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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 2018

Issue#	Rules Due Date	Date of Issue
1	December 26, 2017	January 5, 2018
2	January 2, 2018	January 12, 2018
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50	December 3, 2018	December 14, 2018
51	December 10, 2018	December 21, 2018
52	December 17, 2018	December 28, 2018

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Administrative Procedures for General Professional Regulation Under the Administrative Code

2) Code Citation: 68 Ill. Adm. Code 1130

3)

Section Numbers:	Proposed Actions:
1130.20	Repealed
1130.30	Repealed
1130.40	Renumbered
1130.100	Renumbered/Amendment
1130.110	Renumbered
1130.120	Renumbered
1130.130	Renumbered
1130.200	Renumbered/Amendment
1130.400	New Section

4) Statutory Authority: Implementing Section 2105-15 of the Civil Administrative Code of Illinois [20 ILCS 2105/2105-15].

5) A Complete Description of the Subjects and Issues Involved: This proposed rulemaking repeals the implementing rules for non-binding advisory opinions due to the elimination of non-binding advisory opinions by PA 100-883. It codifies the Department's practice of not renewing a license until the licensee pays any outstanding disciplinary fine or of not issuing a new license until the applicant pays any outstanding fine for unlicensed practice. With the statutory elimination of non-binding advisory opinions, the implementing rules are no longer needed. The confidentiality section is maintained since the Department will continue to have previous requests and responses in its files. A person, who is contemplating applying for a specific license and has a conviction, may request a letter from the Department in the form of a non-binding advisory opinion to determine if the conviction acts as a bar to licensure or whether it will be considered in the Department's review of any future license application. This information will now be published on the Department's website.

The proposed rulemaking also establishes rules for the implementation of a new requirement for sexual harassment prevention training mandated by PA 100-762. This is a new one-hour continuing education course that all licensed professionals who currently have a continuing education requirement must take and complete in order to be eligible for license renewal.

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6) Any published studies or reports, along with the sources of underlying data, that were used when comprising this rulemaking? None

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

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

9) Does this rulemaking contain incorporations by reference? No

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

11) Statement of Statewide Policy Objective: This rulemaking 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:

Interested persons may submit written comments to:

Department of Financial and Professional Regulation
Attention: Craig Cellini
320 West Washington, 3rd Floor
Springfield IL 62786

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

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

13) Initial Regulatory Flexibility Analysis:

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

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

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C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: July 2018

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

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENTS

TITLE 68: PROFESSIONS AND OCCUPATIONS
CHAPTER VII: DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION
SUBCHAPTER a: ADMINISTRATIVE RULES

PART 1130
ADMINISTRATIVE PROCEDURES FOR GENERAL PROFESSIONAL REGULATION UNDER THE ADMINISTRATIVE CODE

SUBPART A: GENERAL

Section
1130.10 Definitions

SUBPART B: NON-BINDING, ADVISORY OPINIONS ON CRIMINAL CONVICTIONS

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1130.20 Request for Non-Binding, Advisory Opinion (Repealed)
1130.30 Board Review (Repealed)
1130.100~~40~~ Confidentiality of Records

SUBPART C: PERMANENT REVOCATIONS

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1130.200~~100~~ Notice of Intent to Issue Permanent Revocation Order
1130.210~~110~~ Licensed Health Care Worker
1130.220~~120~~ Forcible Felony
1130.230~~130~~ Chaperone Orders

SUBPART D: DISCIPLINARY SANCTIONS

Section
1130.300~~200~~ Disciplinary Sanctions

SUBPART E: SEXUAL HARASSMENT PREVENTION TRAINING

Section
1130.400 Sexual Harassment Prevention Training

1130.APPENDIX A Notice of Order Requiring Chaperone

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AUTHORITY: Implementing Section 2105-15 of the Civil Administrative Code of Illinois [20 ILCS 2105/2105-15].

SOURCE: Adopted at 35 Ill. Reg. 7956, effective May 20, 2011; amended at 37 Ill. Reg. 1192, effective February 1, 2013; amended at 37 Ill. Reg. 7479, effective May 31, 2013; amended at 39 Ill. Reg. 14514, effective November 6, 2015; amended at 43 Ill. Reg. _____, effective _____.

SUBPART B: NON-BINDING, ADVISORY OPINIONS ON CRIMINAL CONVICTIONS

Section 1130.20 Request for Non-Binding, Advisory Opinion (Repealed)

~~a) An individual shall file a request for a non-binding, advisory opinion on forms provided by the Department. The request shall include:~~

~~1) A copy of all convictions for which the individual seeks a non-binding, advisory opinion from the Department;~~

~~2) Copies of any certificate of relief from disabilities that the individual may have received or obtained;~~

~~3) A detailed nature of the offense;~~

~~4) Any statements of mitigation;~~

~~5) Any prior conviction of or entry of a plea of guilty or nolo contendere to any crime that is a felony or misdemeanor under the laws of the United States or any state or territory thereof or a misdemeanor of which an essential element is dishonesty or that is directly related to the practice of the profession;~~

~~6) Any licenses held or prior applications filed with the Division;~~

~~7) The profession for which the individual intends to seek licensure (if the individual intends to seek licensure in more than one profession and is seeking a non-binding, advisory opinion on more than one profession, the individual shall complete a separate request for each profession for which the individual is seeking a non-binding, advisory opinion);~~

8) If applicable, verification from any state in which an individual is or has been licensed stating:

A) The time during which the individual was licensed in that state, including the date of the original issuance of the license; and

B) Whether the file on the individual contains any record of disciplinary actions taken or pending.

b) When the accuracy of any submitted documentation or the relevance or sufficiency of the information submitted by the individual is questioned by the Department or the Board because of lack of information, discrepancies or conflicts in information given, or a need for clarification, the individual seeking licensure may be requested to provide further information as may be necessary.

c) In determining whether an individual's criminal record, as disclosed in the request, is considered a bar to the future licensure of the individual, the Department may consider the following factors or any other factors deemed relevant by the Department:

1) Whether there is a direct relationship between one or more of the previous criminal offenses and the specific license to be sought;

2) Whether the issuance of the license would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public;

3) The specific duties and responsibilities necessarily related to the license being sought;

4) The bearing, if any, the criminal offenses will have on the applicant's fitness or ability to perform one or more of the duties and responsibilities of a licensee;

5) The time that has elapsed since the occurrence of the offenses;

6) The age of the individual at the time of occurrence of the criminal offenses;

~~7)~~ ~~The seriousness of the offenses; and~~

~~8)~~ ~~Any information produced by the individual or produced on his or her behalf in regard to his or her rehabilitation and good conduct, including a certificate of relief from disabilities issued to the individual, which shall create a presumption of rehabilitation in regard to the offenses specified in the certificate.~~

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

Section 1130.30 Board Review (Repealed)

~~a)~~ ~~At any time during the review and determination of a request for a non-binding, advisory opinion as to whether the criminal record of an individual as disclosed in the request would bar the individual from the licensure or certification to be sought, the Department may, but shall not be required to, seek the advice and/or recommendation of the Board established for the profession for which the individual seeks licensure or certification.~~

~~b)~~ ~~Any recommendation taken by the Board shall be taken at a meeting held in accordance with the Open Meetings Act [5 ILCS 120]. In exigent circumstances, as determined in the sole discretion of the Department, the Department may contact an individual Board member for advice concerning any individual's request for a non-binding, advisory opinion.~~

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

Section 1130.10040 Confidentiality of Records

All documents and records submitted to the Department by an individual seeking a non-binding, advisory opinion shall be deemed confidential and may not be made available to any person or public or private agency, including any requests made pursuant to the Freedom of Information Act [5 ILCS 140], except if specifically required or permitted by statute or upon specific authorization by the individual seeking a non-binding, advisory opinion. The Department shall not be required to release any documents filed or received pursuant to this Part unless the Department has obtained a written, signed release from the individual who originally requested a non-binding, advisory opinion determination from the Department; except that the Department may disclose information and documents to a federal, state or local law enforcement agency

pursuant to a subpoena in an ongoing criminal investigation or to a health care licensing body of this State or another state or jurisdiction pursuant to an official request made by that licensing body.

(Source: Section 1130.100 renumbered from Section 1130.40 at 43 Ill. Reg. _____, effective _____)

SUBPART C: PERMANENT REVOCATIONS

Section 1130.200~~100~~ Notice of Intent to Issue Permanent Revocation Order

a) Upon determination that the license of a licensed health care worker is subject to permanent revocation pursuant to Section 2105-165(a) of the Code, the Director shall cause a Notice of Intent to Issue Permanent Revocation Order to be served on the licensee by ~~registered~~ mail or email at the licensee's address of record.

b) The Notice of Intent to Issue Permanent Revocation Order shall specify the reason for the intended action and notify the licensee that he or she has 20 days from the date the Notice is mailed or emailed to present to the Department a written response contesting the Department's intended action. Any written response received by the Department shall only be considered for the following reasons and shall include documentation that supports one of these three reasons:

1) The licensee has been incorrectly identified as the person with the conviction;

2) The licensee's conviction has been vacated, overturned, or reversed or a pardon has been granted; or

3) The licensee's conviction is not a disqualifying conviction.

c) After 20 days have lapsed since the issuance of the Notice of Intent to Issue Permanent Revocation Order and the Department has not received a written response from the licensee or any written response received by the Department from the licensee has not established one of the grounds provided in subsection (b), the Director shall issue an order permanently revoking the license of the licensed health care worker in accordance with Section 2105-165(a) of the Code.

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(Source: Section 1130.200 renumbered from Section 1130.100 and amended at 43 Ill. Reg. _____, effective _____)

Section 1130.210~~110~~ Licensed Health Care Worker

The following licensed professionals are licensed health care workers for the purposes of Section 2105-165 of the Code and this Part:

a) Dentists and dental hygienists licensed under the Illinois Dental Practice Act [225 ILCS 25];

b) Licensed practical nurses, registered nurses and advanced practice registered nurses licensed under the Nurse Practice Act [225 ILCS 65];

c) Occupational therapists and occupational therapy assistants licensed under the Illinois Occupational Therapy Practice Act [225 ILCS 75];

d) Optometrists licensed under the Illinois Optometric Practice Act of 1987 [225 ILCS 80];

e) Pharmacists licensed under the Pharmacy Practice Act [225 ILCS 85];

f) Physical therapists and physical therapy assistants licensed under the Illinois Physical Therapy Act [225 ILCS 90];

g) Physicians, including medical doctors (M.D.), doctors of osteopathic medicine (D.O.), and chiropractic physicians (D.C.), licensed under the Medical Practice Act of 1987 [225 ILCS 60];

h) Physician assistants licensed under the Physician Assistant Practice Act of 1987 [225 ILCS 95];

i) Podiatrists licensed under the Podiatric Medical Practice Act of 1987 [225 ILCS 100];

j) Clinical psychologists licensed under the Clinical Psychologist Licensing Act [225 ILCS 15];

k) Clinical social workers and social workers licensed under the Clinical Social Work and Social Work Practice Act [225 ILCS 20];

l) Speech-language pathologists and audiologists licensed under the Illinois Speech-Language Pathology and Audiology Practice Act [225 ILCS 110];

m) Acupuncturists licensed under the Acupuncture Practice Act [225 ILCS 2];

n) Athletic trainers licensed under the Illinois Athletic Trainers Practice Act [225 ILCS 5];

o) Marriage and family therapists licensed under the Marriage and Family Therapy Licensing Act [225 ILCS 55];

p) Naprapaths licensed under the Naprapathic Practice Act [225 ILCS 63];

q) Nursing home administrators licensed under the Nursing Home Administrators Licensing and Disciplinary Act [225 ILCS 70];

r) Orthotists, prosthetists, and pedorthists licensed under the Orthotics, Prosthetics, and Pedorthics Practice Act [225 ILCS 84];

s) Respiratory care practitioners licensed under the Respiratory Care Practice Act [225 ILCS 106];

t) Professional counselors and clinical professional counselors licensed under the Professional Counselor and Clinical Professional Counselor Licensing and Practice Act [225 ILCS 107];

u) Perfusionists licensed under the Perfusionist Practice Act [225 ILCS 125];

v) Registered surgical assistants and registered surgical technologists licensed under the Registered Surgical Assistant and Registered Surgical Technologist Title Protection Act [225 ILCS 130];

w) Genetic counselors licensed under Genetic Counselor Licensing Act [225 ILCS 135]; and

x) Any other license issued by the Department under the Acts listed in this Section and the Controlled Substance~~Substances~~ and Cannabis Nuisance Act [740 ILCS 40], except for pharmacy technicians, issued to a person subject to the Code and this Part.

(Source: Section 1130.210 renumbered from Section 1130.110 and amended at 43 Ill. Reg. _____, effective _____)

Section 1130.220~~120~~ Forcible Felony

A "forcible felony", for the purposes of Section 2105-165 of the Code, is one or more of the following offenses committed in any jurisdiction. The Section numbers listed ~~below~~ in parentheses in this Section, from the Criminal Code of 2012 [720 ILCS 5], are for guidance only and in no way limit the Department from permanent revocation or denial based upon conviction in jurisdictions other than the State of Illinois:

a) First Degree Murder (Section 9-1);

b) Intentional Homicide of an Unborn Child (Section 9-1.2);

c) Second Degree Murder (Section 9-2);

d) Voluntary Manslaughter of an Unborn Child (Section 9-2.1);

e) Drug-induced Homicide (Section 9-3.3);

f) Kidnapping (Section 10-1);

g) Aggravated Kidnaping~~Kidnapping~~ (Section 10-2);

h) Unlawful Restraint (Section 10-3);

i) Aggravated Unlawful Restraint (Section 10-3.1);

j) Forcible Detention (Section 10-4);

k) Involuntary Servitude (Section 10-9(b));

l) Involuntary Sexual Servitude of a Minor (Section 10-9(c));

m) Trafficking in Persons (Section 10-9(d));

n) Criminal Sexual Assault (Section 11-1.20);

o) Aggravated Criminal Sexual Assault (Section 11-1.30);

p) Predatory Criminal Sexual Assault of a Child (Section 11-1.40);

q) Criminal Sexual Abuse (Section 11-1.50);

r) Aggravated Criminal Sexual Abuse (Section 11-1.60);

s) Aggravated Battery (Section 12-3.05);

t) Compelling Organization Membership of Persons (Section 12-6.5);

u) Compelling Confession or Information by Force or Threat (Section 12-7);

v) Robbery; Aggravated Robbery (Section 18-1);

w) Armed Robbery (Section 18-2);

x) Vehicular Hijacking (Section 18-3);

y) Aggravated Vehicular Hijacking (Section 18-4);

z) Home Invasion (Section 19-6);

aa) Terrorism (Section 29D-14.9);

bb) Causing a Catastrophe (Section 29D-15.1);

cc) Possession of a Deadly Substance (Section 29D-15.2);

dd) Making a Terrorist Threat (Section 29D-20);

ee) Falsely Making a Terrorist Threat (Section 29D-25);

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ff) Material Support for Terrorism (Section 29D-29.9);

gg) Hindering Prosecution of Terrorism (Section 29D-35);

hh) Boarding or Attempting to Board an Aircraft with Weapon (Section 29D-35.1);

ii) Armed Violence (Section 33A-2); and

jj) Attempt (Section 8-4) of any of the above specified offenses.

(Source: Section 1130.220 renumbered from Section 1130.120 and amended at 43 Ill. Reg. _____, effective _____)

Section 1130.230~~130~~ Chaperone Orders

a) Within 5 days after receiving notice from a prosecuting attorney that a licensed health care worker has been charged with any offense for which the sentence includes registration as a sex offender; a criminal battery against a patient, including any offense based on sexual conduct or sexual penetration, in the course of patient care or treatment; or a forcible felony, the Department shall forward a chaperone order to the licensed health care worker that requires the worker to immediately cease professional practice and not to resume practice with patient encounters until authorized to do so by the Department pursuant to an approved plan of compliance.

b) A licensed health care worker subject to a chaperone order pursuant to Section 2105-165(c) of the Code shall submit to the Department a written plan of compliance within 5 days after receipt of the chaperone order. The plan of compliance shall include, at a minimum, the following:

1) The number of proposed chaperones;

2) The names, mailing address, email address, telephone number and license number of each proposed chaperone;

3) The days, times, and locations where the licensed health care worker subject to a chaperone order will practice;

4) The scheduled days, hours and practice locations for each chaperone proposed to be utilized; and

5) The method to be used to document the presence of a chaperone during all patient encounters. The presence of a chaperone shall be shown by:

A) Maintaining a schedule of the dates, times and locations each chaperone works and having the designated chaperone initial or make a notation in each patient chart every time the patient is seen by the licensed health care worker subject to a chaperone order; or

B) Maintaining a chaperone log listing each patient seen by the licensed health care worker subject to a chaperone order and signed by both that health care worker and the approved chaperone after each patient encounter.

c) A proposed chaperone shall be a licensed health care worker in good standing and shall be subject to the approval of the Department.

d) The written plan of compliance shall be sent to the Department's Probation Compliance Unit at the address included in the chaperone order.

e) No licensed health care worker subject to a chaperone order shall have any patient encounters until the Department has approved his or her written plan of compliance. After approval of the written plan of compliance, the licensed health care worker subject to a chaperone order shall notify the Department in writing if the licensure status of any approved chaperone changes or if a chaperone can no longer serve for any reason. A chaperone approved by the Department shall automatically become ineligible to serve as a chaperone if his or her license is disciplined by the Department, expires or changes to a status that does not permit active practice. The licensed health care worker subject to a chaperone order shall provide, in writing to the Department, the name, mailing address, email address, telephone number and license number of any replacement or additional proposed chaperone, including the scheduled days, hours and practice location for any replacement or additional chaperone proposed to be utilized. No person may act as chaperone until approved by the Department. No licensed health care worker subject to a chaperone order and acting under an approved written plan of compliance shall have any patient encounters without the presence of an approved

chaperone. Failure to comply with all requirements of the approved written plan of compliance shall be prima facie evidence of practice without a chaperone.

f) The chaperone shall provide written notice of the chaperone order, by using the form provided in Appendix A or by using his or her own form that is substantially similar to the form in Appendix A, to each of the licensed health care worker's patients at the time of the patient's first visit following the effective date of the chaperone order. A copy of the notice shall be signed by the patient and the chaperone and maintained in the patient's file. The chaperone shall also provide a copy of the signed notice to the patient.

g) A pharmacist subject to a chaperone order shall not be required to include in the written plan of compliance methods of documenting the presence of a chaperone as specified in subsection (b)(5) and notice to patients as specified in subsection (f). In place of these requirements, the pharmacist shall include in the written plan of compliance that the presence of a chaperone while the pharmacist is on duty at a pharmacy shall be shown by maintaining a written schedule of the dates, times and locations each chaperone works and having the designated chaperone verify by signature his or her presence for the dates, times and locations stated.

h) Any health care worker subject to a chaperone order may submit a request to the Director for a waiver of any of the requirements of subsections (b) and (f) to allow for the creation of an individually tailored written plan of compliance that achieves the objectives of the Code and this Part.

i) The Department may conduct random inspections and audits to determine compliance with the chaperone order and the written plan of compliance. A licensed health care worker subject to a chaperone order and any approved chaperones shall cooperate with any inspection or audit.

j) If the Secretary finds that evidence in his or her possession indicates that a licensed health care worker subject to a chaperone order has failed to comply with the chaperone order, failed to file a written plan of compliance, or failed to follow the terms of the written plan of compliance, he or she may temporarily suspend without hearing the license of the health care worker until completion of the criminal proceedings. In instances in which the Secretary temporarily suspends a license under this Section, a hearing upon that person's license must be commenced within 15 days after the suspension has occurred and shall be completed without appreciable delay. The Secretary shall appoint an Illinois

licensed attorney to serve as hearing officer in those hearings. The hearing officer shall report his or her findings of fact, conclusions of law, and recommendation to the Secretary. The burden of proof rests with the Department in hearings conducted under this Section, and a recommendation that the license shall remain temporarily suspended shall be made by the hearing officer when the Department establishes by clear and convincing evidence that the licensed health care worker subject to a chaperone order has failed to comply with the chaperone order, failed to file a written plan of compliance, or failed to follow the terms of the written plan of compliance. No temporary suspension shall be stayed during the pendency of any hearing.

k) Any information collected by the Department to investigate compliance with the requirements of this Section shall be maintained by the Department for the confidential use of the Department and shall not be disclosed. The Department may not disclose the information to anyone other than law enforcement officials or regulatory agencies or persons who have an appropriate regulatory interest, as determined by the Secretary. The Department shall have access to any records created by any person in compliance with the requirements of this Section or with a written plan of compliance. However, except for the purposes of the Department, these records shall be accorded the same confidentiality as required by the professional licensing Act governing the particular health care worker or as otherwise provided by law.

l) In the event that a licensed health care worker subject to a chaperone order or under a temporary suspension pursuant to this Part shall be subsequently charged with any additional offenses that would independently subject the licensed health care worker to the provisions of this Part, the existing chaperone order or temporary suspension order shall remain in effect until all pending charges are resolved by the Circuit Court.

