ shall be considered sufficient to support a showing of majority interest.

4) The showing of interest in support of a petition may be evidenced by the electronic signature of the employee, as set forth in subsections (i) through (m).

b) A petition to intervene in an election or majority interest proceeding must be supported by a 15 percent showing of interest when the petition proposes a bargaining unit substantially similar to the originally proposed unit. In the case of a majority interest petition, the requirements of Section 1110.105(q) ~~of this Part~~ also apply. When the intervenor proposes a bargaining unit substantially different

from the originally proposed unit, the petition must be supported by a 30 percent showing of interest in the case of a petition seeking an election and a showing of majority interest in the case of a majority interest petition. In determining whether the proposed bargaining units are substantially similar, the Board will consider the number and type of employees in each of the proposed units. The proposed units will not be considered substantially similar whenever less than 50 percent of the employees in the originally proposed unit are included in the unit proposed by the intervenor. An incumbent exclusive representative shall automatically be allowed to intervene without submitting any showing of interest.

c) If authorization cards or petitions are submitted as a showing of interest, each signature appearing thereon should be dated by the employee.

d) Each signature appearing on an authorization card or petition shall be effective for twelve~~six~~ months from the date it was given.

e) In the case of a petition seeking an election, whenever an employee has signed authorization cards or petitions for two or more employee organizations, each card or petition shall be counted in computing the required showing of interest. In the case of a majority interest petition, whenever an employee has signed authorization cards or petitions for two or more employee organizations, neither card or signature on a petition shall be counted in computing the required showing of interest.

f) The Board shall maintain the confidentiality of the showing of interest. The evidence submitted in support of the showing of interest shall not be furnished to any of the parties.

g) The Executive Director will determine whether the evidence submitted demonstrates the appropriate level of showing of interest pursuant to subsections (a) and (b). Except as provided in Section 1110.105~~ of this Part~~, the showing of interest shall not be subject to collateral attack and shall not be an issue at hearing. However, any person who has evidence that the showing of interest was fraudulent or was obtained through misrepresentation or coercion may bring the evidence to the attention of the Board's agent investigating the petition.

h) If the Executive Director determines that the evidence submitted does not demonstrate the appropriate level of showing of interest, the petitioner or intervenor shall have 48 hours to provide the necessary showing of interest to the

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Executive Director, except as provided by Section 1110.105(p) ~~of this Part~~. If the petitioner or intervenor is unable to present any necessary additional evidence of showing of interest within that time, then the petition shall be subject to dismissal.

i) Authorization cards or other documents evidencing majority support may be signed with an electronic signature.

j) *"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.* [815 ILCS 333/2(8)].

k) Submissions supported by electronic signature must contain the following:

1) the signer's name;

2) the signer's email address or other known contact information;

3) the signer's telephone number;

4) the language to which the signer has agreed;

5) the date the electronic signature was submitted; and,

6) the name of the employer of the employee.

l) Submissions supported by electronic signature will be verified by the Board or its agent.

m) Submissions supported by electronic signature may not contain dates of birth, social security numbers, or other sensitive personal identifiers. The Board will not accept such submissions until the petitioner redacts them.

(Source: Amended at 47 Ill. Reg. 19307, effective December 21, 2023)

Section 1110.105 Processing of Majority Interest Petitions

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a) Majority interest procedures may not be used when another employee organization has lawfully attained representation rights as the exclusive representative of the employees in the bargaining unit.

b) The employer shall provide to the Board and the employee organization a list of employees, as of the date of the petition, within 21 days after receipt of the petition, unless more time, not to exceed 21 days, is granted by the Board due to the size of the unit.

c) The employer shall provide to the Board and to the employee organization examples of the employees' signatures within 21 days after receipt of the petition, unless more time, not to exceed 21 days, is granted by the Board due to the size of the unit. If the employer does not provide the list of employees or the signature examples within the allotted time, the Board shall administratively determine the adequacy of the showing of interest, based upon the evidence submitted by the employee organization. A grant of more time to provide a list of employees or signature examples shall, if necessary, extend the time limitation for certifying an employee organization as exclusive representative.

d) Within 21 days after receipt of the petition, parties served with the petition may file a written response to the petition. The response shall set forth the party's position with respect to the appropriateness of the unit, any proposed exclusions from the unit, any allegations of fraud or coercion in obtaining the showing of interest, and any other issues raised by the petition. A party that fails to file a timely response without good cause shall be deemed to have waived its right to a hearing. Good cause will include when there is no prejudice to another party or the other parties have consented to a hearing without the filing of a timely response.

e) Upon receipt of the petition, the Board or its agent shall investigate the petition. The Board shall certify the employee organization as the exclusive representative if:

1) the Board concludes that the employee organization represents a majority of the employees in the bargaining unit;

2) there are no issues of fraud or coercion in obtaining the showing of interest;

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3) the petition is otherwise consistent with the Act and with this Part; and

4) either there are no unit appropriateness or exclusion issues or the number of contested positions or employees is not sufficient to affect the determination of majority status.

f) Where fraud or coercion in obtaining the showing of interest is alleged, the party or employee alleging fraud or coercion must provide its evidence of fraud or coercion to the Board and to the other parties, including a synopsis of any affidavits submitted to the Board, within 21 days after receipt of the petition or the posting of notice, unless additional time is granted by the Executive Director for good cause shown, such as a joint request, an emergency or whenever the Executive Director believes that it would further the purposes of the Act. The petitioner may file a response no later than seven days following the receipt of that evidence, unless additional time is granted by the Executive Director for good cause shown. The Executive Director shall issue a~~his or her~~ decision within 21 days following the receipt of the petitioner's response.

g) The employee who alleges fraud or coercion or the parties may file exceptions to the Executive Director's decision and briefs supporting those exceptions no later than seven days after receipt of that decision, and a response to those exceptions may be filed no later than seven days after receipt of the exceptions and briefs. If no exceptions are filed within the seven-day period, the parties and any employee who alleges fraud or coercion will be deemed to have waived their exceptions. The filing of exceptions shall not stay the certification if the alleged fraud or coercion is not sufficient to affect the majority status of the petition.

h) If the Executive Director determines that there is clear and convincing evidence of fraud or coercion sufficient to affect the majority status of the petition and no exceptions are filed to that determination, or if the Board makes such a determination, an election will be conducted according to the procedures set forth in this Part. The election shall be conducted within 45 days after the Executive Director's or the Board's determination, unless proceedings concerning the appropriateness of the unit, exclusions from the unit sufficient to affect majority status, or the timeliness of the petition are pending.

i) If the Executive Director determines that there is not clear and convincing evidence of fraud or coercion sufficient to affect the majority status of the petition and no exceptions are filed to that determination, or if the Board makes such a

determination, the Board shall certify the employee organization as the exclusive representative immediately after the Board's determination or within 10 days after service of an unappealed Executive Director's decision if:

1) the Board concludes that the employee organization represents a majority of the employees in the bargaining unit;

2) the petition is otherwise consistent with the Act and with this Part; and

3) there are no unit appropriateness or exclusion issues, those issues have been resolved, or the number of contested positions or employees is not sufficient to affect the determination of majority status.

j) If there are unit appropriateness or exclusion issues, but the number of contested positions or employees is not sufficient to affect the determination of majority status, a party may invoke the Board's unit clarification procedures with respect to the contested positions or employees. Invocation of the Board's unit clarification procedures shall not stay the issuance of a certification.

k) If there are unit appropriateness or exclusion issues, and the number of contested positions or employees is sufficient to affect the determination of majority status, a hearing shall be conducted to resolve these issues. However, no hearing shall be conducted if no issues of material fact are raised, and the employee organization shall be certified as the exclusive representative if otherwise proper. A hearing shall also be conducted when there are issues of material fact concerning the timeliness of the petition under Section 1110.70. The Board shall proceed in accordance with 80 Ill. Adm. Code 1105.10 through 1105.70, except that:

1) The hearing officer's recommended decision shall be issued not later than 21 days after the conclusion of the presentation of evidence, the receipt of the transcript, and the receipt of any post-hearing briefs, unless additional time (not to exceed 21 days) is required due to the length of the record or the complexity of the issues involved. Any findings of fact in this decision must be based exclusively upon the evidence in the record and on matters of which official notice has been taken.

2) Exceptions and Responses

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A) The parties may file exceptions to the recommended decision and briefs in support of those exceptions no later than seven days after receipt of the decision. Any party to the proceeding may file a response to any exceptions and supporting briefs within seven days from receipt of a party's exceptions and supporting brief. Exceptions and briefs shall be simultaneously filed with the General Counsel, 160 N. LaSalle Street, Suite N-400, Chicago, Illinois 60601 or elrb.mail@illinois.gov, and served on the parties, and a certificate of service shall be attached.

B) A party may also file cross-exceptions and a supporting brief within seven days from receipt of another party's exceptions and supporting brief. Any other party may file a response to the cross-exceptions and supporting brief within seven days from receipt of the cross-exceptions and supporting brief. Cross-exceptions and briefs shall be simultaneously filed with the General Counsel and served on the parties, and a certificate of service shall be attached.

C) If no exceptions have been filed within seven days after service of the hearing officer's recommended decision, the parties will be deemed to have waived their exceptions. If no cross-exceptions have been filed within seven days after receipt of another party's exceptions and supporting brief, the parties will be deemed to have waived their cross-exceptions.

3) The Board will review the hearing officer's recommendation upon request by a party or on its own motion. The Board will issue and serve upon all parties a written decision giving the reasons for its decision.

l) Interested persons who wish to participate in the hearing shall direct those requests to the hearing officer. The request shall be in writing and shall state the grounds for participation. In determining whether to grant the request, the hearing officer shall base the~~his or her~~ decision on the timeliness of the request, the degree to which the person requesting participation has a real interest at stake, the ability of the parties to represent the interests of the person requesting participation and the complexity of the proceeding.

m) The hearing officer shall obtain a full and complete record by inquiring into all matters in dispute. The record shall be obtained either by evidentiary hearing or

stipulation. Immediately prior to the close of the record, one or more parties may file motions to remove the case to the Board for decision. Responses to these motions may be filed as directed by the hearing officer. Within seven days after the close of the record, the hearing officer shall rule on the motions. The hearing officer may also order the case removed to the Board on the hearing officer's~~his or her~~ own motion within seven days after the close of the record. If the hearing officer orders a case removed, the hearing officer~~he or she~~ shall certify that there are no determinative issues of fact that require a hearing officer's recommended decision.

n) Within seven days after removal, a party may move the Board to remand the case to the hearing officer, identifying in detail the material factual issues in dispute. If the Board fails to rule on the motion within 14 days, the motion will be deemed denied; the General Counsel will set a briefing schedule for briefs to be submitted to the Board. In cases removed to the Board, the Board shall remand the case if, at any time, it determines that the case presents issues of material fact requiring a hearing officer's recommended decision. Unless the Board remands the case, it shall issue and serve upon all parties a written decision giving the Board's reasons for its decision.

o) The Board shall certify the employee organization as exclusive representative immediately upon issuance of the Board's opinion and order, or upon expiration of the time for filing exceptions to the hearing officer's recommended decision, if:

1) the bargaining unit found to be appropriate by the Board is sufficiently similar to the petitioned for bargaining unit that the showing of majority interest remains sufficient;

2) the employee organization agrees to represent the bargaining unit found to be appropriate;

3) the Board concludes that the employee organization represents a majority of the employees in the bargaining unit;

4) there is not clear and convincing evidence of fraud or coercion in obtaining the showing of interest; and

5) the petition is otherwise consistent with the Act and this Part.

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p) If the bargaining unit approved by the Board is not sufficiently similar to the petitioned for bargaining unit that the showing of majority interest remains sufficient, the petitioner may submit a supplemental showing of interest within seven days after receipt of the Board's ruling, may participate in an election according to subsection (r), or may withdraw the petition.

q) Petitions to intervene may be filed no later than 14 days after the notice is posted. Intervention shall only be allowed when, as a result of the evidence submitted by the intervenor in support of its showing of interest, the original petitioner no longer has a valid showing of majority interest.

r) If the valid evidence presented by the employee organization to support its claim of majority status does not constitute a majority showing of interest, but demonstrates that at least 30 percent of the employees in the unit found appropriate desire to be represented for collective bargaining by the employee organization, the Board shall conduct an election in the unit found appropriate if the petition is otherwise consistent with the Act and this Part.

s) Upon the filing of a petition or at any time thereafter that the case is pending, *a party may allege that the dues deduction authorizations and other evidence submitted in support of a designation of representative without an election were subsequently changed, altered, withdrawn, or withheld as a result of employer fraud, coercion, or any other unfair labor practice by the employer* (Section 7(c-5) of the Act). The party must submit its evidence in support of the allegation at the time that it makes the allegation, unless additional time is granted by the Executive Director for good cause shown. Any other party may submit its response to the allegation no later than seven days from receipt of the submission of the party making the allegation, unless additional time is granted by the Executive Director for good cause shown. The Board or its agent shall investigate the allegation. If the Executive Director finds that there is an issue of law or fact that such conduct occurred, the matter shall be set for hearing. The hearing shall be conducted according to the Board's procedures for contested case hearings (80 Ill. Adm. Code 1105.90 through 1105.210), except that:

1) The hearing officer's~~Administrative Law Judge's~~ recommended decision shall be issued no later than 21 days after the conclusion of the presentation of evidence, the receipt of the transcript, and the receipt of any post-hearing briefs, unless additional time (not to exceed 21 days) is

required due to the length of the record or the complexity of the issues involved.

2) Exceptions and Responses

A) The parties may file exceptions to the recommended decision and briefs in support of those exceptions no later than seven days after receipt of the decision. Any other party may file a response to the exceptions and briefs no later than seven days after receipt of those exceptions and briefs. Exceptions and briefs shall be simultaneously filed with the General Counsel and served on the parties, and a certificate of service shall be attached.

B) A party may also file cross-exceptions and a supporting brief within seven days from receipt of another party's exceptions and supporting brief. Any other party may file a response to the cross-exceptions and supporting brief no later than seven days from receipt of the cross-exceptions and supporting brief. Cross-exceptions and briefs shall be simultaneously filed with the General Counsel and served on the parties, and a certificate of service shall be attached.

t) If the hearing officer~~Administrative Law Judge~~, or the Board on *review, determines that a labor organization would have had a majority interest but for an employer's fraud, coercion, or unfair labor practice, it shall designate the labor organization as an exclusive representative without conducting an election* (Section 7(c-5) of the Act).

u) In order for an employee's dues deduction authorization, authorization card, signature on a petition or other evidence to be counted in determining whether an employee organization has demonstrated a majority interest, the employee must be in the bargaining unit on the date the petition was filed.

v) In cases in which the proposed unit includes professional and nonprofessional employees, authorization cards or other documents evidencing majority support must indicate that the employee desires to be represented by the employee organization in a combined professional-nonprofessional unit. ~~the Board will determine majority status separately for each group. If the employee organization has demonstrated majority status for each group, the Board will conduct a vote to~~

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~~determine whether a majority of each group desires a combined unit. If the majority does not vote for a combined unit, the Board will issue separate certifications for the resulting units. If the employee organization has not demonstrated majority status in each group but has demonstrated majority status in a combined unit, the Board will conduct a vote to determine whether a majority of each group desire a combined unit. If the majority in one of the groups does not vote for a combined unit, but the other group does, the Board will issue a separate certification for the group with majority status.~~

w) In cases in which the proposed unit includes craft and non-craft employees, authorization cards or other documents evidencing majority support must indicate that the employee desires to be represented by the employee organization in a combined craft and non-craft unit.~~the Board will determine majority status separately for each group. If the employee organization has demonstrated majority status for each group, the Board will conduct a vote to determine whether a majority of the craft employees desire a combined unit. If the majority of the craft employees does not vote for a combined unit, the Board will issue separate certifications for the resulting units. If the employee organization has not demonstrated majority status in each group but has demonstrated majority status in a combined unit, the Board will conduct a vote to determine whether a majority of the craft employees desire a combined unit. If the majority of craft employees do not vote for a combined unit, the Board will issue a separate certification for the group with majority status.~~

x) If a majority interest self-determination petition seeks to accrete employees into an existing unit, the employee organization must demonstrate majority status only among the petitioned-for employees (the employees sought to be added to the existing unit). The petitioner may also present evidence that a majority of employees in each group of the proposed combined bargaining unit desires representation in a single unit, otherwise ~~Assuming that majority status has been demonstrated,~~ the Board will conduct an independent poll of the proposed combined bargaining unit~~a vote~~ to determine whether a majority of the petitioned-for employees and a majority of the existing bargaining unit desire a unit combining professional and nonprofessional employees if the existing unit contains only professional employees and the petitioned-for employees include, in whole or part, nonprofessional employees, or if the existing unit contains only nonprofessional employees and the petitioned-for employees include, in whole or part, professional employees. If a majority of both groups do not vote for a unit combining professional and nonprofessional employees, the Board will issue a

separate certification for a stand-alone unit or units of the petitioned-for employees, ensuring that no certification is issued for a unit when the employee organization has not demonstrated majority status. Where a labor organization is the bargaining representative of employees in a unit that has historically combined professional employees, that historical representation shall constitute evidence that a majority of the existing bargaining unit desires a unit combining professional and nonprofessional employees.

y) When an independent poll~~a vote~~ on whether there should be a combined unit is conducted pursuant to subsection ~~(v), (w) or~~ (x), the Board shall not be required to certify the employee organization as the exclusive representative within 30 days after service of the petition.

z) When a hearing is necessary, the Board shall conclude the hearing process and issue a certification of the entire appropriate unit, if the employee organization has demonstrated majority status in that unit, no later than 120 days after the petition was filed. However, this 120-day period may be extended one or more times by agreement of all the parties to a date certain. In other cases, the Board shall ascertain the employees' choice within 120 days after the petition was filed. However, the Board may extend this 120-day period by 60 days on its own motion or on the motion of a party to the proceeding.

(Source: Amended at 47 Ill. Reg. 19307, effective December 21, 2023)

Section 1110.190 Disclaimer of Interest Petitions

a) An employee organization that has been certified by the Board or recognized pursuant to Section 2 of the Act as the exclusive representative of a bargaining unit but wishes to terminate this representation may file a disclaimer of interest petition with the Board.

b) The petition shall contain the following information:

1) the name, address and telephone number of the petitioning employee organization;

2) the name, address and telephone number of the employer;

3) a brief description of the bargaining unit;

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4) the approximate number of employees in the bargaining unit;

5) the date that the employee organization was recognized as the exclusive representative and the method of recognition, if known;

6) a brief description of any collective bargaining agreement covering employees in the bargaining unit, together with its expiration date; and

7) a statement that the employee organization waives and disclaims the authority and duty to represent the employees in the bargaining unit.

c) The Board shall provide the employer with a notice of the disclaimer of interest petition that shall be posted, by the day after the employer receives the notice, on bulletin boards or other places where notices for employees in the bargaining unit are customarily posted, or in conspicuous places in the absence of a customary posting location. If the posting would occur during a seasonal break or other period when a substantial number of employees are not working, notice shall be provided to bargaining unit members through alternative means agreed to by the parties and the Executive Director or Board agent. This notice shall be posted and maintained for 21 calendar days.

d) Bargaining unit members may object to the petition. The employer may object to the petition if the collective bargaining agreement has not expired. Objections to the petition must be filed with the Board and served on the employee organization and the employer within 21 days of the posting or other delivery of the notice, as determined by the certification of the posting.

e) The Executive Director shall approve the petition if the disclaimer is made in good faith, is clear and leaves no doubt that a matter relating to the employee organization's representation does not exist with respect to the bargaining unit. If the petition is approved by the Executive Director, the Board shall revoke the certification, and the authority and duty of the employee organization to represent the bargaining unit shall cease, and any collective bargaining agreement then in effect shall become void as of the expiration of the notice posting period. Any bars to the certification under Section 1110.70 shall no longer be in effect.

f) If the Executive Director dismisses the petition, the petitioning employee organization may file exceptions to the Executive Director's recommendation to

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dismiss and briefs in support of those exceptions no later than 14 days after receipt of the recommendation to dismiss with the General Counsel, 160 N. LaSalle Street, Suite N-400 Chicago, Illinois 60601 or elrb.mail@illinois.gov. Copies of all exceptions and briefs shall be served on all other parties and a certificate of service shall be attached. Any party to the proceeding may file a response to any exceptions and brief within 14 days from receipt of a party's exceptions and supporting brief. The response shall be filed with the General Counsel served on all parties, and a certificate of service shall be attached. If no exceptions have been filed within the 14 day period, the parties will be deemed to have waived their exceptions. If a party has filed exceptions, the Board will review the Executive Director's recommendation and will issue and serve upon the parties a written decision giving its reasons for its decision. The Board's decision will be a final order.

(Source: Added at 47 Ill. Reg. 19307, effective December 21, 2023)

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1) Heading of the Part: Unfair Labor Practice Procedures

2) Code Citation: 80 Ill. Adm. Code 1120

3)

Section Number:	Adopted Action:
1120.90	New Section

4) Statutory Authority: Implementing and authorized by Sections 5(i) and 9 of the Illinois Educational Labor Relations Act [115 ILCS 5/5(i) and 9].

5) Effective Date of Rule: December 21, 2023

6) Does this rulemaking contain an automatic repeal date: No

7) Does this proposed rulemaking contain incorporations by reference? No

8) A copy of the Adopted Rule, including any material incorporated by reference, is on file in the Agency's principal office and is available for inspection.

9) Notice of Proposal Published in the *Illinois Register*: 47 Ill Reg. 11525; August 4, 2023

10) Has JCAR issued a Statement of Objection to this rulemaking? No

11) Differences between Proposed and Final Version: The adopted rules have some nonsubstantive, grammatical and/or technical changes; and additional clarifications were made, as follows:

Section title, add "Processing of Employee Dues in" before "Unfair".

Section 1120.90(b), third to last line, change "shall" to "may".

Section 1120.90(c), first line, change "must" to "may". Strike "and", add ". If the escrow account is maintained, the employee organization" after "objected". Strike "so".

Section 1120.90(d), before "The employer", add "If the employee organization maintains an escrow account in accordance with subsection (c),". Before "employer", change "The" to "the".

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Section 1120.90, add "f) For the purpose of this Section, employee organization includes local exclusive representatives and/or their state, national, international, and parent organizations and/or affiliates."

12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

13) Will this rulemaking replace any emergency rule currently in effect: No

14) Are there any other rulemakings pending on this Part: No

15) Summary and Purpose of Rulemaking: This rulemaking effectuates an amendment to the Illinois Educational Labor Relations Act regarding unlawfully collected union dues.

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

Ellen Maureen Strizak
General Counsel
Illinois Educational Labor Relations Board
160 N. LaSalle Street, Suite N-400
Chicago, Illinois 60601-3103

(312) 793-3170
Email: ellen.strizak@illinois.gov

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

ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

NOTICE OF ADOPTED AMENDMENT

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES
SUBTITLE C: LABOR RELATIONS
CHAPTER III: ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

PART 1120
UNFAIR LABOR PRACTICE PROCEEDINGS

Section

AUTHORITY: Authorized by Section 5(i) of the Illinois Educational Labor Relations Act [115 ILCS 5/5(i)].

SOURCE: Emergency rules adopted at 8 Ill. Reg. 7656, effective May 21, 1984, for a maximum of 150 days; adopted at 8 Ill. Reg. 19413, effective September 28, 1984; amended at 14 Ill. Reg. 1322, effective January 5, 1990; emergency amendments at 16 Ill. Reg. 6052, effective March 30, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 13500, effective August 25, 1992; amended at 28 Ill. Reg. 7973, effective May 28, 2004; amended at 35 Ill. Reg. 14474, effective August 12, 2011; amended at 41 Ill. Reg. 10614, effective August 1, 2017; amended at 47 Ill. Reg. 19324, effective December 21, 2023.

Section 1120.90 Processing of Employee Dues in Unfair Labor Practice Charges Involving Unlawfully Collected Dues

a) Unfair labor practice charges that an employee organization has unlawfully collected dues from an educational employee in violation of the Act shall be filed and processed in accordance with this Section.

b) *In cases in which an educational employee alleges that an employee organization has unlawfully collected dues, the educational employer shall continue to deduct*

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the employee's dues from the employee's pay, but shall transmit the dues to the Board for deposit in an escrow account maintained by the Board (Section 11.1(g) of the Act), notwithstanding that the employee organization may maintain an escrow account in accordance with subsections (c)-(e) and the employee organization has notified the employer of that account.

c) An employee organization may maintain an escrow account for the purpose of holding dues deductions to which employees have objected. If the escrow account is maintained, the employee organization must notify the employer of that account.

d) If the employee organization maintains an escrow account in accordance with subsection (c), the employer shall transmit the entire amount of dues to the employee organization, and the employee organization shall hold them in escrow.

e) An escrow account maintained by an employee organization shall meet the following standards:

1) The account shall be maintained in a federally insured financial institution.

2) The account shall earn interest of at least the rate provided by commercial banks for regular passbook savings accounts.

3) If the account combines the dues of more than one objector, separate records shall be kept of each objector's dues, prorating the interest earned on the account.

4) The escrow account may contain the fees of objecting employees in different bargaining units.

5) Any charges resulting from a financial institution for the cost of maintaining an escrow account shall be borne by the employee organization.

f) For the purpose of this Section, "employee organization" includes local exclusive representatives and their State, national, international, and parent organizations and affiliates.

(Source: Added at 47 Ill. Reg. 19324, effective December 21, 2023)

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1) Heading of the Part: Provider Requirements, Type Services, and Rates of Payment

2) Code Citation: 89 Ill. Adm. Code 686

3)

Section Numbers:	Adopted Actions:
686.900	Amendment
686.910	Amendment
686.920	Amendment
686.930	Amendment
686.940	Amendment

4) Statutory Authority: Implementing Section 3 of the Disabled Persons Rehabilitation Act [20 ILCS 2405/3].

5) Effective Date of Rule: December 13, 2023

6) Does this rulemaking contain an automatic repeal date? No

7) Does this rulemaking contain incorporations by reference? No

8) A copy of the Adopted Rule, including any material incorporated, is on file in the Agency's principal office and is available for public inspection.

9) Notice of proposal published in the *Illinois Register*: 47 Ill. Reg. 7038; May 26, 2023

10) Has JCAR issued a Statement of Objection to this rulemaking? No

11) Differences between Proposal and final version:

In Section 686.910(a)(1), "(hereafter referred to as provider)" was struck.

In Section 686.910(a)(2)(A), "Case managers are those who have achieved a competency score of 98% or greater for the on-site case reviews done by the HSP Ashburn Unit under Section 686.930(d)." was added before the first sentence.

In Section 686.910(a)(2)(A), "their" was replaced by "the Customer's".

In Section 686.910(b)(8), "make" was replaced with "making" and "during the COVID-19 Gubernatorial Disaster Proclamations or during the federal COVID-19 Public Health

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Emergency and any rollback period of the same, and subject to federal approval, telephonic contact shall satisfy the requirement of this subsection (b)(8);" was struck.

In Section 686.910(c)(4), "contracting" was deleted.

In Section 686.910(d) and (e)(1), "them" was replaced with "the Customer".

In Section 686.920(a), replace "provider" with "case management agency".

In Section 686.920(a)(2), "Registered Nurse" was replaced with "registered nurse" and "or" was added after the semicolon.

In Section 686.920(a)(3), "certification" was replaced with "at least one year of experience" and "; or" was replaced with a period.

Section 686.920(a)(4) was deleted.

In Section 686.920(b)(1), "Registered Nurse" was replaced with "registered nurse".

In Section 686.920(b)(3), "A" was deleted; "An individual with a bachelor's degree in a" was reinstated; and "professional with a bachelor's degree in a human services" was deleted.

In Section 686.920(b)(3), in the last line, "and" was added before "with".

In Section 686.920(d), "Organizations" was replaced by "Organization".

In Section 686.920(e)(1), "provider" was replaced by "case management agency".

In Section 686.920(e)(2), "HIV/" was inserted before "AIDS".

In Section 686.930(a), "provider" was replaced by "case management agency".

In Section 686.930(a)(4), "the HSP Ashburn Unit" was removed.

In Section 686.930(b)(1), "during the COVID-19 Gubernatorial Disaster Proclamations or 453 during the federal COVID-19 Public Health Emergency and any rollback 454 period of the same, and subject to federal approval, a telephonic contact 455 shall satisfy the requirements of this subsection (b)(1);" was removed.

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In Section 686.930(d)(1), "at least" was added before "six".

In Section 686.930(e)(1)(B), the period was replaced with "; or".

In Section 686.930(e)(2), "provider" was replaced by "case management agency" in all instances; "return" replaced "be returned"; and "they" was replaced with "the case manager".

In Section 686.930(f), "provider" was replaced by "case management agency" in all instances.

In the opening paragraph of Section 686.940, "HIV/" was added before AIDS.

In Section 686.940(b), "HIV/" was added before "AIDS".

In Section 686.940(c)(2), "HIV/" was added before "AIDS" in the first two instances but not in the name of the cited Act.

In Section 686.940(c)(2), "any requirement within" was added after "persons with HIV/AIDS and" and "Compiled" was added after "Illinois".

In Section 686.940(d)(1), "(Section 11.1-11.5 of the Illinois Procurement Code" was struck and the closing ")" was also struck at the end of the sentence.

In Section 686.940(d)(2), "Federal" was replaced with "federal".

In Section 686.940(d)(2), after "on the basis of", the text was changed to ", including but not limited to, race, color, sex (including sexual harassment), religion, national origin, ancestry, age (40 and over), order of protection status; marital status, sexual orientation (including gender-related identity), physical or mental disability, or unfavorable discharge from military service, pregnancy, citizenship status, employment discrimination based on arrest record, and discrimination in real estate transactions based on familial status or arrest record."

Section 686.940(e) was struck.

12) Have all changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

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13) Will this rulemaking replace an emergency rule currently in effect? No

14) Are there any rulemakings pending on this Part? No

15) Summary and purpose of rulemaking: 89 Ill. Adm. Code 686 establishes provider requirements, types of services, and rates of payment for the Home Services Program (HSP). This rulemaking is proposed to implement language regarding the Department of Human Services/Division of Rehabilitation Services' AIDS Waiver (Ashburn) Unit. The proposed amendments are needed due to changing caseload sizes, Illinois Department of Healthcare and Family Services' requirements, as well as other case management procedures. This rulemaking reflects the changing environment of service provision to individuals with HIV/AIDS. Expanding caseload sizes are necessary to accommodate the implementation of Managed Care's provision of waiver oversight to these Customers. Additionally, the minimum educational and experience criteria have been adjusted to provide parity with similarity credentialed professionals who perform the same work for other waiver programs.

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

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

(217) 785-9772
DHS.AdministrativeRules@illinois.gov

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

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TITLE 89: SOCIAL SERVICES
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES
SUBCHAPTER d: HOME SERVICES PROGRAM

PART 686
PROVIDER REQUIREMENTS, TYPE SERVICES, AND RATES OF PAYMENT

SUBPART A: PERSONAL ASSISTANTS

Section
686.10 Personal Assistant (PA) Requirements
686.20 Services That May Be Provided by a PA
686.25 Criminal Background Check
686.30 Annual Review of PA Performance
686.40 Payment for PA Services

SUBPART B: ADULT DAY CARE PROVIDERS

Section
686.100 Adult Day Care (ADC) Provider Requirements
686.110 Services That Must Be Provided by ADC Providers
686.120 Compliance Review of ADC Providers
686.130 Appeal of Compliance Review for ADC Providers
686.140 Payment for ADC Services

SUBPART C: HOMEMAKER SERVICES

Section
686.200 Homemaker Service Provider Requirements
686.210 Services That Must Be Provided by Homemaker Service Providers
686.220 Compliance Review of Homemaker Service Providers
686.230 Appeal Rights of Homemaker Service Providers
686.235 Enhanced Rate for Health Insurance Costs
686.240 Payment Information for Homemaker Service Providers
686.250 Financial Reporting of Homemaker Service Providers
686.260 Unallowable Expenses for Homemaker Service Providers
686.270 Minimum Homemaker Costs for Homemaker Service Providers
686.280 Cost Categories for Homemaker Services

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SUBPART D: ELECTRONIC HOME RESPONSE SERVICES

Section
686.300 Electronic Home Response Services (EHRS) Provider Requirements
686.310 Services Which Must Be Provided by EHRS Providers
686.320 Minimum Specifications for EHRS Equipment
686.330 Compliance Review of EHRS Providers
686.340 Appeal of Compliance Review for EHRS Providers
686.350 Rate of Payment for EHRS Services

SUBPART E: MAINTENANCE HOME HEALTH SERVICE

Section
686.400 Maintenance Home Health Provider Requirements
686.410 Rate of Payment for Maintenance Home Health Services

SUBPART F: HOME DELIVERED MEALS

Section
686.500 Home Delivered Meals Provider Requirements
686.510 Rate of Payment for Home Delivered Meals

SUBPART G: ENVIRONMENTAL MODIFICATION

Section
686.600 Description
686.605 Criteria for the Provision of Environmental Modifications
686.608 Environmental Modification Provider Requirements
686.610 Cost of Environmental Modification (Repealed)
686.615 Environmental Modification Bidding Procedures and Requirements
686.620 Permanency of Environmental Modification
686.630 Reason for Denial of Environmental Modification
686.640 Verification of Environmental Modification

SUBPART H: ASSISTIVE EQUIPMENT

Section
686.700 Description
686.705 Criteria for the Purchase, Rental, or Repair of Assistive Equipment

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SUBPART I: RESPITE CARE

SUBPART J: CASE MANAGEMENT SERVICES TO PERSONS WITH AIDS

SUBPART K: CASE MANAGEMENT SERVICES
TO PERSONS WITH BRAIN INJURIES

SUBPART L: BEHAVIORAL SERVICES
FOR PERSONS WITH BRAIN INJURIES

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SUBPART M: DAY HABILITATION SERVICES
FOR PERSONS WITH BRAIN INJURIES

Section
686.1200 Day Habilitation Services Provider Requirements
686.1210 Rate of Payment for Day Habilitation Services
686.1220 Certification of Day Habilitation Agency Providers
686.1230 Provider Standards
686.1240 Program and Service Requirements
686.1250 Program Outcomes and Reporting
686.1260 Provider Billing and Record Retention
686.1270 Compliance Review of Day Habilitation Providers

SUBPART N: PREVOCATIONAL SERVICES
FOR PERSONS WITH BRAIN INJURIES

Section
686.1300 Prevocational Services Provider Requirements
686.1310 Rate of Payment for Prevocational Services

SUBPART O: SUPPORTED EMPLOYMENT SERVICES
FOR PERSONS WITH BRAIN INJURIES

Section
686.1400 Supported Employment Service Provider Requirements
686.1410 Rate of Pay for Supported Employment Services

SUBPART P: INDIVIDUAL PROVIDER OVERTIME AND TRAVEL TIME

Section
686.1500 Definitions
686.1510 General Overview
686.1520 Hiring Individual Providers and Backup Individual Providers
686.1530 Overtime Exceptions
686.1540 Customer and Individual Provider Responsibilities
686.1550 Individual Providers Working for Multiple Customers (Repealed)
686.1560 Travel Time
686.1570 Unauthorized Overtime and Sanctions

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SUBPART Q: ELECTRONIC VISIT VERIFICATION

Section
686.1600 Definitions
686.1610 General Overview
686.1620 EVV Requirements for Individual Providers
686.1630 EVV Requirements for In-home Agency Providers

SUBPART R: CRIMINAL BACKGROUND SCREENING

Section
686.1700 Definitions
686.1710 General Overview
686.1720 Waivable Convictions
686.1730 Non-waivable Convictions
686.1740 Background Screening Dispute

686.APPENDIX A Acceptable Human Service Degrees

AUTHORITY: Implementing Section 3 of the Disabled Persons Rehabilitation Act [20 ILCS 2405/3].

SOURCE: Adopted at 19 Ill. Reg. 5104, effective March 21, 1995; amended at 20 Ill. Reg. 12479, effective August 28, 1996; recodified from the Department of Rehabilitation Services to the Department of Human Services at 21 Ill. Reg. 9325; amended at 22 Ill. Reg. 18945, effective October 1, 1998; amended at 22 Ill. Reg. 19262, effective October 1, 1998; amended at 23 Ill. Reg. 499, effective December 22, 1998; amended at 23 Ill. Reg. 6457, effective May 17, 1999; amended at 24 Ill. Reg. 7501, effective May 6, 2000; amended at 24 Ill. Reg. 10212, effective July 1, 2000; amended at 24 Ill. Reg. 18174, effective November 30, 2000; amended at 25 Ill. Reg. 6282, effective May 15, 2001; amended at 26 Ill. Reg. 3994, effective February 28, 2002; amended at 28 Ill. Reg. 6453, effective April 8, 2004; amended at 29 Ill. Reg. 16508, effective October 17, 2005; amended at 31 Ill. Reg. 14238, effective September 27, 2007; emergency amendment at 33 Ill. Reg. 7017, effective May 5, 2009, for a maximum of 150 days; emergency expired October 1, 2009; emergency amendment at 38 Ill. Reg. 6473, effective February 28, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. 11519, effective May 15, 2014; amended at 38 Ill. Reg. 16978, effective July 25, 2014; amended at 41 Ill. Reg. 8454, effective August 1, 2017; amended at 43 Ill. Reg. 2133, effective January 24, 2019; emergency amendment at 45 Ill. Reg. 4178, effective March 10, 2021, for a maximum of 150 days; amended

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at 45 Ill. Reg. 10053, effective July 22, 2021; amended at 46 Ill. Reg. 20865, effective December 19, 2022; amended at 47 Ill. Reg. 19328, effective December 13, 2023.

SUBPART J: CASE MANAGEMENT SERVICES TO PERSONS WITH AIDS

Section 686.900 Program Overview

The Department of Human Services Division ~~Office~~ of Rehabilitation Services (DHS-DRS~~ORS~~) shall enter into agreements with agencies to provide case management services to persons diagnosed with AIDS, which includes persons with human immunodeficiency virus (HIV) infection, who are eligible for services provided by the AIDS Medicaid Waiver. For geographical areas in Illinois in which case management agencies are not located, case management shall be provided by DHS-DRS~~ORS~~ Home Services counselors, utilizing licensed home health nurses, as needed, to comply with the services offered and the requirements contained in Section 686.910(b), (c), (d), and (e).

(Source: Amended at 47 Ill. Reg. 19328, effective December 13, 2023)

Section 686.910 Case Management Provider Responsibilities

a) Case Management

1) The case management agency ~~(hereafter referred to as provider)~~ shall receive Customer referrals from hospitals, the Illinois Department of Public Health's AIDS Hotline, HSP AshburnAIDS Unit, other State and local agencies, and other referral services (e.g., doctors and individuals). The provider shall assign a case manager to each Customer.

2) There shall be two levels of case managers: provisional case managers and case managers.

A) Case managers are those who have achieved a competency score of 98% or greater for the on-site case reviews done by the HSP Ashburn Unit under Section 686.930(d). The case manager shall have full responsibility for the determination of HSP eligibility including assessment and implementation of services to be provided. The case manager shall develop services with Customer participation that are provided in a manner that reflects the Customer's choices, when applicable, and address the Customer's

~~his/her~~ strengths, needs and desired goals. Assessments, service plans and reassessments completed by case managers may be implemented without consultation with the HSP Ashburn~~AIDS~~ Unit.

B) The case manager shall ~~have the option of using a Registered Nurse to review and advise the case manager on the health aspects of the assessment and reassessment and to~~ act as a liaison with the hospital discharge planner, physician, home health agencies, and other medical provider agencies.

C) Provisional case managers are those who have not achieved a competency score of 98% or greater for the on-site case reviews done by the HSP Ashburn Unit~~AIDS unit~~, per Section 686.930(d). Provisional case managers shall submit all developed plans to the HSP Ashburn~~AIDS~~ Unit for approval. Approval of the plan will be based on a review to determine that: the Determination of Need Assessment on which the plan is developed is complete and accurate; the plan meets the needs identified by the assessment; the plan does not place the Customer's health and safety at risk; and the plan is cost effective compared to comparable institutional care.

b) The case manager shall provide the following services:

1) initial assessment of eligibility and information gathering (89 Ill. Adm. Code 682);

2) development of a person-centered service plan and implementation (89 Ill. Adm. Code 684);

3) reassessment of level of care at least every 12 months for those cases in formal eligibility, three months for those cases that have been presumptively determined eligible for interim services (89 Ill. Adm. Code 684.80), or at such time when the Customer's financial or physical condition or need for services changes;

4) networking/coordination/brokering services (i.e., referring and assisting the Customer in obtaining other agencies' services);

5) assisting the Customer when Individual Provider and Agency Provider problems develop. Documentation of these problems and the case management team's responses will be kept in the Customer's case file;

6) counseling and advocacy;

7) acting as inter-agency liaison (e.g., with other DHS programs, Managed Care Organizations (MCOs), vendors, hospitals);

8) making~~make~~ required Customer contact at least once a month, with a face-to-face contact bi-monthly, to ensure the Customer's needs are being met; ~~during the COVID-19 Gubernatorial Disaster Proclamations, and subject to federal approval, telephonic contact shall satisfy the requirement of this subsection (b)(8);~~

9) maintaining and updating Customer records; and

10) monitoring the cost effectiveness of the service plan (89 Ill. Adm. Code 679.50).

c) Eligibility for AIDS Waiver

1) Within 10 working days (exceptions being 2 working days for prescreening referrals from cooperating hospitals for interim/emergency services, 5 working days for all other prescreening for interim/emergency services) after receipt of a referral, the case manager shall complete an individual's eligibility determination for the AIDS Waiver program.

2) The case manager shall determine Customer eligibility for the AIDS Waiver by completing an assessment from a home visit or while the applicant is hospitalized (89 Ill. Adm. Code 682). To determine Customer eligibility, the case manager will utilize the HSP Determination of Need Assessment (89 Ill. Adm. Code 682).

3) The case manager shall assess the Customer's limitations in activities of daily living (ADLs) (e.g., cooking, bathing, shopping) and what resources are available to assist the Customer in performing the ADLs (89 Ill. Adm. Code 682).

4) Notice of eligibility must be mailed to the HSP Ashburn~~AIDS~~ Unit within ten working days after the date on which a completed application is received by the case management ~~contracting~~ agency.

d) The case manager will provide a case action notice to each Customer informing the Customer~~him or her~~ of the eligibility determination, of all rights and responsibilities under the case management program, including the Customer's right to request an appeal, the appeals procedures promulgated by the Department, the right to receive assistance in filing the request for appeal and information about the services of the Home Care Ombudsman Program (HCOP) and how to reach HCOP.

e) Service Plan

1) If the DON assessment demonstrates a nursing facility level of care need such as the need for intermediate care facility (ICF), skilled nursing facility (SNF), or hospital care because of the disability of AIDS/HIV, the case manager shall develop a person-centered service plan that will allow the Customer~~him/her~~ to live at home.

2) The service plan will be retained during the time the case is opened and for five years after closure, unless an audit exception has occurred. In the case of an audit exception, the service plan will be retained until the audit exception has been resolved. Copies of the service plan will be maintained in the case management team's locations and the HSP Ashburn~~AIDS~~ Unit. Closed cases will be retained in the HSP Ashburn Unit for two years then archived pursuant to the DHS records retention policy~~Central Office~~.

3) If implementation of services is delayed beyond required time limits in subsection (c)~~ of this Section~~, the case manager must inform the HSP Ashburn~~AIDS~~ Unit and assist the Customer to obtain an alternative provider.

f) Records of contact with the Customer will be entered and maintained in the Customer's confidential case records. All contacts, verbal or written, with or on behalf of a Customer shall be documented in a confidential case record. The case manager is responsible for obtaining consents for the release of information as

necessary and when required by law or regulation (Confidentiality of Records (42 U.S.C.~~USC~~ 290dd-2); Health Insurance Portability and Accountability Act (42 U.S.C.~~USC~~ 1320(d) et seq.); AIDS Confidentiality Act [410 ILCS 305]; 89 Ill. Adm. Code 505 (Confidentiality of Information).

(Source: Amended at 47 Ill. Reg. 19328, effective December 13, 2023)

Section 686.920 Provider Staffing Requirements, Qualifications, and Training

a) Each case management~~provider~~ agency shall designate an individual who will be responsible for the administration of the case management program. The designated individual shall have or be actively enrolled in a program to obtain:

1) a bachelor's degree in health, human services, or a related field;

2) licensure as a registered nurse pursuant to the Nurse Practice Act [225 ILCS 65]; or

3) at least one year of experience as a home health care administrator, medical clinic administrator, or other health services administrator.

b) The qualifications for case managers shall be as follows:

1) A registered nurse~~Registered Nurse~~, with a current license and a bachelor's~~Bachelor's~~ degree in nursing, social work, social sciences, or counseling or one year~~four years~~ of case management experience; or

2) A social worker with a bachelor's degree in either social work, social sciences, or counseling. A Bachelor~~Bachelor's~~ of Social Work or a Master~~Master's~~ of Social Work degree from a school accredited by any organization nationally recognized for the accreditation of schools of social work is preferred; or

3) An individual with a Bachelor's Degree in a human services field (including, but not limited to, sociology, special education, or rehabilitation counseling) and~~field (see Appendix A)~~ with a minimum of one year~~5 years~~ of case management experience.

c) In addition, it is mandatory that the case manager has:

1) ~~the case manager have~~ a broad knowledge of community resources and networking, case management, and home care; and

2) ~~It is mandatory that the case manager have~~ experience in working with racial and ethnic minorities, as well as one or more of the following:

A) domestic abuse~~addictive and dysfunctional family systems~~;

~~B)~~ ~~racial and ethnic minorities;~~

B~~C~~) the lesbian, gay, bisexual, transgender, queer (LGBTQ+) community~~homosexuals and bisexuals~~;

C~~D~~) persons living with HIV/AIDS; or~~and~~

D~~E~~) persons with substance use disorders~~abusers (e.g., drug users)~~.

d) Each full-time case manager shall have no more than 30 fee-for-service customers and 70 Managed Care Organization (MCO) customers, or an appropriately weighted combination of fee-for-service customers and MCO customers that shall not exceed 100 total customers. For half-time case managers ~~who serve fewer than 30 customers~~, the full-time requirements may be met proportionately (e.g., 15 fee-for-service customers and 35 MCO customers and shall not exceed 50 total customers~~would require a 1/2 time case manager~~).

e) Annually, each case manager shall undergo a minimum of 12 hours of in-service training that shall be:

1) ~~shall be~~ furnished by the case management agency~~Provider~~; and

2) ~~shall be~~ relevant to the provision of services to persons with HIV/AIDS (e.g., infectious disease control procedures, sensitivity training, and updates on information relating to treatment procedures).

(Source: Amended at 47 Ill. Reg. 19328, effective December 13, 2023)

Section 686.930 Monitoring and Liability of Provider

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a) The HSP Ashburn~~AIDS~~ Unit shall monitor the case management agency~~provider~~ to assure compliance with this Subpart by:

1) reviewing and approving the assessment (Section 686.910(c)). The review will be conducted pursuant to the DHS' Home Services Program (89 Ill. Adm. Code 682), the service plan, and payments for services;

2) reviewing provisional case managers as set forth in subsection (d);

3) reviewing, on an annual basis, a random sample 10% of the cases handled in the preceding 12 months or two cases, whichever is greater;

4) ~~the Supervisor of the AIDS Unit~~ visiting, at least annually, all contracting case management agencies.

b) The HSP Ashburn~~AIDS~~ Unit shall monitor the service plans of customers served by a case manager to ensure that:

1) The case manager is monitoring the customer's case at least monthly by carrying out at least one face-to-face visit and two other contacts with the customer; ~~during the COVID-19 Gubernatorial Disaster Proclamations, and subject to federal approval, a telephonic contact shall satisfy the requirements of this subsection (b)(1);~~

2) The case manager is reassessing the service plan at least every 12~~six~~ months for those cases in formal eligibility and every three months for those cases which have been presumptively determined eligible;

3) Each of the reassessments undertaken by the case manager is complete and accurate;

4) Any amendments to the service plan are consistent with the findings of the reassessment; and

5) The service plan remains cost effective (i.e., the cost of the service plan is equal to or less than the long term care~~State's hospital~~ costs).

c) DHS-DRS~~ORS~~, Central Office quality assurance staff shall:

1) monitor the quality of the reviews conducted annually;

2) provide case reviews of selected cases Statewide; and

3) tabulate the findings from all reviews to determine accuracy levels, Statewide need for training and individual training needs.

d) All provisional case managers and case management supervisors will work toward meeting the case manager standards within six months after receiving the HSP AshburnAIDS Unit's Case Management Training. Case managers and case management supervisors with a gap in service of greater than one year must complete the certification process. Complete case manager status will be granted when six case file reviews attain a competency score of 98-100% using the review process described in this subsection (d).

1) The HSP AshburnAIDS Unit nurse will review at least sixthree case files within sixthree months after the date of the provisional case manager's completion of the Case Management Training for the case manager. A combination of the following case types and amounts may be used to satisfy the requirement:

A) six fee-for-service initial assessments;

B) three fee-for-service initial assessments and three fee-for service reassessments; or

C) two fee-for-service initial assessments, two fee-for-service reassessments, and four Managed Care Organization (MCO) assessments of any typeThe case manager will be present and have the case manager Training Manual.

2) The HSP Ashburn Unitnurse will review each case file using the HSP AshburnAIDS Unit case file review quality assurance form.

3) The HSP Ashburn UnitUsing the Case Management Training Manual, the nurse will discuss areas ofeach deficiency with the case manager.

4) The HSP Ashburn UnitA corrective action plan will work withbe developed by the nurse for the case manager to resolve all deficiencies in

the case files.

5) The case manager will correct~~implement the corrective action plan~~ and complete all deficient areas~~items~~ prior to the next review of case files.

6) The HSP Ashburn Unit~~nurse~~ will re-review~~review~~ all deficient files ~~noted in the corrective action plan~~ for compliance with case management practices.

7) The above process will continue, within the six-month review period, until the cases reviewed for the case manager meet a 98-100% compliance score~~ on six case file reviews~~.

e) Return to Provisional Status

1) A case manager shall return to provisional status when any of the following events occur:

A) A review of files, per this Section, results in a score of 89% or less; or

B) Within the last year, the HSP Ashburn Unit~~staff~~ has made five requests for materials that were not submitted on time or for assessments not completed timely; or~~.~~

C) Sufficient documentation is not available to demonstrate that the case manager has successfully completed case management training.

2) Prior to the initiation of action to return a case manager to provisional status, the case management agency~~Provider~~ of the case manager will be sent a letter outlining the issues. The case management agency~~Provider~~ will have 10 days to respond. The case manager will return~~be returned~~ to provisional status unless the case management agency~~Provider~~ can prove the event causing the action did not occur. Once a case manager is returned to provisional status, the case manager~~he/she~~ must complete the measures outlined in subsection (d).

f) Liability

1) DHS shall assume no liability for actions of the case management agency~~provider under the Agreement~~.

2) The case management agency~~provider~~ shall agree to hold DHS harmless against any and all liability, loss, damage, cost or expenses arising from wrongful or negligent acts of the provider.

3) The case management agency~~provider~~ shall certify that it has maintained and will maintain liability insurance coverage. Upon request, the provider shall make available policies, certificates of insurance or current letters documenting all insurance coverage.

4) The case management agency~~provider~~ shall remain liable for the performance of any person, organization, unincorporated association or corporation with which it contracts.

(Source: Amended at 47 Ill. Reg. 19328, effective December 13, 2023)

Section 686.940 Provider Compliance Requirements

In order to participate in the DHS-DRS~~ORS~~ program to provide services to persons with HIV/AIDS, the provider agrees to meet the following minimum requirements that shall be reviewed by DHS annually for compliance.

a) Organization and Administration: The provider shall make available, upon request, its articles of incorporation, or if an unincorporated association (e.g., partnerships and limited partnerships) shall provide a statement of purpose and functions, and the names and addresses of its owners, partners, or general partners.

b) Audits: DHS reserves the right to audit all records and accounts pertinent to the provision of services and billing~~this Agreement~~ at any time within five years after the provider stopped providing services under the HIV/AIDS waiver~~final completion date of the Agreement~~.

c) Policies and Procedures: The provider shall have written policies approved by its governing authority (e.g., Board of Directors) and available for review by customers and purchasers of the service. Such policies shall at a minimum cover:

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1) Service Provided: Policy shall designate the type and scope of service provided. When more than one type of service is offered, there shall be a clear distinction between each type provided.

2) Personnel Policies: Policies shall cover salary schedules, hours of work, sick leave, provision for handling employee grievances, and requirements for attendance at work conferences and training sessions. There shall be written job descriptions identifying required qualifications and duties for each title. Policies shall also include the Centers for Disease Control and Prevention (CDC) recommendations for health care workers for provision of services to persons with HIV/AIDS and any requirements within the Illinois Compiled Statutes regarding HIV/AIDS, including the AIDS Confidentiality Act [410 ILCS 305].

d) State and Federal Statutes

1) All providers shall be subject to compliance with Illinois Compiled Statutes governing conflict of interest ~~(Section 11.1-11.5 of the Illinois Procurement Code~~ [30 ILCS 500/50-13]~~)~~.

2) All providers shall agree to comply with the Civil Rights Restoration Act of 1987 P.L. 100-259), Title VI of the Civil Rights Act of 1964 (42 U.S.C.~~USC~~ 2000d), Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C.~~USC~~ 794), the Illinois Human Rights Act [775 ILCS 5], the Constitution of the United States, the 1970 Constitution of the State of Illinois and any laws, regulations or orders, State or federal~~Federal~~, that prohibit discrimination on the basis of, including but not limited to, race, color, sex (including sexual harassment), religion, national origin, ancestry, age (40 and over), order of protection status; marital status, sexual orientation (including gender-related identity)~~inability to speak or comprehend the English language~~, physical or mental disability~~handicaps~~, or unfavorable discharge from military service, pregnancy, citizenship status, employment discrimination based on arrest record, and discrimination in real estate transactions based on familial status or arrest record.

~~3)~~ ~~The provider shall comply with Section 290ee-3 of the Federal Drug Abuse Confidentiality Act (42 U.S.C. 290ee-3) and the AIDS~~

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~~Confidentiality Act [410 ILCS 301].~~

e) Non-compliance: If the provider is not in compliance with the requirements of this Subpart, corrective actions up to and including termination of the provider as an approved provider~~contract~~ shall be taken.

(Source: Amended at 47 Ill. Reg. 19328, effective December 13, 2023)

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1) Heading of the Part: Retailers' Occupation Tax

2) Code Citation: 86 Ill. Adm. Code 130

3)

Section Numbers:	Adopted Actions:
130.311	Amendment
130.325	Amendment
130.445	Amendment
130.551	Amendment
130.705	Amendment
130.745	Amendment
130.801	Amendment
130.815	Amendment
130.901	Amendment
130.1905	Amendment
130.1935	Amendment
130.1946	Amendment
130.1947	Amendment
130.1953	Amendment
130.1990	Amendment
130.2000	Amendment
130.2035	Amendment
130.2060	Amendment
130.2085	Amendment
130.2165	Amendment

4) Statutory Authority: Implementing the Illinois Retailers' Occupation Tax Act [35 ILCS 120] and authorized by Sections 2505-25 and 2505-795 of the Civil Administrative Code of Illinois. (Department of Revenue Law) [20 ILCS 2505].

5) Effective Date of Rule: December 12, 2023

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 and is available for public inspection.

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9) Notice of Proposal Published in the *Illinois Register*: 47 Ill. Reg. 10353, July 14, 2023

10) Has JCAR issued a Statement of Objections to this rulemaking? No

11) Differences between Proposal and Final Version: The only changes made were the ones agreed upon with JCAR. Only grammatical and technical changes were made. No substantive changes were made.

In the Authority Section of the Table of Contents, "Department of Revenue Law" was changed to "Civil Administrative Code of Illinois (Department of Revenue Law)".

Section 130.311(a) removed italics from "and medical cannabis infused products".

Section 130.551(a) deleted "his or her" and replaced with "their".

Section 130.745(a) deleted "him or her" and replaced with "them".

Section 130.815(c) deleted the subsection label "1)" and moved all of the text from c)1) to the end of subsection c). Changed the subsection label from "A)" to "1)" and "B)" to "2)".

Section 130.901(h) changed "For example, a" to "EXAMPLE: A".

Section 130.1947(i) removed italics from "set forth in this subsection implementing Public Act 98-0583".

Section 130.1947(j) moved the text added after (j)(12) to after (n)(4) and added a subsection label "o)".

Section 130.1953 removed italics from "Beginning January 1, 2006,".

Section 130.2165(d) added a period after "Taxation".

Section 130.2165(d)(1) deleted the subsection label (1) and moved text up to (d) after "Taxation".

Section 130.2165(d)(1)(A) changed the subsection label from "A)" to "1)".

Section 130.2165(d)(1)(B) changed the subsection label from "B)" to "2)".

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12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this rulemaking replace an emergency rule currently in effect? No

14) Are there any rulemakings pending on this Part? Yes

Section Numbers:	Proposed Actions:	*Illinois Register* Citations:
130.340	Amendment	47 Ill. Reg. 12858; September 1, 2023
130.1960	Amendment	47 Ill. Reg. 14688; October 20, 2023

15) Summary and Purpose of Rulemaking: These rules are being amended to provide updates, to add statutory language, and to update language usage. Section 130.311 is being amended to update language from "disabled person" to "person with a disability" and provide updates based on the Department's policies regarding medical appliances.

Section 130.325 is being amended to reflect P.A. 100-22, which added Graphic Arts machinery and equipment to the manufacturing machinery and equipment exemption, to provide a reference to Section 130.330, and delete duplicate sections.

Section 130.445 is being amended to include Federal taxes on diesel fuel as not deductible from gross receipts in calculating Retailers' Occupation Tax liability.

Section 130.551 is being amended to implement P.A. 96-1384 which changed the rate used for prepayment of Retailers' Occupation Tax on sales of motor fuel.

Section 130.705 is being amended to clarify that, in disputed cases involving certificates of registration, a hearing must be requested within 20 days.

Sections 130.745, 130.801, and 130.815 are being amended to implement P.A. 98-0584 by including cannabis dispensaries within the scope of these Sections and providing references to the Cannabis Regulation and Tax Act.

Several sections are being amended to update cross references, such as Sections 130.901, 130.1946, 130.1947, 130.1990, 130.2035, and 130.2060.

Section 130.1905 is being amended to correct a spelling error and to clarify that sellers should obtain certificates of resale for their own protection.

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Section 130.1935 is being amended to incorporate Department policies from letter rulings regarding computer software.

Section 130.1953 is being amended to reflect statutory language contained in 35 ILCS 120/2-6 regarding intermodal terminal facility areas, make technical changes, and correct statutory references.

Section 130.2000 is being amended to correct references to 130.330, to modify pronouns, and to emphasize the need for sellers to obtain a certificate of resale.

Section 130.2085 is being amended to implement P.A. 100-1171 which created an exemption from Retailers' Occupation Tax and Use Tax if a purchaser is exempt by federal law.

Section 130.2165 is being amended to correct a cross reference to 130.311 and to modify pronouns.

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

Kimberly Rossini
Associate Counsel
Legal Services Office
Illinois Department of Revenue
101 West Jefferson
Springfield, Illinois 62794

(217) 782-2844
REV.GCO@illinois.gov

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

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 130
RETAILERS' OCCUPATION TAX

SUBPART A: NATURE OF TAX

Section

SUBPART B: SALE AT RETAIL

Section

SUBPART C: CERTAIN STATUTORY EXEMPTIONS

Section

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SUBPART D: GROSS RECEIPTS

SUBPART E: RETURNS

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SUBPART I: PENALTIES AND INTEREST

SUBPART J: BINDING OPINIONS

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

SUBPART L: TIMELY MAILING TREATED AS TIMELY FILING AND PAYING

SUBPART M: LEASED PORTIONS OF LESSOR'S BUSINESS SPACE

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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
130.1520 Verified Credit

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

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130.1810 Filing of Papers by Agent Under Power of Attorney

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
130.1957 Tangible Personal Property Used in the Construction or Operation of Data Centers
130.1960 Finance Companies and Other Lending Agencies – Installment Contracts – Bad Debts
130.1965 Florists and Nurserymen

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130.1970	Hatcheries
130.1971	Sellers of Pets and the Like
130.1975	Operators of Games of Chance and Their Suppliers
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

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SUBPART T: DIRECT PAYMENT PROGRAM

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130.ILLUSTRATION B	Example of Notice of Revocation of Certificate of Registration
130.ILLUSTRATION C	Food Flow Chart
130.ILLUSTRATION D	Example of a Notice of Expiration of Certificate of Registration

AUTHORITY: Implementing the Illinois Retailers' Occupation Tax Act [35 ILCS 120] and authorized by Sections 2505-25 and 2505-795 of the Civil Administrative Code of Illinois. (Department of Revenue Law) [20 ILCS 2505].

SOURCE: Adopted July l, 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 l, 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 l, 1986; amended at 10 Ill. Reg. 19538, effective November 5, 1986; amended at 10 Ill. Reg. 19772, effective November 5, 1986; amended at 11 Ill. Reg. 4325, effective March 2, 1987; amended at 11 Ill. Reg. 6252, effective March 20, 1987; amended at 11 Ill. Reg. 18284, effective October 27, 1987; amended at 11 Ill. Reg. 18767, effective October 28, 1987; amended at 11 Ill. Reg. 19138, effective October 29, 1987; amended at 11 Ill. Reg. 19696, effective November 23, 1987; amended at 12 Ill. Reg. 5652, effective March 15, 1988; emergency amendment at 12 Ill. Reg. 14401, effective September 1, 1988, for a maximum of 150 days, modified in response to an objection of the Joint Committee on Administrative Rules at 12 Ill. Reg. 19531, effective November 4, 1988, not to exceed the 150 day time limit of the original rulemaking; emergency expired January 29, 1989; amended at 13 Ill. Reg. 11824, effective June 29, 1989; amended at 14 Ill. Reg. 241, effective December 21, 1989; amended at 14 Ill. Reg. 872, effective January 1, 1990; amended at 14 Ill. Reg. 15463, effective September 10, 1990; amended at 14 Ill. Reg. 16028, effective September 18, 1990; amended at 15 Ill. Reg. 6621, effective April 17, 1991; amended at 15 Ill. Reg. 13542, effective August 30, 1991; amended at 15 Ill. Reg. 15757, effective October 15, 1991; amended at 16 Ill. Reg. 1642, effective January 13, 1992; amended at 17 Ill. Reg. 860, effective January 11, 1993; amended at 17 Ill. Reg. 18142, effective October 4, 1993; amended at 17 Ill. Reg. 19651, effective November 2, 1993; amended at 18 Ill. Reg. 1537, effective January 13, 1994; amended at 18 Ill. Reg. 16866, effective November 7, 1994;

amended at 19 Ill. Reg. 13446, effective September 12, 1995; amended at 19 Ill. Reg. 13568, effective September 11, 1995; amended at 19 Ill. Reg. 13968, effective September 18, 1995; amended at 20 Ill. Reg. 4428, effective March 4, 1996; amended at 20 Ill. Reg. 5366, effective March 26, 1996; amended at 20 Ill. Reg. 6991, effective May 7, 1996; amended at 20 Ill. Reg. 9116, effective July 2, 1996; amended at 20 Ill. Reg. 15753, effective December 2, 1996; expedited correction at 21 Ill. Reg. 4052, effective December 2, 1996; amended at 20 Ill. Reg. 16200, effective December 16, 1996; amended at 21 Ill. Reg. 12211, effective August 26, 1997; amended at 22 Ill. Reg. 3097, effective January 27, 1998; amended at 22 Ill. Reg. 11874, effective June 29, 1998; amended at 22 Ill. Reg. 19919, effective October 28, 1998; amended at 22 Ill. Reg. 21642, effective November 25, 1998; amended at 23 Ill. Reg. 9526, effective July 29, 1999; amended at 23 Ill. Reg. 9898, effective August 9, 1999; amended at 24 Ill. Reg. 10713, effective July 7, 2000; emergency amendment at 24 Ill. Reg. 11313, effective July 12, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 15104, effective October 2, 2000; amended at 24 Ill. Reg. 18376, effective December 1, 2000; amended at 25 Ill. Reg. 941, effective January 8, 2001; emergency amendment at 25 Ill. Reg. 1792, effective January 16, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 4674, effective March 15, 2001; amended at 25 Ill. Reg. 4950, effective March 19, 2001; amended at 25 Ill. Reg. 5398, effective April 2, 2001; amended at 25 Ill. Reg. 6515, effective May 3, 2001; expedited correction at 25 Ill. Reg. 15681, effective May 3, 2001; amended at 25 Ill. Reg. 6713, effective May 9, 2001; amended at 25 Ill. Reg. 7264, effective May 25, 2001; amended at 25 Ill. Reg. 10917, effective August 13, 2001; amended at 25 Ill. Reg. 12841, effective October 1, 2001; amended at 26 Ill. Reg. 958, effective January 15, 2002; amended at 26 Ill. Reg. 1303, effective January 17, 2002; amended at 26 Ill. Reg. 3196, effective February 13, 2002; amended at 26 Ill. Reg. 5369, effective April 1, 2002; amended at 26 Ill. Reg. 5946, effective April 15, 2002; amended at 26 Ill. Reg. 8423, effective May 24, 2002; amended at 26 Ill. Reg. 9885, effective June 24, 2002; amended at 27 Ill. Reg. 795, effective January 3, 2003; emergency amendment at 27 Ill. Reg. 11099, effective July 7, 2003, for a maximum of 150 days; emergency expired December 3, 2003; amended at 27 Ill. Reg. 17216, effective November 3, 2003; emergency amendment at 27 Ill. Reg. 18911, effective November 26, 2003, for a maximum of 150 days; emergency expired April 23, 2004; amended at 28 Ill. Reg. 9121, effective June 18, 2004; amended at 28 Ill. Reg. 11268, effective July 21, 2004; emergency amendment at 28 Ill. Reg. 15193, effective November 3, 2004, for a maximum of 150 days; emergency expired April 1, 2005; amended at 29 Ill. Reg. 7004, effective April 26, 2005; amended at 31 Ill. Reg. 3574, effective February 16, 2007; amended at 31 Ill. Reg. 5621, effective March 23, 2007; amended at 31 Ill. Reg. 13004, effective August 21, 2007; amended at 31 Ill. Reg. 14091, effective September 21, 2007; amended at 32 Ill. Reg. 4226, effective March 6, 2008; emergency amendment at 32 Ill. Reg. 8785, effective May 29, 2008, for a maximum of 150 days; emergency expired October 25, 2008; amended at 32 Ill. Reg. 10207, effective June 24, 2008; amended at 32 Ill. Reg. 17228, effective October 15, 2008; amended at 32 Ill. Reg. 17519, effective October 24, 2008; amended at 32 Ill. Reg. 19128, effective December 1, 2008;

amended at 33 Ill. Reg. 1762, effective January 13, 2009; amended at 33 Ill. Reg. 2345, effective January 23, 2009; amended at 33 Ill. Reg. 3999, effective February 23, 2009; amended at 33 Ill. Reg. 15781, effective October 27, 2009; amended at 33 Ill. Reg. 16711, effective November 20, 2009; amended at 34 Ill. Reg. 9405, effective June 23, 2010; amended at 34 Ill. Reg. 12935, effective August 19, 2010; amended at 35 Ill. Reg. 2169, effective January 24, 2011; amended at 36 Ill. Reg. 6662, effective April 12, 2012; amended at 38 Ill. Reg. 12909, effective June 9, 2014; amended at 38 Ill. Reg. 17060, effective July 25, 2014; amended at 38 Ill. Reg. 17421, 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; emergency expired May 24, 2020; emergency amendment at 44 Ill. Reg. 2055, effective January 13, 2020, for a maximum of 180 days; amended at 44 Ill. Reg. 5392, effective March 16, 2020; amended at 44 Ill. Reg. 10981, effective June 10, 2020; amended at 44 Ill. Reg. 13975, effective August 11, 2020; amended at 45 Ill. Reg. 352, effective December 21, 2020; amended at 45 Ill. Reg. 7248, effective June 3, 2021; amended at 45 Ill. Reg. 14464, effective November 2, 2021; amended at 45 Ill. Reg. 16058, effective December 3, 2021; amended at 46 Ill. Reg. 6745, effective April 12, 2022; amended at 46 Ill. Reg. 7785, effective April 26, 2022; amended at 46 Ill. Reg. 10905, effective June 7, 2022; amended at 46 Ill. Reg. 15336, effective August 23, 2022; amended at 46 Ill. Reg. 18120, effective October 25, 2022; amended at 46 Ill. Reg. 18827, effective November 1, 2022; amended at 47 Ill. Reg. 1426, effective January 17, 2023; amended at 47 Ill. Reg. 2116, effective January 24, 2023; amended at 47 Ill. Reg. 5751, effective April 4, 2023; amended at 47 Ill. Reg. 6068, effective April 12, 2023; amended at 47 Ill. Reg. 6309, effective April 18, 2023; amended at 47 Ill. Reg. 19349, effective December 12, 2023.

SUBPART C: CERTAIN STATUTORY EXEMPTIONS

Section 130.311 Drugs, Medicines, Medical Appliances, and Grooming and Hygiene Products

a) General. *With respect to prescription and nonprescription medicines, drugs, medical appliances, products classified as Class III medical devices by the United States Food and Drug Administration that are used for cancer treatment pursuant*

to a prescription, as well as any accessories and components related to those devices, modifications to a motor vehicle for the purpose of rendering it usable by a ~~disabled~~ person with a disability, and insulin, blood sugar testing materials, syringes, and needles used by human diabetics, the tax is imposed at the rate of 1%. Beginning January 1, 2014, "prescription and nonprescription medicines and drugs" includes medical cannabis and medical cannabis infused products *purchased from~~and medical cannabis infused products sold by~~ a registered dispensing organization under the Compassionate Use of Medical Cannabis ~~Pilot~~ Program Act* [410 ILCS 130]. [35 ILCS 120/2-10] ~~(Section 2-10 of the Act)~~
Medical cannabis, including medical cannabis infused products, sold by registered dispensing organization under the Compassionate Use of Medical Cannabis ~~Pilot~~ Program Act, is subject to Retailers' Occupation Tax at the 1% rate, plus applicable local taxes.~~,~~ Cannabis paraphernalia is subject to Retailers' Occupation Tax at the general merchandise rate of 6.25%. Grooming and hygiene products do not qualify for the 1% rate, regardless of whether the products make medicinal claims. Grooming and hygiene products are taxed at the general merchandise rate of 6.25%. [See 35 ILCS 120/2-10]~~(See Section 2-10 of the Act.)~~
AGENCY NOTE: Medical cannabis is subject to tax under both the Metro East Mass Transit District Retailers' Occupation Tax (as provided in 70 ILCS 3610/5.01) and the Regional Transportation Authority Retailers' Occupation Tax (taxed at the rate established for prescription and nonprescription medicines in Cook County and at the rate established for general merchandise in all other areas of the metropolitan region that are subject to the tax, as provided in 70 ILCS 3615/4.03).

b) *Beginning January 1, 2017 and through December 31, 2026, menstrual pads, tampons, and menstrual cups* are exempt from the Retailers' Occupation Tax. [35 ILCS 120/2-5(42)]~~through *December 31, 2026, tampons, menstrual pads, and menstrual cups are exempt from the Retailers' Occupation Tax.* (Section 2-5(42) of the Act)~~ Menstrual pads (including pantiliners) are exempt even when the label indicates that those products are to be used as both menstrual products and incontinence products. However, incontinence products that do not indicate on the label that they can also be used as menstrual products are not exempt.

c) Medicines and Drugs. Except for grooming and hygiene products described in subsection (d), a medicine or drug is any pill, powder, potion, salve, or other preparation for human use that purports on the label to have medicinal qualities. Medicines prescribed by veterinarians for animals are subject to the high rate of tax. A written claim on the label that a product is intended to cure or treat

disease, illness, injury, or pain or to mitigate the symptoms of such disease, illness, injury, or pain constitutes a medicinal claim.