(Source: Section 1130.230 renumbered from Section 1130.130 at 43 Ill. Reg. _____, effective _____)

SUBPART D: DISCIPLINARY SANCTIONS

Section 1130.300~~200~~ Disciplinary Sanctions

Upon a finding by the Department that a person has committed a violation of any licensing Act administered by the Department with regard to licenses, certificates or authorities of persons

exercising their respective professions, trades or occupations, the Department may revoke, suspend, refuse to renew, place on probationary status, fine, or take any other disciplinary action as authorized in any licensing Act administered by the Department with regard to those licenses, certificates or authorities. When making a determination of the appropriate disciplinary sanction to be imposed, the Department shall consider, but is not limited to, the following factors in aggravation and mitigation:

a) Factors in Aggravation

1) The seriousness of the offenses;

2) The presence of multiple offenses;

3) Prior disciplinary history, including actions taken by other agencies in this State or by other states or jurisdictions, hospitals, healthcare facilities, residency programs, employers, insurance providers, or any of the armed forces of the United States or any state;

4) The impact of the offenses on any injured party;

5) The vulnerability of any injured party when considering such elements as, but not limited to, the injured party's age, disability or mental illness;

6) The motive for the offense;

7) The lack of contrition for the offenses;

8) Financial gain as a result of committing the offenses; and

9) The lack of cooperation with the Department or other investigative authorities.

b) Factors in Mitigation

1) The lack of prior disciplinary action by the Department or by other agencies in this State or by other states or jurisdictions, hospitals, healthcare facilities, residency programs, employers, insurance providers, or any of the armed forces of the United States or any state;

2) Contrition for the offenses;

3) Cooperation with the Department or other investigative authorities;

4) Restitution to injured parties;

5) Self-reporting of the misconduct; and

6) Any voluntary remedial actions taken.

c) The Division shall not renew a license if the licensee has an unpaid fine from a disciplinary matter or an unpaid fee from a non-disciplinary action imposed by the Division until the fine or fee is paid to the Division or the licensee has entered into a payment plan and is current on the required payments.

d) The Division shall not issue a license if the applicant has an unpaid fine imposed by the Division for unlicensed practice until the fine is paid to the Division or the applicant has entered into a payment plan and is current on the required payments.

(Source: Section 1130.300 renumbered from Section 1130.200 and amended at 43 Ill. Reg. _____, effective _____)

SUBPART E: SEXUAL HARASSMENT PREVENTION TRAINING

Section 1130.400 Sexual Harassment Prevention Training

a) All persons who hold a professional license issued by the Division and are subject to a continuing education requirement shall complete a one-hour course in sexual harassment training. A licensee may count this one hour for completion of this course towards meeting the minimum credit hours required for continuing education.

b) The sexual harassment prevention training course shall only be provided by existing Division-approved continuing education providers or by persons or entities who become Division-approved continuing education providers.

c) The sexual harassment prevention training course shall include, at a minimum, the following topics:

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1) What is sexual harassment, including its forms and types;

2) What should one do if one experiences or witnesses unwelcome sexual contact;

3) Reporting sexual harassment within one's place of employment and to outside entities, such as the Illinois Department of Human Rights; and

4) Whistleblower protections.

d) The course shall be presented in a classroom setting, a webinar or online.

e) The presentation of this course shall be subject to all other continuing education requirements for each profession.

f) Completion of this course shall be a condition of renewing a license. This requirement shall become effective for all applicable license renewals occurring on or after January 1, 2020.

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

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Rules for Administration of the Compassionate Use of Medical Cannabis Pilot Program

2) Code Citation: 68 Ill. Adm. Code 1290

3)

Section Numbers:	Proposed Actions:
1290.10	Amendment
1290.30	Amendment
1290.40	Amendment
1290.50	Amendment
1290.70	Amendment
1290.100	Amendment
1290.110	Amendment
1290.120	Amendment
1290.140	Amendment
1290.200	Amendment
1290.210	Amendment
1290.230	Amendment
1290.300	Amendment
1290.320	New Section
1290.400	Amendment
1290.405	Amendment
1290.410	Amendment
1290.415	Amendment
1290.420	Amendment
1290.425	Amendment
1290.430	Amendment
1290.431	New Section
1290.440	Amendment
1290.445	Amendment
1290.450	Amendment
1290.500	Amendment
1290.510	Amendment
1290.540	Repealed
1290.550	Repealed

4) Statutory Authority: Implementing and authorized by the Compassionate Use of Medical Cannabis Pilot Program Act [410 ILCS 130].

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENTS

5) A Complete Description of the Subjects and Issues Involved: PA 100-1114 (410 ILCS 130) created the Opioid Alternative Pilot Program (OAPP) within the existing framework of the Medical Cannabis Pilot Program (MCPP). This is a significant expansion of the program, and these proposed rules allow for the implementation of the new Opioid Alternative Pilot Program (OAPP). Specifically, the proposed rules allow for OAPP participants to enter dispensaries and purchase medical cannabis. PA 100-1114 also involved smaller changes within MCPP, and the proposed rules implement these statutory changes and add clarifications on previous rules. Specifically, the proposed rules add clarification to previous rules regarding ownership structure and who is considered a principal officer.

6) Any published studies or reports, along with the sources of underlying data, that were used when comprising this rulemaking, in accordance with 1 Ill. Adm. Code 100.355: None

7) Will this rulemaking replace any emergency rule currently in effect? Yes

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

9) Does this rulemaking contain incorporations by reference? No

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

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

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

Department of Financial and Professional Regulation
Attention: Craig Cellini
320 West Washington, 3rd Floor
Springfield IL 62786

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

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENTS

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

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: Those providing services pursuant to the licensure provisions of this Part.

B) Reporting, bookkeeping or other procedures required for compliance: This rulemaking describes the procedure necessary for compliance.

C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: July 2018

The full text of the Proposed Amendments is identical to the Emergency Amendments being published in this issue of the *Illinois Register* on page: 23202

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: 1800.320 — Proposed Action: Amendment

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

5) A Complete Description of the Subjects and Issues Involved: The Board is currently subject to litigation in two different cases in which the plaintiffs allege that Section 320(b), which governs the petition process for handling contested use agreements between terminal operators and licensed video gaming locations, unconstitutionally deprives them of due process as currently written. The various claims are based on assertions that Section 320(b)(1) imposes impermissible limitations in that it:

Impermissibly limits the nature of the parties who may file petitions;

Impermissibly limits the nature of the agreements the Board will accept petitions regarding, and

Impermissibly prevents an interested party from intervening in a petition where they have an interest.

In *AAA Gaming/ IGI v. IGB*, 2018 CH 09601 (the Midwest Case), AAA and IGI are engaged in a contract dispute with the terminal operator Midwest Electronic Gaming (Midwest). AAA and IGI sold a number of use agreements under an asset purchase agreement to Midwest. The federal judge concluded that under the reasoning of the Illinois Supreme Court in *J & J Ventures, LLC v. Wild, Inc.* 2016 IL 119870 (2016), the court could not rule on the validity of either the underlying use agreements or the asset purchase agreement. *J & J Ventures* held that the Illinois Gaming Board has exclusive jurisdiction to determine whether contracts that purport to control the location and operation of video gaming terminals are valid and enforceable. Following this precedent, the judge in the Midwest Case reasoned that the terms of the asset purchase agreement, granting the assignment of use agreements to Midwest, purported to control the placement and operation of video gaming terminals and therefore fell within the exclusive jurisdiction of the Board. As such, AAA and IGI had to petition the Board to rule on the validity of the use agreements and asset purchase agreement. AAA and IGI

submitted such a petition, but it was rejected by the IGB's legal staff on the grounds that Section 320(b) only permitted terminal operators and licensed establishments to file petitions, and AAA and IGI were neither.

Additionally, Section 320(b) only permits ruling on "use agreements" between a terminal operator and a licensed video gaming location as defined in 11 Ill. Adm. Code 1800.110, and not on other agreements that "purport to control the placement and operation" of video game terminals."

In *Action Gaming v. Illinois Gaming Board*, 2018 CH 09601 (the J&J/Accel Case), Action Gaming sold use agreements to terminal operator J & J Ventures, LLC. Accel Entertainment, another terminal operator, successfully convinced many of the establishments that the agreements sold to J & J were no longer valid, and that the establishments should instead contract with Accel. Accel and J & J are engaged in civil litigation which is currently stayed while their 320(b) petitions are pending before the Board. Action Gaming intervened in the circuit court case, and also sought to intervene in the petition process, on the argument that J & J does not adequately represent their interests and that they could be bound by the outcome of the petitions (as J & J must continue to pay Action based on how many of the use agreements sold to J & J remain with the terminal operator after a certain period of time). As with the plaintiffs in the Midwest Case, Action was denied intervenor status on the basis that it is neither a terminal operator nor a licensed establishment, and that Rule 320(b) has no provision that allows for intervention.

Making relatively minor procedural changes to Section 320(b) will afford better due process protections to individuals who may end up bound by Board decisions, as well as forestall significant litigation. The proposed changes contained in the present rulemaking include:

Expanding the definition of who may file a petition;

Expanding the definition of what sort of agreement may be examined to match that of the *J & J v. Wild holding*; and

Creating a mechanism through which interested parties may intervene.

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

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

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

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

9) Does this rulemaking contain incorporations by reference? No

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

11) Statement of Statewide Policy Objective: 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:

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

fax: 312/814-7253
Agostino.lorenzini@igb.illinois.gov

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: The rulemaking will affect small businesses that are interested parties in disputes concerning the validity or interpretations of agreements that purport to control the location and operation of video gaming terminals, but are currently prohibited from filing petitions with the Board or intervening in pending cases where these issues are considered.

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

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

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not summarized in a Regulatory Agenda because the need for it was not anticipated.

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

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

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

PART 1800
VIDEO GAMING (GENERAL)

SUBPART A: GENERAL PROVISIONS

Section

SUBPART B: DUTIES OF LICENSEES

Section

SUBPART C: STANDARDS OF CONDUCT FOR LICENSEES

Section

SUBPART D: LICENSING QUALIFICATIONS

Section

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

ILLINOIS GAMING BOARD

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

SUBPART I: SECURITY INTERESTS

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

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

ILLINOIS GAMING BOARD

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SUBPART Q: RESPONSIBLE GAMING

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

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

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

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NOTICE OF PROPOSED AMENDMENT

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; amended at 43 Ill. Reg. _____, effective _____.

SUBPART C: STANDARDS OF CONDUCT FOR LICENSEES

Section 1800.320 Minimum Standards for Use Agreements

a) In addition to the requirements set forth in the Act, a Use Agreement must satisfy the following:

1) Only be between:

A) a licensed terminal operator that, beginning July 15, 2014, is licensed by the Board at the time the Use Agreement is signed; and

B) a licensed establishment, licensed truck stop establishment, licensed veterans establishment or licensed fraternal establishment;

2) Contain an affirmative statement that no inducement was offered or accepted regarding the placement or operation of video gaming terminals in a licensed establishment, licensed truck stop establishment, licensed veterans establishment or licensed fraternal establishment;

3) Contain an indemnity and hold harmless provision on behalf of the State, the Board and its agents relative to any cause of action arising from a use agreement;

4) Prohibit any assignment other than from a licensed terminal operator to another licensed terminal operator;

5) Contain a provision that releases the video gaming location from any continuing contractual obligation to the terminal operator in the event that the terminal operator has its license revoked or denied, has its renewal denied, or surrenders its license;

6) State which sales agent, broker or other person, if any, procured the Use Agreement on behalf of the terminal operator;

ILLINOIS GAMING BOARD

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7) Not provide for automatic renewal in the absence of cancellation;

8) Not be for a length of time exceeding eight years.

b) Petitions

1) The Board shall decide a petition brought by a terminal operator, ~~or~~ licensed video gaming location or other interested party alleging that an agreement, or portion of an agreement, that purports to control the location and operation of video gaming terminals~~a Use Agreement, or portion of a Use Agreement,~~ is invalid or unenforceable. Issues the Board has authority to decide under this subsection (b) include, but are not limited to, the following:

A) Whether the agreement is one that controls the placement or operation of video gaming terminals.

B) When two or more agreements~~Use Agreements~~ between a licensed video gaming location and one or more terminal operators have overlapping effective dates, which of the agreements~~Use Agreements~~ is valid during the period of overlap.

C~~B~~) Whether an agreement~~a Use Agreement~~, or portion of an agreement~~a Use Agreement~~, complies with the requirements of the Act and this Part.

D~~C~~) Whether a renewal provision in an agreement~~a Use Agreement~~ poses such obstacles against non-renewal, or confusion about the procedures for non-renewal, as to constitute an undue burden on the licensed video gaming location that has entered into the provision.

E~~D~~) Whether a terminal operator or anyone on its behalf has used coercion, deception, or an inducement or incentive in violation of Section 25(c) of the Act or this Part to persuade a licensed video gaming location to enter into or renew an agreement~~a Use Agreement~~.

ILLINOIS GAMING BOARD

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F) Whether one or more terms of an agreement constitute practices detrimental to the public interest or against the best interests of video gaming.

2) Petitions under this subsection (b) shall be in writing and shall include an original and one copy. Any petitioner under this Section shall bear the burden of proof by clear and convincing evidence. A petition shall contain the following:

A) The name, current address and current telephone number of the petitioner.

B) Detailed facts and reasons upon which the petitioner relies in arguing that an agreement~~a Use Agreement~~, or portion of an agreement~~a Use Agreement~~, is invalid or unenforceable. Petitions may include documentary evidence and affidavits.

C) A signature of the petitioner.

D) A verification of the petition in the following form:

"The undersigned certifies that the statements set forth in this petition are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies that he or she verily believes the same to be true."

E) A notarization.

3) Following receipt of a petition meeting the requirements of subsection (b)(2), the Administrator shall promptly send by certified mail to each non-petitioning terminal operator or licensed video gaming location or other interested party named in the petition a complete copy of the petition, including all submitted documents. Non-petitioning parties named in the petition must file a response within 21 days after their receipt of the petition. All responses shall be in writing and shall include an original and one copy. A response shall be deemed filed on the date on which it is postmarked. The response shall contain the following:

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

A) The name, current address and current telephone number of the licensee.

B) A clear and concise statement admitting or denying each of the allegations set forth in the petition.

C) For all allegations that the licensee denies, detailed facts and reasons upon which the non-petitioning party relies in arguing that the agreement~~Use Agreement~~, or portion of the agreement~~Use Agreement~~, is valid or enforceable. Responses may include documentary evidence and affidavits.

D) A signature of the licensee.

E) A verification of the licensee in the following form:

"The undersigned certifies that the statements set forth in this response are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies that he or she verily believes the same to be true."

F) A notarization.

4) The Administrator shall promptly provide a petitioning party with complete copies of all submitted responses meeting the requirements of subsection (c)(2).

5) Before rendering a recommended decision, the Administrator may require the parties to attend a conference to attempt to settle any dispute under this subsection (b)(5).

6) Administrator's Recommended Decision

A) Following the expiration of the 21-day response period, the Administrator shall issue a written recommended decision on the validity or enforceability of the contested agreement~~Use Agreement~~, or contested portions of the agreement~~Use Agreement~~, based on the contents of the petition and any responses.

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

B) The Administrator's recommended decision shall set forth the reasons the Administrator is recommending the granting or denial of the petition. When the petition asserts more than one claim as to the validity or enforceability of the agreement~~Use Agreement~~, or a portion of the agreement~~Use Agreement~~, the Administrator shall separately decide each claim.

C) Copies of the Administrator's recommended decision shall be served on each party by personal delivery, certified mail or overnight express mail to the party's last known address.

7) A petitioning party or party named in a petition brought under this subsection (b) may file exceptions to the recommended decision of the Administrator. The exception shall be filed with the Board no later than 14 days after receipt of the recommended decision. Exceptions shall specify each finding of fact and conclusion of law to which exception is taken. There shall be no oral argument on exceptions.

8) Intervention

A) Upon timely written application prior to the Administrator issuing a recommendation, the Administrator may, in his or her discretion, permit any interested party to intervene in the petition process, if that party may be materially and adversely affected by a final order arising from the petition.

B) In exercising his or her discretion, the Administrator shall consider whether intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

C) A petition for intervention must meet the same standards as an initial petition under subsection (b)(2). It must also include sufficient facts for the Administrator to find that the intervening party may be materially and adversely affected by a final order arising from the petition.

D) Upon making a determination that a party may be permitted to intervene, the Administrator shall provide to the intervenor a copy

of the original petition, as well as any responses. The Administrator shall also notify all other parties that the petition to intervene has been granted, and provide those parties with a copy of the petition to intervene.

98) Prior to the Board rendering a decision, the Administrator may require the parties to attend a conference to attempt to settle any dispute under this subsection (b).

109) Any relief given by the Board under this subsection (b) shall be limited to deciding which agreementUse Agreement, or portion of the agreementUse Agreement, is valid for the placement and operation of video gaming terminals in a licensed video gaming location. The Board has the express authority to order a licensed terminal operator to remove its Video Gaming Terminals from a licensed establishment if an agreementa Use Agreement, or portion of the agreementUse Agreement, is invalidated. The Board shall not award monetary damages of any kind. Any failure by a party to abide by the Board's decision shall subject the licensee to discipline.

1110) Final Board Order

A) The Board shall review the entire record, including the petitions filed, the Administrator's recommended decision, and any exceptions filed, and shall render a written order including the bases for its decision.

B) Copies of the final Board order shall be served on each licensee by personal delivery, certified mail or overnight express mail to the licensee's last known address.

C) A final Board order shall become effective upon personal delivery to a party or upon posting by certified or overnight express mail to the party's last known address.

c) The Board shall promulgate a standard form for Use Agreements and establish an effective date for its implementation. All new and renewed Use Agreements entered into on or after that effective date shall incorporate the language of the standard form and shall be consistent with the standard form in all respects.

ILLINOIS GAMING BOARD

NOTICE OF PROPOSED AMENDMENT

d) Unless otherwise indeicated, whenever the term "agreement" is used in this Section, it refers to an agreement that purports to control the operation and placement of video gaming terminals.

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

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Medical Payment

2) Code Citation: 89 Ill. Adm. Code 140

3)

Section Numbers:	Adopted Actions:
140.80	Amendment
140.421	Amendment

4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]

5) Effective Date of Rules: November 28, 2018

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

7) Does this rulemaking contain incorporations by reference? No

8) A copy of the adopted rules, including any materials incorporated by reference, is on file in the Agency's principal office and is available for public inspection.

9) Notice of Proposal published in the *Illinois Register*: 42 Ill. Reg. 13411; July 13, 2018 and 42 Ill. Reg. 8119; May 18, 2018

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

11) Differences Between Proposals and Final Version: JCAR suggested stylistic changes to 89 Ill. Adm. Code 140.80 including: adding commas, clarifying cross references, and numbering paragraphs. The effective date of 89 Ill. Adm. Code 140.421 is changed from January 1, 2018 to January 1, 2019.

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

13) Will this rulemaking replace an emergency rule currently in effect? Yes

14) Are there any other rulemakings pending on this Part? Yes

Section Numbers:	Proposed Actions:	*Illinois Register* Citation:
140.3	Amendment	42 Ill. Reg. 7285; April 20, 2018
140.6	Amendment	42 Ill. Reg. 7285; April 20, 2018

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

140.413	Amendment	42 Ill. Reg. 7285; April 20, 2018
140.421	Amendment	42 Ill. Reg. 8119; May 18, 2018
140.513	Amendment	42 Ill. Reg. 9052; June 8, 2018
140.452	Amendment	42 Ill. Reg. 14043; July 20, 2018
140.453	Amendment	42 Ill. Reg. 14043; July 20, 2018
140.455	Amendment	42 Ill. Reg. 14043; July 20, 2018
140.460	Amendment	42 Ill. Reg. 14043; July 20, 2018
140.TABLE N	Amendment	42 Ill. Reg. 14043; July 20, 2018
140.421	Amendment	42 Ill. Reg. 16364; August 31, 2018
140.492	Amendment	42 Ill. Reg. 16364; August 31, 2018
140.TABLE D	Amendment	42 Ill. Reg. 16364; August 31, 2018
140.439	New Section	42 Ill. Reg. 17067; September 28, 2018
140.990	Amendment	42 Ill. Reg. 18242; October 12, 2018
140.991	Amendment	42 Ill. Reg. 18242; October 12, 2018
140.993	Amendment	42 Ill. Reg. 18242; October 12, 2018
140.994	Amendment	42 Ill. Reg. 18242; October 12, 2018
140.995	Repealed	42 Ill. Reg. 18242; October 12, 2018
140.996	Repealed	42 Ill. Reg. 18242; October 12, 2018
140.997	Repealed	42 Ill. Reg. 18242; October 12, 2018
140.462	Amendment	42 Ill. Reg. 19557; November 9, 2018
140.490	Amendment	42 Ill. Reg. 19557; November 9, 2018

15) Summary and Purpose of Rulemaking: The amendment to 89 Ill. Adm. Code 140.80 implements a new hospital provider assessment and new hospital payment methodologies pursuant to PA 100-581 and PA 100-580. The amendment to 89 Ill. Adm. Code 140.421 adds impacted maxillary central incisors to the definition of medically necessary orthodontic treatment for patients under the age of 21.

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

Christopher Gange
Acting General Counsel
Illinois Department of Healthcare and Family Services
201 South Grand Avenue East, 3rd Floor
Springfield IL 62763-0002

HFS.Rules@Illinois.gov

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

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

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

TITLE 89: SOCIAL SERVICES
CHAPTER I: DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES
SUBCHAPTER d: MEDICAL PROGRAMS

PART 140
MEDICAL PAYMENT

SUBPART A: GENERAL PROVISIONS

Section

SUBPART B: MEDICAL PROVIDER PARTICIPATION

Section

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

SUBPART C: PROVIDER ASSESSMENTS

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

140.86	Supportive Living Facility Funds
140.94	Medicaid Developmentally Disabled Provider Participation Fee Trust Fund/Medicaid Long Term Care Provider Participation Fee Trust Fund (Repealed)
140.95	Hospital Services Trust Fund (Repealed)
140.96	General Requirements (Recodified)
140.97	Special Requirements (Recodified)
140.98	Covered Hospital Services (Recodified)
140.99	Hospital Services Not Covered (Recodified)
140.100	Limitation On Hospital Services (Recodified)
140.101	Transplants (Recodified)
140.102	Heart Transplants (Recodified)
140.103	Liver Transplants (Recodified)
140.104	Bone Marrow Transplants (Recodified)
140.110	Disproportionate Share Hospital Adjustments (Recodified)
140.116	Payment for Inpatient Services for GA (Recodified)
140.117	Hospital Outpatient and Clinic Services (Recodified)
140.200	Payment for Hospital Services During Fiscal Year 1982 (Recodified)
140.201	Payment for Hospital Services After June 30, 1982 (Repealed)
140.202	Payment for Hospital Services During Fiscal Year 1983 (Recodified)
140.203	Limits on Length of Stay by Diagnosis (Recodified)
140.300	Payment for Pre-operative Days and Services Which Can Be Performed in an Outpatient Setting (Recodified)
140.350	Copayments (Recodified)
140.360	Payment Methodology (Recodified)
140.361	Non-Participating Hospitals (Recodified)
140.362	Pre July 1, 1989 Services (Recodified)
140.363	Post June 30, 1989 Services (Recodified)
140.364	Prepayment Review (Recodified)
140.365	Base Year Costs (Recodified)
140.366	Restructuring Adjustment (Recodified)
140.367	Inflation Adjustment (Recodified)
140.368	Volume Adjustment (Repealed)
140.369	Groupings (Recodified)
140.370	Rate Calculation (Recodified)
140.371	Payment (Recodified)
140.372	Review Procedure (Recodified)
140.373	Utilization (Repealed)
140.374	Alternatives (Recodified)

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

SUBPART D: PAYMENT FOR NON-INSTITUTIONAL SERVICES

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

SUBPART E: GROUP CARE

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

SUBPART F: FEDERAL CLAIMING FOR STATE AND LOCAL GOVERNMENTAL ENTITIES

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

SUBPART G: MATERNAL AND CHILD HEALTH PROGRAM

SUBPART H: ILLINOIS COMPETITIVE ACCESS AND REIMBURSEMENT EQUITY (ICARE) PROGRAM

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

140.1330 Enforcement

140.TABLE A	Criteria for Non-Emergency Ambulance Transportation
140.TABLE B	Geographic Areas
140.TABLE C	Capital Cost Areas
140.TABLE D	Schedule of Dental Procedures
140.TABLE E	Time Limits for Processing of Prior Approval Requests
140.TABLE F	Podiatry Service Schedule
140.TABLE G	Travel Distance Standards
140.TABLE H	Areas of Major Life Activity
140.TABLE I	Staff Time and Allocation for Training Programs (Recodified)
140.TABLE J	Rate Regions
140.TABLE K	Services Qualifying for 10% Add-On (Repealed)
140.TABLE L	Services Qualifying for 10% Add-On to Surgical Incentive Add-On (Repealed)
140.TABLE M	Enhanced Rates for Maternal and Child Health Provider Services (Repealed)
140.TABLE N	Program Approval for Specified Behavioral Health Services
140.TABLE O	Criteria for Participation as a Behavioral Health Clinic

AUTHORITY: Implementing and authorized by Articles III, IV, V and VI and Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. III, IV, V and VI and 12-13].

SOURCE: Adopted at 3 Ill. Reg. 24, p. 166, effective June 10, 1979; rule repealed and new rule adopted at 6 Ill. Reg. 8374, effective July 6, 1982; emergency amendment at 6 Ill. Reg. 8508, effective July 6, 1982, for a maximum of 150 days; amended at 7 Ill. Reg. 681, effective December 30, 1982; amended at 7 Ill. Reg. 7956, effective July 1, 1983; amended at 7 Ill. Reg. 8308, effective July 1, 1983; amended at 7 Ill. Reg. 8271, effective July 5, 1983; emergency amendment at 7 Ill. Reg. 8354, effective July 5, 1983, for a maximum of 150 days; amended at 7 Ill. Reg. 8540, effective July 15, 1983; amended at 7 Ill. Reg. 9382, effective July 22, 1983; amended at 7 Ill. Reg. 12868, effective September 20, 1983; peremptory amendment at 7 Ill. Reg. 15047, effective October 31, 1983; amended at 7 Ill. Reg. 17358, effective December 21, 1983; amended at 8 Ill. Reg. 254, effective December 21, 1983; emergency amendment at 8 Ill. Reg. 580, effective January 1, 1984, for a maximum of 150 days; codified at 8 Ill. Reg. 2483; amended at 8 Ill. Reg. 3012, effective February 22, 1984; amended at 8 Ill. Reg. 5262, effective April 9, 1984; amended at 8 Ill. Reg. 6785, effective April 27, 1984; amended at 8 Ill. Reg. 6983, effective May 9, 1984; amended at 8 Ill. Reg. 7258, effective May 16, 1984; emergency amendment at 8 Ill. Reg. 7910, effective May 22, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 7910, effective June 1, 1984; amended at 8 Ill. Reg. 10032, effective June 18, 1984; emergency amendment at 8 Ill. Reg. 10062, effective June 20, 1984, for a maximum of 150 days;

amended at 8 Ill. Reg. 13343, effective July 17, 1984; amended at 8 Ill. Reg. 13779, effective July 24, 1984; Sections 140.72 and 140.73 recodified to 89 Ill. Adm. Code 141 at 8 Ill. Reg. 16354; amended (by adding sections being codified with no substantive change) at 8 Ill. Reg. 17899; peremptory amendment at 8 Ill. Reg. 18151, effective September 18, 1984; amended at 8 Ill. Reg. 21629, effective October 19, 1984; peremptory amendment at 8 Ill. Reg. 21677, effective October 24, 1984; amended at 8 Ill. Reg. 22097, effective October 24, 1984; peremptory amendment at 8 Ill. Reg. 22155, effective October 29, 1984; amended at 8 Ill. Reg. 23218, effective November 20, 1984; emergency amendment at 8 Ill. Reg. 23721, effective November 21, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 25067, effective December 19, 1984; emergency amendment at 9 Ill. Reg. 407, effective January 1, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 2697, effective February 22, 1985; amended at 9 Ill. Reg. 6235, effective April 19, 1985; amended at 9 Ill. Reg. 8677, effective May 28, 1985; amended at 9 Ill. Reg. 9564, effective June 5, 1985; amended at 9 Ill. Reg. 10025, effective June 26, 1985; emergency amendment at 9 Ill. Reg. 11403, effective June 27, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 11357, effective June 28, 1985; amended at 9 Ill. Reg. 12000, effective July 24, 1985; amended at 9 Ill. Reg. 12306, effective August 5, 1985; amended at 9 Ill. Reg. 13998, effective September 3, 1985; amended at 9 Ill. Reg. 14684, effective September 13, 1985; amended at 9 Ill. Reg. 15503, effective October 4, 1985; amended at 9 Ill. Reg. 16312, effective October 11, 1985; amended at 9 Ill. Reg. 19138, effective December 2, 1985; amended at 9 Ill. Reg. 19737, effective December 9, 1985; amended at 10 Ill. Reg. 238, effective December 27, 1985; emergency amendment at 10 Ill. Reg. 798, effective January 1, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 672, effective January 6, 1986; amended at 10 Ill. Reg. 1206, effective January 13, 1986; amended at 10 Ill. Reg. 3041, effective January 24, 1986; amended at 10 Ill. Reg. 6981, effective April 16, 1986; amended at 10 Ill. Reg. 7825, effective April 30, 1986; amended at 10 Ill. Reg. 8128, effective May 7, 1986; emergency amendment at 10 Ill. Reg. 8912, effective May 13, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 11440, effective June 20, 1986; amended at 10 Ill. Reg. 14714, effective August 27, 1986; amended at 10 Ill. Reg. 15211, effective September 12, 1986; emergency amendment at 10 Ill. Reg. 16729, effective September 18, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 18808, effective October 24, 1986; amended at 10 Ill. Reg. 19742, effective November 12, 1986; amended at 10 Ill. Reg. 21784, effective December 15, 1986; amended at 11 Ill. Reg. 698, effective December 19, 1986; amended at 11 Ill. Reg. 1418, effective December 31, 1986; amended at 11 Ill. Reg. 2323, effective January 16, 1987; amended at 11 Ill. Reg. 4002, effective February 25, 1987; Section 140.71 recodified to 89 Ill. Adm. Code 141 at 11 Ill. Reg. 4302; amended at 11 Ill. Reg. 4303, effective March 6, 1987; amended at 11 Ill. Reg. 7664, effective April 15, 1987; emergency amendment at 11 Ill. Reg. 9342, effective April 20, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 9169, effective April 28, 1987; amended at 11 Ill. Reg. 10903, effective June 1, 1987; amended at 11 Ill. Reg. 11528, effective June 22, 1987; amended at 11 Ill. Reg. 12011, effective June 30, 1987; amended at 11 Ill. Reg. 12290, effective

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July 6, 1987; amended at 11 Ill. Reg. 14048, effective August 14, 1987; amended at 11 Ill. Reg. 14771, effective August 25, 1987; amended at 11 Ill. Reg. 16758, effective September 28, 1987; amended at 11 Ill. Reg. 17295, effective September 30, 1987; amended at 11 Ill. Reg. 18696, effective October 27, 1987; amended at 11 Ill. Reg. 20909, effective December 14, 1987; amended at 12 Ill. Reg. 916, effective January 1, 1988; emergency amendment at 12 Ill. Reg. 1960, effective January 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 5427, effective March 15, 1988; amended at 12 Ill. Reg. 6246, effective March 16, 1988; amended at 12 Ill. Reg. 6728, effective March 22, 1988; Sections 140.900 thru 140.912 and 140.Table H and 140.Table I recodified to 89 Ill. Adm. Code 147.5 thru 147.205 and 147.Table A and 147.Table B at 12 Ill. Reg. 6956; amended at 12 Ill. Reg. 6927, effective April 5, 1988; Sections 140.940 thru 140.972 recodified to 89 Ill. Adm. Code 149.5 thru 149.325 at 12 Ill. Reg. 7401; amended at 12 Ill. Reg. 7695, effective April 21, 1988; amended at 12 Ill. Reg. 10497, effective June 3, 1988; amended at 12 Ill. Reg. 10717, effective June 14, 1988; emergency amendment at 12 Ill. Reg. 11868, effective July 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 12509, effective July 15, 1988; amended at 12 Ill. Reg. 14271, effective August 29, 1988; emergency amendment at 12 Ill. Reg. 16921, effective September 28, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 16738, effective October 5, 1988; amended at 12 Ill. Reg. 17879, effective October 24, 1988; amended at 12 Ill. Reg. 18198, effective November 4, 1988; amended at 12 Ill. Reg. 19396, effective November 6, 1988; amended at 12 Ill. Reg. 19734, effective November 15, 1988; amended at 13 Ill. Reg. 125, effective January 1, 1989; amended at 13 Ill. Reg. 2475, effective February 14, 1989; amended at 13 Ill. Reg. 3069, effective February 28, 1989; amended at 13 Ill. Reg. 3351, effective March 6, 1989; amended at 13 Ill. Reg. 3917, effective March 17, 1989; amended at 13 Ill. Reg. 5115, effective April 3, 1989; amended at 13 Ill. Reg. 5718, effective April 10, 1989; amended at 13 Ill. Reg. 7025, effective April 24, 1989; Sections 140.850 thru 140.896 recodified to 89 Ill. Adm. Code 146.5 thru 146.225 at 13 Ill. Reg. 7040; amended at 13 Ill. Reg. 7786, effective May 20, 1989; Sections 140.94 thru 140.398 recodified to 89 Ill. Adm. Code 148.10 thru 148.390 at 13 Ill. Reg. 9572; emergency amendment at 13 Ill. Reg. 10977, effective July 1, 1989, for a maximum of 150 days; emergency expired November 28, 1989; amended at 13 Ill. Reg. 11516, effective July 3, 1989; amended at 13 Ill. Reg. 12119, effective July 7, 1989; Section 140.110 recodified to 89 Ill. Adm. Code 148.120 at 13 Ill. Reg. 12118; amended at 13 Ill. Reg. 12562, effective July 17, 1989; amended at 13 Ill. Reg. 14391, effective August 31, 1989; emergency amendment at 13 Ill. Reg. 15473, effective September 12, 1989, for a maximum of 150 days; amended at 13 Ill. Reg. 16992, effective October 16, 1989; amended at 14 Ill. Reg. 190, effective December 21, 1989; amended at 14 Ill. Reg. 2564, effective February 9, 1990; emergency amendment at 14 Ill. Reg. 3241, effective February 14, 1990, for a maximum of 150 days; emergency expired July 14, 1990; amended at 14 Ill. Reg. 4543, effective March 12, 1990; emergency amendment at 14 Ill. Reg. 4577, effective March 6, 1990, for a maximum of 150 days; emergency expired August 3, 1990; emergency amendment at 14 Ill. Reg. 5575, effective April 1, 1990, for a maximum of 150

days; emergency expired August 29, 1990; emergency amendment at 14 Ill. Reg. 5865, effective April 3, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 7141, effective April 27, 1990; emergency amendment at 14 Ill. Reg. 7249, effective April 27, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 10062, effective June 12, 1990; amended at 14 Ill. Reg. 10409, effective June 19, 1990; emergency amendment at 14 Ill. Reg. 12082, effective July 5, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 13262, effective August 6, 1990; emergency amendment at 14 Ill. Reg. 14184, effective August 16, 1990, for a maximum of 150 days; emergency amendment at 14 Ill. Reg. 14570, effective August 22, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 14826, effective August 31, 1990; amended at 14 Ill. Reg. 15366, effective September 12, 1990; amended at 14 Ill. Reg. 15981, effective September 21, 1990; amended at 14 Ill. Reg. 17279, effective October 12, 1990; amended at 14 Ill. Reg. 18057, effective October 22, 1990; amended at 14 Ill. Reg. 18508, effective October 30, 1990; amended at 14 Ill. Reg. 18813, effective November 6, 1990; Notice of Corrections to Adopted Amendment at 15 Ill. Reg. 1174; amended at 14 Ill. Reg. 20478, effective December 7, 1990; amended at 14 Ill. Reg. 20729, effective December 12, 1990; amended at 15 Ill. Reg. 298, effective December 28, 1990; emergency amendment at 15 Ill. Reg. 592, effective January 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 1051, effective January 18, 1991; amended at 15 Ill. Reg. 6220, effective April 18, 1991; amended at 15 Ill. Reg. 6534, effective April 30, 1991; amended at 15 Ill. Reg. 8264, effective May 23, 1991; amended at 15 Ill. Reg. 8972, effective June 17, 1991; amended at 15 Ill. Reg. 10114, effective June 21, 1991; amended at 15 Ill. Reg. 10468, effective July 1, 1991; amended at 15 Ill. Reg. 11176, effective August 1, 1991; emergency amendment at 15 Ill. Reg. 11515, effective July 25, 1991, for a maximum of 150 days; emergency expired December 22, 1991; emergency amendment at 15 Ill. Reg. 12919, effective August 15, 1991, for a maximum of 150 days; emergency expired January 12, 1992; emergency amendment at 15 Ill. Reg. 16366, effective October 22, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 17318, effective November 18, 1991; amended at 15 Ill. Reg. 17733, effective November 22, 1991; emergency amendment at 16 Ill. Reg. 300, effective December 20, 1991, for a maximum of 150 days; amended at 16 Ill. Reg. 174, effective December 24, 1991; amended at 16 Ill. Reg. 1877, effective January 24, 1992; amended at 16 Ill. Reg. 3552, effective February 28, 1992; amended at 16 Ill. Reg. 4006, effective March 6, 1992; amended at 16 Ill. Reg. 6408, effective March 20, 1992; expedited correction at 16 Ill. Reg. 11348, effective March 20, 1992; amended at 16 Ill. Reg. 6849, effective April 7, 1992; amended at 16 Ill. Reg. 7017, effective April 17, 1992; amended at 16 Ill. Reg. 10050, effective June 5, 1992; amended at 16 Ill. Reg. 11174, effective June 26, 1992; emergency amendment at 16 Ill. Reg. 11947, effective July 10, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 12186, effective July 24, 1992; emergency amendment at 16 Ill. Reg. 13337, effective August 14, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 15109, effective September 21, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 15561, effective September 30, 1992; amended at 16 Ill. Reg. 17302, effective November 2, 1992; emergency amendment at 16