1) Examples of medicinal claims that will qualify the product for the low rate of tax include, but are not limited to:

A) "medicated";

B) "heals (a medical condition)";

C) "cures (a medical condition)";

D) "for relief (of a medical condition)";

E) "fights infection";

F) "stops pain";

G) "relief from poison ivy or poison oak";

H) "relieves itching, cracking, burning";

I) "a soaking aid for sprains and bruises";

J) "relieves muscular aches and pains";

K) "cures athlete's foot";

L) "relieves skin irritation, chafing, heat rash, and diaper rash";

M) "relief from the pain of sunburn"; and

N) "soothes pain".

2) The use of the terms "antiseptic", "antibacterial", or "kills germs" may or may not constitute a medicinal claim.

A) The use of these terms in conjunction with a claim that the product kills germs in general does not constitute a medicinal claim.

B) However, a claim that a product is for use as an antiseptic to kill germs to prevent infection in cuts, scrapes, abrasions, and burns does constitute a medicinal claim.

3) Examples of claims that do not constitute medicinal claims include, but are not limited to:

A) "cools";

B) "absorbs wetness that can breed fungus";

C) "deodorant" or "destroys odors";

D) "moisturizes";

E) "freshens breath";

F) "antiperspirant";

G) "sunscreen";

H) "prevents"; and

I) "protects".

d) Grooming and Hygiene Products. *Beginning September 1, 2009, "nonprescription medicines and drugs" does not include grooming and hygiene products. "Grooming and hygiene products" includes, but is not limited to, soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan lotions and* sun~~sun~~ *screens, unless those products are available by prescription only, regardless of whether the products meet the definition of "over-the-counter drugs". "Over-the-counter drug" means a drug for human use that contains a label that identifies the product as a drug as required by 21 CFR 201.66. The "over-the-counter drug" label includes a "Drug Facts" panel or a statement of the "active ingredient(s)"~~"active ingredients"~~ with a list of those ingredients contained in the compound, substance or preparation.* [35 ILCS 120/2-10]~~(Section 2-10 of the Act)~~

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1) As a result, on or after September 1, 2009:

A) nonprescription medicines and drugs that are grooming and hygiene products do not qualify for the 1% rate of tax for medicines and drugs under subsection (c)~~(b)~~. Grooming and hygiene products do not qualify for the 1% rate, regardless of whether the products make medicinal claims or meet the definition of over-the-counter drugs. Grooming and hygiene products are taxed at the general merchandise rate of 6.25%.

B) products available only with a prescription are not "grooming and hygiene products".

2) Examples of products that are grooming and hygiene products include, but are not limited to:

A) all shampoos, hair conditioners, and hair care products;

B) shaving creams or lotions;

C) deodorants;

D) moisturizers;

E) breath spray;

F) all condoms, with and without spermicide;

G) baby diapers and adult diapers;

H) baby powder;

I) contact lens solutions;

J) hand sanitizers;

K) acne products;

L) skin creams, lotions, ointments, and conditioners;

M) foot powders;

N) foot wear insoles that are intended to eliminate odor;

O) feminine hygiene products such as feminine wipes, washes, powders and douches, but, beginning January 1, 2017 through December 31, 2026, the following feminine hygiene products are exempt from tax: tampons, menstrual pads, and menstrual cups (see Section 130.120(vv)); and

P) lip balms.

3) The following products are not grooming and hygiene products and may qualify for the 1% rate if they meet the requirements of subsection (c)~~(b)~~:

A) hydrocortisone creams or ointments;

B) anti-itch creams or ointments;

C) vaginal creams or ointments;

D) nasal sprays;

E) eye drops;

F) topical pain relievers;

G) ice/heat creams;

H) rubbing alcohol;

I) denture creams or adhesives; and

J) styptic pencils.

4) Nonprescription medicines and drugs and products that are not grooming and hygiene products do not qualify for the 1% rate of tax unless they meet the requirements of subsection (c)~~ of this Section~~.

5) Products that are taken orally and ingested, such as vitamins, supplements and weight gain or weight loss products, are not grooming and hygiene products.

e) Medical Appliances: A medical appliance is an item that is used to directly substitute for a malfunctioning part of the human body.

1) For purposes of this Section, an item that becomes part of the human body by substituting for any part of the body that is lost or diminished because of congenital defects, trauma, infection, tumors, or disease is considered a medical appliance. Examples of medical appliances that will qualify the product for the low rate of tax include, but are not limited to:

A) breast implants that restore breasts after removal due to cancer or for preventative, medical reasons;~~loss due to cancer;~~

B) heart pacemakers;

C) artificial limbs;

D) dental prosthetics;

E) crutches and orthopedic braces;

F) dialysis machines (including the dialyzer);

G) wheelchairs;~~ and~~

H) mastectomy forms and bras;~~.~~

I) mobility scooters; and

J) sleep apnea devices.

2) Corrective medical appliances such as hearing aids, eyeglasses, contact lenses,~~lens~~ and orthodontic braces qualify as medical appliances subject to the low rate of tax.

3) Sterile band-aids, dressings, bandages, and gauze qualify for the low rate because they serve as a substitute for skin.

4) Items transferred incident to cosmetic procedures are not considered medical appliances. For purposes of this Section, a cosmetic procedure means any procedure performed on an individual that is directed at improving the individual's appearance and that does not prevent or treat illness or disease, promote the proper function of the body or substitute for any part of the body that is lost or diminished because of congenital defects, trauma, infection, tumors, or disease. Cosmetic procedures include, but are not limited to, elective breast, pectoral, or buttock augmentation.

5) Diagnostic equipment shall not be deemed to be a medical appliance, except as provided in Section 130.311(g). Other medical tools, devices, and equipment such as x-ray machines, laboratory equipment, and surgical instruments that may be used in the treatment of patients but that do not directly substitute for a malfunctioning part of the human body do not qualify as medical appliances. Sometimes a kit of items is sold where the purchaser will use the kit items to perform self-treatment~~treatment upon himself or herself~~. The kit will contain paraphernalia and sometimes medicines. An example is a kit sold for the removal of ear wax. Because the paraphernalia hardware is for treatment, it generally does not qualify as a medical appliance. However, the Department will consider the selling price of the entire kit to be taxable at the reduced rate when the value of the medicines in the kit is more than half of the total selling price of the kit.

6) Supplies, such as cotton swabs, disposable diapers, toilet paper, tissues and towelettes and cosmetics, such as lipsticks, perfume, and hair tonics, do not qualify for the reduced rate.

7) Medical appliances may be prescribed by licensed health care professionals for use by a patient, purchased by health care professionals for the use of patients or purchased directly by individuals. Purchases of medical appliances by lessors that will be leased to others for human use also qualify for the reduced rate of tax.

f) Certain Medical Devices. *Effective August 19, 2016, products classified as Class III medical devices by the United States Food and Drug Administration that are used for cancer treatment pursuant to a prescription, as well as any accessories and components related to those devices, qualify for the 1% rate of tax.* [35 ILCS 120/2-10]~~(Section 2-10 of the Act)~~

g) *Insulin, blood sugar testing materials, syringes, and needles used by human diabetics, the tax is imposed at the rate of 1%.* [35 ILCS 120/2-10]~~*in treating diabetes in human beings qualify for the reduced rate of tax.* (Section 2-10 of the Act)~~

h) Modifications Made to a Motor Vehicle for the Purpose of Rendering It Usable by a Person with a Disability~~Disabled Person~~

1) Effective August 17, 1995, *modifications made to a motor vehicle, as defined in Section 1-146 of the Illinois Vehicle Code* [625 ILCS 5/1-146], *for the purpose of rendering it usable by a ~~disabled~~ person with a disability, qualify for the reduced rate of tax.* [35 ILCS 120/2-10]~~(Section 2-10 of the Act).~~ The low rate applies to modifications that enable a ~~disabled~~ person with a disability to drive a vehicle or that assist in the transportation of ~~disabled~~ persons with disabilities. Examples of such modifications include, but are not limited to, special steering, braking, shifting or acceleration equipment, or equipment that modifies the vehicle for accessibility, such as a chair lift.

2) For purposes of this subsection (h), the term ~~"disabled person" has the same meaning as a~~ "person with disabilities" has the meaning set forth in Section 1-159.1 of the Illinois Vehicle Code [625 ILCS 5/1-159.1].

i) Reporting

1) The retailer must keep an actual record of all sales and must report tax at the applicable rates, based on sales as reflected in the retailer's records. Books and records must be maintained in sufficient detail so that all receipts reported with respect to drugs, medicines, and medical appliances can be supported.

2) Suppliers that sell items to health professionals must collect tax based on the actual use of the items. Health professionals that purchase items that

may or may not qualify for the low rate, depending upon the ultimate use of the items by the health professionals, may provide their suppliers with certificates that identify the percentage of items being purchased that qualify for the low rate, i.e.~~e.g.~~, that are purchased to be used to replace a malfunctioning part of the body. (For example, cosmetic versus reconstructive procedures.)

A) The certificate should contain the following information:

i) the seller's name and address;

ii) the purchaser's name and address;

iii) a description of the medical appliances being purchased;

iv) the percentage of the medical appliances being purchased that qualify for the low rate;

v) the purchaser's signature or the signature of an authorized employee or agent of the purchaser and date of signing; and

vi) if the purchaser is registered with the Department, the purchaser's Registration Number or Resale Number.

B) A supplier that obtains a certificate from a health professional that complies with subsection (i)(2)(A) will not be liable for additional retailers' occupation tax~~Retailers' Occupation Tax~~ in the event the actual percentage of items purchased by the health professional that qualify for the low rate is less than the percentage claimed in the certificate if it remitted retailers' occupation tax~~Retailers' Occupation Tax~~ to the Department based on the information contained in the certificate received from the health professional.

(Source: Amended at 47 Ill. Reg. 19349, effective December 12, 2023)

Section 130.325 Graphic Arts Machinery and Equipment Exemption

~~a)~~ ~~General.~~ Through June 30, 2003, and beginning again on September 1, 2004 through August 30, 2014, notwithstanding the fact that sales may be at retail, the

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Retailers' Occupation Tax does not apply to the sale of machinery and equipment, including repair and replacement parts, both new and used and including that manufactured on special order to be used primarily in graphic arts production. The exemption extends to purchases by lessors who will lease the property for use primarily in graphic arts production. Taxpayers must certify the use of the equipment they are purchasing to their suppliers. ~~(See subsection (i) of this Section.)~~ By statute, this exemption was repealed June 30, 2003 (Public Act 93-24; effective June 20, 2003). Pursuant to Public Act 93-840, effective July 30, 2004, this exemption was reenacted without any specific sunset date. Subsequently, Public Act 96-116 added a sunset date for this exemption of August 30, 2014. Beginning July 1, 2017, the manufacturing machinery and equipment exemption includes machinery and equipment used primarily in graphic arts production. See Section 130.330(g).

~~b)~~ ~~Graphic Arts Production. This term defines the types of entities eligible to claim this exemption. Beginning July 30, 2009, in addition to the requirements contained in subsection (b)(1)(A), an additional requirement was added as set forth in subsection (b)(1)(B). Provisions effective August 13, 1999 through June 30, 2003, and beginning again on September 1, 2004 through August 30, 2014:~~

~~1)~~ ~~Graphic arts production has the following meanings and applications:~~

~~A)~~ ~~*Graphic arts production means printing, including ink jet printing, by one or more of the processes described in Groups 323110 through 323122 of Subsector 323, Groups 511110 through 511199 of Subsector 511, and Group 512230 of Subsector 512 of the North American Industry Classification System (NAICS) published by the U.S. Office of Management and Budget, 1997 edition* (no subsequent amendments or editions are included). *Graphic arts production does not include the transfer of images onto paper or other tangible personal property by means of photocopying or final printed products in electronic or audio form, including the production of software or audio books.* (Section 2-30 of the Act) Groups 323110 through 323122 of Subsector 323, Groups 511110 through 511199 of Subsector 511, and Group 512230 of Subsector 512 include printing upon apparel and textile products, paper, metal, glass, plastics, and other materials except fabric (grey goods). Printing upon grey goods is part of the process of finishing fabric and is included in the NAICS Textile Mills~~

~~subsector in Industry 31331, Textile and Fabric Finishing Mills.~~

~~B)~~ ~~On and after July 30, 2009, in addition to the requirements contained in subsection (b)(1)(A), P.A. 96-116 imposes the additional requirement that the qualifying graphic arts machinery and equipment be used primarily in *the production of tangible personal property for wholesale or retail sale or lease. Persons engaged primarily in the business of printing or publishing newspapers or magazines that qualify as newsprint and ink, by one or more of the processes described in Groups 511110 through 511199 of subsector 511 of the North American Industry Classification System published by the U.S. Office of Management and Budget, 1997 edition, are deemed to be engaged in graphic arts production*. [35 ILCS 120/2-30]. This additional requirement extends to and applies to repair and replacement parts, both new and used and including equipment that is manufactured on special order to be used primarily in graphic arts production. The following are examples of activities that illustrate the new requirement that the machinery must also be used primarily (over 50%) in the production of tangible personal property for wholesale or retail sale or lease:~~

~~i)~~ ~~A company that purchases graphic arts machinery and equipment used to print materials for its internal consumption is not deemed to be engaged in graphic arts production because the printed materials it prints are not for sale.~~

~~ii)~~ ~~A manufacturer that prints catalogs of its products and distributes them without charge to potential customers is not deemed to be engaged in graphic arts production because the catalogs it prints are not for sale.~~

~~iii)~~ ~~A printer who prints bulletins as part of its sale of service to a church is engaged in graphic arts production.~~

~~iv)~~ ~~Printer A subcontracts with Printer B to print greeting cards that Printer A sells to retailers. Printer B is engaged in graphic arts production.~~

~~v)~~ ~~An engineering firm is conducting a seminar for local businesses and contracts with Printer to print materials that are distributed to seminar participants. Printer is engaged in graphic arts production because it is printing tangible personal property for sale as part of its sale of service.~~

~~vi)~~ ~~Company A is in the business of printing the local weekly newspaper that qualifies as newsprint and ink. (See Section 130.2105 for what qualifies as newsprint and ink.) Company A is engaged in graphic arts production.~~

~~vii)~~ ~~A retailer contracts with a printer to print holiday catalogs to be sold at retail. Printer is engaged in graphic arts production because it is printing tangible personal property for sale as part of its sale of service.~~

~~viii)~~ ~~A retailer prints its own sale fliers and distributes them to potential customers. Retailer is not engaged in graphic arts because it is not printing the fliers for sale.~~

~~ix)~~ ~~A manufacturer purchases graphic arts machinery and equipment to be used primarily for the production of office manuals and materials for internal use only. Occasionally, the manufacturer will print catalogs to be sold to promote its year-end inventory sale. The manufacturer is not engaged in graphic arts production because it does not use its equipment primarily (over 50%) in the production of tangible personal property for sale.~~

~~x)~~ ~~Book Binding. Company A is in the business of binding books in the personal collections of individuals and entities. A law firm contracts with Company A to rebind its collection of old law books. Company A is engaged in graphic arts production because it is engaged in an activity involving the binding, collating or finishing of the graphic arts product as part of its sale of service. (See subsection (c)(4)(C).)~~

~~xi) Company A is printing a "How To Manual" to be sold at retail and contracts with Printer to have the manual bound. Printer is engaged in graphic arts production both because the manual being bound is being printed to be sold, and, also, the activity involves the binding, collating or finishing of the graphic arts product as part of its sale of service.~~

~~xii) A law firm binds and collates its legal briefs and office manuals in-house. Law firm is not engaged in graphic arts production because the legal briefs and office manuals are not for sale.~~

~~C) The North American Industry Classification System referenced in subsection (b)(1) can be obtained from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 (Phone: 1-800-553-6847). The Department also maintains a copy of this information, which may be obtained upon request and at cost, from the Legal Services Office, 5-500, 101 West Jefferson Street, Springfield, Illinois 62794.~~

~~D) The exemption applies to machinery and equipment used in graphic arts production processes, as those processes are described in the NAICS. While the NAICS subsectors referenced in subsection (b)(1)(A) describe types of graphic arts establishments that typically engage in graphic arts production, the exemption is not limited to qualifying machinery and equipment used by the establishments described in the NAICS, but rather, to qualifying machinery and equipment used in the printing processes described in the NAICS (for example, lithography, gravure, flexography, screen printing, quick printing, digital printing and trade services such as prepress and binding and finishing services).~~

~~E) The exemption includes printing by methods of engraving, letterpress, lithography, gravure, flexography, screen, quick and digital printing. It also includes the printing of manifold business forms, blankbooks, looseleaf binders, books, periodicals and newspapers. Included in the exemption are prepress services~~

described in Subsector 323122 of the NAICS (e.g., the creation and preparation of negative or positive film from which plates are produced, plate production, cylinder engraving, typesetting and imagesetting). The exemption also includes trade binding and related printing support activities set forth in Subsector 323121 of the NAICS (e.g., tradebinding, sample mounting and postpress services, such as book or paper bronzing, edging, embossing, folding, gilding, gluing, die cutting, finishing, tabbing and indexing).

F) "Digital printing and quick printing" mean the printing of graphical text or images by a process utilizing digital technology, as provided in subsection (b)(4) of this Section. It also includes the printing of what is commonly known as "digital photography" (e.g., use of a qualifying integrated computer and printer system to print a digital image). The exemption extends only to machinery and equipment, including repair and replacement parts, used in the act of production. Accordingly, no other type or kind of tangible personal property will qualify for the exemption, even though it may be used primarily in the graphic arts business.

2) Machinery means major mechanical machines or major components of machines contributing to graphic arts production. Equipment means any independent device or tool separate from any machinery but essential to the graphic arts production process; or any sub-unit or assembly comprising a component of any machinery or auxiliary, adjunct, or attachment parts of machinery. Beginning August 23, 2001, equipment includes chemicals or chemicals acting as catalysts but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a graphic arts product.

A) The exemption does not include hand tools, supplies such as rags, lubricants, adhesives, solvents, ink, dyes, chemicals except as described in this subsection (b)(2), negatives, acids or solutions, fuels, electricity and steam or water. The exemption also does not include items of personal apparel, such as gloves, shoes, glasses, goggles, coveralls, aprons and masks.

B) This exemption does not include the sale of materials to a

purchaser who manufactures those materials into an otherwise exempted type of graphic arts machinery or equipment.

C) Machinery and equipment does not include foundations or special purpose buildings to house or support graphic arts machinery and equipment.

D) Machinery and equipment does not include computer software unless purchased preinstalled in qualifying computer equipment. Computer software not purchased preinstalled in qualifying computer equipment, including upgrades or new software, is subject to tax.

3) Primary Use. The law requires that machinery and equipment be used primarily in graphic arts production.

A) Therefore, machinery that is used primarily in an exempt process and partially in a nonexempt manner would qualify for the exemption. However, the purchaser must be able to establish through adequate records that the machinery or equipment is used over 50% in an exempt manner in order to claim the exemption.

B) The fact that particular machinery or equipment may be considered essential to the conduct of the business of graphic arts production because its use is required by law or practical necessity does not, of itself, mean the machinery or equipment is used primarily in graphic arts production.

4) By way of illustration and not limitation, the following activities will generally be considered graphic arts production:

A) Prepress or preliminary processes. Prepress or preliminary processes include the steps required to transform an original into a state that is ready for reproduction by printing. Prepress or preliminary processes include typesetting, film production, color separation, final photocomposition (e.g., image assembly and imposition (stripping)) and platemaking. Prepress or preliminary processes include the manipulation of images or text in preparation for printing for the purpose of conforming those images to the

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

~~i) Large scale, fixed-position cameras used to photograph two dimensional copy to produce negatives or positives used in the production of plates; film processors; scanners; imposetters; RIP (raster image processor) equipment; proofing equipment; imagesetters, plate processors, helioklischographs and computer-to-plate and computer-to-press equipment.~~

~~ii) Computers that qualify include computers used primarily to receive, store and manipulate images to conform them to the requirements of a specific printing process that will later be performed. Computers used in connection with what is commonly referred to as "digital photography" will qualify if used primarily to format the graphic image that will be printed (e.g., used to format the size and layout of images to be printed). If the computers are primarily used, however, to apply background colors, borders or other artistic enhancements, or to view and select particular digital images to be printed, they will not qualify for the exemption.~~

~~iii) Digital cameras do not qualify if they are used primarily to create an original image that will later be reproduced by a graphic arts process.~~

~~iv) Servers used primarily to transfer images and text to qualifying equipment qualify, but do not qualify if used primarily in a non-exempt activity (for example, servers used to maintain an in-house email system).~~

~~v) Scanners used primarily to input previously created images or text that will be reproduced by a graphic arts process qualify for the exemption.~~

~~B) The transfer of images or text from computers, plates, cylinders or blankets to paper or other stock to be printed. This process begins when paper is introduced on the press. Examples of qualifying equipment used in this activity include printing plates, printing presses, blankets and rollers, automatic blanket washers, scorers and dies, folders, punchers, stackers, strappers used in the pressroom for signatures, dryers, chillers and cooling towers. Laser or ink jet printers used to print on paper or other stock are also included in this exemption.~~

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

~~ii) Computer equipment used to operate exempt graphic arts equipment also qualifies for the exemption.~~

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

~~equipment used to reduce static during the printing process qualifies for the exemption.~~

~~C)~~ ~~Activities involving the binding, collating or finishing of the graphic arts product. Equipment used in these activities includes, for instance, binders, packers, gatherers, joggers, trimmers, selectronic equipment, blow-in card feeders, inserters, stitchers, gluers, spiral binders, addressing machines, labelers and ink-jet printers.~~

~~i)~~ ~~Machinery or equipment used to convey materials to packaging areas after the graphic arts product has been printed, bound and finished qualifies for the exemption. That equipment includes, for instance, conveyor systems, hoists or other conveyance mechanisms used to direct the final printed product into packaging areas.~~

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

~~5)~~ ~~By way of illustration and not limitation, the following activities will generally not be considered to be graphic arts production:~~

~~A)~~ ~~The use of machinery and equipment in general maintenance or repair work on production machinery or equipment. This includes hand tools, welding tools, racks, and other machinery and equipment used in the maintenance area.~~

~~B)~~ ~~The use of machinery and equipment (e.g., fork lifts, roll clamps and roll grabbers) to convey raw materials to the press does not qualify for the exemption.~~

~~C)~~ ~~The use of machinery or equipment to convey materials to final storage or shipping areas. That equipment includes, for instance, fork lifts used primarily to place the packaged printed product into final storage or shipping areas.~~

D) The use of machinery or equipment to gather information, track jobs or to perform data-related functions prior to a qualifying prepress activity (e.g., computers used primarily to edit or create text, data, or other copy). That equipment includes items such as inventory tracking devices and bar-code readers.

E) The use of machinery or equipment to photocopy printed matter. A copier that is capable of printing images or text transmitted to it in digital form will qualify. However, a copier that produces photocopies by means of xerographic technology is subject to tax.

F) The use of machinery or equipment in managerial, sales or other non-production, non-operational activities including inventory control, production scheduling, purchasing, receiving, accounting, physical management, general communications, plant security, marketing, or personnel recruitment, selection or training. Waste disposal equipment (e.g., equipment used to contain and recapture paper dust) does not qualify for the exemption. However, for information regarding the pollution control exemption, see Section 130.335 of this Part. Similarly, baling equipment used to recycle paper waste does not qualify under this exemption. However, the manufacturing machinery and equipment exemption may be applicable. (See Section 130.330 of this Part.)

G) The use of machinery and equipment to prevent or fight fires or to protect employees, such as protective masks, respirators, first-aid kits, gloves, coveralls and goggles, or for safety, accident protection or first-aid, even though that machinery or equipment may be required by federal, State or local law.

H) The use of machinery or equipment for general ventilation, heating, cooling, climate control or general illumination, except when the machinery or equipment is used to produce an environment necessary for the production of printed material.

6) An item of machinery or equipment that initially is used primarily in graphic arts production and having been so used for less than one-half of the useful life and is converted to primarily nonexempt uses will become

~~subject to the tax at the time of the conversion. The tax will be collected on that portion of the price of the machinery or equipment as was excluded from tax at the time the sale or purchase was made.~~

~~7)~~ ~~Sales to Lessors of Graphic Arts Equipment. The statute provides for the purchase of graphic arts machinery and equipment by lessors who will lease that machinery and equipment for use in graphic arts production. Therefore, if the purchaser of the machinery or equipment leases the machinery and equipment to a lessee who uses it in an exempt manner, the sale to the purchaser-lessor will be exempt from tax. A supplier may exclude these sales from his or her taxable gross receipts provided that the purchaser-lessor provides to him or her a properly completed exemption certificate and the information contained in the certificate would support an exemption if the sale were made directly to the lessee. Should a purchaser-lessor subsequently lease the machinery or equipment to a lessee who does not use it in an exempt manner that would qualify directly for the exemption, the purchaser-lessor will become liable for the tax from which he or she was previously exempted.~~

~~8)~~ ~~Exemption Certification. Purchasers wishing to claim the exemption must certify to their suppliers that the machinery and equipment will be used primarily for graphic arts production. Retailers must maintain the certificates in their books and records. The use of blanket certificates of exemption will be permitted. The certificate must include the seller's name and address, the purchaser's name and address and a statement that the property purchased will be used primarily in graphic arts production. So long as the retailer obtains a certificate of exemption that contains all the information required in this subsection (b)(8), the retailer need not verify that the equipment he or she sells is actually used as graphic arts production equipment. If a graphic arts producer or lessor purchases at retail from a vendor who is not registered to collect Illinois Use Tax, the purchaser must maintain a copy of the certification in his or her records to support the deduction taken on the return.~~

~~c)~~ ~~Graphic Arts Production. Provisions in effect until August 13, 1999:~~

~~1)~~ ~~*Graphic arts production means printing by one or more of the common processes or graphic arts production services as those processes and services are defined in Major Group 27 of the U.S. Standard Industrial*~~

~~*Classification Manual*. (Section 2-30 of the Act) The exemption includes printing by letterpress, lithography, gravure, screen, engraving and flexography and includes printing trade services as typesetting, negative production, plate production, bookbinding, finishing, looseleaf binder production and other services set forth in Major Group 27. The exemption extends only to machinery and equipment used in the act of production. Accordingly, no other type or kind of tangible personal property will qualify for the exemption, even though it may be used primarily in the graphic arts business.~~

~~2)~~ ~~Machinery means major mechanical machines or major components of machines contributing to graphic arts production. Equipment means any independent device or tool separate from any machinery but essential to the graphic arts production process; or any sub-unit or assembly comprising a component of any machinery or auxiliary, adjunct or attachment or parts of machinery. The exemption does not include hand tools, supplies, lubricants, adhesives or solvents, ink, chemicals, dyes, acids or solutions, fuels, electricity, steam or water, items of personal apparel such as gloves, shoes, glasses, goggles, coveralls, aprons and masks, or such items as negatives, one-time use printing plates as opposed to multiple use cylinders or lithographic plates, dies, etc., that are expendable supplies. This exemption does not include the sale of materials to a purchaser who manufactures these materials into an otherwise exempted type of graphic arts machinery or equipment.~~

~~3)~~ ~~Machinery and equipment does not include foundations for or special purpose buildings to house or support graphic arts machinery and equipment.~~

~~4)~~ ~~Primary Use.~~

~~A)~~ ~~The law requires that machinery and equipment be used primarily in graphic arts production. Therefore, machinery that is used primarily in an exempt process and partially in a nonexempt manner, would qualify for the exemption. However, the purchaser must be able to establish adequate records that the machinery or equipment is used over 50% in an exempt manner in order to claim the deduction.~~

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~~B)~~ ~~The fact that particular machinery or equipment may be considered essential to the conduct of the business of graphic arts production because its use is required by law or practical necessity does not, of itself, mean the machinery or equipment is used primarily in graphic arts production.~~

~~C)~~ ~~By way of illustration and not limitation, the following activities will generally be considered to constitute an exempt use:~~

~~i)~~ ~~Machinery and equipment to directly produce typesetting, negatives and plates including final photo-composition and color separation processes.~~

~~ii)~~ ~~The use of machinery and equipment to transfer images or text from type or plates or image carriers to paper or other stock to be printed.~~

~~iii)~~ ~~Equipment to collate, bind or finish the graphic arts product covered in subsection (c)(2).~~

~~iv)~~ ~~Large scale, fixed-position cameras used to photograph two dimensional copy to produce negatives or positives used in the production of plates.~~

~~D)~~ ~~By way of illustration and not limitation, the following activities will generally not be considered to be graphic arts production:~~

~~i)~~ ~~The use of machinery and equipment in general maintenance or repair work on production machinery or equipment.~~

~~ii)~~ ~~The use of machinery or equipment to store, convey, handle or transport materials.~~

~~iii)~~ ~~The use of machinery or equipment to place the printed product in the container package or wrapping in which the property is normally sold to the ultimate consumer of the property.~~

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~~iv) The use of machinery or equipment to gather information, photograph, transmit data, edit text, prepare drafts or copy or perform other date-related functions prior to final composition, typesetting, engraving or other preparation of the image carrier.~~

~~v) Xerographic or photocopying machines do not qualify for the exemption.~~

~~vi) Word processing, text editing machinery or computerized equipment unless it is an integral part of a final graphic arts operation, such as a computer-controlled typesetting machine or equivalent that is used primarily in graphic arts production.~~

~~vii) Computers used to store data and generate text, maps, graphs or other print-out formats unless the product is an image carrier to be used to repetitively transfer images by printing. For example, a computer that generates an image that may later be reproduced by a graphic arts process would not qualify while a computer-controlled engraving system that produces printing cylinders and computer-controlled digital typesetting equipment would qualify.~~

~~viii) he use of machinery or equipment in managerial, sales or other non-production, non-operational activities including disposal of waste, inventory control, production scheduling, purchasing, receiving, accounting, physical management, general communications, plant security, sales, marketing, product exhibition and promotion, or personnel recruitment, selection or training.~~

~~ix) The use of machinery and equipment to prevent or fight fires or to protect employees, such as protective masks, gloves, coveralls and goggles or for safety, accident protection or first-aid even though the machinery or equipment may be required by law.~~

~~x) The use of machinery or equipment for general ventilation,~~

~~heating, cooling, climate control or general illumination.~~

~~E)~~ ~~An item of machinery or equipment that initially is used primarily in graphic arts production and having been so used for less than one-half of the useful life is converted to primarily nonexempt uses, will become subject to the tax at the time of the conversion. The tax will be collected on the portion of the purchase price of the machinery or equipment as was excluded from tax at the time the sale or purchase was made.~~

~~5)~~ ~~Sales to Lessors of Graphic Arts Equipment.~~
~~The statute provides for the purchase of graphic arts machinery and equipment by lessors who will lease the machinery and equipment for use in graphic arts production. Therefore, if the purchaser of the machinery or equipment leases the machinery and equipment to a lessee who uses it in an exempt manner, the sale to the purchaser-lessor will be exempt from tax. A supplier may exclude such sales from his or her taxable gross receipts provided that the purchaser-lessor provides to him or her a properly completed exemption certificate and the information contained therein would support an exemption if the sale were made directly to the lessee. Should a purchaser-lessor subsequently lease the machinery or equipment to a lessee who does not use it in an exempt manner that would qualify directly for the exemption, the purchaser-lessor will become liable for the tax from which he or she was previously exempted.~~

~~6)~~ ~~Exemption Certification.~~
~~Purchasers wishing to claim the exemption must certify to their suppliers that the machinery and equipment will be used primarily for graphic arts production. Retailers must maintain the certificates in their books and records. The use of blanket certificates of exemption will be permitted. If a graphic arts producer or lessor purchases at retail from a vendor who is not registered to collect Illinois Use Tax, the purchaser must maintain a copy of the certification in his or her records to support the deduction taken on the return. The certificate must include the seller's name and address, the purchaser's name and address and a statement that the property purchased will be used primarily in graphic arts production.~~

~~7)~~ ~~For the purpose of determining the portion of the proceeds or cost that may be excluded from tax, a sale of property will be deemed to be made as~~

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~~of the date of delivery of the property. If a single sale of property is made that calls for multiple deliveries unrelated to payments and a portion of the sold property is delivered when one fraction of the proceeds or cost is excludable and the remainder of the property is delivered when a different fraction of the proceeds or cost is excludable, the earliest date of delivery of any of the property will determine the portion of the proceeds or cost of the entire sale that may be excluded in computing the tax that is due on that entire sale. However, even when a contract provides for multiple deliveries, if a payment is closely related in time and quantity to the property delivered, the date of each delivery will determine the portion of the proceeds or cost that may be excluded in computing the tax that is due on that payment.~~

(Source: Amended at 47 Ill. Reg. 19349, effective December 12, 2023)

SUBPART D: GROSS RECEIPTS

Section 130.445 Federal Taxes

a) When Deductible

1) In computing retailers' occupation tax~~Retailers' Occupation Tax~~ liability, a person making such computation may deduct an amount equivalent to taxes which the person~~he~~ pays to the Federal Government if the person~~he~~ is required by the Federal law to collect such taxes from ~~his~~ customers and to remit such taxes directly to the Federal Government.

2) Also, in computing retailers' occupation tax~~Retailers' Occupation Tax~~ liability, a person making such computation may deduct an amount equivalent to Federal excise tax which the person~~he~~ pays directly to the Federal Government if such Federal tax is an excise tax imposed upon tangible personal property when sold at retail as distinguished from tangible personal property sold by a wholesaler, an importer, a manufacturer or other producer. Such taxes include the Federal taxes upon luxury passenger vehicles and special fuels. These taxes also include the taxes imposed by Section 4051 of the Internal Revenue Code (26 U.S.C.~~USCA~~ 405) upon the first retail sale of automobile truck chassis and bodies for use with a vehicle that has a gross vehicle weight of more than 33,000 pounds; truck trailer and semitrailer chassis and bodies

suitable for use on a trailer or semitrailer that has a gross vehicle weight of more than 26,000 pounds, and tractors regardless of weight of the kind chiefly used for highway transportation in combination with a trailer or semitrailer.

b) When Not Deductible

1) Federal excise taxes imposed upon the manufacture or production of tangible personal property, and Federal processing taxes, compensating taxes, importation taxes and taxes on floor stocks are not deductible, in computing retailers' occupation tax~~Retailers' Occupation Tax~~ liability, from the gross receipts of persons who sell such tangible personal property at retail. Such taxes include the Federal taxes upon manufacturers of tobacco products and alcoholic liquors.