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Ill. Reg. 18097, effective November 17, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 19146, effective December 1, 1992; expedited correction at 17 Ill. Reg. 7078, effective December 1, 1992; amended at 16 Ill. Reg. 19879, effective December 7, 1992; amended at 17 Ill. Reg. 837, effective January 11, 1993; amended at 17 Ill. Reg. 1112, effective January 15, 1993; amended at 17 Ill. Reg. 2290, effective February 15, 1993; amended at 17 Ill. Reg. 2951, effective February 17, 1993; amended at 17 Ill. Reg. 3421, effective February 19, 1993; amended at 17 Ill. Reg. 6196, effective April 5, 1993; amended at 17 Ill. Reg. 6839, effective April 21, 1993; amended at 17 Ill. Reg. 7004, effective May 17, 1993; emergency amendment at 17 Ill. Reg. 11201, effective July 1, 1993, for a maximum of 150 days; emergency amendment at 17 Ill. Reg. 15162, effective September 2, 1993, for a maximum of 150 days; emergency amendment suspended at 17 Ill. Reg. 18902, effective October 12, 1993; emergency amendment at 17 Ill. Reg. 18152, effective October 1, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 18571, effective October 8, 1993; emergency amendment at 17 Ill. Reg. 18611, effective October 1, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 20999, effective November 24, 1993; emergency amendment repealed at 17 Ill. Reg. 22583, effective December 20, 1993; amended at 18 Ill. Reg. 3620, effective February 28, 1994; amended at 18 Ill. Reg. 4250, effective March 4, 1994; amended at 18 Ill. Reg. 5951, effective April 1, 1994; emergency amendment at 18 Ill. Reg. 10922, effective July 1, 1994, for a maximum of 150 days; emergency amendment suspended at 18 Ill. Reg. 17286, effective November 15, 1994; emergency amendment repealed at 19 Ill. Reg. 5839, effective April 4, 1995; amended at 18 Ill. Reg. 11244, effective July 1, 1994; amended at 18 Ill. Reg. 14126, effective August 29, 1994; amended at 18 Ill. Reg. 16675, effective November 1, 1994; amended at 18 Ill. Reg. 18059, effective December 19, 1994; amended at 19 Ill. Reg. 1082, effective January 20, 1995; amended at 19 Ill. Reg. 2933, effective March 1, 1995; emergency amendment at 19 Ill. Reg. 3529, effective March 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 5663, effective April 1, 1995; amended at 19 Ill. Reg. 7919, effective June 5, 1995; emergency amendment at 19 Ill. Reg. 8455, effective June 9, 1995, for a maximum of 150 days; emergency amendment at 19 Ill. Reg. 9297, effective July 1, 1995, for a maximum of 150 days; emergency amendment at 19 Ill. Reg. 10252, effective July 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 13019, effective September 5, 1995; amended at 19 Ill. Reg. 14440, effective September 29, 1995; emergency amendment at 19 Ill. Reg. 14833, effective October 6, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 15441, effective October 26, 1995; amended at 19 Ill. Reg. 15692, effective November 6, 1995; amended at 19 Ill. Reg. 16677, effective November 28, 1995; amended at 20 Ill. Reg. 1210, effective December 29, 1995; amended at 20 Ill. Reg. 4345, effective March 4, 1996; amended at 20 Ill. Reg. 5858, effective April 5, 1996; amended at 20 Ill. Reg. 6929, effective May 6, 1996; amended at 20 Ill. Reg. 7922, effective May 31, 1996; amended at 20 Ill. Reg. 9081, effective June 28, 1996; emergency amendment at 20 Ill. Reg. 9312, effective July 1, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 11332, effective August 1, 1996; amended at 20 Ill. Reg. 14845, effective October 31, 1996; emergency

amendment at 21 Ill. Reg. 705, effective December 31, 1996, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 3734, effective March 5, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 4777, effective April 2, 1997; amended at 21 Ill. Reg. 6899, effective May 23, 1997; amended at 21 Ill. Reg. 9763, effective July 15, 1997; amended at 21 Ill. Reg. 11569, effective August 1, 1997; emergency amendment at 21 Ill. Reg. 13857, effective October 1, 1997, for a maximum of 150 days; amended at 22 Ill. Reg. 1416, effective December 29, 1997; amended at 22 Ill. Reg. 4412, effective February 27, 1998; amended at 22 Ill. Reg. 7024, effective April 1, 1998; amended at 22 Ill. Reg. 10606, effective June 1, 1998; emergency amendment at 22 Ill. Reg. 13117, effective July 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 16302, effective August 28, 1998; amended at 22 Ill. Reg. 18979, effective September 30, 1998; amended at 22 Ill. Reg. 19898, effective October 30, 1998; emergency amendment at 22 Ill. Reg. 22108, effective December 1, 1998, for a maximum of 150 days; emergency expired April 29, 1999; amended at 23 Ill. Reg. 5796, effective April 30, 1999; amended at 23 Ill. Reg. 7122, effective June 1, 1999; emergency amendment at 23 Ill. Reg. 8236, effective July 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 9874, effective August 3, 1999; amended at 23 Ill. Reg. 12697, effective October 1, 1999; amended at 23 Ill. Reg. 13646, effective November 1, 1999; amended at 23 Ill. Reg. 14567, effective December 1, 1999; amended at 24 Ill. Reg. 661, effective January 3, 2000; amended at 24 Ill. Reg. 10277, effective July 1, 2000; emergency amendment at 24 Ill. Reg. 10436, effective July 1, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 15086, effective October 1, 2000; amended at 24 Ill. Reg. 18320, effective December 1, 2000; emergency amendment at 24 Ill. Reg. 19344, effective December 15, 2000, for a maximum of 150 days; amended at 25 Ill. Reg. 3897, effective March 1, 2001; amended at 25 Ill. Reg. 6665, effective May 11, 2001; amended at 25 Ill. Reg. 8793, effective July 1, 2001; emergency amendment at 25 Ill. Reg. 8850, effective July 1, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 11880, effective September 1, 2001; amended at 25 Ill. Reg. 12820, effective October 8, 2001; amended at 25 Ill. Reg. 14957, effective November 1, 2001; emergency amendment at 25 Ill. Reg. 16127, effective November 28, 2001, for a maximum of 150 days; emergency amendment at 25 Ill. Reg. 16292, effective December 3, 2001, for a maximum of 150 days; emergency amendment at 26 Ill. Reg. 514, effective January 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 663, effective January 7, 2002; amended at 26 Ill. Reg. 4781, effective March 15, 2002; emergency amendment at 26 Ill. Reg. 5984, effective April 15, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 7285, effective April 29, 2002; emergency amendment at 26 Ill. Reg. 8594, effective June 1, 2002, for a maximum of 150 days; emergency amendment at 26 Ill. Reg. 11259, effective July 1, 2002, for a maximum of 150 days; emergency amendment at 26 Ill. Reg. 12461, effective July 29, 2002, for a maximum of 150 days; emergency amendment repealed at 26 Ill. Reg. 16593, effective October 22, 2002; emergency amendment at 26 Ill. Reg. 12772, effective August 12, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 13641, effective September 3, 2002; amended at 26 Ill. Reg. 14789, effective September 26, 2002; emergency amendment at 26 Ill.

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Reg. 15076, effective October 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 16303, effective October 25, 2002; amended at 26 Ill. Reg. 17751, effective November 27, 2002; amended at 27 Ill. Reg. 768, effective January 3, 2003; amended at 27 Ill. Reg. 3041, effective February 10, 2003; amended at 27 Ill. Reg. 4364, effective February 24, 2003; amended at 27 Ill. Reg. 7823, effective May 1, 2003; amended at 27 Ill. Reg. 9157, effective June 2, 2003; emergency amendment at 27 Ill. Reg. 10813, effective July 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 13784, effective August 1, 2003; amended at 27 Ill. Reg. 14799, effective September 5, 2003; emergency amendment at 27 Ill. Reg. 15584, effective September 20, 2003, for a maximum of 150 days; emergency amendment at 27 Ill. Reg. 16161, effective October 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 18629, effective November 26, 2003; amended at 28 Ill. Reg. 2744, effective February 1, 2004; amended at 28 Ill. Reg. 4958, effective March 3, 2004; emergency amendment at 28 Ill. Reg. 6622, effective April 19, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 7081, effective May 3, 2004; emergency amendment at 28 Ill. Reg. 8108, effective June 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 9640, effective July 1, 2004; emergency amendment at 28 Ill. Reg. 10135, effective July 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 11161, effective August 1, 2004; emergency amendment at 28 Ill. Reg. 12198, effective August 11, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 13775, effective October 1, 2004; amended at 28 Ill. Reg. 14804, effective October 27, 2004; amended at 28 Ill. Reg. 15513, effective November 24, 2004; amended at 29 Ill. Reg. 831, effective January 1, 2005; amended at 29 Ill. Reg. 6945, effective May 1, 2005; emergency amendment at 29 Ill. Reg. 8509, effective June 1, 2005, for a maximum of 150 days; emergency amendment at 29 Ill. Reg. 12534, effective August 1, 2005, for a maximum of 150 days; amended at 29 Ill. Reg. 14957, effective September 30, 2005; emergency amendment at 29 Ill. Reg. 15064, effective October 1, 2005, for a maximum of 150 days; emergency amendment repealed by emergency rulemaking at 29 Ill. Reg. 15985, effective October 5, 2005, for the remainder of the 150 days; emergency amendment at 29 Ill. Reg. 15610, effective October 1, 2005, for a maximum of 150 days; emergency amendment at 29 Ill. Reg. 16515, effective October 5, 2005, for a maximum of 150 days; amended at 30 Ill. Reg. 349, effective December 28, 2005; emergency amendment at 30 Ill. Reg. 573, effective January 1, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 796, effective January 1, 2006; amended at 30 Ill. Reg. 2802, effective February 24, 2006; amended at 30 Ill. Reg. 10370, effective May 26, 2006; emergency amendment at 30 Ill. Reg. 12376, effective July 1, 2006, for a maximum of 150 days; emergency amendment at 30 Ill. Reg. 13909, effective August 2, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 14280, effective August 18, 2006; expedited correction at 31 Ill. Reg. 1745, effective August 18, 2006; emergency amendment at 30 Ill. Reg. 17970, effective November 1, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 18648, effective November 27, 2006; emergency amendment at 30 Ill. Reg. 19400, effective December 1, 2006, for a maximum of 150 days; amended at 31 Ill. Reg. 388, effective December 29, 2006; emergency amendment at 31 Ill. Reg. 1580, effective

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January 1, 2007, for a maximum of 150 days; amended at 31 Ill. Reg. 2413, effective January 19, 2007; amended at 31 Ill. Reg. 5561, effective March 30, 2007; amended at 31 Ill. Reg. 6930, effective April 29, 2007; amended at 31 Ill. Reg. 8485, effective May 30, 2007; emergency amendment at 31 Ill. Reg. 10115, effective June 30, 2007, for a maximum of 150 days; amended at 31 Ill. Reg. 14749, effective October 22, 2007; emergency amendment at 32 Ill. Reg. 383, effective January 1, 2008, for a maximum of 150 days; peremptory amendment at 32 Ill. Reg. 6743, effective April 1, 2008; peremptory amendment suspended at 32 Ill. Reg. 8449, effective May 21, 2008; suspension withdrawn by the Joint Committee on Administrative Rules at 32 Ill. Reg. 18323, effective November 12, 2008; peremptory amendment repealed by emergency rulemaking at 32 Ill. Reg. 18422, effective November 12, 2008, for a maximum of 150 days; emergency expired April 10, 2009; peremptory amendment repealed at 33 Ill. Reg. 6667, effective April 29, 2009; amended at 32 Ill. Reg. 7727, effective May 5, 2008; emergency amendment at 32 Ill. Reg. 10480, effective July 1, 2008, for a maximum of 150 days; emergency expired November 27, 2008; amended at 32 Ill. Reg. 17133, effective October 15, 2008; amended at 33 Ill. Reg. 209, effective December 29, 2008; amended at 33 Ill. Reg. 9048, effective June 15, 2009; emergency amendment at 33 Ill. Reg. 10800, effective June 30, 2009, for a maximum of 150 days; amended at 33 Ill. Reg. 11287, effective July 14, 2009; amended at 33 Ill. Reg. 11938, effective August 17, 2009; amended at 33 Ill. Reg. 12227, effective October 1, 2009; emergency amendment at 33 Ill. Reg. 14324, effective October 1, 2009, for a maximum of 150 days; emergency expired February 27, 2010; amended at 33 Ill. Reg. 16573, effective November 16, 2009; amended at 34 Ill. Reg. 516, effective January 1, 2010; amended at 34 Ill. Reg. 903, effective January 29, 2010; amended at 34 Ill. Reg. 3761, effective March 14, 2010; amended at 34 Ill. Reg. 5215, effective March 25, 2010; amended at 34 Ill. Reg. 19517, effective December 6, 2010; amended at 35 Ill. Reg. 394, effective December 27, 2010; amended at 35 Ill. Reg. 7648, effective May 1, 2011; amended at 35 Ill. Reg. 7962, effective May 1, 2011; amended at 35 Ill. Reg. 10000, effective June 15, 2011; amended at 35 Ill. Reg. 12909, effective July 25, 2011; amended at 36 Ill. Reg. 2271, effective February 1, 2012; amended at 36 Ill. Reg. 7010, effective April 27, 2012; amended at 36 Ill. Reg. 7545, effective May 7, 2012; amended at 36 Ill. Reg. 9113, effective June 11, 2012; emergency amendment at 36 Ill. Reg. 11329, effective July 1, 2012 through June 30, 2013; emergency amendment to Section 140.442(e)(4) suspended at 36 Ill. Reg. 13736, effective August 15, 2012; suspension withdrawn from Section 140.442(e)(4) at 36 Ill. Reg. 14529, September 11, 2012; emergency amendment in response to Joint Committee on Administrative Rules action on Section 140.442(e)(4) at 36 Ill. Reg. 14820, effective September 21, 2012 through June 30, 2013; emergency amendment to Section 140.491 suspended at 36 Ill. Reg. 13738, effective August 15, 2012; suspension withdrawn by the Joint Committee on Administrative Rules from Section 140.491 at 37 Ill. Reg. 890, January 8, 2013; emergency amendment in response to Joint Committee on Administrative Rules action on Section 140.491 at 37 Ill. Reg. 1330, effective January 15, 2013 through June 30, 2013; amended at 36 Ill. Reg. 15361, effective October 15, 2012; emergency amendment at 37 Ill. Reg. 253,

effective January 1, 2013 through June 30, 2013; emergency amendment at 37 Ill. Reg. 846, effective January 9, 2013 through June 30, 2013; emergency amendment at 37 Ill. Reg. 1774, effective January 28, 2013 through June 30, 2013; emergency amendment at 37 Ill. Reg. 2348, effective February 1, 2013 through June 30, 2013; amended at 37 Ill. Reg. 3831, effective March 13, 2013; emergency amendment at 37 Ill. Reg. 5058, effective April 1, 2013 through June 30, 2013; emergency amendment at 37 Ill. Reg. 5170, effective April 8, 2013 through June 30, 2013; amended at 37 Ill. Reg. 6196, effective April 29, 2013; amended at 37 Ill. Reg. 7985, effective May 29, 2013; amended at 37 Ill. Reg. 10282, effective June 27, 2013; amended at 37 Ill. Reg. 12855, effective July 24, 2013; emergency amendment at 37 Ill. Reg. 14196, effective August 20, 2013, for a maximum of 150 days; amended at 37 Ill. Reg. 17584, effective October 23, 2013; amended at 37 Ill. Reg. 18275, effective November 4, 2013; amended at 37 Ill. Reg. 20339, effective December 9, 2013; amended at 38 Ill. Reg. 859, effective December 23, 2013; emergency amendment at 38 Ill. Reg. 1174, effective January 1, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. 4330, effective January 29, 2014; amended at 38 Ill. Reg. 7156, effective March 13, 2014; amended at 38 Ill. Reg. 12141, effective May 30, 2014; amended at 38 Ill. Reg. 15081, effective July 2, 2014; emergency amendment at 38 Ill. Reg. 15673, effective July 7, 2014, for a maximum of 150 days; emergency amendment at 38 Ill. Reg. 18216, effective August 18, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. 18462, effective August 19, 2014; amended at 38 Ill. Reg. 23623, effective December 2, 2014; amended at 39 Ill. Reg. 4394, effective March 11, 2015; emergency amendment at 39 Ill. Reg. 6903, effective May 1, 2015 through June 30, 2015; emergency amendment at 39 Ill. Reg. 8137, effective May 20, 2015, for a maximum of 150 days; emergency amendment at 39 Ill. Reg. 10427, effective July 10, 2015, for a maximum of 150 days; emergency expired December 6, 2015; amended at 39 Ill. Reg. 12825, effective September 4, 2015; amended at 39 Ill. Reg. 13380, effective September 25, 2015; amended at 39 Ill. Reg. 14138, effective October 14, 2015; emergency amendment at 40 Ill. Reg. 13677, effective September 16, 2016, for a maximum of 150 days; emergency expired February 12, 2017; amended at 41 Ill. Reg. 999, effective January 19, 2017; amended at 41 Ill. Reg. 3296, effective March 8, 2017; amended at 41 Ill. Reg. 7526, effective June 15, 2017; amended at 41 Ill. Reg. 10950, effective August 9, 2017; amended at 42 Ill. Reg. 4829, effective March 1, 2018; amended at 42 Ill. Reg. 12986, effective June 25, 2018; emergency amendment at 42 Ill. Reg. 13688, effective July 2, 2018, for a maximum of 150 days; emergency amendment to emergency rule at 42 Ill. Reg. 16265, effective August 13, 2018, for the remainder of the 150 days; amended at 42 Ill. Reg. 14383, effective July 23, 2018; amended at 42 Ill. Reg. 20059, effective October 26, 2018; amended at 42 Ill. Reg. 22352, effective November 28, 2018.

SUBPART C: PROVIDER ASSESSMENTS

Section 140.80 Hospital Provider Fund

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

a) Purpose and Contents

1) The Hospital Provider Fund (Fund) was created in the State Treasury on February 3, 2004 (see 305 ILCS 5/5A-8). Interest earned by the Fund shall be credited to the Fund. The Fund shall not be used to replace any funds appropriated to the Medicaid program by the General Assembly.

2) The Fund is created for the purpose of receiving and disbursing monies in accordance with this Section and Article 5A of the Code.

3) The Fund shall consist of:

A) All monies collected or received by the Department under subsection (b);

B) All federal matching funds received by the Department as a result of expenditures made by the Department that are attributable to monies deposited in the Fund;

C) Any interest or penalty levied in conjunction with the administration of the Fund;

D) Monies transferred from another fund in the State treasury;

E) All other monies received for the Fund from any other source, including interest earned on those monies.

b) Provider Assessments

1) Subject to Sections 5A-3, 5A-10 and 5A-15 of the Code, for State fiscal years 2009 through 2018, or as long as continued under Section 5A-16, an annual assessment on inpatient services is imposed on each hospital provider in an amount equal to $218.38 multiplied by the difference of the hospital's occupied bed days less the hospital's Medicare bed days; provided, however, the amount of $218.38 shall be increased by a uniform percentage to generate an amount equal to 75% of the State share of the payments authorized under Section 5A-12-5 of the Code, with that increase only taking effect upon the date that a State share for those payments is required under federal law. For the period of April through

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June 2015, the amount of $218.38 used to calculate the assessment under this subsection (b)(1) shall be increased by a uniform percentage to generate $20,250,000 in the aggregate for that period from all hospitals subject to the annual assessment under this Section. For State fiscal years 2009 and after, a hospital's occupied bed days and Medicare bed days shall be determined using the most recent data available from each hospital's 2005 Medicare cost report as contained in the Healthcare Cost Report Information System file, for the quarter ending on December 31, 2006, without regard to any subsequent adjustments or changes to such data. If a hospital's 2005 Medicare cost report is not contained in the Healthcare Cost Report Information System, then the Department may obtain the hospital provider's occupied bed days and Medicare bed days from any source available, including, but not limited to, records maintained by the hospital provider, which may be inspected at all times during business hours of the day by the Department or its duly authorized agents and employees. Subject to Sections 5A-3, 5A-10, and 5A-16 of the Code, for State fiscal years 2019 and 2020, an annual assessment on inpatient services is imposed on each hospital provider in an amount equal to $197.19 multiplied by the difference of the hospital's occupied bed days less the hospital's Medicare bed days; however, for State fiscal year 2020, the amount of $197.19 shall be increased by a uniform percentage to generate an additional $6,250,000 in the aggregate for that period from all hospitals subject to the annual assessment under this Section. For State fiscal years 2019 and 2020, a hospital's occupied bed days and Medicare bed days shall be determined using the most recent data available from each hospital's 2015 Medicare cost report as contained in the Healthcare Cost Report Information System file, for the quarter ending on March 31, 2017, without regard to any subsequent adjustments or changes to such data. If a hospital's 2015 Medicare cost report is not contained in the Healthcare Cost Report Information System, then the Illinois Department may obtain the hospital provider's occupied bed days and Medicare bed days from any source available, including, but not limited to, records maintained by the hospital provider, which may be inspected at all times during business hours of the day by the Illinois Department or its duly authorized agents and employees. Notwithstanding any other provision in this Section, for a hospital provider that did not have a 2015 Medicare cost report, but paid an assessment in State fiscal year 2018 on the basis of hypothetical data, that assessment amount shall be used for State fiscal years 2019 and 2020; however, for State fiscal year 2020, the assessment

amount shall be increased by the proportion that it represents of the total annual assessment that is generated from all hospitals in order to generate $6,250,000 in the aggregate for that period from all hospitals subject to the annual assessment under this Section. Subject to Sections 5A-3 and 5A-10, for State fiscal 2021 through 2024, an annual assessment on inpatient services is imposed on each hospital provider in an amount equal to $197.19 multiplied by the difference of the hospital's occupied bed days less the hospital's Medicare bed days, provided, however, that the amount of $197.19 used to calculate the assessment under this subsection (b)(1) shall be adjusted by a uniform percentage to generate the same total annual assessment that was generated in State fiscal year 2020 from all hospitals subject to the annual assessment under this subsection (b)(1) plus $6,250,000. For State fiscal years 2021 and 2022, a hospital's occupied bed days and Medicare bed days shall be determined using the most recent data available from each hospital's 2017 Medicare cost report as contained in the Healthcare Cost Report Information System file, for the quarter ending on March 31, 2019, without regard to any subsequent adjustments or changes to such data. For State fiscal years 2023 and 2024, a hospital's occupied bed days and Medicare bed days shall be determined using the most recent data available from each hospital's 2019 Medicare cost report as contained in the Healthcare Cost Report Information System file, for the quarter ending on March 31, 2021, without regard to any subsequent adjustments or changes to such data.

2) In addition to any other assessments imposed under this Section, effective July 1, 2016 and semiannually thereafter through June 2018, or as provided in Section 5A-16, in addition to any federally required State share as authorized under subsection (b)(1), the amount of $218.38 shall be increased by a uniform percentage to generate an amount equal to 75% of the ACA Assessment Adjustment, as defined in subsection (l)(1).

3) Subject to Sections 5A-3, 5A-10, and 5A-15 of the Code for the portion of State fiscal year 2012 beginning June 10, 2012 through June 30, 2012, and for State fiscal years 2013 through 2018, an annual assessment on outpatient services is imposed on each hospital provider in an amount equal to .008766 multiplied by the hospital's outpatient gross revenue; provided, however, the multiplier of .008766 shall be increased by a uniform percentage to generate an amount equal to 25% of the State share of the payments authorized under Section 5A-12-5, with that increase only

taking effect upon the date that a State share for those payments is required under federal law. For the period of April through June 2015, the amount of .008766 used to calculate the assessment under this subsection (b)(3) shall be increased by a uniform percentage to generate $6,750,000 in the aggregate for that period from all hospitals subject to the annual assessment under this Section. For the portion of State fiscal year 2012 beginning June 10, 2012 through June 30, 2012 and for State fiscal years 2013 through 2018, a hospital's outpatient gross revenue shall be determined using the most recent data available from each hospital's 2009 Medicare cost report as contained in the Healthcare Cost Report Information System file, for the quarter ending on June 30, 2011, without regard to any subsequent adjustments or changes to that data. If a hospital's 2009 Medicare cost report is not contained in the Healthcare Cost Report Information System, then the Department may obtain the hospital provider's outpatient gross revenue from any source available, including, but not limited to, records maintained by the hospital provider, which may be inspected at all times during business hours of the day by the Department or its duly authorized agents and employees. For the period beginning June 10, 2012 through June 30, 2012, the annual assessment on outpatient services shall be prorated by multiplying the assessment amount by a fraction, the numerator of which is 21 days and the denominator of which is 365 days. Subject to Sections 5A-3, 5A-10, and 5A-16, for State fiscal years 2019 and 2020, an annual assessment on outpatient services is imposed on each hospital provider in an amount equal to .01358 multiplied by the hospital's outpatient gross revenue; however, for State fiscal year 2020, the amount of .01358 shall be increased by a uniform percentage to generate an additional $6,250,000 in the aggregate for that period from all hospitals subject to the annual assessment under this subsection (b)(3). For State fiscal years 2019 and 2020, a hospital's outpatient gross revenue shall be determined using the most recent data available from each hospital's 2015 Medicare cost report as contained in the Healthcare Cost Report Information System file, for the quarter ending on March 31, 2017, without regard to any subsequent adjustments or changes to such data. If a hospital's 2015 Medicare cost report is not contained in the Healthcare Cost Report Information System, then the Department may obtain the hospital provider's outpatient gross revenue from any source available, including, but not limited to, records maintained by the hospital provider, which may be inspected at all times during business hours of the day by the Department or its duly authorized

agents and employees. Notwithstanding any other provision in this Section, for a hospital provider that did not have a 2015 Medicare cost report, but paid an assessment in State fiscal year 2018 on the basis of hypothetical data, that assessment amount shall be used for State fiscal years 2019 and 2020; however, for State fiscal year 2020, the assessment amount shall be increased by the proportion that it represents of the total annual assessment that is generated from all hospitals in order to generate $6,250,000 in the aggregate for that period from all hospitals subject to the annual assessment under this subsection (b)(3). Subject to Sections 5A-3 and 5A-10, for State fiscal years 2021 through 2024, an annual assessment on outpatient services is imposed on each hospital provider in an amount equal to .01358 multiplied by the hospital's outpatient gross revenue, provided however, that the amount of .01358 used to calculate the assessment under this subsection (b)(3) shall be adjusted by a uniform percentage to generate the same total annual assessment that was generated in State fiscal year 2020 from all hospitals subject to the annual assessment under this subsection (b)(3) plus $6,250,000. For State fiscal years 2021 and 2022, a hospital's outpatient gross revenue shall be determined using the most recent data available from each hospital's 2017 Medicare cost report as contained in the Healthcare Cost Report Information System file, for the quarter ending on March 31, 2019, without regard to any subsequent adjustments or changes to such data. For State fiscal years 2023 and 2024, a hospital's outpatient gross revenue shall be determined using the most recent data available from each hospital's 2019 Medicare cost report as contained in the Healthcare Cost Report Information System file, for the quarter ending on March 31, 2021, without regard to any subsequent adjustments or changes to such data.

4) In addition to any other assessments imposed under Article 5A of the Code, effective July 1, 2016 and semiannually thereafter through June 2018, in addition to any federally required State share as authorized under subsection (b)(3), the amount of .008766 shall be increased by a uniform percentage to generate an amount equal to 25% of the ACA Assessment Adjustment, as defined in subsection (l)(1).

5) Final Reconciliation

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NOTICE OF ADOPTED AMENDMENTS

A) The Department shall complete and apply a final reconciliation of the ACA Assessment Adjustment described in subsections (b)(2) and (b)(4) prior to June 30, 2018 to account for:

i) any differences between the actual payments issued or scheduled to be issued prior to June 30, 2018 as authorized in Section 5A-12.5 of the Code for the period of January 1, 2018 through June 30, 2018 and the estimated payments due and payable in the month of October 2017 multiplied by 6 as described in subsection (l)(1)(D); and

ii) any difference between the estimated fee-for-service payments under Section 5A-12.5(b) of the Code and the amount of those payments that are actually scheduled to be paid.

B) The Department shall notify hospitals of any additional amounts owed or reduction credits to be applied to the June 2018 ACA Assessment Adjustment. This is to be considered the final reconciliation for the ACA Assessment Adjustment.

C) Notwithstanding any other provision of this Section, if, for any reason, the scheduled payments under Section 5A-12.5(b) of the Code are not issued in full by the final day of the period authorized under that statute, funds collected from each hospital pursuant to subsections (l)(1)(D) and (b)(5)(A), attributable to the scheduled payments authorized under Section 5A-12.5(b) of the Code that are not issued in full by the final day of the period attributable to each payment authorized under that statute, shall be refunded.

6) The increases authorized under subsections (b)(2) and (b)(4) shall be limited to the federally required State share of the total payments authorized under Section 5A-12.5 of the Code if the sum of those payments yields an annualized amount equal to or less than $450,000,000, or if the adjustments authorized under Section 5A-12.2(t) of the Code are found not to be actuarially sound; however, this limitation shall not apply to the fee-for-service payments described in Section 5A-12.5 of the Code.

c) Payment of Assessment Due

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1) The inpatient assessment imposed by Section 5A-2 of the Code for State fiscal year 2009 through State fiscal year 2018, or as provided in Section 5A-16,~~and each subsequent State fiscal year~~ shall be due and payable in monthly installments, each equaling one-twelfth of the assessment for the year, on the 14th State business day of each month. No installment payments of an inpatient assessment shall be due and payable, however, until after the Comptroller has issued the payments required under Section 5A-12.2 of the Code. Assessment payments postmarked on the due date will be considered as paid on time.

2) Except as provided in Section 5A-4(a-5) of the Code, the outpatient assessment imposed by subsection (b)(3)~~ of this Section~~ for the portion of State fiscal year 2012 beginning June 10, 2012 through June 30, 2012~~,~~ and for State fiscal year 2013 through State fiscal year 2018, or as provided in Section 5A-16~~and each subsequent State fiscal year~~, shall be due and payable in monthly installments, each equaling one-twelfth of the assessment for the year, on the 14th State business day of each month.

A) No installment payment of an outpatient assessment imposed by subsection (b)(3) shall be due and payable, however, until after:

i) the Department notifies the hospital provider, in writing, that the payment methodologies to hospitals required under Section 5A-12.4 of the Code have been approved by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services (CMMS), and the waiver under 42 CFR 433.68 for the assessment imposed by subsection (b) of this Section, if necessary, has been granted by CMMS; and

ii) the Comptroller has issued the payments required under Section 5A-12.4 of the Code.

B) Assessment payments postmarked on the due date will be considered as paid on time. Upon notification to the Department of approval of the payment methodologies required under Section 5A-12.4 of the Code and the waiver granted under 42 CFR 433.68, if necessary, all installments otherwise due under subsection (b)(3)

of this Section prior to the date of notification shall be due and payable to the Department upon written direction from the Department and issuance by the Comptroller of the payments required under Section 5A-12.4 of the Code.

3) The assessment imposed under Section 5A-2 of the Code for State fiscal year 2019 and each subsequent State fiscal year shall be due and payable in monthly installments, each equaling one-twelfth of the assessment for the year, on the 14th State business day of each month.

A) No installment payment of an assessment imposed by Section 5A-2 of the Code shall be due and payable, however, until after:

i) The Department notifies the hospital provider, in writing, that the payment methodologies to hospitals required under Section 5A-12.6 of the Code have been approved by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services, and the waiver under 42 CFR 433.68 for the assessment imposed by Section 5A-2 of the Code, if necessary, has been granted by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services; and

ii) The Comptroller has issued the payments required under Section 5A-12.6 of the Code.

B) Upon notification to the Department of approval of the payment methodologies required under Section 5A-12.6 of the Code and the waiver granted under 42 CFR 433.68, if necessary, all installments otherwise due under subsection (b)(3) prior to the date of notification shall be due and payable to the Department upon written direction from the Department and issuance by the Comptroller of the payments required under Section 5A-12.6 of the Code.

4~~3~~) Any assessment amount that is due and payable to the Department more frequently than once per calendar quarter shall be remitted to the Department by the hospital provider by means of electronic funds transfer. The Department may provide for remittance by other means if the amount

due is less than $10,000 or electronic funds transfer is unavailable for this purpose.

54) All payments received by the Department shall be credited first to unpaid installment amounts (rather than to penalty or interest), beginning with the most delinquent installments.

d) Notice Requirements, Penalty, and Maintenance of Records

1) The Department shall send a notice of assessment to every hospital provider subject to an assessment under subsection (b), except that no notice shall be sent for the outpatient assessment imposed under subsection (b)(3) until the Department receives written notice that the payment methodologies to hospitals required under Section 5A-12.4 of the Code has been approved and the waiver under 42 CFR 433.68, if necessary, has been granted by CMMS.

2) If a hospital provider conducts, operates, or maintains more than one hospital licensed by the Illinois Department of Public Health, a separate notice shall be sent for each hospital.

e) Procedure for Partial Year Reporting/Operating Adjustments

1) Cessation of business during the fiscal year in which the assessment is being paid. If a hospital provider ceases to conduct, operate, or maintain a hospital for which the person is subject to assessment under subsection (b), the assessment for the State fiscal year in which the cessation occurs shall be adjusted by multiplying the assessment computed under subsection (d) by a fraction, the numerator of which is the number of days in the year during which the provider conducts, operates, or maintains the hospital and the denominator of which is 365. Immediately upon ceasing to conduct, operate or maintain a hospital, the person shall pay the assessment for the year as adjusted (to the extent not previously paid).

2) Commencing of business during the fiscal year in which the assessment is being paid. A hospital provider who commences conducting, operating, or maintaining a hospital for which the person is subject to assessment under subsection (b), upon notice by the Department, shall pay the assessment under subsection (d) as computed by the Department in installments on the

due dates stated on the notices and on the regular installment due dates for the State fiscal year occurring after the due date of the initial assessment notice. For State fiscal years 2009 through 2018, in the case of a hospital provider that did not conduct, operate or maintain a hospital in 2005, the inpatient assessment for that State fiscal year shall be computed on the basis of hypothetical occupied bed days for the full calendar year as determined by the Department. For the portion of State fiscal year 2012 beginning June 10, 2012 through June 30, 2012, and for State fiscal years 2013 through 2018, in the case of a hospital provider that did not conduct, operate or maintain a hospital in 2009, the outpatient assessment imposed under subsection (b)(3) shall be computed on the basis of hypothetical gross outpatient revenue for the full calendar year as determined by the Department. The assessment determination made by the Department is final.

3) Partial Calendar Year Operation Adjustment. For a hospital provider that did not conduct, operate, or maintain a hospital throughout the entire calendar year reporting period, the assessment for the State fiscal year shall be annualized for the portion of the reporting period the hospital was operational (dividing the assessment due by the number of days the hospital was in operation and then multiplying the amount by 365). Information reported by a prior provider from the same hospital during the calendar year shall be used in the annualization equation, if available.

4) Notwithstanding any other provision in this Section, for State fiscal years 2019 through 2024, in the case of a hospital provider that did not conduct, operate, or maintain a hospital in the year that is the basis of the calculation of the assessment under this Section, the assessment under subsection (b) for the State fiscal year shall be computed on the basis of hypothetical occupied bed days for the full calendar year as determined by the Illinois Department, except that for a hospital provider that did not have a 2015 Medicare cost report, but paid an assessment in State fiscal year 2018 on the basis of hypothetical data, that assessment amount shall be used for State fiscal years 2019 and 2020; however, for State fiscal year 2020, the assessment amount shall be increased by the proportion that it represents of the total annual assessment that is generated from all hospitals in order to generate $6,250,000 in the aggregate for that period from all hospitals subject to the annual assessment under this Section.

5) Notwithstanding any other provision in this Section, for State fiscal years 2019 through 2024, in the case of a hospital provider that did not conduct, operate, or maintain a hospital in the year that is the basis of the calculation of the assessment under this Section, the assessment under subsection (b) for that State fiscal year shall be computed on the basis of hypothetical gross outpatient revenue for the full calendar year as determined by the Illinois Department, except that for a hospital provider that did not have a 2015 Medicare cost report, but paid an assessment in State fiscal year 2018 on the basis of hypothetical data, that assessment amount shall be used for State fiscal years 2019 and 2020; however, for State fiscal year 2020, the assessment amount shall be increased by the proportion that it represents of the total annual assessment that is generated from all hospitals in order to generate $6,250,000 in the aggregate for that period from all hospitals subject to the annual assessment under this Section.