2) Also, Federal taxes which are imposed on tangible personal property when sold by a wholesaler, an importer, a manufacturer or other producer (such as the Federal taxes on gasoline, diesel, tires or other tangible personal property when sold by a wholesaler, an importer, a manufacturer or other producer), are not deductible from gross receipts by anyone in computing retailers' occupation tax~~Retailers' Occupation Tax~~ liability.

3) The taxes referred to under this subheading ("When Not Deductible") are merely costs of doing business to the person who pays such taxes or to persons to whom the economic burden of such taxes may be shifted by those who pay such taxes to the Federal Government.

(Source: Amended at 47 Ill. Reg. 19349, effective December 12, 2023)

SUBPART E: RETURNS

Section 130.551 Prepayment of Retailers' Occupation Tax on Motor Fuel

a) *Any person engaged in the business of selling motor fuel at retail, as defined in the Motor Fuel Tax Law, and who is not a licensed distributor or supplier, as defined in* Section 1.2 or 1.14, respectively, of *the Motor Fuel Tax Law* [35 ILCS 505/1.2 and 1.14], *shall prepay to* their *distributor, supplier, or other reseller of motor fuel a portion of the tax imposed by* the Retailers' Occupation Tax Act (the Act) *if the distributor, supplier, or other reseller of motor fuel is registered under*

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Section 2a or Section 2c of the Act. *The prepayment requirement provided for in* this Section *does not apply to liquid propane gas.* [35 ILCS 120/2d] Every distributor, supplier, or other reseller of motor fuel registered under the Motor Fuel Tax Law that collects the tax shall remit the retailers' occupation tax~~Retailers' Occupation Tax~~ prepayment due from a person engaged in the business of selling any motor fuel to the Department in accordance with Section 2d(g) of the Act~~, except liquid propane gas, at retail and who is not a licensed distributor or supplier, as defined in Section 1.2 or 1.14, respectively, of the Motor Fuel Tax Law [35 ILCS 505/1.2 and 1.14]~~.

b) Portion of Retailers' Occupation Tax to be Prepaid by Retailer

1) *Before July 1, 2000 and then beginning on January 1, 2001 through June 30, 2003, the Retailers' Occupation Tax paid to the distributor, supplier or other reseller of motor fuel shall be an amount equal to $0.04 per gallon of the motor fuel, except gasohol as defined in Section 2-10 of* the Act *which shall be an amount equal to $0.03 per gallon, purchased from such distributor, supplier or other reseller.*

2) *Beginning on July 1, 2000 and through December 31, 2000, the Retailers' Occupation Tax paid to the distributor, supplier, or other reseller shall be an amount equal to $0.01 per gallon of the motor fuel, except gasohol as defined in Section 2-10 of* the Act *which shall be an amount equal to $0.01 per gallon, purchased from the distributor, supplier, or other reseller.*

3) *Beginning on July 1, 2003 and through December 10, 2010, the Retailers' Occupation Tax paid to the distributor, supplier, or other reseller shall be an amount equal to $0.06 per gallon of the motor fuel, except for gasohol as defined in Section 2-10 of* the Act *which shall be an amount equal to $0.05 per gallon, purchased from the distributor, supplier, or other reseller.*

4) *Beginning on January 1, 2011 and thereafter, the Retailers' Occupation Tax paid to the distributor, supplier, or other reseller shall be at the rate established by the Department under* this paragraph. *The rate shall be established by the Department on January 1 and July 1 of each year using the average selling price, as defined in Section 1 of* the Act, *per gallon of motor fuel sold in the State during the previous 6 months and multiplying that amount by 6.25% to determine the cents per gallon rate. In the case*

of biodiesel blends, as defined in Section 3-42 of the Use Tax Act, with no less than 1% and no more than 10% biodiesel, and in the case of gasohol, as defined in Section 3-40 of the Use Tax Act, the rate shall be 80% of the rate established by the Department under this paragraph *for motor fuel. The Department shall provide persons subject to* Section 2d of the Act *notice of the rate established under this subsection at least 20 days prior to each January 1 and July 1. Publication of the established rate on the Department's internet website shall constitute sufficient notice under* Section 2d of the Act. *The Department may use data derived from independent surveys conducted or accumulated by third parties to determine the average selling price per gallon of motor fuel sold in the State.* [35 ILCS 120/2d(b)-(e)]

~~Before July 1, 2000 and then beginning on January 1, 2001 through June 30, 2003, the Retailers' Occupation Tax paid to such distributor, supplier or other reseller of motor fuel shall be an amount equal to four cents per gallon of the motor fuel, except gasohol as defined in Section 2-10 of the Act which shall be an amount equal to 3 cents per gallon, purchased from such distributor, supplier or other reseller. Beginning on July 1, 2003 and thereafter, the Retailers' Occupation Tax paid to the distributor, supplier, or other reseller shall be an amount equal to $0.06 per gallon of the motor fuel; except that, for gasohol as defined in Section 2-10 of the Act, the tax shall be an amount equal to $0.05 per gallon, purchased from the distributor, supplier, or other reseller. Beginning on July 1, 2000 and through December 31, 2000, the Retailers' Occupation Tax paid to such distributor, supplier or other reseller of motor fuel shall be an amount equal to one cent per gallon of the motor fuel and of gasohol as defined in Section 2-10 of the Act.~~

c) The distributor, supplier or other reseller required to remit such retailers' occupation tax~~Retailers' Occupation Tax~~ shall file returns and deliver statements of the tax paid in accordance with Sections 2e and 2f of the Act.

d) The vendor's discount provided in Section 3 of the Retailers' Occupation Tax Act shall not apply to the amount of prepaid tax which is remitted to the Department as required by 35 ILCS 120/2d, 2e, and 2f.

(Source: Amended at 47 Ill. Reg. 19349, effective December 12, 2023)

SUBPART G: CERTIFICATE OF REGISTRATION

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Section 130.705 Procedure in Disputed Cases Involving Certificates of Registration~~Financial Responsibility Requirements~~

a) *No certificate of registration shall be issued to any person who is in default to the State of Illinois for moneys due under* the Retailers' Occupation Tax Act *or under any other State tax law or municipal or county tax ordinance or resolution under which the certificate of registration that is issued to the applicant under* the Retailers' Occupation Tax Act *will permit the applicant to engage in business without registering separately under such other law, ordinance or resolution.* [35 ILCS 120/2a]~~Any person aggrieved by any decision of the Department under this Regulation may, within 60 days after notice of such decision, protest and request a hearing, whereupon the Department shall give notice to such person of the time and place fixed for such hearing and shall hold a hearing in conformity with the provisions of the Retailers' Occupation Tax Act and then issue its final administrative decision in the matter to such person.~~

b) *Any person aggrieved by any decision of the Department under* Section 2a of the Retailers' Occupation Tax Act *may within 20 days after notice of such decision, protest and request a hearing, whereupon the Department shall give notice to such person of the time and place fixed for such hearing and shall hold a hearing in conformity with the provisions of* the Retailers' Occupation Tax Act *and then issue its final administrative decision in the matter to such person.* [35 ILCS 120/2a]~~In the absence of such a protest within 60 days, the Department's decision shall become final without any further determination being made or notice given.~~

c) *In the absence of such a protest within 20 days, the Department's decision shall become final without any further determination being made or notice given.* [35 ILCS 120/2a]

(Source: Amended at 47 Ill. Reg. 19349, effective December 12, 2023)

Section 130.745 Revocation of Certificate

a) The Department, after notice and hearing as provided under Section 2505-380 of the Civil Administrative Code [20 ILCS 2505/2505-380] and Section 2b of the Act, shall revoke the certificate of registration (including all sub-certificates of registration, if any, issued thereunder) of any person who 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 Act or any other Act administered by the Department, or who violates any of the provisions of the Act. 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 person so accused notice in writing of the charge against themhim or her, and on the date designated shall conduct a hearing upon this matter. The lapse of such 90-day90 day period shall not preclude the Department from conducting revocation proceedings at a later date if necessary.

b) Upon revocation of the certificate of registration (including all sub-certificates of registration, if any, issued under the certificate), the Department shall post notice at the place or places of business, at the front entrance and on the front windows, to which the revoked certificate applied, stating that the certificate of registration has been revoked and that it is unlawful for any person to engage in the business of selling tangible personal property at retail in this State without a certificate of registration issued by the Department (see Illustration B).

c) The Department shall notify the Department of Financial and Professional Regulation and the Department of Public Health upon revocation of, or a decision not to renew, a certificate of registration issued to a medical cannabis dispensing organization operated under the Compassionate Use of Medical Cannabis Pilot Program Act or issued to a dispensing organization under the Cannabis Regulation and Tax Act.

(Source: Amended at 47 Ill. Reg. 19349, effective December 12, 2023)

SUBPART H: BOOKS AND RECORDS

Section 130.801 Books and Records − General Requirements

a) *Every person engaged in the business of selling tangible personal property at retail in this State shall keep records and books of all sales* and purchases*and purchases of tangible personal property*, including all sales and purchase invoices, purchase orders, merchandise records and requisitions, inventory records *prepared as of December 31 of each year or otherwise annually, as has been the custom in the specific trade* [35 ILCS 120/7], credit memos, debit memos, bills of lading, shipping records, and all other records pertaining to any and all purchases and sales of goods whether or not the retailer believes them to be taxable under the Act; and the retailer shall also keep summaries,

recapitulations, totals, journal entries, ledger accounts, accounts receivable records, accounts payable records, statements, tax returns with all schedules or pertinent working papers used in connection with the preparation of such returns, and other documents listing, summarizing or pertaining to such sales, purchases, inventory changes, shipments or other transactions. For a description of what records constitute the minimum required, including the use of machine-sensible records and electronic data interchange, see Section 130.805 of this Part.

b) Retailers must maintain complete books and records covering receipts from all sales and distinguishing taxable from nontaxable receipts.

c) The books and records must clearly indicate and explain all the information (deductions as well as gross receipts) required for tax returns.

d) If a taxpayer retains records required to be retained under this Section in both machine-sensible and hard-copy formats, the taxpayer shall, upon request, make the records available to the Department in machine-sensible format in accordance with Section 130.805(b)(5).

e) The *books and records* *and other papers and documents which are required by the Act to be kept shall* ~~*must*~~ *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]

f) The books and records must be kept within Illinois except in instances where a business has several branches, with the head office being located outside Illinois, and where all books and records have been regularly kept outside the State at such head office. Under such circumstances, upon written permission from the Department, books and records may be kept outside Illinois, but the taxpayer must, within a reasonable time after notification by the Department, make all pertinent books, records, papers and documents available at some point within Illinois for the purpose of the inspection and audit as the Department may deem necessary.

g) Request for Books and Records and Documentation During an Audit

1) At the initiation of an audit, the Department will notify the taxpayer of the books and records that the taxpayer will be required to produce for the Department to enable the Department to conduct the audit. During the

course of the audit, the Department will provide the taxpayer with information document requests ("Information Document Request") for books and records the Department is requesting the taxpayer to produce for review. The taxpayer will be provided 30 days, or the number of days agreed to by the taxpayer and the Department, to respond to an Information Document Request. If the taxpayer and the Department cannot agree on a date to respond to a request, the taxpayer shall have 30 days to respond. If the taxpayer does not provide the Department with the books and records requested in the Information Document Request, the Department will issue a second Information Document Request for the books and records. If the taxpayer again fails to provide the Department with the books and records requested, the Department is authorized to issue a written document request for the records pursuant to subsection (i)(3).

2) *It shall be presumed that all sales of tangible personal property are subject to tax under* the Act~~*the Act*~~ *until the contrary is established. The burden of proving that a transaction is not taxable shall be upon the person who would be required to remit the tax to the Department if the transaction is taxable. In the course of any audit or investigation or hearing by the Department with reference to a given taxpayer, if the Department finds that the taxpayer lacks documentary evidence needed to support the taxpayer's claim to exemption from tax, the Department is authorized to notify the taxpayer in writing to produce such evidence* ("Notice of Demand for Documentary Evidence")~~*("Notice of Demand for Documentary Evidence")*, *and the taxpayer shall have 60 days subject to the right in the Department to extend this period either on request for good cause shown or on its own motion from the date when such notice is sent to the taxpayer by certified or registered mail (or delivered to the taxpayer if the notice is served personally) in which to obtain and produce such evidence for the Department's inspection and audit, failing which the matter shall be closed, and the transaction shall be conclusively presumed to be taxable.* [35 ILCS 120/7]~~.~~ In the course of any audit or investigation by the Department with reference to a given taxpayer, if the taxpayer fails to produce the documentary evidence needed to support the taxpayer's claim to exemption from tax within the 60 days or the time allotted, the taxpayer is subject to the penalty in subsection (i).

EXAMPLE: The auditor requests all the resale certificates and exemption

certificates for all tax-exempt sales. The auditor has issued an Information Document Request pursuant to subsection (g)(1). The retailer has failed to provide the documentary evidence required to support the exemptions. The Department issued a written request ("Notice of Demand for Documentary Evidence") pursuant to subsection (g)(2) and provided the taxpayer 60 days to produce the documentation. If the retailer has not provided all of the certificates after the 60 days has elapsed, the matter will be closed, the transactions will be conclusively presumed to be taxable, and the retailer is subject to the penalty in subsection (i).

h) All books and records kept by a medical cannabis dispensing organization under the Compassionate Use of Medical Cannabis ~~Pilot~~ Program Act or kept by a dispensing organization pursuant to rules adopted by the Illinois Department of Financial and Professional Regulation to implement the Compassionate Use of Medical Cannabis ~~Pilot~~ Program Act and the Cannabis Regulation and Tax 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.

i) *Any person who fails to keep books and records or fails to produce books and records for examination, as required by* Section 7 of the Act and this Part ~~*Section 7 of the Act and this Part*~~*, 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* Section 7 of the Act and this Part ~~*Section 7 of the Act and this Part*~~*. The penalties imposed under* Section 7 of the Act and this subsection (i) ~~*Section 7 of the Act and this subsection (i)*~~ *shall not apply if the taxpayer shows that he or she acted with ordinary business care and prudence.* [35 ILCS 120/7]

1) The Act imposes two requirements on retailers: retailers must maintain books and records (see subsection (a)) and they must produce the books and records for inspection and examination by the Department upon request (see subsection (e)). A retailer may be subject to the penalty in this subsection (i) if it maintains books and records but fails or refuses to produce the records upon request of the Department. A retailer also may be subject to the penalty in this subsection (i) if it does not maintain books and records and therefore cannot produce the books and records to the Department upon request. In the latter case, the retailer may be subject to

either a penalty for the failure to maintain books and records or the failure to produce books and records; the Department cannot impose two penalties in this case.

2) If a person fails to produce books and records for examination or inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep the books and records so required. A person who is unable to rebut this presumption is subject to the penalty provided in this subsection (i).

3) Except as otherwise provided by subsection (i)(8)(A), if a request has been made and not honored, prior to issuing a notice of penalty for a failure to maintain books and records or a failure to produce books and records, the Department must provide the taxpayer with a document request in writing ("Notice of Demand for Books and Records").

A) The Notice of Demand for Books and Records shall contain:

i) the name of the person receiving the request;

ii) the name of the business;

iii) the date of the request or requests;

iv) the books and records requested;

v) the books and records that the person failed to produce;

vi) the number of days the person has to produce the books and records; and

vii) the name of the Department agent or employee.

B) The Department agent or employee shall sign and date the form and provide a copy of the form to the person either in person or by mail. The person shall have 30 days from the date of the Notice of Demand for Books and Records to produce the books and records the person has failed to produce. The Department is authorized to extend the period either on written request for good cause shown

or on its own motion. If the person fails to produce the books and records within the time allotted, the Department shall issue a notice of penalty pursuant to this subsection (i).

4) Any person receiving a notice of penalty may, within 20 days after the date on the notice of penalty, protest and request a hearing in writing. Upon receiving a request for a hearing, the Department shall give notice to the person requesting the hearing of the time and place fixed for the hearing and shall hold a hearing in conformity with the provisions of the Act, and then issue its final administrative decision in the matter to that person. The Department shall postpone the hearing until completion of the inspection or audit. In the absence of a protest and request for a hearing within 20 days, the Department's decision shall become final without any further determination being made or notice given.

5) The Department cannot impose more than one penalty for failure to produce books and records for a calendar month.

EXAMPLE 1: An authorized agent of the Department inspects a retailer and requests the records for the first week in April. The retailer does not produce the records. The agent subsequently requests the records for the remaining 3 weeks in April. The retailer does not produce the records. The agent can assess only one penalty for the month of April.

EXAMPLE 2: In April, an authorized agent of the Department inspects a retailer and requests all purchase invoices for tangible personal property purchased in March. The purchase invoices are not provided by the retailer and the Department issues a notice of penalty in the amount of $1,000. The agent returns in May and requests to see all the cigarette sales receipts for March. The retailer fails to produce the sales receipts. The Department cannot issue a penalty for failure of the retailer to provide sales receipts for March because the agent has previously issued a notice of penalty for failure to produce the purchase invoices for March.

6) A records request can cover multiple periods. The Department is authorized to issue a separate penalty for each period.

EXAMPLE: An auditor makes multiple requests for books and records for the months of January through July. The retailer cannot produce the

books and records for any of the months. The auditor fills out a Notice of Demand for Books and Records, provides a copy to the person, and provides 30 days for the person to produce the books and records. After the 30-day period expires, the retailer does not produce the books and records. The Department issues a notice of penalty in the amount of $1,000 for the month of January and $3,000 for each of the months February through July, for a total penalty of $19,000.

7) *The penalties imposed* under this subsection (i) *shall not apply if the taxpayer shows that he or she acted with ordinary business care and prudence.* [35 ILCS 120/7] When determining whether a taxpayer has acted with ordinary business care and prudence, the Department will consider the size of the business, the amount of gross receipts, the volume of sales, the nature of the business, the type and number of items sold by the business, the types of books and records requested, and whether the books and records constitute the minimum records required by Section 130.805. (In other words, would a taxpayer that exercised ordinary business care and prudence be able to produce the books and records requested by the Department?) "Ordinary care has been defined to be that degree of care which is exercised by ordinarily prudent persons under same or similar circumstances." Swenson v. City of Rockford, 9 Ill.2d 122, 127 (1956).

8) Requests for Books and Records at the Beginning and During Scheduled Audits

A) When the Department determines it will audit a taxpayer's books and records, it shall notify the taxpayer of the audit and schedule a time to commence the audit that is satisfactory to the Department and the taxpayer. In no event can this time be later than 6 months after the date of the notice, unless the Department agrees to extend the 6-month period. If the taxpayer refuses to schedule the commencement of the audit within 6 months after the date of the notice, the taxpayer is subject to a penalty for refusal to produce books and records for every month subject to the audit. After the 6-month period has expired, the Department may issue a notice of penalty to the taxpayer pursuant to this subsection (i). The Department is not required to provide the taxpayer with a

document request or allow additional time to schedule an audit of the person's books and records.

B) During the course of an audit, the auditor may issue multiple requests for specific books and records. Prior to issuing the first notice of penalty during an audit, the auditor shall complete a Notice of Demand for Books and Records in accordance with subsection (i) that identifies all books and records that have not been provided pursuant to all earlier requests for the production of documents.

(Source: Amended at 47 Ill. Reg. 19349, effective December 12, 2023)

Section 130.815 Preservation and Retention of Records

a) 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~~Notices of Tax Liability~~ as provided by Sections 4 and 5 of the Act shall be preserved until the expiration of such period unless the Department, in writing, shall authorize their destruction or disposal prior to such expiration.

b) In determining the period for which the Department is authorized to issue a notice of tax liability~~Notice of Tax Liability~~, the following material from Sections 4 and 5 of the Act must be considered.

c) *Except in case of a fraudulent return* (in which instance, there is no statute of limitations), *or* except *in the case of an amended return (where a notice of tax liability may be issued on or after each January 1 and July 1 for an amended return filed not more than 3 years prior to such January 1 or July 1, respectively),* or *except in case of failure to file a return* (in which instance, there is no statute of limitations), or except *with the consent of the person to whom the notice of tax liability is to be issued, no notice of tax liability shall be issued on and after each January 1 and July 1 covering gross receipts received during any month or period of time more than 3 years prior to such January 1 and July 1, respectively, except that if a return is not filed at the required time, no notice of tax liability may be issued on and after each July 1 and January 1 for such return filed more than 3 years prior to such July 1 and January 1, respectively.* [35 ILCS 120/4 and 5] Provided, however, that the foregoing limitations upon the issuance of a notice of tax liability~~Notice of Tax Liability~~ shall not apply to:

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1~~A~~) the issuance of a notice of tax liability~~Notice of Tax Liability~~ with respect to any period of time prior thereto in cases where the Department has, within the period of limitation then provided, notified the person making the return of a notice of tax liability~~Notice of Tax Liability~~ even though such return, with which the tax that was shown by such return to be due was paid when the return was filed, had not been corrected by the Department in the manner required by Section 4 of the Act prior to the issuance of such notice, and

2~~B~~) the issuance of any such notice~~Notice~~ with respect to any period of time prior thereto in cases where the Department has, within the period of limitation then provided, notified a person of the amount of tax computed even though the Department had not determined the amount of tax due from such person in the manner required by Section 5 of the Act prior to the issuance of such notice~~Notice~~; but in no case shall the amount of any such notice of tax liability~~Notice of Tax Liability~~ for any period otherwise barred by the Act exceed for such period the amount shown in the notice of tax liability~~Notice of Tax Liability~~ theretofore issued.

~~Except in case of failure to file a return, or except in case of a fraudulent return (in which two instances, there is no statute of limitations), or except in the case of an amended return (where a Notice of Tax Liability may be issued on or after each January 1 and July 1 for an amended return filed not more than 3 years prior to such January 1 or July 1, respectively), or except with the consent of the person to whom the Notice of Tax Liability is to be issued, no Notice of Tax Liability shall be issued on and after each January 1 and July 1 covering gross receipts received during any month or period of time more than 3 years prior to such January 1 and July 1, respectively:~~

EXAMPLE 1: Taxpayer files a tax return on June 20, 2023. The statute of limitations for the Department to issue a notice of tax liability expires June 30, 2026, for the return filed in June.

EXAMPLE 2: Same facts as above, but the Department does not issue a notice of tax liability by June 20, 2026. It is later discovered in 2027 that the June 20, 2023, return was fraudulent. As such, the Department may issue a notice of tax liability at any time; there is no time limit.

EXAMPLE 3: Taxpayer files a tax return on July 20, 2024. The statute of limitations for the Department to issue a notice of tax liability expires December 31, 2027.

EXAMPLE 4: Taxpayer files all monthly tax returns for the year 2024, except for October. In January 2028, the Department discovers the taxpayer failed to file the return for October 2024. While the three-year statute of limitations to issue a notice of tax liability expired on December 31, 2027, the Department may still issue a notice of tax liability for failure to file to a return.

d) If, when a tax or penalty or interest under the Act becomes due and payable, the person alleged to be liable therefor shall be out of the State, the notice of tax liability~~Notice of Tax Liability~~ may be issued, within the times limited by the Act, after his coming into or return to the State; and if, after the tax or penalty or interest under the Act becomes due and payable, the person alleged to be liable therefor departs from and remains out of the State, the time of his absence is no part of the time limited for the issuance of the notice of tax liability~~Notice of Tax Liability~~; but the foregoing provisions concerning absence from the State shall not apply to any case in which, at the time when a tax or penalty or interest becomes due under the Act, the person allegedly liable therefor is not a resident of this State.

e) The time limitation period on the Department's right to issue a notice of tax liability~~Notice of Tax Liability~~ shall not run during any period of time in which the Order of any Court has the effect of enjoining or restraining the Department from issuing the notice of tax liability~~Notice of Tax Liability~~.

(Source: Amended at 47 Ill. Reg. 19349, effective December 12, 2023)

SUBPART I: PENALTIES AND INTEREST

Section 130.901 Civil Penalties

a) Filing an Incorrect Return

If the tax computed upon the basis of the gross receipts as fixed by the Department is greater than the amount of tax due under the return or returns as filed, the Department shall (or if the tax or any part thereof that is admitted to be due by a return or returns, whether filed on time or not, is not paid, the Department may) issue the taxpayer a notice of tax liability for the amount of tax

claimed by the Department to be due, together with a penalty in an amount determined in accordance with Section 3-3 of the Uniform Penalty and Interest Act (UPIA). *Provided, that if the incorrectness of any return or returns as determined by the Department is due to negligence or fraud, said penalty shall be in an amount determined in accordance with Section 3-5 or Section 3-6 of the* UPIA. [35 ILCS 120/4]

b) Failure to File Return When Required, but Payment Prior to Notice of Tax Liability

In case any person engaged in the business of selling tangible personal property at retail fails to file a return when and as herein required, but thereafter, prior to the Department's issuance of a notice of tax liability under this Section*, files a return and pays the tax,* the person *shall also pay a penalty in an amount determined in accordance with Section 3-3 of the* UPIA. [35 ILCS 120/5]

c) Filing Return at Required Time but Failure to Pay Tax

In case any person engaged in the business of selling tangible personal property at retail files the return at the time required by the Act *but fails to pay the tax, or any part thereof, when due, a penalty in an amount determined in accordance with Section 3-3 of the* UPIA *shall be added thereto.* [35 ILCS 120/5]

d) Filing Late Return Without Payment of Entire Tax

In case any person engaged in the business of selling tangible personal property at retail fails to file a return when and as herein required, but thereafter, prior to the Department's issuance of a notice of tax liability under this Section*, files a return but fails to pay the entire tax, a penalty in an amount determined in accordance with Section 3-3 of the* UPIA *shall be added thereto.* [35 ILCS 120/5]

e) Failure to File Return When Required, and Failure to Pay Prior to Notice by Department

In case any person engaged in the business of selling tangible personal property at retail fails to file a return, the Department shall determine the amount of tax due from the person *according to its best judgment and information, which amount so fixed by the Department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due, as shown in such determination. The Department shall issue the taxpayer a notice of tax liability for the amount of tax claimed by the Department to be due, together with a penalty of 30% thereof.* [35 ILCS 120/5]

f) Notice of Tax Liability
Upon issuance of a notice of tax liability (NTL), a *taxpayer or the taxpayer's legal representative may, within 60 days after such notice, file a protest to such notice of tax liability with the Department and request a hearing*. The Department shall provide notice of the time and place of the hearing to the taxpayer or the taxpayer's legal representative and shall hold a hearing in accordance with the Act. After the hearing, the Department shall issue a final assessment of the amount due to the taxpayer or the taxpayer's legal representative. *If a protest to a notice of tax liability and a request for hearing is not filed within 60 days after* issuance of a NTL, *such* NTL *shall become final without the necessity of a final assessment being issued and shall be deemed to be a final assessment.* [35 ILCS 120/5]

g) Effect of a Taxpayer's Bankruptcy Filing Upon a Notice of Tax Liability
If prior to the issuance of the NTL, a taxpayer has filed a petition in U.S. Bankruptcy Court and the automatic stay is still in effect, or if a taxpayer files such a petition within 60 days after the issuance of a NTL, the automatic stay prevents any pre-petition liability included in the NTL from becoming final even though not protested within 60 days after the issuance of the NTL. If any pre-petition tax included in the NTL is not paid to the Department through the bankruptcy proceeding, adjudicated by the bankruptcy court, or discharged by the bankruptcy court, the taxpayer has 60 days after termination of the automatic stay to protest the pre-petition liability and request an administrative hearing pursuant to 86 Ill. Adm. Code 200.

h) Over-Collection of Tax or Collection of Tax on Nontaxable Receipts
If a seller collects an amount (however designated) that purports to reimburse the seller for retailers' occupation tax liability measured by receipts that are not subject to retailers' occupation tax, or if a seller, in collecting an amount (however designated) that purports to reimburse the seller for retailers' occupation tax liability measured by receipts that are subject to tax under the Act, *collects more from the purchaser than the seller's retailers' occupation tax liability on the transaction, the purchaser shall have a legal right to claim a refund of that amount from the seller. If, however, that amount is not refunded to the purchaser for any reason, the seller is liable to pay that amount to the Department. This* subsection (h) *does not apply to an amount collected by the seller as reimbursement for the seller's retailers' occupation tax liability on receipts that are subject to tax under* the Act *as long as the collection is made in*

compliance with the tax collection brackets prescribed by the Department at 86 Ill. Adm. Code 150.Table A. [35 ILCS 120/2-40]

EXAMPLE: A lessor of tangible personal property who paid Use Tax up front upon acquisition of the rental property collects an amount described in the rental statements as a "tax" from lessees. Because the lease contract payment amounts do not generate a tax, the amounts collected as a "tax" are a collection of tax on nontaxable receipts and the lessee has a legal right to claim a refund of that amount. If the amount is not refunded, the taxpayer must pay the amount to the Department. (See John Nottoli, Inc. v. Department of Revenue, 272 Ill. App. 3d 822 (4th Dist. 1995)).

i) Filing Late Return Due to "Reasonable Cause"

1) *The penalties imposed under* Sections 3-3, 3-4, and 3-5 of the Uniform Penalty and Interest Act *shall not apply if the taxpayer shows that the* taxpayer's *failure to file a return or pay tax at the required time was due to reasonable cause.* [35 ILCS 735/3-8]

2) The Department will decide whether to abate a penalty by considering the extent to which the taxpayer made a good faith effort to determine the proper tax liability and pay the proper liability in a timely fashion. In making this determination the Department will use the standards set out in the Reasonable Cause Section (86 Ill. Adm. Code 700.400) of the Uniform Penalty and Interest Act regulations.

j) Failure to Maintain Books and Records and Failure to Produce Books and Records for Examination
Section 7 of the Act imposes *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.* [35 ILCS 120/7] (See Section 86 Ill. Adm. Code 130.801(i)).

~~Beginning January 1, 1994, the Uniform Penalty and Interest Act [35 ILCS 735] applies to civil penalties imposed for violations of the Retailers' Occupation Tax Act or of any regulation of the Department issued pursuant to that Act. (See 86 Ill. Adm. Code 700 for explanations and examples of the application of these penalties.) The Retailers' Occupation Tax Act provided the following penalties for violations of the Act or of any Regulation of the Department issued~~

~~pursuant thereto prior to January 1, 1994:~~

~~a)~~ ~~Filing an Incorrect Return~~
~~*If the tax computed upon the basis of the gross receipts as fixed by the Department is greater than the amount of tax due under the return or returns as filed, the Department shall (or if the tax or any part thereof that is admitted to be due by a return or returns, whether filed on time or not, is not paid, the Department may) issue the taxpayer a notice of tax liability for the amount of tax claimed by the Department to be due, together with a penalty of 10% thereof: Provided, that if the incorrectness of any return or returns as determined by the Department is due to fraud, said penalty shall be 30% of the tax due*~~ (Section 4 of the Act). ~~The above-quoted penalties apply on or after January 1, 1988 through December 31, 1993.~~

~~b)~~ ~~Failure to File Return When Required, but Payment Prior to Notice of Tax Liability~~
~~*In case any person engaged in the business of selling tangible personal property at retail fails to file a return when and as herein required, but thereafter, prior to the Department's issuance of a notice of tax liability under this section, files a return and pays the tax, he shall also pay a penalty of 10% of the amount of the tax.*~~ (Section 5 of the Act)

~~1)~~ ~~The above-quoted penalty applies January 1, 1988 through December 31, 1993.~~

~~A)~~ ~~EXAMPLE: The taxpayer's return for November 1987, is required to be filed on or before December 31, 1987. The taxpayer files the return on January 10, 1988. Because the return is filed late in January 1988, it is subject to the 10% penalty rate that went into effect January 1, 1988.~~

~~B)~~ ~~EXAMPLE: The taxpayer's return for October 1987, is required to be filed on or before November 30, 1987. The taxpayer files the return on December 12, 1987. Because the return is filed late during December 1987, it is subject to the 7.5% penalty rate that was in effect during December 1987.~~

~~2)~~ ~~As to tax liability incurred before November 1, 1987, but on or after December 1, 1984, the penalty in this situation is 7.5%.~~

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c) Filing Return at Required Time but Failure to Pay Tax
In case any person engaged in the business of selling tangible personal property at retail files the return at the time required by the Act but fails to pay the tax, or any part thereof, when due, a penalty of 10% of the amount of the tax unpaid when due shall be added thereto. (Section 5 of the Act)

1) The above-quoted penalty applies on or after January 1, 1988 through December 31, 1993.

2) As to tax liability incurred before January 1, 1988, but on or after December 1, 1984, the penalty in this situation is 7.5%.

d) Filing Late Return Without Payment of Entire Tax
In case any person engaged in the business of selling tangible personal property at retail fails to file a return when and as herein required, but thereafter, prior to the Department's issuance of a notice of tax liability under this section, files a return but fails to pay the entire tax, a penalty of 10% of the full amount of tax shown by such return shall be added thereto. (Section 5 of the Act)

1) The above-quoted penalty applies on or after January 1, 1988 through December 31, 1993.

2) As to tax liability incurred before January 1, 1988, but on or after December 1, 1984, the penalty in this situation is 7.5%.

e) Failure to File Return When Required, and Failure to Pay Prior to Notice by Department
In case any person engaged in the business of selling tangible personal property at retail fails to file a return, the Department shall determine the amount of tax due from him according to its best judgment and information, which amount so fixed by the Department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due, as shown in such determination.... The Department shall issue the taxpayer a notice of tax liability for the amount of tax claimed by the Department to be due, together with a penalty of 30% thereof. (Section 5 of the Act)

1) The above-quoted penalty applies to tax liability incurred on or after December 1, 1984 through December 31, 1993.