64) Change in Ownership and/or Operators. The full quarterly installment must be paid on the designated due dates regardless of changes in ownership or operators. Liability for the payment of the assessment amount (including past due assessments and any interest or penalties that may have accrued against the amount) rests on the hospital provider currently operating or maintaining the hospital regardless if these amounts were incurred by the current owner or were incurred by previous owners. Collection of delinquent assessment fees from previous providers will be made against the current provider. Failure of the current provider to pay any outstanding assessment liabilities incurred by previous providers shall result in the application of penalties described in subsection (f)(1).

f) Penalties

1) Any hospital that fails to pay the full amount of an installment when due shall be charged, unless waived by the Department for reasonable cause, a penalty equal to 5% of the amount of the installment not paid on or before the due date, plus 5% of the portion remaining unpaid on the last day of each monthly period thereafter, not to exceed 100% of the installment amount not paid on or before the due date. Waiver due to reasonable cause may include but is not limited to:

A) provider has not been delinquent on payment of an assessment due, within the last three calendar years from the time the delinquency occurs.

B) provider can demonstrate to the Department's satisfaction that a payment was made prior to the due date.

C) provider is a new owner/operator and the late payment occurred in the quarter in which the new owner/operator assumed control of the facility.

2) Within 30 days after the due date, the Department may begin recovery actions against delinquent hospitals participating in the Medicaid Program. Payments may be withheld from the hospital until the entire assessment, including any interest and penalties, is satisfied or until a reasonable repayment schedule has been approved by the Department. If a reasonable agreement cannot be reached or if a hospital fails to comply with an agreement, the Department reserves the right to recover any outstanding provider assessment, interest and penalty by recouping the amount or a portion thereof from the hospital's future payments from the Department. The provider may appeal this recoupment in accordance with the Department's rules at 89 Ill. Adm. Code 104. The Department has the right to continue recoupment during the appeal process. Penalties pursuant to subsection (f)(1) will continue to accrue during the recoupment process. Recoupment proceedings against the same hospital two times in a fiscal year may be cause for termination from the Medicaid Program. Failure by the Department to initiate recoupment activities within 30 days shall not reduce the provider's liabilities nor shall it preclude the Department from taking action at a later date.

3) If the hospital does not participate in the Medicaid Program, or is no longer doing business with the Department, or the Department cannot recover the full amount due through the claims processing system, within three months after the fee due date, the Department may begin legal action to recover the monies, including penalties and interest owed, plus court costs.

g) Delayed Payment – Groups of Hospitals
The Department may establish delayed payment of assessments and/or waive the

payment of interest and penalties for groups of hospitals such as disproportionate share hospitals or all other hospitals when:

1) The State delays payments to hospitals due to problems related to State cash flow; or

2) A cash flow bond pool's, or any other group financing plans', requests from providers for loans are in excess of its scheduled proceeds such that a significant number of hospitals will be unable to obtain a loan to pay the assessment.

h) Delayed Payment – Individual Hospitals
In addition to the provisions of subsection (g), the Department may delay assessments for individual hospitals that are unable to make timely payments under this Section due to financial difficulties. No delayed payment arrangements shall extend beyond the last business day of the calendar quarter following the quarter in which the assessment was to have been received by the Department as described in subsection (c). The request must be received by the Department prior to the due date of the assessment.

1) Criteria. Delayed payment provisions may be instituted only under extraordinary circumstances. Delayed payment provisions may be made only to qualified hospitals who meet all of the following requirements:

A) The provider has experienced an emergency that necessitates institution of delayed payment provisions. Emergency in this instance is defined as a circumstance under which institution of the payment and penalty provisions described in subsections (c)(1), (c)(2), (f)(1) and (f)(2) would impose severe and irreparable harm to the clients served. Circumstances that may create these emergencies include, but are not limited to, the following:

i) Department system errors (either automated system or clerical) that have precluded payments, or that have caused erroneous payments such that the provider's ability to provide further services to clients is severely impaired;

ii) Cash flow problems encountered by a provider that are unrelated to Department technical system problems and

that result in extensive financial problems to a facility, adversely impacting on its ability to serve its clients.

B) The provider serves a significant number of clients under the medical assistance program. "Significant" in this instance means:

i) A hospital that serves a significant number of clients under the medical assistance program; significant in this instance means that the hospital qualifies as a disproportionate share hospital (DSH) under 89 Ill. Adm. Code 148.120(a)(1) through 148.120(a)(2); or qualifies as a Medicare DSH hospital under the current federal guidelines.

ii) A government-owned facility that meets the cash flow criterion under subsection (h)(1)(A)(ii).

iii) A hospital that has filed for Chapter 11 bankruptcy and that meets the cash flow criterion under subsection (h)(1)(A)(ii).

C) The provider must ensure that a delay of payment request, as defined under subsection (h)(3)(A), is received by the Department prior to the payment due date, and the request must include a Cash Position Statement that is based upon current assets, current liabilities and other data for a date that is less than 60 days prior to the date of filing. Any liabilities payable to owners or related parties must not be reported as current liabilities on the Cash Position Statement. A deferral of assessment payments will be denied if any of the following criteria are met:

i) The ratio of current assets divided by current liabilities is greater than 2.0.

ii) Cash, short term investments and long term investments equal or exceed the total of accrued wages payable and the assessment payment. Long term investments that are unavailable for expenditure for current operations due to donor restrictions or contractual requirements will not be used in this calculation.

D) The provider must show evidence of denial of an application to borrow assessment funds through a cash flow bond pool or financial institutions such as a commercial bank. The denial must be 90 days old or less.

E) The provider must sign an agreement with the Department that specifies the terms and conditions of the delayed payment provisions. The agreement shall contain the following provisions:

i) Specific reasons for institution of the delayed payment provisions;

ii) Specific dates on which payments must be received and the amount of payment that must be received on each specific date described;

iii) The interest or a statement of interest waiver as described in subsection (h)(5) that shall be due from the provider as a result of institution of the delayed payment provisions;

iv) A certification stating that, should the entity be sold, the new owners will be made aware of the liability and any agreement selling the entity will include provisions that the new owners will assume responsibility for repaying the debt to the Department according to the original agreement;

v) A certification stating that all information submitted to the Department in support of the delayed payment request is true and accurate to the best of the signator's knowledge; and

vi) Other terms and conditions that may be required by the Department.

2) A hospital that does not meet the above criteria may request a delayed payment schedule. The Department may approve the request, notwithstanding the hospital not meeting the above criteria, upon a sufficient showing of financial difficulties and good cause by the hospital. If the request for a delayed payment schedule is approved, all other

conditions of this subsection (h) shall apply.

3) Approval Process

A) In order to receive consideration for delayed payment provisions, providers must ensure their request is received by the Department prior to the payment due date, in writing (telefax requests are acceptable) to the Bureau of Hospital and Provider Services. The request must be received by the date designated by the Department. Providers will be notified, in writing, as to the due dates for submitting delay of payment requests. Requests must be complete and contain all required information before they are considered to have met the time requirements for filing a delayed payment request. All telefax requests must be followed up with original written requests, postmarked no later than the date of the telefax. The request must include:

i) An explanation of the circumstances creating the need for the delayed payment provisions;

ii) Supportive documentation to substantiate the emergency nature of the request including a cash position statement as defined in subsection (h)(1)(C), a denial of application to borrow the assessment as defined in subsection (h)(1)(D) and an explanation of the risk of irreparable harm to the clients; and

iii) Specification of the specific arrangements requested by the provider.

B) The hospital shall be notified by the Department, in writing prior to the assessment due date, of the Department's decision with regard to the request for institution of delayed payment provisions. An agreement shall be issued to the provider for all approved requests. The agreement must be signed by the administrator, owner, chief executive officer or other authorized representative and be received by the Department prior to the first scheduled payment date listed in such agreement.

4) Waiver of Penalties. The penalties described in subsections (f)(1) and (f)(2) may be waived upon approval of the provider's request for institution of delayed payment provisions. In the event a provider's request for institution of delayed payment provisions is approved and the Department has received the signed agreement in accordance with subsection (h)(3)(B), the penalties shall be permanently waived for the subject quarter unless the provider fails to meet all of the terms and conditions of the agreement. In the event the provider fails to meet all of the terms and conditions of the agreement, the agreement shall be considered null and void and the penalties shall be fully reinstated.

5) Interest. The delayed payments shall include interest at a rate not to exceed the State of Illinois borrowing rate. The applicable interest rate shall be identified in the agreement described in subsection (h)(1)(E). The interest may be waived by the Department if the facility's current ratio, as described in subsection (h)(1)(C), is 1.5 or less and the hospital meets the criteria in subsections (h)(1)(A) and (B). Any waivers granted shall be expressly identified in the agreement described in subsection (h)(1)(E).

6) Subsequent Delayed Payment Arrangements. Once a provider has requested and received approval for delayed payment arrangements, the provider shall not receive approval for subsequent delayed payment arrangements until such time as the terms and conditions of any current delayed payment agreement have been satisfied or unless the provider is in full compliance with the terms of the current delayed payment agreement. The waiver of penalties described in subsection (h)(4) shall not apply to a provider that has not satisfied the terms and conditions of any current delayed payment agreement.

i) Administration and Enforcement Provisions

The Department shall establish and maintain a listing of all hospital providers appearing in the licensing records of the Department of Public Health, which shall show each provider's name and principal place of business and the name and address of each hospital operated, conducted, or maintained by the provider in this State. The Department shall administer and enforce Sections 5A-1, 2, 3, 4, 5, 7, 8, 10, ~~and~~ 12, 15, and 16 of the Code and collect the assessments and penalty assessments imposed under Sections 5A-2 and 4 of the Code. The Department, its Director, and every hospital provider subject to assessment measured by occupied bed days shall have the following powers, duties and rights:

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1) The Department may initiate either administrative or judicial proceedings, or both, to enforce the provisions of Sections 5A-1, 2, 3, 4, 5, 7, 8, 10, ~~and~~ 12, 15 and 16 of the Code. Administrative enforcement proceedings initiated shall be governed by the Department's rules at 89 Ill. Adm. Code 104.200 through 104.330. Judicial enforcement proceedings initiated shall be governed by the rules of procedure applicable in the courts of this State.

2) No proceedings for collection, refund, credit, or other adjustment of an assessment amount shall be issued more than three years after the due date of the assessment, except in the case of an extended period agreed to in writing by the Department and the hospital provider before the expiration of this limitation period.

3) Any unpaid assessment under Section 5A-2 of the Code shall become a lien upon the assets of the hospital upon which it was assessed. If any hospital provider, outside the usual course of its business, sells or transfers the major part of any one or more of the real property and improvements, the machinery and equipment, or the furniture or fixtures of any hospital that is subject to the provisions of Sections 5A-1, 2, 3, 4, 5, 7, 8, 10, ~~and~~ 12, 15 and 16 of the Code, the seller or transferor shall pay the Department the amount of any assessment, assessment penalty, and interest (if any) due from it under Sections 5A-2 and 4 of the Code up to the date of the sale or transfer. If the seller or transferor fails to pay any assessment, assessment penalty, and interest (if any) due, the purchaser or transferee of the asset shall be liable for the amount of the assessment, penalties and interest (if any) up to the amount of the reasonable value of the property acquired by the purchaser or transferee. The purchaser or transferee shall continue to be liable until the purchaser or transferee pays the full amount of the assessment, penalties, and interest (if any) up to the amount of the reasonable value of the property acquired by the purchaser or transferee or until the purchaser or transferee receives from the Department a certificate showing that the assessment, penalty and interest have been paid or a certificate from the Department showing that no assessment, penalty or interest is due from the seller or transferor under Sections 5A-2, 4 and 5 of the Code.

4) Payments under Section 5A-4 of the Code are not subject to the Illinois Prompt Payment Act [30 ILCS 540]. Credits or refunds shall not bear

interest.

5) In addition to any other remedy provided for and without sending a notice of assessment liability, the Department may collect an unpaid assessment by withholding, as payment of the assessment, reimbursements or other amounts otherwise payable by the Department to the hospital provider.

j) Exemptions
The following classes of providers are exempt from the assessment imposed under Section 5A-4 of the Code unless the exemption is adjudged to be unconstitutional or otherwise invalid:

1) A hospital provider that is a State agency, a State university, or a county with a population of 3,000,000 or more.

2) A hospital provider that is a county with a population of less than 3,000,000 or a township, municipality, hospital district, or any other local governmental unit.

k) Nothing in Section 5A-4 of the Code shall be construed to prevent the Department from collecting all amounts due under this Section pursuant to an assessment imposed before February 3, 2004.

l) Definitions
As used in this Section, unless the context requires otherwise:

1) "ACA Assessment Adjustment" means:

A) For the period of July 1, 2016 through December 31, 2016, the product of .19125 multiplied by the sum of the fee-for-service payments to hospitals authorized under Section 5A-12.5 of the Code and the adjustments authorized under Section 5A-12.2(t) of the Code to managed care organizations for hospital services due and payable in the month of April 2016 multiplied by 6.

B) For the period of January 1, 2017 through June 30, 2017, the product of .19125 multiplied by the sum of the fee-for-service payments to hospitals authorized under Section 5A-12.5 of the Code and the adjustments authorized under Section 5A-12.2(t) to

managed care organizations for hospital services due and payable in the month of October 2016 multiplied by 6, except that the amount calculated under this subsection (l)(1)(B) shall be adjusted, either positively or negatively, to account for the difference between the actual payments issued under Code Section 5A-12.5 for the period beginning July 1, 2016 through December 31, 2016 and the estimated payments due and payable in the month of April 2016 multiplied by 6 as described in subsection (l)(1)(A).

C) For the period of July 1, 2017 through December 31, 2017, the product of .19125 multiplied by the sum of the fee-for-service payments to hospitals authorized under Section 5A-12.5 of the Code and the adjustments authorized under Section 5A-12.2(t) of the Code to managed care organizations for hospital services due and payable in the month of April 2017 multiplied by 6, except that the amount calculated under this subsection (l)(1)(C) shall be adjusted, either positively or negatively, to account for the difference between the actual payments issued under Code Section 5A-12.5 for the period beginning January 1, 2017 through June 30, 2017 and the estimated payments due and payable in the month of October 2016 multiplied by 6 as described in subsection (l)(1)(B).

D) For the period of January 1, 2018 through June 30, 2018, the product of .19125 multiplied by the sum of the fee-for-service payments to hospitals authorized under Section 5A-12.5 of the Code and the adjustments authorized under Section 5A-12.2(t) of the Code to managed care organizations for hospital services due and payable in the month of October 2017 multiplied by 6, except that:

i) the amount calculated under this subsection (l)(1)(D) shall be adjusted, either positively or negatively, to account for the difference between the actual payments issued under Code Section 5A-12.5 for the period of July 1, 2017 through December 31, 2017 and the estimated payments due and payable in the month of April 2017 multiplied by 6 as described in subsection (l)(1)(C); and

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ii) the amount calculated under this subsection (l)(1)(D) shall be adjusted to include the product of .19125 multiplied by the sum of the fee-for-service payments, if any, estimated to be paid to hospitals under Section 5A-12.5(b) of the Code.

2) "CMMS" means the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services.

3) "Department" means the Illinois Department of Healthcare and Family Services.

4) "Fund" means the Hospital Provider Fund.

5) "HCRIS" means the federal Centers for Medicare and Medicaid Services Healthcare Cost Report Information System.

6) "Hospital" means an institution, place, building, or agency located in this State that is subject to licensure by the Illinois Department of Public Health under the Hospital Licensing Act, whether public or private and whether organized for profit or not-for-profit.

7) "Hospital Provider" means a person licensed by the Department of Public Health to conduct, operate, or maintain a hospital, regardless of whether the person is a Medicaid provider. For purposes of this definition, "person" means any political subdivision of the State, municipal corporation, individual, firm, partnership, corporation, company, limited liability company, association, joint stock association or trust, or a receiver, executor, trustee, guardian, or other representative appointed by order of any court.

8) "Inpatient Gross Revenue" means total inpatient gross revenue, as reported on the HCRIS Worksheet C, Part 1, Column 6, Line 101, less the sum of the following lines (including any subset lines of these lines):

A) Line 34: Skilled Nursing Facility.

B) Line 35: Other Nursing Facility.

C) Line 35.01: Intermediate Care Facility for the Mentally Retarded.

D) Line 36: Other Long Term Care.

E) Line 45: PBC Clinical Laboratory Services – Program Only.

F) Line 60: Clinic.

G) Line 63: Other Outpatient Services.

H) Line 64: Home Program Dialysis.

I) Line 65: Ambulance Services.

J) Line 66: Durable Medical Equipment – Rented.

K) Line 67: Durable Medical Equipment – Sold.

L) Line 68: Other Reimbursable.

9) "Medicare Bed Days" means, for each hospital, the sum of the number of days that each bed was occupied by a patient who was covered by Title XVIII of the Social Security Act, excluding days attributable to the routine services provided to persons receiving skilled or intermediate long term care services. Medicare bed days shall be computed separately for each hospital operated or maintained by a hospital provider.

10) "Medicare Gross Inpatient Revenue" means the sum of the following:

A) The sum of the following lines from the HCRIS Worksheet D-4, Column 2 (excluding the Medicare gross revenue attributable to the routine services provided to patients in a psychiatric hospital, a rehabilitation hospital, a distinct part psychiatric unit, a distinct part rehabilitation unit or swing beds):

i) Line 25: Adults and Pediatrics.

ii) Line 26: Intensive Care Unit.

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iii) Line 27: Coronary Care Unit.

iv) Line 28: Burn Intensive Care Unit.

v) Line 29: Surgical Intensive Care Unit.

vi) Line 30: Other Special Care Unit.

B) From Worksheet D-4, Column 2, the amount from Line 103 less the sum of Lines 60, 63, 64, 66, 67 and 68 (and any subset lines of these lines).

C) The amount from Worksheet D-6, Part 3, Column 3, Line 53.

11) "Medicare Gross Outpatient Revenue" means the amount from the HCRIS Worksheet D, Part V, Line 101, Columns 5, 5.01, 5.02, 5.03 and 5.04 less the sum of Lines 45, 60, 63, 64, 65, 66 and 67 (and any subset lines of these lines).

12) "Occupied Bed Days" means the sum of the number of days that each bed was occupied by a patient for all beds, excluding beds classified as long term care beds and assessed a licensed bed fee during calendar year 2001. Occupied bed days shall be computed separately for each hospital operated or maintained by a hospital provider.

13) "Outpatient Gross Revenue" (prior to State fiscal year 2019 from Medicare 2552-96 cost reports) means, for each hospital, its total gross charges attributed to outpatient services as reported on the Medicare cost report at Worksheet C, Part I, Column 7, Line 101 less the sum of lines 45, 60, 63, 64, 65, 66, 67 and 68 (and any subset lines of these lines).

14) "Outpatient Gross Revenue" (for State fiscal year 2019 and thereafter from Medicare 2552-10 cost reports) means, for each hospital, its total gross charges attributed to outpatient services as reported on the Medicare cost report at Worksheet C, Part I, Column 7, Line 200 less the sum of lines 61, 90, 94, 95, 96, 97, 99, 100, 101, 115, 116, and 117 (and any subset lines of these lines).

(Source: Amended at 42 Ill. Reg. 22352, effective November 28, 2018)

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SUBPART D: PAYMENT FOR NON-INSTITUTIONAL SERVICES

Section 140.421 Limitations on Dental Services

Effective for dates of service on or after July 1, 2014:

a) The Department shall impose prior approval requirements to determine the medical necessity of dental services listed in this Section. Prior approval is required for:

1) Crowns;

2) Partial Pulpotomy;

3) Periodontal services, except full mouth debridement for diagnostic purposes, ages 0-20;

4) Apexification and recalcification;

5) Apicoectomy;

6) Dentures, partial dentures and denture relines;

7) Maxillofacial prosthetics;

8) Prosthodontics;

9) Removal of impacted teeth;

10) Surgical removal of residual roots;

11) Surgical exposure to aid eruption;

12) Alveoloplasty;

13) Incision and drainage of abscess;

14) Removal of cysts or tumors;

15) Frenulectomy;

16) Orthodontics. Effective January 1, 2017, medically necessary orthodontic treatment is approved only for patients under the age of 21 and is defined as:

A) treatment necessary to correct a condition that scores 28 points or more on the Handicapping Labio-Lingual Deviation Index (HLD); or

B) treatment necessary to correct the following conditions:

i) Cleft palate;

ii) Deep impinging bite with signs of tissue damage, not just touching palate;

iii) Anterior crossbite with gingival recession;~~and~~

iv) Severe traumatic deviation (i.e., accidents, tumors, etc.; attach description) and

v) Effective January 1, 2019, impacted maxillary central incisor;

17) General anesthesia, conscious sedation or deep sedation;

18) Therapeutic drug injection;

19) Other drugs and medicaments;

20) Unspecified miscellaneous adjunctive general services or procedures;

21) Dental services not listed in Table D.

b) The dentist may request post-approval when a dental procedure requiring prior approval is provided on an emergency basis. Approval of the procedures shall be given if the dental procedure is medically necessary.

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(Source: Amended at 42 Ill. Reg. 22352, effective November 28, 2018)

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1) Heading of the Part: Hospital Services

2) Code Citation: 89 Ill. Adm. Code 148

3)

Section Numbers:	Adopted Actions:
148.25	Amendment
148.100	Amendment
148.105	Amendment
148.115	Amendment
148.116	Amendment
148.117	Amendment
148.126	Amendment
148.140	Amendment
148.160	Amendment
148.170	Amendment
148.295	Amendment
148.296	Amendment
148.297	Repealed
148.299	Amendment
148.401	New Section
148.402	New Section
148.403	New Section
148.404	New Section
148.405	New Section
148.406	New Section
148.407	New Section
148.408	New Section
148.409	New Section
148.410	New Section
148.411	New Section
148.412	New Section
148.413	New Section
148.414	New Section
148.415	New Section
148.416	New Section
148.417	New Section
148.418	New Section
148.419	New Section
148.420	New Section

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148.436	Repealed
148.440	Repealed
148.442	Repealed
148.444	Repealed
148.446	Repealed
148.448	Repealed
148.450	Repealed
148.452	Repealed
148.454	Repealed
148.456	Repealed
148.458	Repealed
148.464	Repealed
148.466	Repealed
148.468	Repealed
148.470	Repealed
148.472	Repealed
148.474	Repealed
148.476	Repealed
148.478	Repealed
148.480	Repealed
148.482	Repealed
148.484	Repealed
148.486	Repealed

4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]

5) Effective Date of Rules: November 29, 2018

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

7) Does this rulemaking contain incorporations by reference? No

8) A copy of the adopted rules, including any materials incorporated by reference, is on file in the Agency's principal office and is available for public inspection.

9) Notice of Proposal published in the *Illinois Register*: 42 Ill. Reg. 13415; July 13, 2018

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

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11) Differences Between Proposal and Final Version: JCAR suggested stylistic changes including: adding commas, periods, semicolons and hyphens; changing commas to semicolons; correcting cross references; reordering sentences for clarity purposes; correcting word tenses; correcting capitalization errors; deleting repetitive words, and correcting word choices and punctuation to comply with the Style Manual for the Illinois Administrative Code and *Illinois Register*. Additionally, the drafting error in Section 148.140 was remedied by adding the psychiatric EAPG standardized amount in effect July 1, 2018 and correcting references to rehabilitation EAPG standardized amount.

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

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

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

15) Summary and Purpose of Rulemaking: This amendment implements a new hospital provider assessment and new hospital payment methodologies pursuant to PA 100-581 and PA 100-580.

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

Christopher Gange
Acting General Counsel
Illinois Department of Healthcare and Family Services
201 South Grand Avenue East, 3rd Floor
Springfield IL 62763-0002

HFS.Rules@Illinois.gov

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

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TITLE 89: SOCIAL SERVICES
CHAPTER I: DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES
SUBCHAPTER d: MEDICAL PROGRAMS

PART 148
HOSPITAL SERVICES

SUBPART A: GENERAL PROVISIONS

Section

SUBPART B: REIMBURSEMENT AND RELATED PROVISIONS

Section

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SUBPART C: SEXUAL ASSAULT EMERGENCY TREATMENT PROGRAM

SUBPART D: STATE CHRONIC RENAL DISEASE PROGRAM

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AUTHORITY: Implementing and authorized by Articles III, IV, V and VI and Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. III, IV, V and VI and 12-13].

SOURCE: Sections 148.10 thru 148.390 recodified from 89 Ill. Adm. Code 140.94 thru 140.398 at 13 Ill. Reg. 9572; Section 148.120 recodified from 89 Ill. Adm. Code 140.110 at 13 Ill. Reg. 12118; amended at 14 Ill. Reg. 2553, effective February 9, 1990; emergency amendment at 14 Ill. Reg. 11392, effective July 1, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 15358, effective September 13, 1990; amended at 14 Ill. Reg. 16998, effective October 4, 1990; amended at 14 Ill. Reg. 18293, effective October 30, 1990; amended at 14 Ill. Reg. 18499, effective November 8, 1990; emergency amendment at 15 Ill. Reg. 10502, effective July 1, 1991, for a maximum of 150 days; emergency expired October 29, 1991; emergency amendment at 15 Ill. Reg. 12005, effective August 9, 1991, for a maximum of 150 days; emergency expired January 6, 1992; emergency amendment at 15 Ill. Reg. 16166, effective November 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 18684, effective December 23, 1991; amended at 16 Ill. Reg. 6255, effective March 27, 1992; emergency amendment at 16 Ill. Reg. 11335,

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effective June 30, 1992, for a maximum of 150 days; emergency expired November 27, 1992; emergency amendment at 16 Ill. Reg. 11942, effective July 10, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 14778, effective October 1, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 19873, effective December 7, 1992; amended at 17 Ill. Reg. 131, effective December 21, 1992; amended at 17 Ill. Reg. 3296, effective March 1, 1993; amended at 17 Ill. Reg. 6649, effective April 21, 1993; amended at 17 Ill. Reg. 14643, effective August 30, 1993; emergency amendment at 17 Ill. Reg. 17323, effective October 1, 1993, for a maximum of 150 days; amended at 18 Ill. Reg. 3450, effective February 28, 1994; emergency amendment at 18 Ill. Reg. 12853, effective August 2, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 14117, effective September 1, 1994; amended at 18 Ill. Reg. 17648, effective November 29, 1994; amended at 19 Ill. Reg. 1067, effective January 20, 1995; emergency amendment at 19 Ill. Reg. 3510, effective March 1, 1995, for a maximum of 150 days; emergency expired July 29, 1995; emergency amendment at 19 Ill. Reg. 6709, effective May 12, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 10060, effective June 29, 1995; emergency amendment at 19 Ill. Reg. 10752, effective July 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 13009, effective September 5, 1995; amended at 19 Ill. Reg. 16630, effective November 28, 1995; amended at 20 Ill. Reg. 872, effective December 29, 1995; amended at 20 Ill. Reg. 7912, effective May 31, 1996; emergency amendment at 20 Ill. Reg. 9281, effective July 1, 1996, for a maximum of 150 days; emergency amendment at 20 Ill. Reg. 12510, effective September 1, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 15722, effective November 27, 1996; amended at 21 Ill. Reg. 607, effective January 2, 1997; amended at 21 Ill. Reg. 8386, effective June 23, 1997; emergency amendment at 21 Ill. Reg. 9552, effective July 1, 1997, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 9822, effective July 2, 1997, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 10147, effective August 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 13349, effective September 23, 1997; emergency amendment at 21 Ill. Reg. 13675, effective September 27, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 16161, effective November 26, 1997; amended at 22 Ill. Reg. 1408, effective December 29, 1997; amended at 22 Ill. Reg. 3083, effective January 26, 1998; amended at 22 Ill. Reg. 11514, effective June 22, 1998; emergency amendment at 22 Ill. Reg. 13070, effective July 1, 1998, for a maximum of 150 days; emergency amendment at 22 Ill. Reg. 15027, effective August 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 16273, effective August 28, 1998; amended at 22 Ill. Reg. 21490, effective November 25, 1998; amended at 23 Ill. Reg. 5784, effective April 30, 1999; amended at 23 Ill. Reg. 7115, effective June 1, 1999; amended at 23 Ill. Reg. 7908, effective June 30, 1999; emergency amendment at 23 Ill. Reg. 8213, effective July 1, 1999, for a maximum of 150 days; emergency amendment at 23 Ill. Reg. 12772, effective October 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 13621, effective November 1, 1999; amended at 24 Ill. Reg. 2400, effective February 1, 2000; amended at 24 Ill. Reg. 3845, effective February 25, 2000; emergency amendment at 24 Ill. Reg. 10386, effective July 1, 2000, for a maximum of 150 days;

amended at 24 Ill. Reg. 11846, effective August 1, 2000; amended at 24 Ill. Reg. 16067, effective October 16, 2000; amended at 24 Ill. Reg. 17146, effective November 1, 2000; amended at 24 Ill. Reg. 18293, effective December 1, 2000; amended at 25 Ill. Reg. 5359, effective April 1, 2001; emergency amendment at 25 Ill. Reg. 5432, effective April 1, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 6959, effective June 1, 2001; emergency amendment at 25 Ill. Reg. 9974, effective July 23, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 10513, effective August 2, 2001; emergency amendment at 25 Ill. Reg. 12870, effective October 1, 2001, for a maximum of 150 days; emergency expired February 27, 2002; amended at 25 Ill. Reg. 16087, effective December 1, 2001; emergency amendment at 26 Ill. Reg. 536, effective December 31, 2001, for a maximum of 150 days; emergency amendment at 26 Ill. Reg. 680, effective January 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 4825, effective March 15, 2002; emergency amendment at 26 Ill. Reg. 4953, effective March 18, 2002, for a maximum of 150 days; emergency amendment repealed at 26 Ill. Reg. 7786, effective July 1, 2002; emergency amendment at 26 Ill. Reg. 7340, effective April 30, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 8395, effective May 28, 2002; emergency amendment at 26 Ill. Reg. 11040, effective July 1, 2002, for a maximum of 150 days; emergency amendment repealed at 26 Ill. Reg. 16612, effective October 22, 2002; amended at 26 Ill. Reg. 12322, effective July 26, 2002; amended at 26 Ill. Reg. 13661, effective September 3, 2002; amended at 26 Ill. Reg. 14808, effective September 26, 2002; emergency amendment at 26 Ill. Reg. 14887, effective October 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 17775, effective November 27, 2002; emergency amendment at 27 Ill. Reg. 580, effective January 1, 2003, for a maximum of 150 days; emergency amendment at 27 Ill. Reg. 866, effective January 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 4386, effective February 24, 2003; emergency amendment at 27 Ill. Reg. 8320, effective April 28, 2003, for a maximum of 150 days; emergency amendment repealed at 27 Ill. Reg. 12121, effective July 10, 2003; amended at 27 Ill. Reg. 9178, effective May 28, 2003; emergency amendment at 27 Ill. Reg. 11041, effective July 1, 2003, for a maximum of 150 days; emergency amendment at 27 Ill. Reg. 16185, effective October 1, 2003, for a maximum of 150 days; emergency amendment at 27 Ill. Reg. 16268, effective October 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 18843, effective November 26, 2003; emergency amendment at 28 Ill. Reg. 1418, effective January 8, 2004, for a maximum of 150 days; emergency amendment at 28 Ill. Reg. 1766, effective January 10, 2004, for a maximum of 150 days; emergency expired June 7, 2004; amended at 28 Ill. Reg. 2770, effective February 1, 2004; emergency amendment at 28 Ill. Reg. 5902, effective April 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 7101, effective May 3, 2004; amended at 28 Ill. Reg. 8072, effective June 1, 2004; emergency amendment at 28 Ill. Reg. 8167, effective June 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 9661, effective July 1, 2004; emergency amendment at 28 Ill. Reg. 10157, effective July 1, 2004, for a maximum of 150 days; emergency amendment at 28 Ill. Reg. 12036, effective August 3, 2004, for a maximum of 150 days; emergency expired December 30, 2004; emergency

amendment at 28 Ill. Reg. 12227, effective August 6, 2004, for a maximum of 150 days; emergency expired January 2, 2005; amended at 28 Ill. Reg. 14557, effective October 27, 2004; amended at 28 Ill. Reg. 15536, effective November 24, 2004; amended at 29 Ill. Reg. 861, effective January 1, 2005; emergency amendment at 29 Ill. Reg. 2026, effective January 21, 2005, for a maximum of 150 days; amended at 29 Ill. Reg. 5514, effective April 1, 2005; emergency amendment at 29 Ill. Reg. 5756, effective April 8, 2005, for a maximum of 150 days; emergency amendment repealed by emergency rulemaking at 29 Ill. Reg. 11622, effective July 5, 2005, for the remainder of the 150 days; amended at 29 Ill. Reg. 8363, effective June 1, 2005; emergency amendment at 29 Ill. Reg. 10275, effective July 1, 2005, for a maximum of 150 days; emergency amendment at 29 Ill. Reg. 12568, effective August 1, 2005, for a maximum of 150 days; emergency amendment at 29 Ill. Reg. 15629, effective October 1, 2005, for a maximum of 150 days; amended at 29 Ill. Reg. 19973, effective November 23, 2005; amended at 30 Ill. Reg. 383, effective December 28, 2005; emergency amendment at 30 Ill. Reg. 596, effective January 1, 2006, for a maximum of 150 days; emergency amendment at 30 Ill. Reg. 955, effective January 9, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 2827, effective February 24, 2006; emergency amendment at 30 Ill. Reg. 7786, effective April 10, 2006, for a maximum of 150 days; emergency amendment repealed by emergency rulemaking at 30 Ill. Reg. 12400, effective July 1, 2006, for the remainder of the 150 days; emergency expired September 6, 2006; amended at 30 Ill. Reg. 8877, effective May 1, 2006; amended at 30 Ill. Reg. 10393, effective May 26, 2006; emergency amendment at 30 Ill. Reg. 11815, effective July 1, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 18672, effective November 27, 2006; emergency amendment at 31 Ill. Reg. 1602, effective January 1, 2007, for a maximum of 150 days; emergency amendment at 31 Ill. Reg. 1997, effective January 15, 2007, for a maximum of 150 days; amended at 31 Ill. Reg. 5596, effective April 1, 2007; amended at 31 Ill. Reg. 8123, effective May 30, 2007; amended at 31 Ill. Reg. 8508, effective June 1, 2007; emergency amendment at 31 Ill. Reg. 10137, effective July 1, 2007, for a maximum of 150 days; amended at 31 Ill. Reg. 11688, effective August 1, 2007; amended at 31 Ill. Reg. 14792, effective October 22, 2007; amended at 32 Ill. Reg. 312, effective January 1, 2008; emergency amendment at 32 Ill. Reg. 518, effective January 1, 2008, for a maximum of 150 days; emergency amendment at 32 Ill. Reg. 2993, effective February 16, 2008, for a maximum of 150 days; amended at 32 Ill. Reg. 8718, effective May 29, 2008; amended at 32 Ill. Reg. 9945, effective June 26, 2008; emergency amendment at 32 Ill. Reg. 10517, effective July 1, 2008, for a maximum of 150 days; emergency expired November 27, 2008; amended at 33 Ill. Reg. 501, effective December 30, 2008; peremptory amendment at 33 Ill. Reg. 1538, effective December 30, 2008; emergency amendment at 33 Ill. Reg. 5821, effective April 1, 2009, for a maximum of 150 days; emergency expired August 28, 2009; amended at 33 Ill. Reg. 13246, effective September 8, 2009; emergency amendment at 34 Ill. Reg. 15856, effective October 1, 2010, for a maximum of 150 days; emergency expired February 27, 2011; amended at 34 Ill. Reg. 17737, effective November 8, 2010; amended at 35 Ill. Reg. 420, effective December 27, 2010; expedited correction at 38

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Ill. Reg. 12618, effective December 27, 2010; amended at 35 Ill. Reg. 10033, effective June 15, 2011; amended at 35 Ill. Reg. 16572, effective October 1, 2011; emergency amendment at 36 Ill. Reg. 10326, effective July 1, 2012 through June 30, 2013; emergency amendment to Section 148.70(g) suspended at 36 Ill. Reg. 13737, effective August 15, 2012; suspension withdrawn from Section 148.70(g) at 36 Ill. Reg. 18989, December 11, 2012; emergency amendment in response to Joint Committee on Administrative Rules action on Section 148.70(g) at 36 Ill. Reg. 18976, effective December 12, 2012 through June 30, 2013; emergency amendment to Section 148.140(b)(1)(F) suspended at 36 Ill. Reg. 13739, effective August 15, 2012; suspension withdrawn from Section 148.140(b)(1)(F) at 36 Ill. Reg. 14530, September 11, 2012; emergency amendment to Sections 148.140(b) and 148.190(a)(2) in response to Joint Committee on Administrative Rules action at 36 Ill. Reg. 14851, effective September 21, 2012 through June 30, 2013; amended at 37 Ill. Reg. 402, effective December 27, 2012; emergency rulemaking at 37 Ill. Reg. 5082, effective April 1, 2013 through June 30, 2013; amended at 37 Ill. Reg. 10432, effective June 27, 2013; amended at 37 Ill. Reg. 17631, effective October 23, 2013; amended at 38 Ill. Reg. 4363, effective January 29, 2014; amended at 38 Ill. Reg. 11557, effective May 13, 2014; amended at 38 Ill. Reg. 13263, effective June 11, 2014; amended at 38 Ill. Reg. 15165, effective July 2, 2014; emergency amendment at 39 Ill. Reg. 10453, effective July 10, 2015, for a maximum of 150 days; emergency expired December 6, 2015; amended at 39 Ill. Reg. 10824, effective July 27, 2015; amended at 39 Ill. Reg. 16394, effective December 14, 2015; amended at 41 Ill. Reg. 1041, effective January 19, 2017; amended at 42 Ill. Reg. 3152, effective January 31, 2018; emergency amendment at 42 Ill. Reg. 13740, effective July 2, 2018, for a maximum of 150 days; emergency amendment to emergency rule at 42 Ill. Reg. 16318, effective August 13, 2018, for the remainder of the 150 days; emergency expired November 28, 2018; amended at 42 Ill. Reg. 22401, effective November 29, 2018.

SUBPART A: GENERAL PROVISIONS

Section 148.25 Definitions and Applicability

Effective for dates of service on or after July 1, 2014:

a) The term "large public hospital" means a hospital:

1) Owned by and located in an Illinois county with a population exceeding three million; or

2) Organized under the University of Illinois Hospital Act; or

3) Maintained by the Illinois Department of Human Services.