2) As to tax liability incurred before December 1, 1984, but after July 1, 1965, the penalty in this situation is 20%.

f) Effect of a Taxpayer's Bankruptcy Filing Upon a Notice of Tax Liability
Generally, if a protest to a notice of tax liability and a request for hearing is not filed within 60 days after issuance of a Notice of Tax Liability (NTL), such NTL shall become final without the necessity of a final assessment being issued and shall be deemed to be a final assessment. (See Section 5 of the Act) However, if prior to the issuance of the NTL, a taxpayer has filed a petition in U.S. Bankruptcy Court and the automatic stay is still in effect, or if a taxpayer files such a petition within 60 days after the issuance of an NTL, the automatic stay prevents any pre-petition liability included in the NTL from becoming final even though not protested within 60 days after the issuance of the NTL. If any pre-petition tax included in the NTL is not paid to the Department through the bankruptcy proceeding, adjudicated by the bankruptcy court, or discharged by the bankruptcy court, the taxpayer has 60 days after termination of the automatic stay to protest the pre-petition liability and request an administrative hearing pursuant to 86 Ill. Adm. Code 200.

g) Over-Collection of Tax, or Collection of Tax on Nontaxable Receipts
If a seller collects an amount (however designated) that purports to reimburse the seller for Retailers' Occupation Tax liability measured by receipts that are not subject to retailers' occupation tax, or if a seller, in collecting an amount (however designated) that purports to reimburse the seller for Retailers' Occupation Tax liability measured by receipts that are subject to tax under the Act, collects more from the purchaser than the seller's Retailers' Occupation Tax liability on the transaction, the purchaser shall have a legal right to claim a refund of that amount from the seller. If, however, that amount is not refunded to the purchaser for any reason, the seller is liable to pay that amount to the Department. This subsection (g) does not apply to an amount collected by the seller as reimbursement for the seller's Retailers' Occupation Tax liability on receipts that are subject to tax under the Act as long as such collection is made in compliance with the tax collection brackets prescribed by the Department at 86 Ill. Adm. Code 150.Table A. (Section 2-40 of the Act)

For example, a lessor of tangible personal property who paid Use Tax up front upon acquisition of the rental property collects an amount described in the rental statements as a "tax" from lessees. Because the lease contract payment amounts

~~do not generate a tax, the amounts collected as a "tax" are a collection of tax on nontaxable receipts and the lessee has a legal right to claim a refund of that amount. If the amount is not refunded, the taxpayer must pay the amount to the Department. (See John Nottoli, Inc. v. Department of Revenue (Fourth Dist. 1995, 272 Ill.App.3d 822).)~~

~~h)~~ ~~Filing Late Return Due to "Reasonable Cause"~~

~~1)~~ ~~The penalties imposed under Sections 3-3, 3-4 and 3-5 of the Uniform Penalty and Interest Act shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause.~~

~~2)~~ ~~The Department will decide whether to abate a penalty by considering the extent to which the taxpayer made a good faith effort to determine his proper tax liability and pay his proper liability in a timely fashion. In making this determination the Department will use the standards set out in the Reasonable Cause Section (86 Ill. Adm. Code 700.400) of the Uniform Penalty and Interest Act regulations.~~

~~i)~~ ~~Failure to Maintain Books and Records and Failure to Produce Books and Records for Examination~~
~~*Section 7 of the Act imposes 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.* [35 ILCS 120/7] (See 35 ILCS 120/7 and Section 130.801(i).)~~

(Source: Amended at 47 Ill. Reg. 19349, effective December 12, 2023)

SUBPART S: SPECIFIC APPLICATIONS

Section 130.1905 Agricultural Producers

a) Agricultural Producers − When Liable For Tax

1) Persons who engage in the business of selling agricultural products, such as milk and other dairy~~diary~~ products, livestock, meats, hay, grain, vegetables, fruit, plants, flowers, eggs, young trees or any other such items

of tangible personal property, to purchasers for use or consumption, are required to remit retailers' occupation tax~~Retailers' Occupation Tax~~ to the Department upon their receipts from such sales, notwithstanding the fact that such persons may themselves produce the agricultural products which they sell.

2) For example, a dairy farmer who produces milk and sells it to purchasers for use or consumption becomes liable for the tax.

3) Similarly, farmers who sell products to purchasers for use or consumption from roadside stands or from vending vehicles to purchasers for use or consumption, or who rent or lease space at an established market, "sales barn" or other similar place and sell commodities in their own names to purchasers for use or consumption, are engaged in the business of selling tangible personal property to purchasers for use or consumption within the meaning of the Retailers' Occupation Tax Act.

b) Agricultural Producers − When Not Liable For Tax
Agricultural producers are not required to remit retailers' occupation tax~~Retailers' Occupation Tax~~ measured by their gross receipts from sales of tangible personal property to purchasers for purposes of resale. For example, a farmer who sells eggs to a grocer who purchases such eggs for resale to the grocer's~~his~~ customers is selling tangible personal property to a purchaser for purposes of resale. However, except in the case of sales to totally exempt purchasers, when sales for resale are made, sellers should, for their protection, take a Certificate of Resale from the purchaser. Mere statements by sellers that property was sold for resale will not be accepted by the Department without corroborative evidence. See Section 130.1405 for a seller's responsibility to obtain certificates of resale and the requirements for certificates of resale.

c) Associations of Agriculturists − When Liable For Tax
When an association of agriculturists conducts a market, "sales barn" or other similar place at which agricultural produce is sold to purchasers for use or consumption by the association as agent for principals who are unknown or undisclosed (see Section 130.1915 of this Part, entitled "Auctioneers and Agents"), such association is engaged in the business of selling tangible personal property to purchasers for use or consumption within the meaning of the Act and is required to remit retailers' occupation tax~~Retailers' Occupation Tax~~ upon the gross receipts from such sales. The management of such association is required to

file returns and pay the tax under such circumstances.

(Source: Amended at 47 Ill. Reg. 19349, effective December 12, 2023)

Section 130.1935 Computer Software

a) Computer software means all types of software including operational, applicational, utilities, compliers, templates, shells, and all other forms. Canned software is considered to be tangible personal property regardless of the form in which it is transferred or transmitted, including tape, disc, card, electronic means, or other media. The sale at retail, or transfer, of canned software intended for general or repeated use is taxable, including the transfer by a retailer of software which is subject to manufacturer licenses restricting the use or reproduction of the software.

1) A license of software is not a taxable retail sale if:

A) it is evidenced by a written agreement signed by the licensor and the customer;

i) An electronic agreement in which the customer accepts the license by means of an electronic signature that is verifiable and can be authenticated and is attached to or made part of the license will comply with this requirement.

ii) A license agreement in which the customer electronically accepts the terms by clicking "I agree" does not comply with this requirement.

B) it restricts the customer's duplication and use of the software;

C) it prohibits the customer from licensing, sublicensing, or transferring the software to a third party (except to a related party) without the permission and continued control of the licensor;

D) the licensor has a policy of providing another copy at minimal or no charge if the customer loses or damages the software, or of permitting the licensee to make and keep an archival copy, and such policy is either stated in the license agreement, supported by

the licensor's books and records, or supported by a notarized statement made under penalties of perjury by the licensor; and

E) the customer must destroy or return all copies of the software to the licensor at the end of the license period. This provision is deemed to be met, in the case of a perpetual license, without being set forth in the license agreement.

EXAMPLE: A retailer of computer software and related products sells or transfers a shrink-wrapped software program to a customer. A "license agreement" contained on or in the package, which by its terms becomes effective upon opening of the package, states that the customer does not receive title to the program and that the customer may not copy the program except to make a backup or archival copy while the customer~~he~~ owns the program. The license agreement is not evidenced by a written agreement signed by the customer. The license does not prohibit the customer from selling the program to a third party. If the customer loses or damages the program, the vendor will not replace it for free or for a minimal charge. Since it fails to meet all the requirements for treatment as an exempt license, the transfer from the vendor to the customer is a taxable retail sale of software.

2) Value-added resellers who acquire software for relicensing or transfer to consumers after modification or adaptation of the software may acquire the software as a sale for resale by presenting their suppliers with valid certificates (see Section 130.1410 of this Part).

3) Computer software provided through a cloud-based delivery system is not subject to tax. A cloud-based delivery system is one in which computer software is never downloaded onto a client's computer and only accessed remotely.

4) If a provider of a service provides to the subscriber an API, applet, desktop agent, or a remote access agent to enable the subscriber to access the provider's network and services, the subscriber is receiving computer software.

b) Tax applies to the entire charge made to the customer, including charges for all

associated documentation and materials. Charges for updates of canned software are considered to be sales of software. Charges for training, telephone assistance, installation, and consultation are exempt if they are separately stated from the selling price of canned software. Maintenance agreements for software will be treated in the same manner as other maintenance agreements. Sellers of maintenance agreements must pay tax on their cost price of the materials transferred incident to the completion of a maintenance agreement.

c) Custom Computer Programs

1) Custom computer programs prepared to the special order of the customer are not subject to tax under the Retailers' Occupation Tax Act, the Use Tax Act, the Service Occupation Tax Act, or the Service Use Tax Act. To be considered exempt software, the following elements must be present:

A) Preparation or selection of the program for the customer's use requires an analysis of the customer's requirements by the vendor; and

B) The program requires adaptation by the vendor to be used in a specific work environment, e.g., a particular make and model of a computer using a specified input or output device.

2) Custom computer programs do not include "canned" or prewritten computer programs held for general or repeated sale or lease. Modification of an existing prewritten program to meet the customer's needs is custom software. If modified software is held for general or repeated sale or lease, it is canned software. Custom software means the software which results from real and substantial changes to the operational coding of canned or pre-written software in order to meet the specific individualized requirements of the purchaser for the purchaser's~~his~~ limited or particular use.

EXAMPLE: Canned software is purchased with a resale certificate by a programmer who modifies it to meet a customer's specific needs. The transfer to the customer is exempt from tax. If that program, as modified, is sold to other customers without further modification, it is taxable canned software, as are copies or repeat orders of such modified software.

3) The selection of pre-written or canned programs or program modules assembled by the vendor into a software package does not constitute custom software unless real and substantial changes are made to the programs or creation of program interfacing logic. If the pre-written program or module was previously marketed, the new program will qualify as a custom program if the price of the pre-written program was 50% or less of the price of the new program. If the pre-written program was not previously marketed, the new program will qualify as a custom program if the charge made to the customer for custom programming services, as evidenced by the records of the seller, was more than 50% of the contract price to the consumer.

d) All software used to operate exempt manufacturing machinery and equipment (see 86 Ill. Adm. Code 130.330) is exempt.

(Source: Amended at 47 Ill. Reg. 19349, effective December 12, 2023)

Section 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

a) Section 1d of the Retailers' Occupation Tax Act provides an exemption for *tangible personal property to be used or consumed in the process of graphic arts production if used or consumed at a facility that is certified by the Department of Commerce and Economic Opportunity (DCEO) and located in a county of more than 4,000 persons and less~~fewer~~ than 45,000 persons.* [35 ILCS 120/1d]

b) To qualify for the exemption, a business must meet the following requirements contained in Section 1d and 1f of the Retailers' Occupation Tax Act:

1) *be located in an enterprise zone established pursuant to the Illinois Enterprise Zone Act*;

2) *use or consume the tangible personal property at a facility located in a county of more than 4,000 but less~~fewer~~ than 45,000 persons;*

3) *make investments~~ that~~:*

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A) *which cause the creation of a minimum of 200 full-time equivalent jobs in Illinois; or*

B) *which cause the retention of a minimum of 2,000 full-time jobs in Illinois; or*

C) *of ~~total~~ a minimum of $40,000,000 and retain at least 90% of the jobs in place on the date on which the exemption is granted and for the duration of the exemption; and*

4) *be certified by DCEO as complying with the requirements specified in* this subsection (b).*~~this subsection (b).~~* [35 ILCS 120/1d and 1f~~120/1f~~]

c) Businesses seeking certificates of eligibility must make application to the DCEO on application forms provided by DCEO. [35 ILCS 120/1f]~~*Businesses seeking certificates of eligibility must make application to DCEO on application forms provided by* DCEO. [35 ILCS 120/1f]~~ The Illinois Department of Revenue does not certify businesses as eligible for this exemption.

d) To qualify for the exemption, the tangible personal property must be used or consumed within the enterprise zone in the process of graphic arts production. Sales of tangible personal property used or consumed in activities that do not constitute graphic arts production remain subject to the tax. *For purposes of this* Section~~*Section*~~*, "graphic arts production" means the production of tangible personal property for wholesale or retail sale or lease by means of printing, including ink jet printing, by one or more of the processes described in Groups 323110 through 323122 of Subsector 323, Groups 511110 through 511199 of Subsector 511, and Group 512230 of Subsector 512 of the North American Industry Classification System published by the U.S. Office of Management and Budget, 1997 edition. Graphic arts production does not include the transfer of images onto paper or other tangible personal property by means of photocopying or final printed products in electronic or audio form, including the production of software or audiobooks. Persons engaged primarily in the business of printing or publishing newspapers or magazines that qualify as newsprint and ink, by one or more of the processes described in Groups 511110 through 511199 of subsector 511 of the North American Industry Classification System are deemed to be engaged in graphic arts production.* [35 ILCS 120/2-30]

e) *The exemption includes repair and replacement parts for machinery and equipment used primarily in the process of graphic arts production.* [35 ILCS 120/1d] The exemption also includes equipment, manufacturing fuels, material and supplies for the maintenance, repair or operation of such graphic arts machinery or equipment.

f) Examples of items that qualify for the exemption are:

1) machinery and equipment that would otherwise qualify under the graphic arts machinery and equipment exemption because of being used in the activities described in Section 130.330(g)(3)~~130.325(b)(4)~~ and for repair and replacement parts for the machinery and equipment;

2) printing plates, film, fountain solution, blanket wash, and ink additives used in the activities set out at Section 130.330(g)(3)~~130.325(b)(4)~~;

3) materials and prep supplies, such as mylar, masking sheets, developer, hardener, fixer, replenishers, and tape used or consumed in the activities set out at Section 130.330(g)(3)~~130.325(b)(4)~~;

4) machinery and equipment and hand tools used to maintain, repair or operate machinery and equipment that qualifies for the graphic arts machinery and equipment exemption as set out in Section 130.330(g)~~130.325~~;

5) materials and supplies, such as lubricants, coolants, adhesives, solvents or cleaning compounds used to maintain, repair or operate machinery or equipment that qualifies for the graphic arts machinery and equipment exemption as set out in Section 130.330(g)~~130.325~~;

6) any fuel, such as coal, diesel oil, gasoline, natural gas, artificial gas or steam that would be subject to retailers' occupation tax or use tax~~Retailers' Occupation Tax or Use Tax~~ liability when sold at retail is exempt from those taxes when sold for use as fuel for machinery and equipment that qualifies for the graphic arts machinery and equipment exemption as set out in Section 130.330(g)~~130.325~~;

7) protective clothing and safety equipment, such as ear plugs, safety shoes, gloves, coveralls, aprons, goggles, safety glasses, face masks and air filter

masks used when maintaining, repairing or operating machinery and equipment that qualifies for the graphic arts machinery and equipment exemption as set out in Section 130.330(g)~~130.325~~.

g) The tangible personal property must be used primarily in graphic arts production. Therefore, tangible personal property that is used primarily in an exempt process and partially in a nonexempt manner would qualify for exemption. However, the purchaser must be able to establish through adequate records that the tangible personal property is used over 50 percent in an exempt manner in order to claim the exemption.

h) The exemption does not extend to tangible personal property that is not used or consumed in the graphic arts production process itself. This is true even though the item is used in an activity that is essential to graphic arts production. The exemption does not extend, for example, to:

1) tangible personal property used or consumed in general production plant maintenance activities or in the maintenance of machinery and equipment that would not qualify for the graphic arts production exemption;

2) tangible personal property used to store, convey, handle, or transport materials prior to their entrance into the production cycle;

3) tangible personal property used to store, convey, handle, or transport finished articles after completion of the production cycle;

4) tangible personal property used to transport work-in-process or finished articles between production plants;

5) machinery and equipment used to gather information, photograph, transmit data, edit text, prepare drafts or copy, or perform other data-related functions prior to final composition, typesetting, engraving, or other preparation of the image carrier;

6) xerographic or photocopying machines;

7) word processing, text editing machinery or computerized equipment unless it is an integral part of a final graphic arts operation such as a

computer-controlled typesetting machine or equivalent that is used primarily in graphic arts production;

8) computers used to store data and generate text, maps, graphs, or other print-out formats unless the product is an image carrier to be used to repetitively transfer images by printing. For example, a computer that generates an image that may later be reproduced by a graphic arts process would not qualify while a computer-controlled engraving system that produces printing cylinders and computer-controlled digital typesetting equipment would qualify;

9) tangible personal property used or consumed in managerial, sales or other nonproduction, nonoperational activities, such as disposal of waste, scrap or residue, inventory control, production scheduling, work routing, purchasing, receiving, accounting, fiscal management, general communications, plant security, product exhibition and promotion, or personnel recruitment, selection or training;

10) tangible personal property used or consumed as general production plant safety equipment; or

11) tangible personal property and fuel used or consumed in general production plant ventilation, heating, cooling, climate control, or illumination, not required by a graphic arts production process.

i) This exemption from the Retailers' Occupation Tax is available to all retailers registered to collect or remit Illinois tax. It is not restricted to retailers located in jurisdictions that have established enterprise zones.

j) If the purchaser of the machinery or equipment leases the machinery and equipment to a certified business that uses it in an exempt manner, the sale to the purchaser-lessor will be exempt from tax. A retailer may exclude these sales from taxable gross receipts provided that the purchaser-lessor provides to the retailer a properly completed exemption certificate and the information contained in the certificate would support an exemption if the sale were made directly to the certified business. Should a purchaser-lessor subsequently lease the machinery or equipment to a business who does not use it in an exempt manner that would qualify directly for the exemption, the purchaser-lessor will become liable for the tax from which he or she was previously exempted.

k) Documentation of Exemption

1) When a certified business (or the lessor to a certified business) initially purchases qualifying items from an Illinois registered retailer, the retailer must be provided with:

A) a copy of the current certificate of eligibility issued by DCEO; and

B) a written statement signed by the certified business (or its lessor) that the items being purchased will be used or consumed (or leased for use or consumption) in a graphic arts production process at a location in an enterprise zone established under the authority of the Illinois Enterprise Zone Act.

2) So long as a copy of a current certificate of eligibility and a statement of exemption are maintained by a retailer, the certified business (or its lessor) may claim the exemption on subsequent purchases from that retailer by indicating on the face of purchase orders that the transaction is exempt by referencing the certificate of eligibility and statement of exemption. This procedure on subsequent purchases is authorized only so long as the certificate of eligibility remains current. That is, the exemption can be claimed only as to purchases made during the effective period of the certificate of eligibility specified by DCEO on the face of the certificate of eligibility.

3) If a certified business (or its lessor) purchases tangible personal property that is to be used in the process of graphic arts production, the certified business (or its lessor) must certify that fact to the retailer in writing in order to relieve the retailer of the duty of collecting and remitting tax. However, the purchaser who certifies that the item is being purchased for a qualifying use within an enterprise zone by a qualified business will be held liable for the tax by the Department if it is found that the item was not so used.

l) An item that initially is used primarily in a qualifying manner but that is converted to a nonexempt use or is moved to a nonqualifying location will become subject to tax at the time of its conversion, based on the fair market value of the item at the time of conversion.

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(Source: Amended at 47 Ill. Reg. 19349, effective December 12, 2023)

Section 130.1947 Tangible Personal Property Used or Consumed in the Process of Manufacturing and Assembly within Enterprise Zones or by High Impact Businesses

a) Section 1d of the Retailers' Occupation Tax Act provides an exemption for *tangible personal property to be used or consumed ~~by a business entity~~ within an enterprise zone established pursuant to the Illinois Enterprise Zone Act or to be used or consumed by any~~a~~ High Impact Business, in the process of the manufacturing or assembly of tangible personal property for wholesale or retail sale or lease~~,~~ if used or consumed by a business certified by the Department of Commerce and Economic Opportunity* (DCEO). [35 ILCS 120/1d]~~.~~

b) Tangible Personal Property Used or Consumed in the Process of Manufacturing or Assembling within an Enterprise Zone
To qualify for the exemption, a business located in an enterprise zone must meet the following requirements contained in Section 1f of the Retailers' Occupation Tax Act:

1) *be located in an Enterprise Zone~~enterprise zone~~ established pursuant to the Illinois Enterprise Zone Act*;

2) *make investments ~~that~~:*

A) *which cause the creation of a minimum of 200 full-time equivalent jobs in Illinois; or*

B) *which make investments that cause the retention of a minimum of 2,000 full-time jobs in Illinois; or*

C) *of~~total~~ a minimum of $40,000,000 and retain at least 90% of the jobs in place on the date on which the exemption is granted and for the duration of the exemption; and*

3) *be certified by DCEO as complying with the requirements specified* in this subsection (b). [35 ILCS 120/1f]

c) Tangible Personal Property Used or Consumed in the Process of Manufacturing or Assembling by a High Impact Business
To qualify for the exemption as a High Impact Business, the business must not be located within an enterprise zone at the time of its designation and must meet the following requirements contained in Section 5.5(a)(3)(A) of the Illinois Enterprise Zone Act [20 ILCS 655]:

1) *the business intends to make a minimum investment of:*

A) *$12,000,000 which~~that~~ will be placed in service in qualified property and intends to create 500 full-time equivalent jobs at a designated location in Illinois; or*

B) *$30,000,000 which~~that~~ will be placed in service in qualified property and intends to retain 1,500 full-time jobs at a designated location in Illinois;*

2) *the business certifies in writing that the investments would not be placed in service in qualified property and the job creation or job retention would not occur without the tax credits and exemptions set forth in Section 5.5(b) of the Illinois Enterprise Zone Act. The terms "placed in service" and "qualified property" have the same meanings as described in Section 201(h) of the Illinois Income Tax Act* [20 ILCS 655/5.5(a)(3)(A)];

3) is certified by DCEO as complying with the requirements specified in this subsection (c); and

4) for purposes of this subsection (c):

A) *the exemption is not authorized until the minimum investments set forth in* subsection (c)(1)~~ or (c)(2)~~ *have been placed in service in qualified properties and the minimum full-time equivalent jobs or full-time retained jobs set forth in* subsection (c)(1)~~ or (c)(2)~~ *have been created or retained* [20 ILCS 655/5.5(b)];

B) *the terms "placed in service" and "qualified property" have the same meanings~~meaning~~ as described in Section 201 (h) of the Illinois Income~~Section 201 (h) of the Illinois Income~~ Tax Act* [20 ILCS 655].

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d) Businesses seeking certificates of eligibility must *make application to the* DCEO ~~*DCEO*~~ on application forms provided by DCEO. [35 ILCS 120/1f]~~.~~ The Illinois Department of Revenue does not certify business enterprises as eligible for this exemption.

e) Once a business is certified to qualify for the exemption, the tangible personal property must be used or consumed within the enterprise zone or at the certified location of the High Impact Business in the process of manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. Sales of tangible personal property used or consumed in activities that do not constitute manufacturing or assembling remain subject to the tax. For purposes of this Section, "manufacturing" and "assembling" shall have the same meaning ascribed to those terms in Section 130.330(b)(1)~~130.330(b)(2)~~ through (9).

f) *The exemption includes repair and replacement parts for machinery and equipment used primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease.* ~~[35 ILCS 120/1d]~~ *The exemption also includes equipment, manufacturing fuels, material and supplies for the maintenance, repair or operation of the manufacturing or assembling machinery or equipment.* [35 ILCS 120/1d]~~[35 ILCS 120/1n]~~

g) Examples of items that qualify for the exemption are:

1) machinery and equipment that would otherwise qualify under the manufacturing machinery and equipment exemption because it is used in the activities set forth in Section 130.330(c)(3)~~130.330(d)(3)~~, and repair and replacement parts for that machinery and equipment;

2) hand tools used in the activities set forth in Section 130.330(c)(3)~~130.330(d)(3)~~;

3) materials and supplies, such as abrasives, acids, polishing compounds or lubricants used or consumed in the activities set forth in Section 130.330(c)(3)~~130.330(d)(3)~~;

4) machinery and equipment and hand tools used to maintain, repair or operate machinery and equipment that qualifies for the manufacturing machinery and equipment exemption set forth in Section 130.330;

5) materials and supplies, such as lubricants, coolants, adhesives, solvents or cleaning compounds used to maintain, repair or operate machinery or equipment that qualifies for the manufacturing machinery and equipment exemption set forth in Section 130.330;

6) any fuel, such as coal, diesel oil, gasoline, natural gas, artificial gas or steam that would be subject to retailers' occupation tax or use tax~~Retailers' Occupation Tax or Use Tax~~ liability when sold at retail is exempt from those taxes when sold for use as fuel for machinery and equipment that qualifies for the manufacturing machinery and equipment exemption set forth in Section 130.330; and

7) protective clothing and safety equipment such as gloves, coveralls, aprons, goggles, safety glasses, face masks and air filter masks used when maintaining, repairing or operating machinery and equipment that qualifies for the manufacturing machinery and equipment exemption set forth in Section 130.330.

h) The tangible personal property must be used primarily in manufacturing or assembling. Therefore, tangible personal property that is used primarily in an exempt process and partially in a nonexempt manner would qualify for exemption. However, the purchaser must be able to establish through adequate records that the tangible personal property is used over 50 percent in an exempt manner in order to claim the exemption.

i) *The exemption provided in this Section for tangible personal property to be used or consumed in the process of manufacturing or assembly of tangible personal property for wholesale or retail sale or lease, and the repair and replacement parts for that machinery and equipment, does not apply to such property used or consumed in the generation of electricity for wholesale or retail sale; the generation or treatment of natural or artificial gas for wholesale or retail sale that is delivered to customers through pipes, pipelines, or mains; or the treatment of water for wholesale or retail sale that is delivered to customers through pipes, pipelines, or mains.* *The provisions* set forth in this subsection implementing Public Act 98-0583 *are declaratory of existing law as to the meaning and scope of this exemption.*~~*The provisions set forth in this subsection* were implemented by Public Act 98-0583*, which stated that the provisions are declaratory of existing law as to the meaning and scope of this exemption.*~~ [35 ILCS 120/1d]

j) The exemption provided under Section 1d of the Retailers' Occupation Tax Act and this Section does not extend to tangible personal property that is not used or consumed in the manufacturing or assembling process itself. This is true even though the item is used in an activity that is essential to manufacturing or assembling. For example, the exemption does not extend to:

1) tangible personal property used or consumed in general production plant maintenance activities or in the maintenance of machinery and equipment that would not qualify for the manufacturing machinery and equipment exemption;

2) tangible personal property used or consumed in research and development of new products, production techniques, or production machinery;

3) tangible personal property used to store, convey, handle, or transport materials, parts or subassemblies prior to their entrance into the production cycle;

4) tangible personal property used to store, convey, handle, or transport finished articles after completion of the production cycle;

5) tangible personal property used to transport work-in-process or finished articles between production plants;

6) tangible personal property used or consumed in managerial, sales or other nonproduction, nonoperational activities, such as disposal of waste, scrap or residue, inventory control, production scheduling, work routing, purchasing, receiving, accounting, fiscal management, general communications, plant security, product exhibition and promotion, or personnel recruitment, selection or training;

7) tangible personal property used or consumed as general production plant safety equipment;

8) tangible personal property and fuel used or consumed in general production plant ventilation, heating, cooling, climate control, or illumination, not required by a manufacturing or assembling process;

9) tangible personal property used or consumed in the preparation of food and beverages by a retailer for retail sale, such as restaurants, vending machines, and food service establishments;

10) fuel used or consumed in the operation of any machinery or equipment that would not qualify for exemption under the manufacturing machinery and equipment exemption set out in Section 130.330;

11) building materials that become physically incorporated into foundations or housings for machinery and equipment; the building materials may qualify for exemption under the provisions of Section 130.1951 if all requirements set out in that Section are met; and

12) building materials dedicated to general construction purposes at a production plant; the building materials may qualify for exemption under the provisions of Section 130.1951 if all the requirements of that Section are met.

k) This exemption from Illinois Retailers' Occupation Tax is available to all retailers registered to collect or remit Illinois tax. It is not restricted to retailers located in jurisdictions that have established enterprise zones.

l) The tangible personal property resulting from the process of manufacturing or assembling must be for wholesale or retail sale or lease. For purposes of this Section, see Section 130.330(a)(6) and (7)~~130.330(c)~~ for requirements relating to sale or lease of the tangible personal property produced in the process of manufacturing or assembling.

m) If a certified business (or its lessor) purchases tangible personal property that is to be used in the process of manufacturing and assembly, then the certified business (or its lessor) must certify that fact to the retailer in writing in order to relieve the retailer of the duty of collecting and remitting tax. However, the purchaser who certifies that the item is being purchased for a qualifying use within an enterprise zone by a certified business will be held liable for the tax by the Department if it is found that the item was not so used.

n) Documentation of Exemption

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1) When a certified business (or the lessor to a certified business) initially purchases qualifying items from an Illinois registered retailer, the retailer must be provided with:

A) a copy of the current certificate of eligibility issued by DCEO; and

B) a written certification signed by the certified business (or its lessor) that the items being purchased will be used or consumed (or leased for use or consumption) in a manufacturing or assembling process at a location in an enterprise zone established pursuant to the Illinois Enterprise Zone Act or by a High Impact Business.

2) If a copy of a certified business' current certificate of eligibility and certification are maintained by a retailer, the certified business (or its lessor) may claim the exemption on subsequent purchases from that retailer by indicating on the face of purchase orders that the transaction is exempt by making reference to the certificate of eligibility and certification. This procedure on subsequent purchases is authorized as long as the certificate of eligibility remains valid. The exemption can only be claimed for purchases made during the effective period of the certificate of eligibility specified by DCEO on the face of the certificate of eligibility.

3) The retailer must receive a certificate of eligibility and the purchaser's written certificate to relieve the retailer of the duty of collecting and remitting tax on a sale.

4) An item that initially is used primarily in a qualifying manner at a qualifying location but that is converted to a nonexempt use or is moved to a nonqualified location will become subject to tax at the time of its conversion based on the lesser of the purchase price or fair market value of the item at the time of conversion.

o) Beginning on July 1, 2019, the manufacturing and assembling machinery and equipment exemption provided in Section 2-45 of the Act and Section 130.330 includes production related tangible personal property. See 130.330(h) to determine if any of the items identified in subsection (j) qualify as production related tangible personal property under the manufacturing and assembling machinery and equipment exemption.

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(Source: Amended at 47 Ill. Reg. 19349, effective December 12, 2023)

Section 130.1953 Sales of Building Materials to be Incorporated into a Redevelopment Project Area within an Intermodal Terminal Facility Area

a) Beginning January 1, 2006,~~*Beginning on January 1, 2006, pursuant to P.A. 94-0546,*~~ *each retailer that makes a qualified sale of building materials to be incorporated into real estate in a redevelopment project area within an intermodal terminal facility area in accordance with Section 11-74.4-3.1 of the Illinois Municipal Code by remodeling, rehabilitating, or new construction may deduct receipts from those sales when calculating the tax imposed by* the Retailers' Occupation Tax *Act*. [35 ILCS 120/2-6]~~[35 ILCS 120/1p]~~

b) Definitions

1) *As used in this Section, "intermodal terminal facility" means land, improvements to land, equipment, and appliances necessary for the receipt and transfer of goods between one mode of transportation and another, at least one of which must be transportation by rail. "Intermodal terminal facility area" means an area that:*~~*For purposes of this Section, "intermodal terminal facility" means land, improvements to land, equipment, and appliances necessary for the receipt and transfer of goods between one mode of transportation and another, at least one of which must be transportation by rail.* [65 ILCS 5/11-74.4-3.1(c)]~~

A) *does not include any existing intermodal facility or includes an obsolete intermodal facility;*

B) *comprises a minimum of 150 acres and not more than 2 square miles in total area, exclusive of lakes and waterways;*

C) *has at least one Class 1 railroad right-of-way located within it or within one quarter mile of it; and*

D) *has no boundary limit further than 3 miles from the right-of-way.* [65 ILCS 5/11-74.4-3.1(c)]

2) *For purposes of this Section, "qualified sale" means a sale of building materials that will be incorporated into real estate as part of an industrial or commercial project for which a Certificate of Eligibility for Sales Tax Exemption has been issued by the corporate authorities of the municipality in which the building project is located.* [35 ILCS 120/2-6]~~[35 ILCS 120/1p]~~

c) Qualifying Building Materials
In order to qualify for the deduction, the materials being purchased must be building materials purchased for physical incorporation into real estate as part of an industrial or commercial project in a redevelopment project area within an intermodal terminal facility area certified by the corporate authorities of the municipality in which the building project is located. For example, gross receipts from sales of the following can qualify for the deduction:

1) Common building materials such as lumber, bricks, cement, windows, doors, insulation, roofing materials, and sheet metal;

2) Any trackage, ties, ballast, spikes, plates, high mast lighting, and cranes that are physically incorporated into the redevelopment project area of the intermodal terminal facility;

3) Plumbing systems and their components such as bathtubs, lavatories, sinks, faucets, garbage disposals, water pumps, water heaters, water softeners, and water pipes;

4) Heating systems and their components such as furnaces, ductwork, vents, stokers, boilers, heating pipes, and radiators;

5) Electrical systems and their components such as wiring, outlets, and light fixtures that are physically incorporated into the redevelopment project area of the intermodal terminal facility;

6) Central air-conditioning systems, ventilation systems and their components that are physically incorporated into the redevelopment project area of the intermodal terminal facility;

7) Built-in cabinets and other woodwork that is physically incorporated into the building located in the redevelopment project area of the intermodal terminal facility;

8) Built-in appliances such as refrigerators, stoves, ovens, and trash compactors that are physically incorporated into the building located in the redevelopment project area of the intermodal terminal facility;

9) Floor coverings such as tile, linoleum and carpeting that are glued or otherwise permanently affixed to the building in the redevelopment project area location by use of tacks, staples, or wood stripping filled with nails that protrude upward (sometimes referred to as "tacking strips" or "tack-down strips"); and

10) Landscape products such as trees, shrubs, topsoil, and sod that are physically incorporated (i.e., permanently transplanted) into the redevelopment project area within the intermodal terminal facility area.

d) Non-Qualifying Building Materials
Items that are not physically incorporated into an industrial or commercial project within the redevelopment project area within an intermodal terminal facility as certified by the corporate authorities of the municipality in which the redevelopment project area is located cannot qualify for the deduction. For example, gross receipts from sales of the following do not qualify for the deduction:

1) Tools, machinery, equipment, fuel, forms, and other items that may be used by a construction contractor at a redevelopment project area location, but are not physically incorporated into the redevelopment project area;

2) Free standing appliances such as stoves, ovens, refrigerators, washing machines, portable ventilation units, window air conditioning units, lamps, clothes washers, clothes dryers, trash compactors, and dishwashers that may be connected to and operate from a building's electrical or plumbing system, but do not become a component of those systems;

3) Floor coverings that are area rugs or that are attached to the structure using only two-sided tape; and

4) Mobile equipment, trucks or cranes not physically incorporated into the redevelopment project area of the intermodal terminal facility area.

e) Records – Required to Document Exemption

To document the exemption allowed under this Section, *the retailer must obtain from the purchaser* a purchaser's certificate and *a copy of the Certificate of Eligibility for Sales Tax Exemption issued by the corporate authorities of the municipality in which the real estate into which the building materials will be incorporated is located.* [35 ILCS 120/2-6]~~To document the exemption allowed under this Section, the retailer must obtain from the purchaser a purchaser's statement and a copy of the Certificate of Eligibility for Sales Tax Exemption issued by the corporate authorities of the municipality in which the real estate into which the building materials will be incorporated is located.~~

1) Purchaser's Certificate~~Statement~~ – *The retailer must obtain a certificate from the purchaser that contains all of the following:*~~Retailers must obtain a purchaser's statement from the purchaser that contains all of the following:~~

A) *A statement that the building materials are being purchased for incorporation into real estate located in an intermodal terminal facility area certified in accordance with Section 11-74.4-3.1 of the Illinois Municipal Code;*~~A statement that the building materials are being purchased for incorporation into real estate located in a redevelopment project area of an intermodal terminal facility area certified in accordance with Section 11-74.4-3.1 of the Illinois Municipal Code;~~

B) *The location or address of the real estate into which the building materials will be incorporated;*~~The location or address of the real estate into which the building materials will be incorporated;~~

C) *The name of the intermodal facility area in which the real estate is located;*~~The name of the intermodal terminal facility area in which that real estate is located;~~

D) *A description of the building materials being purchased;* and~~A description of the building materials being purchased; and~~

E) *The purchaser's signature and date of purchase.* [35 ILCS 120/2-6]~~The purchaser's signature and date of purchase.~~

2) Certificate of Eligibility for Sales Tax Exemption − The retailer must obtain and keep in its books and records a copy of the Certificate of Eligibility for Sales Tax Exemption issued by the municipality *that must contain all of the following:*~~Retailers must keep among their books and records a copy of a Certificate of Eligibility for Sales Tax Exemption issued by the municipality that must include all of the following:~~

A) *A statement that the commercial or industrial project identified in the Certificate meets all the requirements of the jurisdiction in which the project is located;*~~A statement that the commercial or industrial project identified in the Certificate meets all the requirements of the jurisdiction in which the project is located;~~

B) *The location or address of the building project;* and~~The location or address of the building project; and~~

C) *The signature of the chief executive office of the municipality in which the building project is located, or the chief executive officer's delegate.* [35 ILCS 120/2-6]~~The signature of the chief executive officer of the municipality in which the building project is located, or the chief executive officer's delegate.~~

(Source: Amended at 47 Ill. Reg. 19349, effective December 12, 2023)

Section 130.1990 Peddlers, Hawkers, and Itinerant Vendors

a) When Liable For Tax

1) Persons who transport a supply of tangible goods from place to place, whether upon trucks, wagons or otherwise, exposing such goods for sale, soliciting and negotiating sales, and immediately delivering the goods sold, are considered to be peddlers, hawkers or itinerant vendors. Where such peddlers, hawkers or itinerant vendors sell such tangible personal property at retail in Illinois, on their own behalf, they are required to obtain a certificate of registration from the Department, file tax returns in conformance with the requirements of Section 3 of the Act and Subpart E

of this Part and remit to the Department the retailers' occupation taxRetailers' Occupation Tax on their receipts from such sales. *It is unlawful for any person to engage in the business of selling of tangible personal property at retail in this State without a certificate of registration from the Department.* [35 ILCS 120/2a](Section 2a of the Act).

2) It is immaterial what methods are employed in consummating sales, whether door-to-door canvass, solicitation by telephone or mail, or display in salesrooms.

b) When Not Liable For Tax

1) Where such persons do not sell on their own behalf, but merely act as agents for a manufacturer or distributor, or other person as a disclosed principal, such disclosed principal is liable for retailers' occupation taxRetailers' Occupation Tax if the principalhe is engaged in this State in the business of selling tangible personal property to purchasers for use or consumption (see Subpart F of this Part).

2) Even if such manufacturer, distributor, or other disclosed principal is exempt from the Retailers' Occupation Tax because of interstate commerce under Section 130.605130.610 of Subpart F, such disclosed principal is required to register and act as an Illinois Use Tax collector if the principalhe comes within the definition of "retailer maintaining a place of business in this State" in Section 2 of the Use Tax Act and in Subpart B of the Use Tax Regulations (86 Ill. Adm. Code 150).

c) Display Of Certificate
Each peddler, hawker, or itinerant vendor, selling goods on theirhis own behalf to purchasers for use or consumption, must display prominently, in connection with theirhis business, the Certificate of Registration issued by the Department. If a vehicle is used, the Certificate must be affixed conspicuously thereto. If no vehicle is used, the Certificate should be attached, in such a manner as to be readily visible by the public, to the sample case or other container used by the peddler, hawker, or itinerant vendor in transacting theirhis business.

(Source: Amended at 47 Ill. Reg. 19349, effective December 12, 2023)

Section 130.2000 Persons Engaged in the Printing, Graphic Arts or Related Occupations,

and Their Suppliers

a) Classification of Businesses
Falling into the classification of persons engaged in the graphic arts or related occupations are printers, book binders, typographers, portrait or commercial photographers, commercial artists, portrait painters, sign painters, photostaters, and blueprinters. This list is illustrative, but not exhaustive. Persons falling under this Part may or may not qualify for the graphic arts machinery and equipment exemption set forth in Section 130.330(g)~~130.325~~.

b) Persons Engaged in the Graphic Arts – When Liable For Tax

1) Persons engaged in the graphic arts or related occupations may, under certain circumstances, be considered to be engaged in the business of selling tangible personal property to purchasers for use or consumption, in which event they incur retailers' occupation tax~~Retailers' Occupation Tax~~ liability. This is the case, for example, when they sell to purchasers for use or consumption tangible personal property which is standard enough to be stocked for sale or offered for sale from catalogues or other sales literature, or which otherwise is sold at retail apart from the seller's engaging in a service occupation. Illustrations would include legal forms, stock or standard greeting cards, pictures or other items which are stocked for sale or offered for sale to the public generally, or products of photoprocessing.

2) Effective August 1, 1961, a person who is engaged in the graphic arts also incurs retailers' occupation tax~~Retailers' Occupation Tax~~ liability on ~~his~~ receipts from sales, to users, of items which such person~~he~~ produces on special order if such item serves substantially the same function as stock or standard items of tangible personal property that are sold at retail. Items which "serve substantially the same function" are those which, when produced on special order, could be sold substantially as produced to someone other than the original purchaser at substantially the same price. A printed item that is personalized is always considered to be printed on special order.

3) Effective September 1, 1988, photographers, film makers, and other servicemen, are subject to retailers' occupation tax~~Retailers' Occupation Tax~~ on the photoprocessing component of their total service charge when

they sell products of photoprocessing. The tax on the photoprocessing component will apply regardless of whether the photographer performs the photoprocessing in-house~~,~~ or engages a third-party photoprocessor. *For purposes of the tax imposed on photographs, negatives and positives by* the *Act*~~*this Section*~~*, photoprocessing includes, but is not limited to, developing films, positives*, ~~*and*~~ *negatives,* *and* *transparencies,* as well as *tinting, coloring, making, and enlarging prints. Photoprocessing does not include* ~~*products of photoprocessing produced for use in motion pictures for public commercial exhibition,*~~ *color separation, typesetting, and platemaking by photographic means in the graphic arts industry and does not include any procedure, process, or activity connected with the creation of the images on the film from which the negatives, positives, or photographs are derived.* ~~*The sale of digital photography is not a sale of products of photoprocessing.*~~ *The charge for in-house photoprocessing may not be less than the photoprocessor's cost price of materials. In transactions in which products of photoprocessing are sold in conjunction with other services, if a charge for the photoprocessing component is not separately stated, tax is imposed on 50% of the entire selling price unless the sale is made by a professional photographer, in which case tax shall be imposed on 10% of the entire selling price*. [35 ILCS 120/2-15]~~(Section 2 of the Act)~~ The tax on photoprocessing may be paid when purchasing self-developing film, such as Polaroid, or film which includes photoprocessing charges in the purchase of the film.

A) EXAMPLE: The professional photographer receives an assignment to shoot a specified layout from an advertising agency. The photographer selects the location, hires the models, arranges for the make-up, rents the equipment and shoots the scene. The photographer sends the undeveloped film to an outside photoprocessing laboratory for development. The photographer's bill for the sale of the photograph includes a charge for the photographer's~~his~~ artistic and other services and a separately-stated charge for the photoprocessing component which is either the charge made to the photographer~~him~~ by the photoprocessing laboratory or such an amount plus the photographer's~~his~~ customary mark-up. The tax should only be applied to the photoprocessing component.

B) EXAMPLE: The same facts as above except the professional

photographer does not separately state a charge for the photoprocessing component and bills the~~his~~ client a lump sum. A tax is collected on 10% of the lump sum price.

C) EXAMPLE: A portrait photographer photographs a family in the photographer's~~his~~ studio and develops the film in-house. The photographer's bill includes a sitting fee and a separately-stated charge for the product of photoprocessing. A tax is collected on the photoprocessing charge only.

D) EXAMPLE: A photographer develops exposed film and transfers negatives and prints to a consumer. Tax is collected on the entire bill.

E) EXAMPLE: An advertising agency prepares advertising brochures for a customer using images provided by the customer on film, which the advertising agency develops, enlarges, and prints. The photoprocessing component is not separately stated on the bill. Tax is based upon 50% of the bill.

c) Persons Engaged in the Graphic Arts – When Not Liable For Tax

1) A photostater who is employed to reproduce material for a~~his~~ customer by the photostating process, or a printer who is employed to print material for a~~his~~ customer in accordance with copy supplied to the printer by the customer or otherwise in accordance with the customer's specifications and special order, or a person who otherwise engages primarily in the transaction in furnishing graphic arts' services is not engaged in such transaction in the business of selling tangible personal property within the meaning of the Act, if the item so produced does not serve substantially the same function as stock or standard items of tangible personal property that are sold at retail, but is engaged in such transaction primarily in a service occupation. For example, a printer that is hired by a customer to print personalized wedding invitations or greeting cards is engaged in the transaction as a serviceman.

2) To the extent to which any such person engages in a service occupation, the person~~he~~ is not liable for retailers' occupation tax~~Retailers' Occupation Tax~~ on the~~his~~ receipts therefrom, including receipts from both labor and

tangible personal property. (For further illustrations, see Section 130.1995(b) of this Part.)

3) If the tax exemption described in this Section would otherwise apply, the person supplying the printed item or other item that is produced through the graphic arts' processes to the user will not lose that exemption because of the fact that the person outsources~~he farms~~ the work of producing the item ~~out~~ to someone else.

d) Suppliers of Persons Engaged in the Graphic Arts – When Liable For Tax

1) When persons who are engaged in the business of selling tangible personal property sell any such tangible personal property, for use or consumption, to persons engaged in the graphic arts or related occupations, such vendors incur retailers' occupation tax~~Retailers' Occupation Tax~~ liability unless such purchases qualify for the graphic arts Machinery and Equipment Exemption (see Section 130.330(g)~~130.325~~). This class of sales includes, but is not limited to, sales of machinery, tools, equipment, office supplies and other tangible personal property which the purchasers retain and use or consume. This class of sales also includes sales of plates, film, pre-sensitized plates, alcohol, chemicals, etc., which are consumed by those engaged in the graphic arts or related occupations in the course of the performance of their work.

2) It is not material whether the plates, film, pre-sensitized plates, alcohol, chemicals, etc., are consumed in the course of producing, by the graphic arts' processes, items which have a commercial value, or whether the plates, film, pre-sensitized plates, alcohol, chemicals, etc., are consumed in producing, on special order, items of noncommercial value.

3) Likewise, this class of sales includes sales of film to photographers who use such film in producing negatives which remain the property of such photographers.

4) Furthermore, this class of sales includes sales of paper stock, ink, duplicating materials (stencil sheet masters, offset masters and spirit masters) and other tangible personal property to printers and other graphic arts' servicemen who incorporate such tangible personal property as ingredients into items which remain the property of such servicemen

instead of being resold by them in some manner.

e) Suppliers of Persons Engaged in the Graphic Arts – When Not Liable For Tax

1) Persons who sell tangible personal property to persons who are engaged in the graphic arts or related occupations and who resell such property to others are not required to remit retailers' occupation tax~~Retailers' Occupation Tax~~ measured by their gross receipts from such sales. This class of sales includes sales of ink, paper stock, chemicals, developing paper, sensitized paper, bookbindings, metal, wood, glue, brads, staples, binding tape, and other tangible personal property where such property is purchased by persons engaged in the graphic arts or related occupations and incorporated by them into printed matter, pictures, or other tangible personal property which they sell. However, except in the case of sales to totally exempt purchasers, when sales for resale are made, sellers should, for their protection, take a Certificate of Resale from the purchaser. Mere statements by sellers that property was sold for resale will not be accepted by the Department without corroborative evidence. See Section 130.1405 for a seller's responsibility to obtain certificates of resale and the requirements for certificates of resale.

2) It is not material whether the ink, paper, developing paper and other similar items are resold as ingredients of articles which have a commercial value or whether the ink, paper stock, developing paper and other similar items are resold as ingredients of articles which are produced on special order and which have no commercial value.

f) Liability Under the Service Occupation Tax
For information concerning the application of the Service Occupation Tax to purchases, by graphic arts' servicemen, of tangible personal property which they retransfer as an incident to rendering service, see the Service Occupation Tax, 86 Ill. Adm. Code 140.

(Source: Amended at 47 Ill. Reg. 19349, effective December 12, 2023)

Section 130.2035 Registered Pharmacists and Druggists

a) When Liable For Tax
When registered pharmacists or druggists sell drugs or medicines "over-the-

counter" to purchasers for use or consumption apart from their filling of the prescription of a licensed physician or other person qualified to issue prescriptions, or when registered pharmacists or druggists sell other tangible personal property to purchasers for use or consumption, such registered pharmacists or druggists incur retailers' occupation tax~~Retailers' Occupation Tax~~ liability.

b) When Not Liable For Tax

1) When registered pharmacists and druggists, who, themselves, are engaged in the practice of a licensed profession, sell medicines or drugs on the prescription of a licensed physician or other person qualified to issue prescriptions, such registered pharmacists and druggists are engaged primarily in a service occupation or profession and are not required to remit retailers' occupation tax~~Retailers' Occupation Tax~~ measured by their receipts from such transactions, including receipts from both labor and tangible personal property. These transactions are governed by the Service Occupation Tax Act. For information concerning the Service Occupation Tax, see 86 Ill. Adm. Code 140. For information on Sales of Drugs and Related Items, to or by Pharmacists, see 86 Ill. Adm. Code 140.135.

2) For information concerning newspapers, magazines, books, sheet music, and phonograph records, see Section 130.2105 of this Part.

3) For information concerning photofinishing, see Section 130.2000 of this Part.

4) For information concerning sales of medicines, see Section 130.311~~130.310~~ of this Part.

(Source: Amended at 47 Ill. Reg. 19349, effective December 12, 2023)

Section 130.2060 Sales of Alcoholic Beverages, Motor Fuel and Tobacco Products

a) Retailers' Occupation Tax on Retail Sales of Alcoholic Beverages
Persons engaged in the business of selling alcoholic beverages to purchasers for use or consumption are required to remit retailers' occupation tax~~Retailers' Occupation Tax~~ to the Department upon their gross receipts from such sales, notwithstanding the fact that manufacturers and importing distributors of

alcoholic beverages are required to pay certain taxes under the Liquor Control Act of 1934 [235 ILCS 5]. It is immaterial whether such alcoholic beverages are consumed on or off the premises where such alcoholic beverages are sold. In computing retailers' occupation taxRetailers' Occupation Tax liability, no amount may be deducted from gross receipts from retail sales of alcoholic beverages to cover the taxes which have been paid by manufacturers or importing distributors of alcoholic beverages under the Liquor Control Act of 1934. Since the legal incidence of the Cook County Liquor Gallonage Tax is on the consumer, with the seller acting merely as a collector of the tax for the county, amounts collected because of the Cook County Liquor Tax are not considered to be a part of the liquor retailer's receipts that are subject to retailers' occupation taxRetailers' Occupation Tax.

b) Retail Sales of Motor Fuel
Persons engaged in the business of selling motor fuel to purchasers for use or consumption are also required to remit retailers' occupation taxRetailers' Occupation Tax to the Department upon their taxable receipts from such sales. In computing their retailers' occupation taxRetailers' Occupation Tax liability, persons who sell motor fuel for use or consumption may deduct, from their gross receipts from such sales, the Illinois Motor Fuel Tax collected with respect to such sales, because the Illinois Motor Fuel Tax is on the consumer and is not considered to be a part of the "selling price" of the motor fuel. The rate of the Illinois Motor Fuel Tax is 19¢ per gallon. (Also, see 86 Ill. Adm. Code 130.435 and 500.200500.)

c) In addition, the Cook County Motor Fuel Tax is imposed upon the consumer and is therefore also deductible from gross receipts. However, county motor fuel taxes County Motor Fuel Taxes imposed under the County Motor Fuel Tax Law are includable in gross receipts subject to retailers' occupation taxRetailers' Occupation Tax because such taxes are imposed upon retailers of motor fuel and not upon consumers. (See Section 130.435.)

d) Retailers' Occupation Tax on Retail Sales of Cigarettes and Other Tobacco Products

1) Persons engaged in the business of selling cigarettes, cigars and other tobacco products incur retailers' occupation taxRetailers' Occupation Tax liability when selling such products to purchasers for use or consumption. In the case of cigarettes, the amount of the retail selling price represented

by the State Cigarette Tax or Cigarette Use Tax should be included in the total selling price in arriving at the net taxable selling price. ~~The rate of the Cigarette Tax and the Cigarette Use Tax is 29 mills per cigarette, or 58 per package on a package of 20 cigarettes.~~

2) If a home rule jurisdiction, such as Chicago, imposes a cigarette tax, the amount of such local cigarette tax is subject to retailers' occupation tax~~Retailers' Occupation Tax~~. If any local government, pursuant to authorization from the Illinois General Assembly to do so, should impose a cigarette tax in the nature of an occupation tax, the amount collected by retailers because of that kind of local cigarette tax is also subject to retailers' occupation tax~~Retailers' Occupation Tax~~.

e) Improper Collection of Tax
The retailer should not collect tax on amounts as to which the retailer~~he~~ is acting merely as a tax collector, such as the Cook County Liquor Gallonage Tax and the Illinois Motor Fuel Tax. If the retailer does erroneously collect tax on any such amounts, the retailer~~he~~ must refund the erroneously collected tax to the purchaser or else remit such erroneously collected tax to the Department. The retailer~~He~~ may not retain it. Also, if the retailer knowingly collects tax from customers on receipts which are not subject to retailers' occupation tax, the retailer~~Retailers' Occupation Tax, he~~ can be subject to prosecution for a criminal violation.

(Source: Amended at 47 Ill. Reg. 19349, effective December 12, 2023)

Section 130.2085 Sales to or by Banks, Savings and Loan Associations and Credit Unions

a) Sales to Banks, Etc.

1) Retail sales to national banks, State-chartered banks, Federally-chartered savings and loan associations, and other privately-owned financial institutions are subject to the Retailers' Occupation Tax. This conclusion also applies to sales of building materials and fixtures to construction contractors for incorporation into real estate owned by banks and savings and loan associations even if such real estate is used for bank or savings and loan association purposes. For the foregoing purposes, the date of sale is considered to be the date of delivery to the purchaser. Beginning January 4, 2019, sales of tangible personal property are exempt from the Retailers' Occupation Tax if the purchaser is exempt from use tax by

operation of federal law. [35 ILCS 120/2-5(16)]

2) Federally-chartered credit unions, the Federal National Mortgage Association (Fannie Mae), Farm Credit Banks, and Federal Home Loan Banks do not incur Use Tax liability when making purchases of tangible personal property for use or consumption. (See respectively 12 U.S.C.~~USC~~ 1768, 12 U.S.C.~~USC~~ 1723(a)(C)(2), 12 U.S.C.~~USC~~ 2023 and 12 U.S.C.~~USC~~ 1433.) Retailers making sales of tangible personal property to Federal credit unions, the Federal National Mortgage Association (Fannie Mae), Farm Credit Banks, and Federal Home Loan Banks are not able to reimburse themselves for the retailers' occupation tax~~Retailers' Occupation Tax~~ they incur as a result of making such sales by collecting the reimbursing use tax~~Use Tax~~. Nonetheless, retailers making sales of tangible personal property to Federal credit unions, the Federal National Mortgage Association (Fannie Mae), Farm Credit Banks, and Federal Home Loan Banks do incur retailers' occupation tax~~Retailers' Occupation Tax~~ liability on their gross receipts from such sales. Beginning January 4, 2019, purchases of tangible personal property are exempt from the Use Tax if the purchaser is exempt by operation of federal law. [35 ILCS 120/2-5(16)]

b) Sales by Banks, Etc.
State-chartered banks and both Federally- and State-chartered savings and loan associations, which engage in selling tangible personal property at retail, are liable for retailers' occupation tax~~Retailers' Occupation Tax~~ on their receipts from such sales commencing March 17, 1965. Effective February 1, 1970, national banks that engage in selling tangible personal property at retail also are liable for retailers' occupation tax~~Retailers' Occupation Tax~~ on their receipts from such sales.

(Source: Amended at 47 Ill. Reg. 19349, effective December 12, 2023)

Section 130.2165 Veterinarians

a) Veterinarians as Servicemen
Veterinarians are engaged primarily in rendering service to their clients and so are considered to be servicemen. As medical professionals regulated under the Veterinary Medicine and Surgery Practice Act of 2004 (the Act) [225 ILCS 115], they typically provide services to persons with whom they have established a

veterinarian-client-patient relationship (VCPR) as defined in Section 3 of the Act. Under the Act, in order to maintain a valid VCPR, a veterinarian must maintain sufficient knowledge of the animal to initiate treatment and be readily available for follow-up. In addition, a veterinarian~~he or she~~ must maintain adequate medical records, as provided in 68 Ill. Adm. Code 1500.50(k)~~(a)(11)~~, and must comply with certification, licensure, professional conduct and disciplinary requirements, including continuing education mandates, as provided by the Act and 68 Ill. Adm. Code 1500. Services provided by veterinarians are predicated upon compliance with these requirements.

b) Tax Liabilities of Veterinarians

In conducting a veterinary practice, veterinarians may incur different types of tax, depending upon the nature of their activities. When licensed veterinarians transfer tangible personal property to their clients as a result of the practice of veterinary medicine, a service transaction occurs that results in liability under the Service Occupation Tax Act. Veterinarians also sometimes sell items of tangible personal property to clients or even to the general public outside the scope of a service transaction. In such cases, they are considered to be retailers engaged in the business of selling tangible personal property at retail and incur retailers' occupation tax~~Retailers' Occupation Tax~~ liability. In addition, veterinarians incur use tax~~Use Tax~~ on items of tangible personal property that are not transferred to their clients and instead are consumed by them in the course of performing veterinary services. Subsections (c) through (e)~~ of this Section~~ describe the requirements for a service transaction and define the tax liability that results from these transactions. Also described are the circumstances under which retailers' occupation tax and use tax~~Retailers' Occupation Tax liability and Use Tax~~ liability are incurred by veterinarians.

c) Service Transactions – Requirements – Taxation

1) In order for a transaction to be considered a service transaction for purposes of taxation, several requirements must first be met. Specifically:

A) A licensed veterinarian must have first established a valid VCPR with the service client, as defined in Section 3 of the Act;

B) A licensed veterinarian must have physically examined the animal;

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C) A veterinary practice must maintain medical records demonstrating that the animal for whom tangible personal property was transferred was physically examined by a licensed veterinarian in that veterinary practice no more than 1 year prior to the date on which tangible personal property was transferred;

D) The requirements of this subsection (c)(1) are not intended in any way to affect the requirements of the Act concerning the establishment or maintenance of a valid VCPR, but are intended only to establish the type of tax liability that will be incurred by a veterinary practice.

2) When veterinarians engage in service transactions, they incur liability under the Service Occupation Tax Act. See 86 Ill. Adm. Code 140 for a detailed explanation of these liabilities. Assuming a valid VCPR has first been established, a service transaction occurs under the following circumstances:

A) A service transaction occurs when medicines, drugs and other products are directly applied or administered by a licensed veterinarian during a veterinary examination. Tangible personal property transferred may include, but is not limited to, vaccines,~~;~~ flea and tick products,~~;~~ shampoos,~~;~~ bandages,~~;~~ ointments,~~;~~ splints,~~;~~ and sutures.

B) A service transaction occurs when a licensed veterinarian sells medicines, drugs and other products having a medicinal purpose, as defined in subsection (c)(2)(C)~~ of this Section~~, as part of a continuing plan for the health and well-being~~well being~~ of an animal under the veterinarian's~~his or her~~ care. These drugs, medicines and other medicinal products may be products that federal law restricts to use only by prescription from a licensed veterinarian, or may be products that are recommended by the veterinarian under a continuing plan for the health and well-being~~well being~~ of the animal. These transactions include refills of such drugs, medicines, and other medicinal products that are made over-the-counter without a physical examination of the animal on the date of the refill. In order to document that qualifying items are transferred as part of a continuing plan for the health and well-

being~~well being~~ of the animal, the following requirements must be met:

i) the licensed veterinarian transferring items to the service client (or the veterinarian's designee) must enter a notation in the animal's medical records that the medicine, drug or medicinal product was recommended or prescribed as a result of an examination or after consultation with the service client; and

ii) the licensed veterinarian transferring items to the service customer (or the veterinarian's designee) must sign and contemporaneously date the notation in the animal's medical records; and

iii) the animal's medical records must demonstrate that a licensed veterinarian in the veterinary practice that transferred the items to the animal examined the animal no more than 1 year prior to the date on which the items were transferred.

C) For purposes of this subsection (c), a medicine, drug, or other product having a medicinal purpose means items that are ingested by or applied to an animal and that cure or treat disease, illness, injury, or pain or mitigate the symptoms of such disease, illness, injury, or pain. Such items may include, but are not limited to, items that are required to be prescribed by a veterinarian; nonprescription medicines; vitamins, herbal remedies and dietary and nutritional supplements (e.g., glucosamine and chondroitin~~chondroitan~~); medicated shampoos; topical flea and tick products applied directly on an animal for the control of fleas and ticks; and flea and tick collars. Such items also include dental products such as toothpaste, toothbrushes, and chews that are specifically designed to promote dental health in animals; insecticides and insect growth regulators that are applied by broadcast treatment (e.g., hand pump sprayers or pressurized aerosols) or with total release aerosols or foggers; products used to treat urinary behavior issues; collars worn by an animal after surgery to prevent the removal of sutures; and splints and braces.

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Animal food is considered to have a medicinal purpose only if its manufacturer restricts its sale to licensed veterinarians. In order to document the requirement that the manufacturer restrict the sale of animal food to licensed veterinarians, a veterinarian shall annually obtain a letter from the manufacturer representing that the animal food is sold only to licensed veterinarians. Provided that a veterinarian maintains this letter in the veterinarian's~~his or her~~ books and records, the Department shall consider the animal food to have a "medicinal purpose" for the period of one year following the date of issuance of the letter. The following items are not considered to have medicinal purposes: combs; brushes; shears; nail clippers; name tags; nonmedicated shampoo; leashes; collars; toys; clothing; odor eliminators; and waste handling products. Prescriptions for animals are subject to the high rate of tax. See 86 Ill. Adm. Code 130.311.~~86 Ill. Adm. Code 130.310.~~

i) EXAMPLE 1: During a veterinary examination of a dog, a veterinarian breaks open a 6 dose package of flea and tick product and applies one packet to the dog. The veterinarian~~He or she~~ recommends that the service client continue use of the flea and tick product and offers the remaining 5 packets for sale. If the customer purchases all 5 packets of the flea and tick product at the time of the service transaction, the veterinarian will incur liability under the Service Occupation Tax on the 6 pack of flea and tick product (one applied to the animal incident to service, the other 5 transferred to the service customer as part of the service transaction). If the service customer returns 6 months later and purchases 2 additional flea and tick packets without examination of the dog, the veterinarian will incur liability under the Service Occupation Tax provided that the veterinarian~~he or she~~ maintains the proper documentation in the veterinarian's~~his or her~~ books and records as required in subsection (c)(2)(B)~~ of this Section~~.

ii) EXAMPLE 2: A service client's~~client discovers that his or her~~ dog has fleas, so the client takes it to the veterinarian for treatment. The veterinarian uses a lice comb to examine for fleas and then applies a nonprescription flea

and tick bath to treat the infestation. The veterinarian recommends that the service client purchase additional bottles of the product to ensure that treatment is complete. The service client returns 2 weeks later to purchase an additional bottle of product. The veterinarian will incur liability under the Service Occupation Tax on the flea and tick product transferred when treating the dog, as well as on the subsequent sale of the same flea and tick product (provided that the required documentation is maintained). The veterinarian will incur Use Tax on the flea and tick comb used~~that he or she uses~~ in practice (as well as other items used or consumed in the grooming and bathing of the dog, such as towels, dryers, or disposable pads).

3) Application of Service Tax to Example

A) In both Examples 1 and 2 of subsection (c)(2)(C), the veterinarian can remit service occupation tax~~Service Occupation Tax~~ based on the selling price of the tangible personal property transferred incident to service, as more fully explained in subsection (c)(3)(B) ~~of this Section~~. However, if the annual aggregate cost price of all items transferred incident to service transactions is less than 35% of annual aggregate gross receipts from service, the veterinarian~~he or she~~ may elect instead to handle liability by being treated as a "de minimis" serviceman. See 86 Ill. Adm. Code 140.106 for an explanation of the 35% threshold. As a de minimis serviceman, the veterinarian~~he or she~~ may pay tax as follows:

i) If the veterinarian does not make over-the-counter sales subject to retailers' occupation tax~~Retailers' Occupation Tax~~ (e.g., sales of leashes, clippers, or combs), the veterinarian~~he or she~~ may elect to remit use tax~~Use Tax~~ to suppliers on the~~his or her~~ cost price of tangible personal property transferred incident to service (if suppliers are not registered to collect the use tax~~Use Tax~~, the veterinarian~~he or she~~ must register for the limited purpose of self-assessing and remitting use tax~~Use Tax~~ on these purchases). See 86 Ill. Adm. Code 140.108 for further

information. The veterinarian cannot provide Certificates of Resale to suppliers if electing~~he or she elects~~ this option.

ii) If the veterinarian makes over-the-counter sales subject to retailers' occupation tax~~Retailers' Occupation Tax~~, the veterinarian~~he or she~~ may remit service occupation tax~~Service Occupation Tax~~ to the Department on the veterinarian's~~his or her~~ cost price of the tangible personal property transferred incident to service. See 86 Ill. Adm. Code 140.109 for further information. In this case, the veterinarian should provide Certificates of Resale to suppliers. The veterinarian~~He or she~~ must register and file returns with payment of tax to the Department.

B) If the veterinarian's annual aggregate cost price of all items transferred incident to service transactions is 35% or more of annual aggregate gross receipts from service, the veterinarian~~he or she~~ cannot elect to be treated as a de minimis serviceman. The veterinarian must pay service occupation tax~~Service Occupation Tax~~ on the selling price of the tangible personal property transferred incident to service. See 86 Ill. Adm. Code 140.106. The veterinarian must register and remit returns with tax to the Department. The veterinarian~~He or she~~ should provide Certificates of Resale to suppliers and may calculate selling price as follows:

i) Separately stated selling price. If the serviceman separately states the selling price of the tangible personal property transferred incident to service on billings to service customers, then service occupation tax~~Service Occupation Tax~~ liability is based on that separately stated selling price. In no event, however, can the service occupation tax~~Service Occupation Tax~~ liability be based on an amount less than the serviceman's cost price of the tangible personal property being transferred.

ii) Fifty percent base. If the serviceman's bill to the service customer does not separately state the selling price of the tangible personal property transferred, the serviceman's service occupation tax~~Service Occupation Tax~~ liability is

based on 50% of the entire customer bill. However, in no event can the service occupation tax~~Service Occupation Tax~~ be based on an amount less than the serviceman's cost price of the tangible personal property being transferred.

d) Retail Transactions – Defined – Taxation. ~~1)~~ Retailers' occupation tax liability~~Occupation Tax Liability~~ will be incurred by veterinarians in the following circumstances:

1~~A~~) Retailers' occupation tax~~Occupation Tax~~ liability will be incurred on the sale of any tangible personal property to persons with whom the veterinarian has not established a valid VCPR in accordance with the Act. Such items may be medicinal (e.g., a flea and tick product for application on an animal) or non-medicinal (e.g., nonmedicated shampoos, combs, leashes, or collars).

2~~B~~) Retailers' occupation tax~~Occupation Tax~~ liability will be incurred on the sale of any tangible personal property to persons with whom a veterinarian has established a valid VCPR if those items are sold outside the scope of the service transactions described in subsection (c)~~ of this Section~~. The following items are considered to be transferred outside of the scope of a service transaction, regardless of whether a VCPR has been established: combs, brushes, shears, nail clippers, name tags, nonmedicated shampoos, leashes, collars, toys, clothing, odor eliminators and waste handling products.

e) Use Tax Incurred by Veterinarians
A veterinarian will incur use tax~~Use Tax~~ on tangible personal property that is used or consumed in the veterinary practice~~he or she uses or consumes in his or her veterinary practice~~ and is not transferred to a service customer. In Example 2 of subsection (c)(2)(C), these items would include the disposable pads, dryers, combs and towels. Other items might include, but are not limited to, cleaning supplies, tables or chairs, thermometers and hand soap. Certificates of Resale cannot be used for the purchase of these items. Instead, use tax~~Use Tax~~ must either be paid to suppliers or, if suppliers are not registered to collect tax, then the veterinarian must self-assess and remit use tax~~Use Tax~~ to the Department.

(Source: Amended at 47 Ill. Reg. 19349, effective December 12, 2023)

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1) Heading of the Part: Higher Education Distance Learning and Interstate Reciprocity

2) Code Citation: 23 Ill. Adm. Code 1033

3)

Section Numbers:	Emergency Actions:
1033.10	Amendment
1033.20	Amendment
1033.30	Amendment
1033.40	Amendment
1033.50	New Section
1033.60	New Section

4) Statutory Authority: Higher Education Distance Learning Act [110 ILCS 145].

5) Effective Date of Rule: December 15, 2023

6) If this emergency rulemaking is to expire before the end of the 150-day period, please specify the date on which they are to expire: The emergency amendment will expire at the end of the 150-day period, upon repeal of the emergency rulemaking, or upon adoption of permanent rulemaking, whichever comes first.

7) Date Filed with the Index Department: December 15, 2023

8) A copy of the emergency rule, including any material incorporated, is on file in the Illinois Board of Higher Education's Springfield office and is available for public inspection.

9) Reason for Emergency: This emergency rulemaking is adopted as the Illinois Board of Higher Education has determined there is a threat to the public interest, safety, or welfare. Pursuant to a requirement of the National Council for State Authorization Reciprocity Agreement ("SARA"), this Agency must adopt rules prior to January 1, 2024, that contain conforming language in order to retain association with SARA. Without this emergency rulemaking, the course of studies for distance learning students could be adversely impacted.

10) A Complete Description of the Subject and Issues: This proposed rulemaking amends current administrative rule to comport with the National Council for State Authorization Reciprocity Agreement ("SARA") policy manual. As a member of SARA, IBHE is

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required to put in place rules that reflect changes put forth by SARA to better serve distance learning students across the United States.

11) Are there any rulemakings pending on this Part? Yes

Section Numbers:	Proposed Actions:	*Illinois Register* Citations:
1033.10	Amendment	47 Ill. Reg. 13759; September 29, 2023
1033.20	Amendment	47 Ill. Reg. 13759; September 29, 2023
1033.30	Amendment	47 Ill. Reg. 13759; September 29, 2023
1033.40	Amendment	47 Ill. Reg. 13759; September 29, 2023
1033.50	New Section	47 Ill. Reg. 13759; September 29, 2023
1033.60	New Section	47 Ill. Reg. 13759; September 29, 2023

12) Statement of Statewide Policy Objective: This rulemaking will not create or expand a State mandate.

13) Information and questions regarding this emergency rule shall be directed to:

David A. Kelm
General Counsel
Illinois Board of Higher Education
1 N. Old State Capitol Plaza
Suite 333
Springfield, IL 62701

(217) 866-1428
Kelm@IBHE.org

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

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NOTICE OF EMERGENCY AMENDMENTS

TITLE 23: EDUCATION AND CULTURAL RESOURCES
SUBTITLE A: EDUCATION
CHAPTER II: BOARD OF HIGHER EDUCATION

PART 1033
HIGHER EDUCATION DISTANCE LEARNING AND INTERSTATE RECIPROCITY

Section

AUTHORITY: Implementing and authorized by the Higher Education Distance Learning Act [110 ILCS 145].

SOURCE: Adopted by emergency rulemaking at 39 Ill. Reg. 6042, effective April 16, 2015, for a maximum of 150 days; adopted at 39 Ill. Reg. 12293, effective August 19, 2015; emergency amendment at 47 Ill. Reg. 19449, effective December 15, 2023, for a maximum of 150 days.

Section 1033.10 Purpose
EMERGENCY

a) The purpose of this Part is to address the powers and duties delegated to the Board of Higher Education ("BHE" or the "Board") by the Higher Education Distance Learning Act (the "Act"), including, but not limited to, minimum standards for institutions of higher education participating in the interstate reciprocity agreements for distance learning. The Board will collaborate with the Illinois Community College Board (ICCB) to establish and ensure eligibility for Illinois public community colleges that desire to participate.

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b) The Higher Education Distance Learning Act authorizes the State of Illinois to participate in a system of interstate reciprocity to simplify regulation in the expanding field of distance learning. The system of interstate reciprocity established by the National Council for State Authorization Reciprocity Agreement allows willing post-secondary institutions in member states to participate in that agreement on a voluntary basis. Under the system, institutions participate through, and agree to be regulated by, their home state. The Council and statute establish minimum requirements and provide a simplified method of regulating distance learning programs. The system applies only to distance education. The Illinois Board of Higher Education is designated by the Act to be the lead agency coordinating all Illinois-based participating institutions in the distance learning interstate reciprocity program. The Board of Higher Education will collaborate with the ICCB to establish and ensure eligibility for Illinois public community colleges that desire to participate in the program.

(Source: Emergency amendment at 47 Ill. Reg. 19449, effective December 15, 2023, for a maximum of 150 days)

Section 1033.20 Definitions
EMERGENCY

The definitions included in this Section apply to terms used in this Part in conjunction with the Higher Education Distance Learning Act and the National Council for State Authorization Reciprocity Agreement (SARA) Policy Manual~~"SARA Policies and Standards" issued and approved by the National Council for State Authorization Reciprocity Agreements on January 7, 2015~~ and any subsequent revisions as long as those revisions are consistent with the Higher Education Distance Learning Act.

"Accredited" means holding institutional accreditation by name as a U.S.-based institution from an accreditor recognized by the U.S. Department of Education and whose scope of recognition, as specified by the U.S. Department of Education, includes distance education.~~(see Section 1 of the SARA Policies and Standards).~~

"Academic Term" means a portion of an academic year, the time during which an institution holds classes.

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"Academic Year" means the period of time generally extending from August in one calendar year through July of the following calendar year, usually broken into Academic Terms such as semesters, trimesters, or quarters.

"Act" means the Higher Education Distance Learning Act [110 ILCS 145].

"Approve", "Approval", or "Authorization to Participate", in the context of an institutional application to operate under SARA, means a written statement issued by the Board that an institution meets the standards required by SARA and is eligible to operate under SARA. ~~(see Section 1 of the SARA Policies and Standards).~~

"Board" or "BHE" means the Illinois *Board of Higher Education* ~~(Section 10 of the Act)~~.

"Complaint" means a formal assertion in writing that the terms and conditions of the state authorization reciprocity agreement between the Board and the National Council for State Authorization Reciprocity Agreements, or of laws, standards or regulations incorporated by that agreement, are being violated by a person, institution, state, agency or other organization or entity operating under the terms of that agreement, including student complaints.

"C-RAC Guidelines" refers to the Interregional Guidelines for the Evaluation of Distance Education Programs (Online Learning) for best practices in postsecondary distance education developed by leading practitioners of distance education and adopted by the Council of Regional Accrediting Commissions (C-RAC) (see SARA Policy Manual~~Section 1 of the SARA Policies and Standards~~).

"Distance Learning" or "Distance Education" means instruction offered by any means where the student and faculty member are in separate physical locations. It includes, but is not limited to, online, interactive video or correspondence courses or programs. ~~*"Distance Learning" or "Distance Education" means instruction offered by any means where the student and faculty member are in separate physical locations. It includes, but is not limited to, online, interactive video or correspondence courses or programs.* (Section 10 of the Act)~~

"Executive Director" means the Executive Director of the Illinois Board of Higher Education.

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"Home State" means a SARA-member state where an institution holds its legal domicile, authorization, and is accredited. To operate under SARA an institution must have a single Home State~~the single member state recognized by the NC-SARA to regulate institutions that desire to participate in SARA~~.

"Host State" or "Reciprocal State" means a SARA-member state in which an institution operates under the terms of the agreement, other than the home state ~~(see Section 1 of the SARA Policies and Standards)~~.

"ICCB" means the Illinois Community College Board.

"Institution" means a degree-granting postsecondary entity. ~~(see Section 1 of the SARA Policies and Standards).~~

"Member State" means any state, district or territory that has joined SARA.~~any state, commonwealth, district or territory of the United States that is a participant in good standing in a SARA (see Section 1 of the SARA Policies and Standards).~~

"NC-SARA" or "National Council for SARA" means the National Council for State Authorization Reciprocity Agreements ~~(see Section 1 of the SARA Policies and Standards)~~.

"Participation Agreement" means the agreement that each participating institution is required to sign and abide by in order to participate in SARA~~*"Participation Agreement" means the agreement that each participating institution is required to sign and abide by in order to take advantage of the reciprocity agreement* (Section 10 of the Act)~~. For the purposes of the Act and this Part, the participation agreement constitutes~~is~~ the applications~~application~~ created by NC-SARA and the Board that contain~~contains~~ the eligibility criteria and is to be completed and signed by the institution. The institution will submit the applications~~application~~ to the Board and, after the institution has been approved by the Board staff and NC-SARA, the application becomes the participation agreement, subject to annual renewal.

"Participating Institution" means any institution of higher learning that offers an associate's degree or higher, in whole or in part, through distance learning and has voluntarily or willingly entered into a participation agreement to be regulated by a participating home state with respect to institutional and program approval, complaints, and institutional and program reviews.~~*"Participating Institution"*~~

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~~*means any institution of higher learning that offers an associate's degree or higher, in whole or in part, through distance learning and has voluntarily or willingly entered into a participation agreement to be regulated by a participating home state with respect to institutional and program approval, complaints, and institutional and program reviews* (Section 10 of the Act For the purposes of the Act and this Part, the Board is the agency designated to serve as the point of contact for Illinois.~~

"Provisional Admission" or "Provisional Renewal" means conditional approval by the Board staff of an institution's participation in SARA that carries additional monitoring conditions of that institution by its Home State.

"Provisional Status" means the SARA status of an institution provided provisional admission or provisional renewal by its Home State.

"Physical Presence" means on-going occupation of a physical location for instructional purposes or maintenance of an administrative office to facilitate instruction.~~*"Physical Presence" means on-going occupation of a physical location for instructional purposes or maintenance of an administrative office to facilitate instruction* (Section 10 of the Act).~~

"Public Institution of Higher Education" as defined in the Board of Higher Education Act (110 ILCS 205/1)

"Regional Compact" means the New England Board of Higher Education, Midwestern Higher Education Compact (to which Illinois belongs), Southern Regional Education Board, or Western Interstate Commission for Higher Education ~~(see Section 1 of the SARA Policies and Standards)~~.

"SARA" means the state authorization reciprocity agreement or the voluntary program that implements reciprocity agreements amongst states, institutions and the National Council for SARA.

"SARA Policy Manual ~~Policies and Standards~~" refers to the document adopted by the National Council for SARA, as may be amended from time to time, to administer the voluntary, regional approach to state oversight of distance education.

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"State" means any state, commonwealth, district or territory of the United States that is a participant in the state authorization reciprocity agreement.~~*"State" means any state, commonwealth, district or territory of the United States that is a participant in good standing in a state authorization reciprocity agreement* (Section 10 of the Act).~~

"State Authorization Reciprocity Agreement",~~*"State Authorization Reciprocity Agreement",*~~ "SARA", "Reciprocity Agreement",~~*"Reciprocity Agreement",*~~ or "Interstate Reciprocity Agreement" means a voluntary agreement that establishes reciprocity between willing states for approval of postsecondary educational services delivered by distance learning beyond state boundaries~~*means a voluntary agreement that establishes reciprocity between willing states for approval of postsecondary educational services delivered by distance learning beyond state boundaries* (Section 10 of the Act)~~. The development of these agreements among and between the state portal agencies and/or the regional compacts will be facilitated through NC-SARA.

(Source: Emergency amendment at 47 Ill. Reg. 19449, effective December 15, 2023, for a maximum of 150 days)

Section 1033.30 Institution Approval Requirements
EMERGENCY

a) Authorization to Participate

1) Any degree-granting postsecondary institution, including public, private nonprofit and private for-profit institution, that desires to participate in SARA to offer distance education under the authority of the State of Illinois must:

A) Be accredited as defined in Section 1032.20.

B) Have Illinois as the designated home state, as defined in Section 1032.20, for postsecondary education offerings.

C) Be financially stable, evidenced by:

i) being a public institution of higher education in Illinois;~~being State supported,~~ or

ii) being a~~, for~~ private for-profit or~~and~~ private nonprofit institution~~institutions~~ participating in federal student aid programs under Title IV of the Higher Education Act of 1965 (PL 89-329), by meeting the following criteria: having a most recent Federal Financial Responsibility Composite score of 1.5 or above; or having a financial responsibility score between 1 and 1.4 and providing additional financial evidence described in subsection (a)(2) to the Board to determine the financial status of the institution; or~~,~~

iii) being a~~for~~ private for-profit or~~and~~ private nonprofit institution~~institutions~~ not participating in federal student aid programs and without a Federal Financial Responsibility Composite Score, providing a comparable score that is calculated by an independent accountant using the U.S. Department of Education's calculation methodology that matches the institution's sector and is certified by the same independent accountant and additional financial evidence described in subsection (a)(2) to the Board to determine financial status of the institution.

D) No private for-profit or private nonprofit institution with a Federal Financial Responsibility Score below 1.0 will be determined eligible by the Board to participate in SARA through this State, even if any such institution is cleared by the U.S. Department of Education to participate in Title IV student aid programs.

2) The following shall be used by the Board staff to determine the financial status of institutions required to provide additional financial evidence:

A) A written statement in the most recent fiscal year audited financial statement confirming that the institution is financially stable. The audited financial statement must show that the institution has adequate revenue to meet its financial obligations, including payment of unearned tuition.

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B) An irrevocable letter of credit from a bank or other similar financial institution in an amount equivalent to the estimated unearned tuition revenue from distance education students in one academic year. The formula to calculate unearned tuition is the maximum number of students that could be enrolled in any one academic year multiplied by the amount of the tuition for each academic level charged by the institution. The sum of the subtotals by academic level is the estimated unearned tuition revenue.

b) Institutional participation shall be voluntary and, as such, institutions that choose not to participate will be governed by current Illinois statutes and regulations for distance education programs (the Board of Higher Education Act [110 ILCS 205], the Private College Act [110 ILCS 1005], the Academic Degree Act [110 ILCS 1010], and the Public Community College Act [110 ILCS 805], and 23 Ill. Adm. Code 1030, 1050 and 1051).

c) Physical Presence

1) Any institution that meets the requirements of subsection (a) that has Illinois as the home state, is located in Illinois and holds its principal institutional accreditation in Illinois must receive Board approval for operating and degree granting authority under the Private College Act, the Academic Degree Act, or the Board of Higher Education Act, or be exempt from approval requirements as specified in 23 Ill. Adm. Code 1030.

2) Any Illinois public community college desiring to participate in SARA shall be reviewed and approved by ICCB. This will not abrogate the Board of Higher Education's authority to request reviews of community colleges participating in the agreement.

3) Any out-of-state institution from any SARA member state with physical presence as determined under this subsection (c)(3) must apply and obtain operating and degree granting authority from the Board. In determining whether such out-of-state participating institution has a physical presence, the following shall apply ~~(see Section 5 of the SARA Policies and Standards)~~:

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A) The institution has a physical location~~facility~~ in this State~~, whether owned, operated or rented,~~ for synchronous or asynchronous instruction;

B) The institution requires students to physically meet in a location for instructional purposes more than twice per full-term (quarter or semester) course for a total of more than six hours;

C) The institution offers a "short course" or seminars that require more than 20 contact hours in one six-month period;

D) The institution establishes a physical location~~facility, whether owned, rented or operated by, or on behalf of, the institution,~~ to provide information for the purpose of enrolling students or providing student support services;

E) The institution establishes an administrative office, including but not limited to office space for instructional or noninstructional staff;

F) The institution maintains a mailing address or phone exchange in Illinois.

4) Any out-of-state institution from a SARA member state that does not have physical presence in Illinois shall not be required by the Board to fulfill any additional Illinois requirements to operate under SARA if it does the following ~~(see Section 5 of the SARA Policies and Standards)~~:

A) Offers distance learning courses that do not require students to gather in groups, except for the provisions in subsection (c)(3)(B);

B) Holds recruitment activities or advertises to students, whether through print, billboard, direct mail, internet, radio, television or other media;

C) Offers distance education courses on a military base if enrollment in those courses is limited to federal employees and family members;

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D) Maintains a server, router or similar electronic service device housed in a facility that otherwise would not constitute physical presence (the presence of a server or similar pass-through switching device does not by itself constitute the offering of a course or program in Illinois);

E) Has faculty, adjunct faculty, mentors, tutors or other academic personnel residing in Illinois (the presence of instructional faculty in Illinois, when those faculty teach entirely via distance education and never meet their students in person, does not establish physical presence for purposes of the SARA);

F) Holds proctored exams on behalf of the institution in Illinois;

G) Has contractual arrangements with third-party providers to offer or support SARA eligible programs. Any contact between a third-party provider of educational services and the State or SARA office must be made through the participating degree-granting institution. A third-party provider may not represent a participating institution regarding any subject under SARA's operating policies to any SARA office or the State of Illinois;

H) Offers educational field experiences for students, including an educational field trip arranged for a group of students that are normally in residence at an institution in another state, with the exception of full-scale residency programs such as a summer session at a field station;

I) Operates limited supervised field experiences. For the purposes of the SARA, interstate supervised field experiences originating from any member state's distance learning or campus-based program will be considered distance education not triggering physical presence if those activities involve placing not more than 10 students from any academic program, who are physically present simultaneously, at a single clinical facility or site in Illinois. Any out-of-state SARA member institution intending to have a larger pool of student placement must get approval from the Board to do so. Any out-of-state SARA member institution that owns a supervised field experience, clinical or practicum site shall be

exempted from the limitations on placement of its own students at that site.

5) Any institution approved to participate in SARA that offers courses or programs designed to lead to professional licensure or certification or advertised as leading to licensure must satisfy all federal requirements for disclosures regarding such professional licensure programs under 34 C.F.R. 668.43. These requirements will also apply to non-Title IV institutions. To comply with this requirement, participating institutions must do the following:

A) Provide a list of all states for which the institution has determined that its curriculum meets the state educational requirements for licensure or certification;

B) Provide a list of all states for which the institution has determined that its curriculum does not meet the state educational requirements for licensure or certification; or

C) Provide a list of all states for which the institution has not made a determination that its curriculum meets the state educational requirements for licensure or certification;

D) Provide notification in writing to enrolled students that the institution has determined that the course or program does not meet or if it is not determined if it meets the requirements for professional licensure or certification in the state in which the student is located;

E) Provide notification in writing to prospective students before financial obligation is made that the institution has determined that the course or program does not meet or if it is not determined if it meets the requirements for professional licensure or certification in the state in which the student is located; and

F) Institutions that are unable, after all reasonable efforts, to determine whether a program will meet state professional licensure requirements shall provide the student or applicant with current contact information for any applicable licensing boards and advise

the student or applicant to determine whether the program meets requirements for licensure in the state where the student is located.

~~5)~~ ~~Any participating institution offering distance learning courses leading to professional licensure must keep students, applicants and prospective students aware of the licensing requirements of Illinois. To comply with this requirement, participating institutions must do one of the following:~~

~~A)~~ ~~Provide notification in writing that the institution has determined that the course or program meets the requirements for professional licensure in the state in which the student resides; or~~

~~B)~~ ~~Provide notification in writing that the institution cannot confirm whether the course or program meets requirements for professional licensure in the state in which the student resides. The institution must provide the student with current contact information for any applicable licensing boards and advise the student to determine whether the program meets requirements for licensure.~~

6) Out-of-state institutions that choose to participate outside the reciprocity agreement or are from nonmember states will be bound by other Illinois laws identified in subsection (b) for distance education programs.

(Source: Emergency amendment at 47 Ill. Reg. 19449, effective December 15, 2023, for a maximum of 150 days)

Section 1033.40 Application Process and Participation
EMERGENCY

The following are the processes for institutional participation in SARA:

a) Eligibility

1) Any degree-granting institution whose main campus is located in Illinois and holds its principal institutional accreditation in Illinois, including public, private nonprofit and private for-profit institutions, can voluntarily apply to the Board to participate in SARA. The Board shall approve Illinois institutions meeting the eligibility requirements as described in this Section.

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2) Institutions are eligible to participate in SARA if they are in compliance with the standards, procedures and requirements established by the NC-SARA and the Board. Approved institutions are required to maintain the conditions of approval throughout the participation period. Any institution that fails to maintain conditions of approval may lose eligibility to participate in SARA and be removed at any time by the Board. The following are the criteria to determine eligibility:

A) The Interregional Guidelines for the Evaluation of Distance Education (C-RAC Guidelines) adopted by the National Council for SARA (July 10, 2015; no later amendments or editions are included) for the interstate distance learning reciprocity program must be maintained by the institution at all times during the participation period. Participating institutions must comply with the following C-RAC Guidelines ~~(see Section 4 of SARA Policies and Standards)~~:

i) Online learning is appropriate to the institution's mission and purposes;

ii) The institution's plans for developing, sustaining and, if appropriate, expanding online learning offerings are integrated into its regular planning and evaluation processes;

iii) Online learning is incorporated into the institution's systems of governance and academic oversight;

iv) Curricula for the institution's online learning offerings are coherent, cohesive and comparable in academic rigor to programs offered in traditional instructional formats;

v) The institution evaluates the effectiveness of its online learning offerings, including the extent to which the online learning goals are achieved, and uses the results of its evaluations to enhance the attainment of the goals;

vi) Faculty responsible for delivering the online learning curricula and evaluating the students' success in achieving the online learning goals are appropriately qualified and effectively supported;

vii) The institution provides effective student and academic services to support students enrolled in online learning offerings;

viii) The institution provides sufficient resources to support and, if appropriate, expand its online learning offerings; and

ix) The institution assures the integrity of its online offerings.

B) Authorization to operate under SARA shall last for 12 months. Every year following the initial approval, the Board shall determine if participating institutions still meet SARA requirements. Any institution that does not seek to renew and pay applicable participation fees will no longer be eligible to participate in SARA.

C) Community colleges may be deemed eligible by participating in a comparable approval process required by ICCB.

3) In the review of institutions' applications to participate in SARA, Board staff shall consider actions of federal or state regulatory agencies or Offices of Attorneys General, Offices of Inspectors General, or similar bodies that affect an institution's status with those bodies.

4) Institutions applying to participate in SARA should be financially stable as described in Section 1033.30(a)(1)(C) and capable of assuring the revenues needed for meeting stated objectives and fulfilling commitments to students. The eligible institution submitting financial evidence as described in Section 1033.30(a)(1)(C) must be in compliance with federal and state regulations and statutes, including payment of unearned tuition and for applicable proprietary institution participating in federal student aid, compliance with requirements of 34 CFR 668.28, "Non-Federal Education Assistance Funds (90/10 rule)".

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NOTICE OF EMERGENCY AMENDMENTS

b) Participation Fees

1) Institutions are assessed fees by the Board and by the National Council for Sara to participate in SARA.

A) The Board assesses an annual fee of $1,750 to institutions participating in SARA and whose applications are managed by the Board. Full payment of these fees is required prior to Board staff review of the SARA application.

B) The National Council for SARA assesses initial and recurring fees to participating institutions. In order to be considered eligible to be a SARA institution by the Board, the institution must be in good standing with the National Council for SARA, including compliance with all Council fee requirements.

2) Remittance

A) Board fees shall be submitted as check, certified check, cashier's check or money order payable to the Illinois Board of Higher Education.

B) The Board shall return fees, minus a fee of $250 for processing, if, after further investigation, the Board determines that the institution is not eligible to participate in SARA. No refund shall be awarded for any application that has been reviewed by Board staff. Applications withdrawn by the institution shall receive no refund.

C) Board fees shall be submitted to:

Illinois Board of Higher Education
Academic Affairs Fee Remittance
1 N. Old Capitol Plaza, Suite 333
Springfield IL 62701-1377

D) Applications submitted with insufficient or incorrect fees shall be considered incomplete. The Board will notify the institution of the correct amount due. No further action will be taken by the Board until the full or correct amount due is submitted.

ILLINOIS BOARD OF HIGHER EDUCATION

NOTICE OF EMERGENCY AMENDMENTS

c) Application and Approval Process

1) Any institution seeking to participate is required to complete an application and pay the participation fees.

2) The Board will provide SARA application forms to institutions, and Board staff will review the application to determine the institution's eligibility to participate in SARA.

3) Board participation fees shall be paid in full before an application is reviewed by staff.

4) Community colleges may be deemed SARA eligible by participating in a comparable ICCB approval process. No fee will be assessed by the Board of Higher Education.

5) Upon approval by the Board to participate in SARA, the institution will be sent an electronic link to make payment to the NC-SARA. The Board shall notify the Council when an institution has completed the application process.

d) Maintenance of Approval
Institutions are approved to participate in SARA if they are in compliance with the standards, procedures and requirements of this Section. Approved institutions are required to maintain the conditions of approval throughout the participation period. Any institution that fails to maintain conditions of approval may lose eligibility to participate in SARA and be removed at any time by the Board.

1) Renewal
Approval to participate in SARA is for 12 months. Any institution participating in SARA is required to renew annually and pay required renewal fees to the Board and to NC-SARA. Any institution that does not renew the participation agreement with the Board or pay required fees will no longer be eligible to participate in SARA. The Board will not process any institution's application for renewal until the full amount due is paid.

2) Data Reporting

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Participating institutions must comply with the annual data reporting mandated by NC-SARA as set forth in the Data Reporting Handbook provided by NC-SARA. ~~SARA participating institutions shall annually submit the following data, and other data that NC-SARA may direct participating institutions to submit in the future, to NC-SARA (see Section 6 of the SARA Policies and Standards):~~

~~A)~~ ~~The number of students enrolled in the institution via distance education delivered outside the home state of the institution. The data should be reported by state, territory or district in which the students reside.~~

~~B)~~ ~~A list of programs that a student may complete without on-campus attendance (using the U.S. Department of Education definition of a distance education program).~~

3) Reviews
The staff of the Board may request reviews and visitations of SARA participating institutions as necessary for the implementation of the Act and this Part.

4) Investigations of Institutions

A) The Board staff shall initiate an investigation upon receipt by the Executive Director of a verified written complaint of an incident occurring within two years prior to the date the complaint was submitted. Complaints subject to investigation may include those arising from students, other SARA participating institutions, other SARA member states, the U.S. Department of Education, employers and licensing boards. Investigations may be initiated concerning any of the following:

i) Any violation of SARA consumer protection provisions concerning dishonest or fraudulent claims, including but not limited to recruitment and marketing materials; job placement data; tuition, fees and financial aid; admission requirements for courses and programs; accreditation status of institutions; professional licensing requirements or the requirements of specialized accrediting bodies; and any

ILLINOIS BOARD OF HIGHER EDUCATION

NOTICE OF EMERGENCY AMENDMENTS

coursework transfer to other institutions that causes harm or financial loss to students.

ii) Any violation of the C-RAC Guidelines adopted by NC-SARA ~~(July 10, 2015; no later amendments or editions are included)~~ for the interstate distance learning reciprocity program.

iii) Any violation of the provisions of the Private College Act, the Academic Degree Act, and 23 Ill. Adm. Code 1030 (Program Review (Private Colleges and Universities)).

iv) Loss, suspension, probation or similar adverse action taken by an accrediting body with which the institution is or was affiliated.

v) Actions of federal or state regulatory agencies or Offices of Attorneys General, Offices of Inspectors General, or similar bodies that may affect an institution's status with those bodies and/or affect the delivery of SARA programs.

vi) Failure to maintain financial stability as described in Section 1033.30(a)(1)(C).

vii) Failure to continue to meet any requirement in this Section.

B) The institution involved in an investigation will be informed of the alleged violations and the processes of investigation. SARA participating institutions must work directly with the students to resolve certain SARA related complaints (e.g., complaints about grades or student conduct violations). The following are complaint procedures:

i) Any complaints not resolved within the institution shall be reported to the BHE Executive Director for investigation and final resolution.

ii) After the Executive Director receives an unresolved complaint, the Executive Director~~he or she~~ will initiate an

investigation. The institution involved will be notified by the Board staff prior to initiating an investigation.

iii) Upon completion of an investigation, the Board staff will inform the institution of the status of the investigation. In the event that the alleged violations are substantiated, the institution may be removed from participating in SARA or be placed on provisional status. If removed from participating in SARA, the~~The~~ institution will be required to stop recruiting students for distance education under SARA until it gets a written clearance from the Board reauthorizing participation.

C) The institution shall provide in its catalog and print promotional materials and on its website the institution's~~institution~~ complaint policies and procedures for reporting complaints, as well as the Board's website link for reporting complaints. The website information must include an electronic link to the institution's complaint portal as well as the Board's website on the first page (as registered with standard web/internet search engines).

D) Community colleges may be deemed compliant by abiding by comparable ICCB processes.

e) Revocation of Eligibility

1) Grounds for revocation of eligibility to participate in SARA include the following:

A) Failure to renew the SARA and/or pay required fees;

B) Violation of any applicable Illinois State laws or any provisions in the SARA Policies and Standards;

C) Failure by an approved institution to maintain institutional accreditation or to report negative changes to its accreditation to the Board;

D) Failure to maintain financial stability;

ILLINOIS BOARD OF HIGHER EDUCATION

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E) Failure to continue to meet any requirement of this Section.

2) Neither NC-SARA nor the Board will issue a refund if an institution's eligibility is revoked due to violations of applicable Illinois State laws or SARA standards. Neither will any institution that voluntarily withdraws at any time during the participation year receive any refund.

3) Procedures for Revocation

A) Following the Board staff investigation of institutional practices, the staff may recommend to the Executive Director revocation of eligibility to participate in the SARA.

B) The Executive Director shall send to the institution an official letter of revocation. ~~The institution shall have 15 business days to communicate with the Board in writing of actions that will be taken and the timeline to address the violations identified in the revocation letter.~~

~~C)~~ ~~The institution will be considered a SARA participant for the duration of a mandatory Board approved teach-out plan.~~

~~D)~~ ~~The Board may reinstate the institution at any time upon satisfactory correction of the violations that led to the revocation of eligibility.~~

f) State Withdrawal
If Illinois withdraws from SARA, institutions approved and operating under SARA through Illinois may continue to do so for the remainder of the academic term or 90 days after the receipt of the Illinois withdrawal notice, whichever is later, but not to exceed six months from the date of notice.

g) Registers
The Board shall maintain a register on the Board web site with the names of the institutions that have been approved by the Board and NC-SARA to participate in the SARA program (www.ibhe.org). In addition, NC-SARA publishes a list of participating states and institutions on its web site (www.nc-sara.org).

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NOTICE OF EMERGENCY AMENDMENTS

(Source: Emergency amendment at 47 Ill. Reg. 19449, effective December 15, 2023, for a maximum of 150 days)

Section 1033.50 Provisional Admission or Renewal
EMERGENCY

a) The Board staff may approve an institution applying for initial or renewal participation in SARA to participate on provisional status in any of the following circumstances:

1) The institution is on notice, show cause, provisional, or probationary status or the equivalent with its institutional accrediting agency;

2) The institution is currently required by the U.S. Department of Education to post a letter of credit or is under a cash management agreement or under reimbursement payment method or Heightened Cash Monitoring (HCM 1 or HCM 2) with the U.S. Department of Education (such institutions must still have a Federal Financial Responsibility Composite Score of 1.0 or above);

3) The institution has a Federal Financial Responsibility Composite Score between 1.0 and 1.5;

4) The institution is the subject of a publicly announced investigation by a government agency, and the investigation is related to the institution's academic quality, financial stability or student consumer protection;

5) The institution is the subject of a current investigation by its Home State related to the institution's academic quality, financial stability or student consumer protection;

6) A third-party action such as a private lawsuit or news story does not by itself establish a government investigation. If such a third-party event results in an investigation by a government agency as set forth in subsections (a)(4) and (5), above, those subsections become applicable. Lawsuits by government entities are considered to have resulted from a governmental investigation and can be the basis of a determination of provisional status.

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NOTICE OF EMERGENCY AMENDMENTS

7) Lack of compliance with SARA policies related to data reporting.

8) The institution has a change of ownership as determined by the Home State.

9) The participating institution is in violation of, or noncompliance with SARA policies.

b) The Board staff shall notify the Midwestern Higher Education Compact [Regional Compact] and NC-SARA of the admission or renewal of an institution on provisional status. NC-SARA will provide indication of the institution's provisional status on the NC-SARA website.

c) An institution admitted to or renewed for SARA participation on provisional status is subject to additional oversight measures as the Board staff considers necessary for purposes of ensuring SARA requirements are met regarding program quality, financial stability and consumer protection, including limits on its distance learning enrollments if deemed necessary and appropriate by the Home State. The Home State shall report to its regional SARA steering committee and NC-SARA at least once a year on the status of any Institution(s) admitted or renewed on Provisional Status.

d) An institution admitted to or renewed for SARA participation on provisional status shall remain in that status for a period not to exceed one year unless all of the following are true:

1) The Board staff or an external entity whose action has resulted in the institution's provisional status (see 3.2(a)) has not within the one-year period taken action to resolve the institution's status with that entity;

2) The Board staff recommends extension; and

3) The President of the Midwestern Higher Education Compact (relevant Regional Compact) approves extension; and

4) To support comparable application of this policy across regions, the President of NC-SARA approves such action.

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e) In no event shall such an extension of provisional status exceed one additional year.

f) In the event that the Board staff determines that an institution on SARA provisional status is no longer subject to any of the circumstances set forth in subsection 1033.50(a), above, the Board staff shall remove the institution's designation of provisional status and shall notify the Midwestern Higher Education Compact [Regional Compact] and NC-SARA. NC-SARA shall then remove that designation on NC-SARA's online listing of SARA-participating Institutions.

g) If an institution on SARA provisional status is found by the Board staff to not meet the requirements of SARA, the Board staff shall disallow any further enrollments under SARA, shall notify the Midwestern Higher Education Compact (its Regional Compact) and NC-SARA, and:

1) Remove the institution from SARA participation, or

2) Allow the institution a period not to exceed 12 months in which to come into compliance with SARA policies under state supervision. Only one such time period is allowed in any three-year period.

h) If an institution on SARA provisional status is found by the Board staff not to meet the requirements of SARA, the Board staff shall allow any students enrolled in the institution under SARA policies at the time of the finding of noncompliance a period of six months in which to conclude their work at the institution under SARA provisions, irrespective of the institution's SARA status.

i) Provisional status between renewal periods. The Board staff, at its discretion, may place an institution on provisional status at any time if the institution is subject to any conditions set forth in subsection 1033.50(a), above, or if the institution's Federal Financial Composite Score falls between 1.0 and 1.5. An institution placed on provisional status by the Board staff shall remain in that status until its next renewal date, at which time the Board staff will determine if the institution will be removed from SARA participation, renewed for provisional SARA participation for no longer than one year, unless conditions of subsection 1033.50(d), above, are met, or renewed without such provisional designation.

ILLINOIS BOARD OF HIGHER EDUCATION

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j) SARA eligibility following change of ownership. A change of ownership will be determined by the Board staff in accordance with applicable Board rules, and if there is a change of ownership, a new application for authorization must be submitted by the new ownership and approved by the Board.

1) A SARA participating institution will remain under SARA until the required approvals are completed by all agencies, including the institution's accreditor. The institution may become provisionally approved by the Board staff as of the effective date of change of ownership until a new Federal Financial Responsibility Composite Score is established. A new application for institutional approval may be required.

A) Institutions participating in federal student aid programs under Title IV of the Higher Education Act of 1965 (PL 89-329) shall submit to the Board staff a copy of the same day balance sheet showing the institution's financial position on the day the ownership changed, prepared in accordance with Generally Accepted Accounting Principles (GAAP) and audited in accordance with Generally Accepted Government Auditing Standards (GAGAS) as required by the U.S. Department of Education to extend the Temporary Program Participation Agreement (PPA).

B) Institutions not participating in federal student aid programs shall submit to the Board staff a same day balance sheet showing the institution's financial position on the day the ownership changed prepared in accordance with GAAP by an independent accountant.

2) Newly acquired institutions seeking SARA participation. If the newly acquired institution has not participated in SARA, the institution shall follow the requirements as described in Section 1033.30.

(Source: Emergency rule added at 47 Ill. Reg. 19449, effective December 15, 2023, for a maximum of 150 days)

Section 1033.60 Institutional Appeals
EMERGENCY

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In the event that an institution is notified by the Board staff of its intent to remove the institution from participating in SARA, or if the institution is denied initial participation in SARA, the institution may appeal the denial of participation to the Executive Director of the Board.

a) Institutions who choose to appeal must do so on the following grounds:

1) The Board staff did not follow procedures as outlined in the SARA Manual and this Part. The institution must submit supporting documentation.

2) The Board staff made a mistake in determining that the institution does not meet the eligibility criteria to participate in SARA, as outlined in the SARA Manual and this Part. The institution must submit supporting documentation to prove that the institution meets the eligibility criteria.

3) The Board staff made a mistake in determining that the institution was in violation of, or is non-compliant with, SARA policies outlined in the SARA Manual and this Part. The institution must submit supporting documentation to prove that the institution's actions or failure to act was not in violation and complies with the written policies.

b) Appeals Process

1) Institutions wishing to appeal their removal or denial of participation from SARA must notify the Board in writing of the intent to appeal within seven days of receiving an official letter of revocation or denial from the Board staff.

A) For institutions who are currently participating in SARA, if no notice to appeal is received within the seven-day timeframe, the Board staff will take the necessary steps to officially remove the institution from SARA by notifying the NC-SARA office.

B) For institutions that have submitted a notice to appeal, and the notice has been received by the Board staff, the status of the institution shall remain unchanged during the appeal process.

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NOTICE OF EMERGENCY AMENDMENTS

2) The notice of intent to appeal must include the name of the institution, what action was denied, when the denial was received, and contact information for the appeal.

The notice must be delivered to the Board via e-mail to: SARA@ibhe.org.

Hard copies of the notice of intent to appeal may be sent to:

Illinois Board of Higher Education
SARA Appeal
1 N. Old Capitol Plaza, Suite 333
Springfield IL 62701-1377

Upon receipt of the notice of intent to appeal, the Board will contact the institution to verify receipt and may request additional information to clarify the intent to appeal.

3) Institutions who notify the Board of their intent to appeal must submit their official appeal, consisting of a letter stating their reason for appealing, along with the required supporting documentation, within seven days after submitting a notice of their intent to appeal.

The official appeal must be delivered to the Board via e-mail to: SARA@ibhe.org.

Hard copies of the official appeal may be sent to:

Illinois Board of Higher Education
Attn: SARA Appeal
1 N. Old Capitol Plaza, Suite 333
Springfield IL 62701-1377

4) Upon receiving the official appeal and supporting documentation, the Executive Director will make a determination on the appeal within fourteen days of the receipt of the official appeal.

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A) Institutions whose appeals are accepted will remain as a SARA participating institution or will be granted initial participation in SARA if not already a participating institution.

B) The institution must pay all fees associated with SARA participation before participation will be granted or before institutional participation can be renewed.

C) Institutions whose appeals are denied will be notified of the decision of the Executive Director. For institutions currently participating in SARA, the Board will take immediate action to have them removed as a SARA participating institution following the notification of the decision of the Executive Director.

5) If an institution's SARA participation expires during the appeals process, they will remain a participating institution until such time as the appeals process can be resolved.

(Source: Emergency rule added at 47 Ill. Reg. 19449, effective December 15, 2023, for a maximum of 150 days)

DEPARTMENT OF INSURANCE

NOTICE OF CORRECTION TO NOTICE ONLY

1) Heading of the Part: Licensing of Public Adjusters

2) Code Citation: 50 Ill. Adm. Code 3118

3) The Notice of Adopted Rules being corrected appeared at: 47 Ill. Reg. 2301; February 17, 2023

4) The information being corrected is as follows: Section 3118.45 was amended by this rulemaking, not repealed as indicated under item three of the Notice.

JOINT COMMITTEE ON ADMINISTRATIVE RULES

SECOND NOTICES RECEIVED

The following second notices were received during the period of December 12, 2023 through December 18, 2023. These rulemakings are scheduled for the January 16, 2024 meeting. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rulemaking should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

Second Notice Expires	Agency and Rule	Start of First Notice	JCAR Meeting
1/20/24	State Universities Retirement System, Universities Retirement (80 Ill. Adm. Code 1600)	9/29/23 47 Ill. Reg. 13879	1/16/24
1/24/24	Capital Development Board, Community Health Center Construction (71 Ill. Adm. Code 42)	8/11/23 47 Ill. Reg. 11860	1/16/24
1/25/24	State Universities Civil Service System, State Universities Civil Service System (80 Ill. Adm. Code 250)	9/22/23 47 Ill. Reg. 13457	1/16/24
1/25/24	Department of Public Health, Hospice Programs (77 Ill. Adm. Code 280)	9/15/23 47 Ill. Reg. 13152	1/16/24
1/25/24	Department of Public Health, Medically Complex For the Developmentally Disabled Facilities Code (77 Ill. Adm. Code 390)	10/13/23 47 Ill. Reg. 14296	1/16/24
1/25/24	Department of Central Management Services, Travel (80 Ill. Adm. Code 2800)	10/13/23 47 Ill. Reg. 14148	1/16/24
1/25/24	Department of Central Management Services, Acquisition, Management and	10/13/23 47 Ill. Reg. 141041	1/16/24

JOINT COMMITTEE ON ADMINISTRATIVE RULES

SECOND NOTICES RECEIVED

	Disposal of Real Property (44 Ill. Adm. Code 5000)		
1/26/24	Illinois Labor Relations Board, Access to Records of the Illinois Labor Relations Board (2 Ill. Adm. Code 2501)	10/20/23 47 Ill. Reg. 14683	1/16/24
1/26/24	Department of Revenue, Retailers' Occupation Tax (86 Ill. Adm. Code 130)	10/20/23 47 Ill. Reg. 14688	1/16/24
1/28/24	Department of Public Health, Intermediate Care For the Developmentally Disabled Facilities Code (77 Ill. Adm. Code 350)	10/13/23 47 Ill. Reg. 14205	1/16/24
1/28/24	Office of the State Fire Marshal, Furniture Fire Safety Regulations (Repealer) (41 Ill. Adm. Code 300)	10/27/23 47 Ill. Reg. 15247	1/16/24

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

STATEMENT OF RECOMMENDATION
TO PROPOSED RULEMAKING

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

Heading of the Part: Medical Payment

Code Citation: 89 Ill. Adm. Code 140

Section Numbers: 140.457 140.465

Date Originally Published in the *Illinois Register*: 1/13/23
47 Ill. Reg. 315

At its meeting on December 12, 2023, the Joint Committee on Administrative Rules considered the above-referenced rulemaking and recommended that the Department be more timely in implementing statute in rule. Public Act 101-10 required treatment of autism spectrum disorder through Applied Behavior Analysis to be covered under the Medical Assistance Program for children with a diagnosis of autism spectrum disorder and stated that the Department shall submit rules regarding provision of services and providers by September 1, 2019. The Department did not propose these rules until January 13, 2023.

The agency should respond to this Recommendation in writing within 90 days after receipt of this Statement. Failure to respond will constitute refusal to accede to the Committee's Recommendation. The agency's response will be placed on the JCAR agenda for further consideration.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

STATEMENT OF OBJECTION
TO EMERGENCY RULEMAKING

DEPARTMENT ON AGING

Heading of the Part: Community Care Program

Code Citation: 89 Ill. Adm. Code 240

Section Numbers: 240.160 240.1541
240.235 240.1542
240.1530

Date Originally Published in the *Illinois Register*: 11/3/23
47 Ill. Reg. 15675

At its meeting on December 12, 2023, the Joint Committee on Administrative Rules objected to the Department on Aging's use of emergency rulemaking to adopt rules titled Community Care Program (89 Ill. Adm. Code 240; 47 Ill. Reg. 15675 - 11/3/23) because it does not meet the criteria for emergency rulemaking in 1 Ill. Adm. Code 230.400(a)(1)(C) and (D). The emergency situation did not arise through no fault of the agency and the emergency rule is not limited to those matters that are required to meet the emergency situation. Beginning March 1, 2020, the federal Centers for Medicare and Medicaid Services, in response to the COVID-19 public health emergency, waived a federal requirement that prohibited legally responsible individuals from serving as home care aides for program participants. After this flexibility was granted, the Department permitted legally responsible individuals to serve as home care aides despite this practice being strictly prohibited in its own administrative rules. The Department could have easily made this change through a proposed rulemaking and allowed for public notice and comment at some point over the last three years. Further, this rulemaking contains general clean-up and style changes that are not necessary to address the emergency situation.

Failure of the agency to respond within 90 days after receipt of the Statement of Objection shall be deemed a refusal. The agency's response will be placed on the JCAR agenda for further consideration.

POLLUTION CONTROL BOARD

JANUARY 2024 REGULATORY AGENDA

a) Parts (Headings and Code Citations): 35 Ill. Adm. Code 201, Permits and General Provisions; 35 Ill. Adm. Code 202, Alternative Control Strategies; 35 Ill. Adm. Code 203, Major Stationary Sources Construction and Modification; 35 Ill. Adm. Code 204, Prevention of Significant Deterioration; 35 Ill. Adm. Code 205, Emissions Reduction Market System; 35 Ill. Adm. Code 207, Vehicle Scrappage Activities; 35 Ill. Adm. Code 211, Definitions and General Provisions; 35 Ill. Adm. Code 212, Visible and Particulate Matter Emissions; 35 Ill. Adm. Code 214, Sulfur Limitations; 35 Ill. Adm. Code 215, Organic Material Emission Standards and Limitations; 35 Ill. Adm. Code 216, Carbon Monoxide Emissions; 35 Ill. Adm. Code 217, Nitrogen Oxides Emissions; 35 Ill. Adm. Code 218, Organic Material Emission Standard and Limitations for the Chicago Area; 35 Ill. Adm. Code 219, Organic Material Emissions Standards and Limitations for the Metro East Area; 35 Ill. Adm. Code 220, Nonmethane Organic Compounds; 35 Ill. Adm. Code 223, Standard and Limitations for Organic Material Emissions for Area Sources; 35 Ill. Adm. Code 225, Control of Emissions from Large Combustion Sources; 35 Ill Adm. Code 226, Standards and Limitations for Certain Sources of Lead; 35 Ill. Adm. Code 228, Asbestos; 35 Ill. Adm. Code 229, Hospital/Medical/Infectious Waste Incinerators; 35 Ill. Adm. Code 232, Toxic Air Contaminants; 35 Ill. Adm. Code 237, Open Burning; 35 Ill. Adm. Code 240, Mobile Sources; 35 Ill. Adm. Code 241, Clean Fuel Fleet Program; 35 Ill. Adm. Code 243, Air Quality Standards; 35 Ill. Adm. Code 244, Episodes; 35 Ill. Adm. Code 245, Odors; 35 Ill. Adm. Code 249, Ethylene Oxide Ambient Air Monitoring (Board Rulemaking Docket R 18-21)

1) Rulemaking:

A) Description: The Board opened this rulemaking docket to review its air pollution rules and determine which of them are obsolete, repetitive, confusing, or unnecessary. The Illinois Environmental Protection Agency (IEPA) has also proposed to clarify provisions of these rules. Both IEPA and the Board intend proposed amendments to be non-substantive in nature.

B) Statutory Authority: Sections 10, 27, and 28 of the Environmental Protection Act [415 ILCS 5/10, 27, and 28].

C) Scheduled meeting/hearing dates: The Board intends to hold the required two hearings in the first half of calendar year 2024.

D) Date agency anticipates First Notice: The Board expects to adopt a first-notice proposal in the first half of calendar year 2024.

E) Affect on small businesses, small municipalities or not for profit corporations: Because the Board intends its proposed revisions to be non-substantive clarifications, it does not expect those revisions to have a substantive effect on these entities.

F) Agency contact person for information:

Name: Don A. Brown, Clerk
Address: Pollution Control Board
60 East Van Buren Street, Suite 630
Chicago, Illinois 60605

(312) 814-3461
don.brown@illinois.gov

G) Related rulemakings and other pertinent information: None

b) Part (Heading and Code Citation): Definitions and General Provisions (35 Ill. Adm. Code 211)

1) Rulemaking: Docket number R24-16

A) Description: Section 9.1(e) of the Environmental Protection Act [415 ILCS 5/9.1(e)] requires the Board to adopt rules that are identical-in-substance to exempt from regulation those volatile organic compounds that the United States Environmental Protection Agency (USEPA) has determined are exempt from regulation for ozone due to negligible photochemical reactivity. The Illinois definition of volatile organic material (VOM) lists the federally excluded volatile organic compounds.

USEPA codified the compounds determined to be exempt from regulation as 40 C.F.R. §51.100(s). 57 Fed. Reg. 3945 (Feb. 3, 1992). This definition includes all compounds and classes of compounds excluded by USEPA. The Illinois definition of VOM, codified at 35 Ill. Adm. Code 211.7150, corresponds with USEPA's definition.

POLLUTION CONTROL BOARD

JANUARY 2024 REGULATORY AGENDA

The Board reserved docket number R24-16 to accommodate any amendments to the 40 CFR 51.100(s) definition of VOM that USEPA may adopt between July 1, 2023, and December 31, 2023.

By March 2024, the Board intends to determine whether USEPA rules require any Board action in response. The Board will then propose necessary amendments to the Illinois definition of VOM using the identical-in-substance procedure or dismiss docket R24-16, as appropriate.

Section 9.1(e) requires that the Board complete amendments within one year of the date on which USEPA adopted the earliest action upon which the amendments are based. Assuming USEPA adopted an amendment that will require Board action on the first day of the update period, July 1, 2023, the due date for Board adoption of amendments in docket R24-16 would be July 1, 2024.

To meet a due date of July 1, 2024, the Board would propose amendments and publish a Notice of Proposed Amendments to in the *Illinois Register* by late March 2024. This would allow the Board to accept public comments on the proposal for 45 days before adopting any amendments. Alternatively, if no amendment to the Illinois definition is needed, the Board will promptly dismiss the reserved docket R24-16.

B) Statutory authority: Implementing and authorized by Sections 7.2, 9.1(e), and 27 of the Environmental Protection Act [415 ILCS 5/7.2, 9.1(e) & 27].

C) Scheduled meeting/hearing dates: None scheduled at this time. The Board would propose any amendments according to Sections 27 and 28 of the Act [415 ILCS 5/27 & 28]. The Board will then schedule and conduct at least one public hearing, as required by Section 110(a) of the federal Clean Air Act (42 U.S.C. § 7410(a)) for amendment of the Illinois ozone SIP.

D) Date agency anticipates First Notice: Section 9.1(e) of the Environmental Protection Act [415 ILCS 5/9.1(e)] provides that this rulemaking is not subject to Section 5-35 of the APA [5 ILCS 100/5-35]. For this reason, the rulemaking is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules. Rather, the Board will publish a Notice of Proposed Amendments in the *Illinois Register*, and it

will accept public comments on the proposal for 45 days after the date of publication, as required by section 7.3(b)(1) of the Environmental Protection Act [415 ILCS 5/7.3(b)(1)] and section 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/5-40].

For the reasons above, the Board cannot now anticipate an exact date for publication.

E) Affect on small business, small municipalities, or not for profit corporations: This rulemaking may affect any small business, small municipality, or not for profit corporation that engages in the emission of a chemical compound that is the subject of a proposed exemption or proposed deletion from the USEPA list of exempted compounds.

F) Agency contact person for information: Address questions or written comments concerning this rulemaking, noting docket number R24-16, to:

Name: Don A. Brown, Clerk
Address: Pollution Control Board
60 East Van Buren Street, Suite 630
Chicago, Illinois 60605

(312) 814-3461
don.brown@illinois.gov

G) Related rulemakings and other pertinent information: No other rulemaking that would affect 35 Ill. Adm. Code 211 is now planned. However, if the Board receives a rulemaking proposal under 415 ILCS 5/27 and 28, it may initiate a rulemaking at any time.

c) Part (Heading and Code Citation): Air Quality Standards (35 Ill. Adm. Code 243)

1) Rulemaking: Docket number R24-15

A) Description: Section 10(H) of the Environmental Protection Act [415 ILCS 5/10(H)] requires the Board to adopt ambient air quality standards that are identical-in-substance to the National Ambient Air Quality Standards (NAAQS) adopted by the United States Environmental

Protection Agency (USEPA) under section 109 of the federal Clean Air Act (42 U.S.C. §7409).

USEPA codified the primary and secondary NAAQS at 40 CFR 50, which includes provisions for monitoring ambient air quality. Other federal regulations relate to the NAAQS, including 40 CFR 53, which establishes procedures for approving equivalent and reference methods, and 40 CFR 81, which designates air quality monitoring regions and their attainment/non-attainment status.

The Board reserved docket number R24-15 to accommodate any amendments to the federal NAAQS that USEPA may adopt between July 1, 2023, and December 31, 2023. To date, the Board has found no USEPA action during this period that requires Board action.

By March 2024, the Board will determine whether USEPA rules require any Board action in response. The Board will then propose necessary amendments to the Illinois ambient air quality standards using the identical-in-substance procedure in this docket R24-15 or dismiss the docket, as appropriate.

Section 10(H) requires that the Board complete amendments within one year of the date on which USEPA adopted the earliest action upon which the amendments are based. Assuming USEPA adopted an amendment that will require Board action on the first day of the update period, the due date for Board adoption of amendments in docket R24-15 would be July 1, 2024.

To meet a due date of July 1, 2024, the Board would propose amendments and publish a Notice of Proposed Amendments to in the *Illinois Register* by late March 2024. This would allow the Board to accept public comments on the proposal for 45 days before adopting any amendments.

B) Statutory authority: Implementing and authorized by Sections 7.2, 10(H), and 27 of the Environmental Protection Act [415 ILCS 5/7.2, 10(H) & 27].

C) Scheduled meeting/hearing dates: None scheduled at this time. The Board would propose any amendments according to Sections 27 and 28 of

the Act [415 ILCS 5/27 & 28]. The Board may then schedule and conduct at least one public hearing, if required by Section 110(a) of the federal Clean Air Act (42 U.S.C. f§ 7418) for amendment of the Illinois SIP for any air contaminant, if the Board considers a hearing authorized and required.

D) Date agency anticipates First Notice: Section 10(H) of the Environmental Protection Act [415 ILCS 5/10(H)] provides that this rulemaking is not subject to Section 5-35 of the APA [5 ILCS 100/5-35]. For this reason, the rulemaking is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules. Rather, the Board will publish a Notice of Proposed Amendments in the *Illinois Register*, and it will accept public comments on the proposal for 45 days after the date of publication, as required by section 7.3(b)(1) of the Environmental Protection Act [415 ILCS 5/7.3(b)(1)] and section 5-40 of the Administrative Procedure Act [5 ILCS 100/5-40].

For the reasons above, the Board cannot now anticipate an exact date for publication.

E) Affect on small business, small municipalities, or not for profit corporations: This rulemaking may affect any small business, small municipality, or not for profit corporation that engages in the emission of an air contaminant or precursor to an air contaminant that is the subject of a NAAQS.

F) Agency contact person for information: Address questions or written comments concerning this rulemaking, noting docket number R24-15, to:

Name: Don A. Brown, Clerk
Address: Pollution Control Board
60 East Van Buren Street, Suite 630
Chicago, Illinois 60605

(312) 814-3461
don.brown@illinois.gov

G) Related rulemakings and other pertinent information: No other rulemaking that would affect 35 Ill. Adm. Code 243 is now planned.

However, if the Board receives a rulemaking proposal under 415 ILCS 5/27 and 28, it may initiate a rulemaking at any time.

d) Parts (Headings and Code Citations): Sewer Discharge Criteria (35 Ill. Adm. Code 307); Pretreatment Programs (35 Ill. Adm. Code 310)

1) Rulemaking: Docket number R24-14

A) Description: Section 13.3 of the Environmental Protection Act [415 ILCS 5/13.3] requires the Board to adopt Illinois rules that are identical-in-substance to wastewater pretreatment rules adopted by the United States Environmental Protection Agency (USEPA) under sections 307(a), (b), and (c) and 402(b)(8) and (b)(9) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. §§1317(a), (b), and (c) and 1342(b)(8) and (b)(9)).

The Board has reserved docket number R24-14 to accommodate any amendments to the federal wastewater pretreatment rules, 40 CFR 400 through 499, that USEPA may adopt between July 1, 2023, and December 31, 2023. To date, the Board found no USEPA actions during this period that require Board action.

By March 2024, the Board will determine whether USEPA rules require any Board action in response. The Board will then propose corresponding amendments to the Illinois wastewater pretreatment regulations using the identical-in-substance procedure or dismiss docket R24-14, as appropriate.

Section 13.3 of the Act requires that the Board complete amendments within one year of the date on which USEPA adopted the earliest action upon which the amendments are based. Assuming USEPA adopted an amendment that will require Board action on the first day of the update period, the due date for Board adoption of amendments in docket R24-14 would be July 1, 2024.

To meet a due date of July 1, 2024, the Board would propose amendments and publish a Notice of Proposed Amendments to in the *Illinois Register* by late March 2024. This would allow the Board to accept public comments on the proposal for 45 days before adopting any amendments. Alternatively, if no amendments to the Illinois wastewater pretreatment

rules are needed, the Board will promptly dismiss the reserved docket R24-14.

B) Statutory authority: Implementing and authorized by Sections 7.2, 13, 13.3, and 27 of the Environmental Protection Act [415 ILCS 5/7.2, 13, 13.3 & 27].

C) Scheduled meeting/hearing dates: None scheduled at this time. The Board would propose any amendments according to Sections 27 and 28 of the Act [415 ILCS 5/27 & 28]. No hearing is required in identical-in-substance proceedings.

D) Date agency anticipates First Notice: Section 13.3 of the Environmental Protection Act [415 ILCS 5/13.3] provides that this rulemaking is not subject to Section 5-35 of the APA [5 ILCS 100/5-35]. For this reason, the rulemaking is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules. Rather, the Board will publish a Notice of Proposed Amendments in the *Illinois Register*, and it will accept public comments on the proposal for 45 days after the date of publication, as required by section 7.3(b)(1) of the Environmental Protection Act [415 ILCS 5/7.3(b)(1)] and section 5-40 of the Administrative Procedure Act [5 ILCS 100/5-40].

For the reasons above, the Board cannot now anticipate an exact date for publication.

E) Affect on small business, small municipalities, or not for profit corporations: This rulemaking may affect any small business, small municipality, or not for profit corporation that engages in the discharge of pollutants into the collection system of a publicly-owned treatment works that is the subject of any federal amendments.

F) Agency contact person for information: Address questions or written comments concerning this rulemaking, noting docket number R24-14, to:

Name: Don A. Brown, Clerk
Address: Pollution Control Board
60 East Van Buren Street, Suite 630
Chicago, Illinois 60605

(312) 814-3461
don.brown@illinois.gov

G) Related rulemakings and other pertinent information: No other rulemaking that would affect 35 Ill. Adm. Code 307or 310 is now planned. However, if the Board receives a rulemaking proposal under 415 ILCS 5/27 and 28, it may initiate a rulemaking at any time.

e) Part (Heading and Code Citation): Primary Drinking Water Standards (35 Ill. Adm. Code 611)

1) Rulemaking: Docket number R24-9

A) Description: Section 17.5 of the Environmental Protection Act [415 ILCS 5/17.5] requires the Board to adopt Illinois rules that are identical-in-substance to requirements adopted by the United States Environmental Protection Agency (USEPA) under sections 1412(b), 1414(c), 1417(a), and 1445(a) of the federal Safe Drinking Water Act (SDWA) (42 U.S.C. §§300g-1(b), 300g-3(c), 300g-6(a), and 300j-4). The USEPA requirements may amend national primary drinking water regulations (NPDWRs) and other related requirements.

The Board reserved docket number R24-9 to accommodate any amendments to NPDWRs, 40 CFR 141 through 143, that USEPA may adopt between July 1, 2023, and December 31, 2023. To date, the Board has found no USEPA action during this period that requires Board action.

By March 2024, the Board will determine whether USEPA rules require any Board action in response. The Board will then propose necessary amendments to the Illinois SDWA primary drinking water regulations using the identical-in-substance procedure or dismiss docket R24-9, as appropriate.

Section 17.5 requires that the Board complete amendments within one year of the date on which USEPA adopted the earliest action upon which the amendments are based. Assuming USEPA adopted an amendment that will require Board action on the first day of the update period, the due

date for Board adoption of amendments in docket R24-9 would be July 1, 2024.

To meet a due date of July 1, 2024, the Board would propose amendments and publish a Notice of Proposed Amendments to in the *Illinois Register* by late March 2024. This would allow the Board to accept public comments on the proposal for 45 days before adopting any amendments. Alternatively, if no amendments to the Illinois wastewater pretreatment rules are needed, the Board will promptly dismiss the reserved docket R24-9.

B) Statutory authority: Implementing and authorized by Sections 17, 17.5, and 27 of the Environmental Protection Act [415 ILCS 5/17, 17.5 & 27].

C) Scheduled meeting/hearing dates: None scheduled at this time. The Board would propose any amendments according to Sections 27 and 28 of the Act [415 ILCS 5/27 & 28]. No hearing is required in identical-in-substance proceedings.

D) Date agency anticipates First Notice: Section 17.5 of the Environmental Protection Act [415 ILCS 5/17.5] provides that this rulemaking is not subject to Section 5-35 of the APA [5 ILCS 100/5-35]. For this reason, the rulemaking is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules. Rather, the Board will publish a Notice of Proposed Amendments in the *Illinois Register*, and it will accept public comments on the proposal for 45 days after the date of publication, as required by section 7.3(b)(1) of the Environmental Protection Act [415 ILCS 5/7.3(b)(1)] and section 5-40 of the Administrative Procedure Act [5 ILCS 100/5-40].

For the reasons above, the Board cannot now anticipate an exact date for publication.

E) Affect on small business, small municipalities, or not for profit corporations: This rulemaking may affect any small business, small municipality, or not for profit corporation in Illinois that owns or operates a "public water supply," as defined by Section 3.28 of the Act, i.e., that has at least fifteen service connections or regularly serves an average of at

least 25 individuals daily at least 60 days out of the year, or it is assisting a public water supply to demonstrate compliance.

F) Agency contact person for information: Address questions or written comments concerning this rulemaking, noting docket number R24-9, to:

Name: Don A. Brown, Clerk
Address: Pollution Control Board
60 East Van Buren Street, Suite 630
Chicago, Illinois 60605

(312) 814-3461
don.brown@illinois.gov

G) Related rulemakings and other pertinent information: No other rulemaking that would affect 35 Ill. Adm. Code 611 is now planned. However, if the Board receives a rulemaking proposal under 415 ILCS 5/27 and 28, it may initiate a rulemaking at any time.

f) Parts (Headings and Code Citations): RCRA and UIC Permit Programs (35 Ill. Adm. Code 702); RCRA Permit Program (35 Ill. Adm. Code 703); Procedures for Permit Issuance (35 Ill. Adm. Code 705); Hazardous Waste Management System: General (35 Ill. Adm. Code 720); Identification and Listing of Hazardous Waste (35 Ill. Adm. Code 721); Standards Applicable to Generators of Hazardous Waste (35 Ill. Adm. Code 722); Standards Applicable to Transporters of Hazardous Waste (35 Ill. Adm. Code 723); Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (35 Ill. Adm. Code 724); Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (35 Ill. Adm. Code 725); Standards for the Management of Specific Hazardous Waste and Specific Types of Hazardous Waste Management Facilities (35 Ill. Adm. Code 726); Land Disposal Restrictions (35 Ill. Adm. Code 728); Standards for Universal Waste Management (35 Ill. Adm. Code 733);Hazardous Waste Injection Restrictions (35 Ill. Adm. Code 738); Standards for the Management of Used Oil (35 Ill. Adm. Code 739)

1) Rulemaking: Docket number R24-12

A) Description: Section 22.4(a) of the Environmental Protection Act [415 ILCS 5/22.4(a)] requires the Board to adopt Illinois rules that are identical-in-substance to hazardous waste management standards adopted

by the United States Environmental Protection Agency (USEPA) to implement sections 3001 through 3005 of Subtitle C of the federal Resource Conservation and Recovery Act (RCRA) (42 U.S.C. §§6921 through 6925).

The Board reserved docket number R24-12 to accommodate any amendments to the federal RCRA Subtitle C program, 40 CFR 148, 260 through 270, 273, and 279, that USEPA may adopt between July 1, 2023, and December 31, 2023. To date, the Board has found no USEPA actions relating to the RCRA Subtitle C standards during this period that will require Board action.

By March 2024, the Board will determine whether USEPA rules require any Board action in response. The Board will then propose necessary amendments to the Illinois hazardous waste regulations using the identical-in-substance procedure or dismiss docket R24-12, as appropriate.

Section 22.4(a) requires that the Board complete amendments within one year of the date on which USEPA adopted the earliest action upon which the amendments are based. Assuming USEPA adopted an amendment that will require Board action on the first day of the update period, the due date for Board adoption of amendments in docket R24-12 would be July 1, 2024.

To meet a due date of July 1, 2024, the Board would propose amendments and publish a Notice of Proposed Amendments to in the *Illinois Register* by late March 2024. This would allow the Board to accept public comments on the proposal for 45 days before adopting any amendments. Alternatively, if no amendment to the Illinois definition is needed, the Board will promptly dismiss the reserved docket R24-12.

B) Statutory authority: Implementing and authorized by Sections 7.2, 22.4(a), and 27 of the Environmental Protection Act [415 ILCS 5/7.2, 22.4(a), 27].

C) Scheduled meeting/hearing dates: None scheduled at this time. The Board would propose any amendments according to Sections 27 and 28 of the Act [415 ILCS 5/27, 28]. No hearing is required in identical-in-substance proceedings.

D) Date agency anticipates First Notice: Section 22.4(a) of the Environmental Protection Act [415 ILCS 5/22.4(a)] provides that this rulemaking is not subject to Section 5-35 of the APA [5 ILCS 100/5-35]. For this reason, the rulemaking is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules. Rather, the Board will publish a Notice of Proposed Amendments in the *Illinois Register*, and it will accept public comments on the proposal for 45 days after the date of publication, as required by section 7.3(b)(1) of the Environmental Protection Act [415 ILCS 5/7.3(b)(1)] and section 5-40 of the Administrative Procedure Act [5 ILCS 100/5-40].

For the reasons above, the Board cannot now anticipate an exact date for publication.

E) Affect on small business, small municipalities, or not for profit corporations: This rulemaking may affect any small business, small municipality, or not for profit corporation that engages in the generation, transportation, treatment, storage, or disposal of hazardous waste.

F) Agency contact person for information: Address questions or written comments concerning this rulemaking, noting docket number R24-12, to:

Name: Don A. Brown, Clerk
Address: Pollution Control Board
60 East Van Buren Street, Suite 630
Chicago, Illinois 60605

(312) 814-3461
don.brown@illinois.gov

G) Related rulemakings and other pertinent information: No other rulemaking that would affect 35 Ill. Adm. Code 720 through 728, 733, 738, or 739 is now planned. However, if the Board receives a rulemaking proposal under 415 ILCS 5/27 and 28, it may initiate a rulemaking at any time.

g) Parts (Headings and Code Citations): RCRA and UIC Permit Programs (35 Ill. Adm. Code 702); UIC Permit Program (35 Ill. Adm. Code 704); Procedures for Permit Issuance

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(35 Ill. Adm. Code 705); Hazardous Waste Management System: General (35 Ill. Adm. Code 720); Underground Injection Control Operating Requirements (35 Ill. Adm. Code 730)

1) Rulemaking: Presently reserved docket number R24-13

A) Description: Section 13(c) of the Environmental Protection Act [415 ILCS 5/13(c)] requires the Board to adopt Illinois rules that are identical-in-substance to underground injection control (UIC) rules adopted by the United States Environmental Protection Agency (USEPA) under section 1421 of the federal Safe Drinking Water Act (SDWA) (42 U.S.C. §300h).

The Board reserved docket number R24-13 to accommodate any amendments to the federal UIC regulations, 40 CFR 144 through 147, that USEPA may adopt between July 1, 2023, and December 31, 2023. To date, the Board has found no USEPA amendments to the UIC standards during this period that require Board action.

By March 2024, the Board will determine whether USEPA rules require any Board action in response. The Board will then propose necessary amendments to the Illinois UIC regulations using the identical-in-substance procedure or dismiss docket R24-13, as appropriate.

Section 13(c) requires that the Board complete amendments within one year of the date on which USEPA adopted the earliest action upon which the amendments are based. Assuming USEPA adopted an amendment that will require Board action on the first day of the update period, the due date for Board adoption of amendments in docket R24-2 would be July 1, 2024.

To meet a due date of July 1, 2024, the Board would propose amendments and publish a Notice of Proposed Amendments to in the *Illinois Register* by late March 2024. This would allow the Board to accept public comments on the proposal for 45 days before adopting any amendments. Alternatively, if no amendment to the Illinois definition is needed, the Board will promptly dismiss the reserved docket R24-13.

B) Statutory authority: Implementing and authorized by Sections 7.2, 13(c) and 27 of the Environmental Protection Act [415 ILCS 5/7.2, 13(c), 27].

C) Scheduled meeting/hearing dates: None scheduled at this time. The Board would propose any amendments according to Sections 27 and 28 of the Act [415 ILCS 5/27, 28]. No hearing is required in identical-in-substance proceedings.

D) Date agency anticipates First Notice: Section 13(c) of the Environmental Protection Act [415 ILCS 5/13(c)] provides that this rulemaking is not subject to Section 5-35 of the APA [5 ILCS 100/5-35]. For this reason, this rulemaking is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules. Rather, the Board will publish a Notice of Proposed Amendments in the *Illinois Register*, and it will accept public comments on the proposal for 45 days after the date of publication, as required by section 7.3(b)(1) of the Environmental Protection Act [415 ILCS 5/7.3(b)(1)] and section 5-40 of the Administrative Procedure Act [5 ILCS 100/5-40].

For the reasons above, the Board cannot now anticipate an exact date for publication.

E) Affect on small business, small municipalities, or not for profit corporations: This rulemaking may affect any small business, small municipality, or not for profit corporation in Illinois to the extent the affected entity engages in the underground injection of waste.

F) Agency contact person for information: Address questions or written comments concerning this rulemaking, noting docket number R24-13, to:

Name: Don A. Brown, Clerk
Address: Pollution Control Board
60 East Van Buren Street, Suite 630
Chicago, Illinois 60605

(312) 814-3461
don.brown@illinois.gov

G) Related rulemakings and other pertinent information: No other rulemaking that would affect 35 Ill. Adm. Code 702, 704, 705, 720, or 730

is now planned. However, if the Board receives a rulemaking proposal under 415 ILCS 5/27 and 28, it may initiate a rulemaking at any time.

h) Parts (Headings and Code Citations): Solid Waste (35 Ill. Adm. Code 807); Solid Waste Disposal: General Provisions (35 Ill. Adm. Code 810); Standards for New Solid Waste Landfills (35 Ill. Adm. Code 811); Information to Be Submitted in a Permit Application (35 Ill. Adm. Code 812); Procedural Requirements for Permitted Landfills (35 Ill. Adm. Code 813); Interim Standards for Existing Landfills and Units (35 Ill. Adm. Code 814); Procedural Requirements for All Landfills Exempt from Permits (35 Ill. Adm. Code 815)

1) Rulemaking: Presently reserved docket number R24-11

A) Description: Section 22.40(a) of the Environmental Protection Act [415 ILCS 5/22.40(a)] requires the Board to adopt Illinois rules that are identical-in-substance to municipal solid waste landfill (MSWLF) rules adopted by the United States Environmental Protection Agency (USEPA) under sections 4004 and 4010 of Subtitle D of the federal Resource Conservation and Recovery Act (RCRA) (42 U.S.C. §§6949 and 6949a).

The Board reserved docket number R24-11 to accommodate any amendments to the RCRA Subtitle D MSWLF regulations, 40 CFR 258, that USEPA may adopt between July 1, 2023, and December 31, 2023. To date, the Board has found no USEPA amendments to the MSWLF rules during this period that require Board action.

By March 2024, the Board will determine whether USEPA rules require any Board action in response. The Board will then propose necessary amendments to the Illinois RCRA Subtitle D MSWLF regulations using the identical-in-substance procedure or dismiss docket R24-11, as appropriate.

Section 22.40(a) requires that the Board complete amendments within one year of the date on which USEPA adopted the earliest action upon which the amendments are based. Assuming USEPA adopted an amendment that will require Board action on the first day of the update period, the due date for Board adoption of amendments in docket R24-11 would be July 1, 2024.

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To meet a due date of July 1, 2024, the Board would propose amendments and publish a Notice of Proposed Amendments to in the *Illinois Register* by late March 2024. This would allow the Board to accept public comments on the proposal for 45 days before adopting any amendments. Alternatively, if no amendment to the Illinois definition is needed, the Board will promptly dismiss the reserved docket R24-11.

B) Statutory authority: Implementing and authorized by Sections 7.2, 22.40(a) and 27 of the Environmental Protection Act [415 ILCS 5/7.2, 22.40(a), 27].

C) Scheduled meeting/hearing dates: None scheduled at this time. The Board would propose any amendments according to Sections 27 and 28 of the Act [415 ILCS 5/27, 28]. No hearing is required in identical-in-substance proceedings.

D) Date agency anticipates First Notice: Section 22.40(a) of the Environmental Protection Act [415 ILCS 5/22.40(a)] provides that this rulemaking is not subject to Section 5-35 of the APA [5 ILCS 100/5-35]. For this reason, the rulemaking is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules. Rather, the Board will publish a Notice of Proposed Amendments in the *Illinois Register*, and it will accept public comments on the proposal for 45 days after the date of publication, as required by section 7.3(b)(1) of the Environmental Protection Act [415 ILCS 5/7.3(b)(1)] and section 5-40 of the Administrative Procedure Act [5 ILCS 100/5-40].

For the reasons above, the Board cannot now anticipate an exact date for publication.

E) Affect on small business, small municipalities, or not for profit corporations: This rulemaking may affect any small business, small municipality, or not for profit that engages in the land disposal of municipal solid waste.

F) Agency contact person for information: Address questions or written comments concerning this rulemaking, noting docket number R24-11, to:

Name: Don A. Brown, Clerk

POLLUTION CONTROL BOARD

JANUARY 2024 REGULATORY AGENDA

Address: Pollution Control Board
60 East Van Buren Street, Suite 630
Chicago, Illinois 60605

(312) 814-3461
don.brown@illinois.gov

G) Related rulemakings and other pertinent information: No other rulemaking that would affect 35 Ill. Adm. Code 807 or 810 through 815 is now planned. However, if the Board receives a rulemaking proposal under 415 ILCS 5/27 and 28, it may initiate a rulemaking.

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Issue Index - With Effective Dates

Rules acted upon in Volume 47, Issue 52 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.