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b) The term "hospital" means:

1) For the purpose of hospital inpatient reimbursement, any institution, place, building, or agency, public or private, whether organized for profit or not-for-profit, that:

A) Is subject to licensure by the Illinois Department of Public Health (DPH) under the Hospital Licensing Act.

B) Is organized under the University of Illinois Hospital Act.

C) Is maintained by the State, or any department or agency of the State, when the department or agency has authority under the law to establish and enforce standards for the hospitalization or care facilities under its management and control.

D) Meets all comparable conditions and requirements of the Hospital Licensing Act in effect for the state in which it is located.

2) For the purpose of hospital outpatient reimbursement, the term "hospital" shall, in addition to the definition described in subsection (b)(1), include:

A) An ambulatory surgical treatment facility, as described in 89 Ill. Adm. Code 146.105(a).

B) A free-standing emergency center, as described in subsection (e) of this Section.

3) For the purpose of non hospital-based clinic reimbursement, the term "hospital" shall mean a county-operated outpatient facility owned by and located in an Illinois county with a population exceeding three million.

4) For the purpose of hospital-based clinic reimbursement, the term "hospital" shall mean a hospital-based clinic meeting the provisions of Section 148.40(d) and 89 Ill. Adm. Code 140.461(a).

5) For the purpose of participation, reimbursement and accreditation, the term "Health and Human Services Approved Accreditation Organization

(HHS-AAO)" shall mean an accrediting organization recognized by the Secretary of the Department of Health and Human Services as having standards for accreditation that meet or exceed Medicare requirements for the provider and service in question.

c) For the purpose of hospital inpatient reimbursement, the term "distinct part unit" means a unit within a hospital, as defined in subsection (b)(1), that meets the following qualifications:

1) Distinct Part Psychiatric Units. A distinct part psychiatric unit is a functional unit that is enrolled with the Department to provide inpatient psychiatric services (category of service 021).

2) Distinct Part Rehabilitation Units. A distinct part rehabilitation unit is a functional unit that is enrolled with the Department to provide inpatient rehabilitation services (category of service 022).

d) Specialty Hospitals

1) Psychiatric Hospitals. To qualify as a psychiatric hospital, a facility must be:

A) Licensed by the state within which it is located as a psychiatric hospital and be primarily engaged in providing, by or under the supervision of a psychiatrist, psychiatric services for the diagnosis and treatment of mentally ill persons.

B) Enrolled with the Department as a psychiatric hospital to provide inpatient psychiatric services (category of service 021).

2) Rehabilitation Hospitals. To qualify as a rehabilitation hospital, a facility must be:

A) Licensed by the state within which it is located as a physical rehabilitation hospital.

B) Enrolled with the Department as a rehabilitation hospital to provide inpatient physical rehabilitation services (category of service 022).

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3) Children's Hospitals. To qualify as a children's hospital, a facility must be devoted exclusively to caring for children and either be:

A) A hospital licensed by the state within which it is located as a pediatric, psychiatric or children's hospital.

B) A unit within a general hospital that was enrolled with the Department as a children's hospital on July 1, 2013. ~~Units so enrolled shall be reimbursed for all inpatient and outpatient services provided to Medical Assistance enrollees who are under 18 years of age, with the exception of obstetric services, normal newborn nursery services, psychiatric services, and physical rehabilitation services, without regard to the physical location within the hospital where the care is rendered.~~

C) Effective July 1, 2018, a unit within a general hospital that:

i) Is designated a Perinatal Level III center by the Illinois Department of Public Health as of December 1, 2017;

ii) Is designated a Pediatric Critical Care Center by the State as of December 1, 2017; and

iii) Has a 2017 Medicaid inpatient utilization rate equal to or greater than 45% as of July 1, 2018.

D) Effective July 1, 2018, a unit within a general hospital that:

i) Is designated a Perinatal Level II center by the Illinois Department of Public Health as of December 1, 2017;

ii) Has a 2017 Medicaid Inpatient Utilization Rate greater than 70%; and

iii) Has at least 10 pediatric beds listed on the Illinois Department of Public Health 2015 calendar year hospital profile as of July 1, 2018.

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E) For hospitals identified in subsections (d)(3)(B), (d)(3)(C), and (d)(3)(D), units so enrolled shall be reimbursed for all inpatient and outpatient services provided to Medical Assistance recipients who are under 18 years of age, with the exception of obstetric services, normal newborn nursery services, psychiatric services, and physical rehabilitation services, without regard to the physical location within the hospital where the care is rendered.

4) Long Term Acute Care Hospitals. To qualify as a long term acute care hospital, a facility must be licensed by the state within which it is located as an acute care hospital and certified by Medicare as a long term care hospital.

e) The term "freestanding emergency center" means a facility that provides comprehensive emergency treatment services 24-hours per day, on an outpatient basis, and has been issued a license by the Illinois Department of Public Health under the Freestanding Emergency Center Code (77 Ill. Adm. Code 518), as a freestanding emergency center, or a facility outside of Illinois that meets conditions and requirements comparable to those found in the Emergency Medical Services (EMS) Systems Act [210 ILCS 50] in effect for the jurisdiction in which it is located.

f) The term "coordinated care participating hospital" means a hospital, located in a county of the State in which the Department mandates some or all of the beneficiaries of the Medical Assistance Program residing in the area to enroll in a care coordination program as defined in Section 5-30 of the Illinois Public Aid Code (Code) that:

1) Has entered into a contract to provide hospital services to enrollees of the care coordination program.

2) Has not been offered a contract by a care coordination plan that pays not less than the Department would have paid on a fee-for-service basis, but excluding disproportionate share hospital adjustment payments or any other supplemental payment that the Department pays directly.

g) The term "critical access hospital" means a hospital, located in Illinois, that has been designated as a critical care hospital by DPH in accordance with 42 CFR 485, Subpart F.

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h) Academic Medical Centers and Major Teaching Hospital Status. Hospitals dedicated to medical research and medical education shall be classified each State fiscal year in 3 tiers based on specific criteria:

1) Tier I. A private academic medical center must:

A) be a hospital located in Illinois that is:

i) under common ownership with the college of medicine of a non-public college or university; or

ii) a freestanding hospital in which the majority of the clinical chiefs of service or clinical department chairs are department chairs in an affiliated non-public Illinois medical school; or

iii) a children's hospital that is separately incorporated and non-integrated into the academic medical center hospital but is the pediatric partner for an academic medical center hospital and that serves as the primary teaching hospital for pediatrics for its affiliated Illinois medical school. A hospital identified in this subsection (h)(i)(A)(iii) is deemed to meet the additional Tier I criteria if its partner academic medical center hospital meets the Tier I criteria;

B) serve as the training site for at least 30 graduate medical education programs accredited by the Accreditation Council for Graduate Medical Education;

C) facilitate the training on the campus or on affiliated off-campus sites of no less than 500 medical students, interns, residents and fellows during the calendar year preceding the beginning of the State fiscal year;

D) perform, either itself or through its affiliated university, at least $12,000,000 in medical research funded through grants or contracts from the National Institutes of Health or, with respect to hospitals described in subsection (h)(1)(A)(ii), have as its affiliated

non-public Illinois medical school a medical school that performs, either itself or through its affiliated university, medical research funded using at least $12,000,000 in grants or contracts from the National Institutes of Health; and

E) expend, directly or indirectly, through an affiliated non-public medical school or as part of a hospital system, defined as a hospital and one or more other hospitals or hospital affiliates related by common control or ownership, no less than $5,000,000 toward medical research and education during the calendar year preceding the beginning of the State fiscal year.

2) Tier II. A public academic medical center must:

A) be a hospital located in Illinois that is a primary teaching hospital affiliated with:

i) University of Illinois School of Medicine at Chicago;

ii) University of Illinois School of Medicine at Peoria;

iii) University of Illinois School of Medicine at Rockford;

iv) University of Illinois School of Medicine at Urbana; or

v) Southern Illinois University School of Medicine in Springfield; and

B) contribute no less than $2,500,000 toward medical research and education during the calendar year preceding the beginning of the State fiscal year.

3) Tier III. A major teaching hospital must:

A) be an Illinois hospital with 100 or more interns and residents or with a ratio of interns and residents to beds greater than or equal to 0.25; and

B) support at least one graduate medical education program accredited

by the Accreditation Council for Graduate Medical Education.

i) Children's Specialty Hospital. To qualify as a children's specialty hospital, a facility must be:

1) an Illinois hospital as defined in subsection (d)(3)(A) and have fewer than 50 total inpatient beds; or

2) a cost reporting hospital, as defined in subsection (d)(3)(A), located outside of Illinois and have fewer than 50 total beds and an average length of stay greater than 20 days in State fiscal year 2013, as contained in the Department's claims data warehouse.

(Source: Amended at 42 Ill. Reg. 22401, effective November 29, 2018)

SUBPART B: REIMBURSEMENT AND RELATED PROVISIONS

Section 148.100 County Trauma Center Adjustment Payments

Effective for dates of service on or after July 1, 2014:

a) County Trauma Center Adjustment (TCA) Payments. Illinois hospitals that, on the first day of July preceding the TCA rate period, are recognized as Level I or Level II trauma centers by DPH, shall receive an adjustment that shall be calculated as follows:

1) The available funds from the Trauma Center Fund each quarter shall be divided by the number of each eligible hospital's (as defined in subsection (a)(4)) Medicaid trauma admissions in the same quarter of the TCA base period to determine the adjustment for the TCA rate period. The result of this calculation shall be the County TCA adjustment per Medicaid trauma admission for the applicable quarter.

2) The TCA payments shall not be treated as payments for hospital services under Title XIX of the Social Security Act for purposes of the calculation of the intergovernmental transfer provided for in Section 15-3(a) of the Illinois Public Aid Code.

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3) The trauma center adjustments shall be paid to eligible hospitals on a quarterly basis.

4) Trauma Center Adjustment Limitations. Hospitals that qualify for trauma center adjustments under this Section shall not be eligible for the total trauma center adjustment if, during the TCA rate period, the hospital is no longer recognized by DPH, or the appropriate licensing agency, as a Level I or Level II trauma center as required for the adjustments described in subsection (a)(1). In these instances, the adjustments calculated under this subsection (a)(4) shall be pro-rated as applicable, based upon the date that recognition ceased.

b) Definitions. The definitions of terms used with reference to calculation of the trauma center adjustments in this Section are as follows:

1) "Available funds" means funds that have been deposited into the Trauma Center Fund, have been distributed to the Department by the State Treasurer, and have been appropriated by the Illinois General Assembly.

2) "Medicaid trauma admission" means, for, discharges through June 30, 2014, those services provided to Medicaid-enrolled beneficiaries that were received and processed as hospital inpatient admissions, excluding admissions for normal newborns, that were subsequently adjudicated by the Department through the last day of June preceding the TCA rate period and contained within the Department's paid claims data base, with an ICD-9-CM principal diagnosis code of: 800.0 through 800.99; 801.0 through 801.99; 802.0 through 802.99; 803.0 through 803.99; 804.0 through 804.99; 805.0 through 805.98; 806.0 through 806.99; 807.0 through 807.69; 808.0 through 808.9; 809.0 through 809.1; 828.0 through 828.1; 839.0 through 839.3; 839.7 through 839.9; 850.0 through 850.9; 851.0 through 851.99; 852.0 through 852.59; 853.0 through 853.19; 854.0 through 854.19; 860.0 through 860.5; 861.0 through 861.32; 862.8; 863.0 through 863.99; 864.0 through 864.19; 865.0 through 865.19; 866.0 through 866.13; 867.0 through 867.9; 868.0 through 868.19; 869.0 through 869.1; 887.0 through 887.7; 896.0 through 896.3; 897.0 through 897.7; 900.0 through 900.9; 902.0 through 904.9; 925; 926.8; 929.0 through 929.99; 958.4; 958.5; 990 through 994.99.

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For discharges after June 30, 2014, those services provided to Medicaid-enrolled beneficiaries that were received and processed as hospital inpatient admissions that were subsequently adjudicated by the Department through the last day of June preceding the TCA rate period and contained within the Department's paid claims data base, and have been grouped to one of the following DRGs:

020 Craniotomy for trauma.

055 Head trauma, with coma lasting more than one hour or hemorrhage.

056 Brain contusion/laceration and complicated skull fracture, coma less than one hour or no coma.

057 Concussion, closed skull fracture not otherwise specified, uncomplicated intracranial injury, coma less than one hour or no coma.

135 Major chest and respiratory trauma.

308 Hip and femur procedures for trauma, except joint replacement.

384 Contusion, open wound and other trauma to skin and subcutaneous tissue.

841 Extensive third degree burns with skin graft, as of July 1, 2018.

842 Full thickness burns with graft, as of July 1, 2018.

843 Extensive burns without skin graft, as of July 1, 2018.

844 Partial thickness burns with or without graft, as of July 1, 2018.

910 Craniotomy for multiple significant trauma.

911 Extensive abdominal/thoracic procedures for multiple significant trauma.

912 Musculoskeletal and other procedures for multiple significant trauma.

930 Multiple significant trauma, without operating room procedure.

3) "TCA base period" means the 12-month period ending on the last day of June preceding the TCA rate period.

4) "TCA rate period" means the 12-month period beginning on October 1 of the year and ending September 30 of the following year.

5) "Trauma Center Fund" means the fund created in the State treasury by Section 5.325 of the State Finance Act [30 ILCS 105] and described in Section 3.225 of the Emergency Medical Services (EMS) Systems Act [210 ILCS 50] and Section 5-5.03 of the Public Aid Code.

(Source: Amended at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.105 Reimbursement Methodologies for Inpatient Rehabilitation Services

Effective with discharges on or after July 1, 2014:

a) Inpatient rehabilitation services not excluded from the DRG PPS pursuant to 89 Ill. Adm. Code 149.50(b) shall be reimbursed through the DRG PPS.

b) Inpatient rehabilitation services excluded from the DRG PPS shall be reimbursed a hospital-specific rate paid per day of covered inpatient care, determined pursuant to subsection (c) or (d), as applicable. The total payment for an inpatient stay will equal the sum of:

1) the payment determined in this Section; and

2) any applicable adjustments to payment specified in Section 148.290.

c) Rehabilitation Hospital. Payment for inpatient rehabilitation services provided by a rehabilitation hospital, as defined in Section 148.25(d)(2):

1) For which the Department had no inpatient base period claims data, shall be the product of the following:

A) 80 percent of weighted average rehabilitation hospital rate; and

B) The length of stay, as defined in 89 Ill. Adm. Code 149.100(i).

2) For which the Department had inpatient base period claims data, shall be the product of the following:

A) The greater of:

i) the hospital's rehabilitation rate, as determined in subsection (e); and

ii) 80 percent of the weighted average rehabilitation hospital rate.

B) The length of stay, as defined in 89 Ill. Adm. Code 149.100(i).

d) Distinct Part Rehabilitation Unit. Payment for inpatient rehabilitation services provided by a distinct part rehabilitation unit, as defined in Section 148.25(c)(2):

1) For which the Department had no inpatient base period paid claims data, shall be the product of the following:

A) The arithmetic mean rate for rehabilitation distinct part units.

B) The length of stay, as defined in 89 Ill. Adm. Code 149.100(i).

2) For which the Department had inpatient base period paid claims data, shall be the product of the following:

A) The lesser of:

i) The greater of:

- The distinct part rehabilitation unit rate, as determined in subsection (e); and

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- 80 percent of the arithmetic mean rate for rehabilitation distinct part units.

ii) The arithmetic mean rehabilitation rate for rehabilitation distinct part units plus the value of one standard deviation of the rehabilitation rate for rehabilitation distinct part units.

e) The rehabilitation rate is calculated as the sum of:

1) The rehabilitation rate in effect on July 1, 2011;~~.~~

2) The quotient, rounded to the nearest hundredth, of the rehabilitation provider's allocated static payments divided by the rehabilitation provider's inpatient covered days in the inpatient base period paid claims data; and~~.~~

3) Effective July 1, 2018, plus $96.00.

f) Definitions

"Allocated static payments" means the adjustment payments made to the hospital pursuant to 89 Ill. Adm. Code 148.105, 148.115, 148.126, 148.295, 148.296 and 148.298, during State fiscal year 2011, excluding those payments that continue after July 1, 2014, pursuant to the methodologies outlined in rule as of February 21, 2014 (see https://www.illinois.gov/hfs/medicalproviders/hospitals/hospitalratereform/Pages/default.aspx~~http://www2.illinois.gov/hfs/PublicInvolvement/hospitalratereform/Pages/Rules.aspx~~), as determined by the Department, allocated to rehabilitation services based on the ratio of rehabilitation claim charges to total inpatient claim charges determined using inpatient base period claims data.

"Inpatient base period paid claims data" means SFY 2011 inpatient Medicaid fee-for-service paid claims data, excluding Medicare dual eligible claims, for rehabilitation payment for services provided in SFY 2015 and 2016.

"Weighted average rehabilitation hospital rate" means the sum of rehabilitation hospital inpatient base period paid claims data total reported payments, excluding Disproportionate Share Hospitals (DSH) and Medicaid Percentage

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Adjustment/Medicaid High Volume Adjustment (MPA/MHVA), plus rehabilitation hospital total allocated supplemental payments, divided by rehabilitation hospital inpatient base period paid claims data total covered days.

(Source: Amended at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.115 Reimbursement Methodologies for Long Term Acute Care Services

Effective with discharges on or after July 1, 2014:

a) Inpatient long term acute care psychiatric services excluded from the DRG PPS pursuant to 89 Ill. Adm. Code 149.50(b) shall be reimbursed under the inpatient psychiatric services methodologies specified in Section 148.110.

b) Inpatient long term acute care services excluded from the DRG PPS shall be reimbursed a hospital-specific rate paid per day of covered inpatient care, determined pursuant to this Section. The total payment for an inpatient stay will equal the sum of:

1) the payment determined in this Section; and

2) any applicable adjustments to payment specified in Section 148.290.

c) Payment for long term acute care services provided by a long term acute care hospital, as defined in Section 148.25(d)(4):

1) For which the Department had no inpatient base period paid claims data, shall be the product of the following:

A) $604.00; and

B) The length of stay, as defined in 89 Ill. Adm. Code 149.100(i).

2) For which the Department had inpatient base period paid claims data, shall be the product of the following:

A) The hospital-specific rate, as determined in subsection (d).

B) The length of stay, as defined in 89 Ill. Adm. Code 149.100(i).

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d) The hospital-specific rate is calculated as the sum of:

1) The per diem rate for long term acute care services in effect on July 1, 2011.

2) The quotient, rounded to the nearest hundredth, of the hospital's allocated static payments divided by the hospital's covered days in the inpatient base period paid claims data.

e) Definitions

"Allocated static payments" means the adjustment payments made to the hospital pursuant to Sections 148.105, 148.115, 148.126, 148.295, 148.296 and 148.298 during SFY 2011 pursuant to the methodologies outlined in rule as of February 21, 2014 (see http://www2.illinois.gov/hfs/PublicInvolvement/hospital ratereform/Pages/ Rules.aspx), as determined by the Department, allocated to long-term acute care services based on the ratio of long-term acute care claim charges, excluding psychiatric claim charges, to total inpatient claim charges determined using inpatient base period claims data.

"Inpatient base period paid claims data" means SFY 2011 inpatient Medicaid fee-for-service paid claims data, excluding Medicare dual eligible claims.

f) Long Term Acute Care Supplemental Per Diem Rates.

1) The long term acute care supplemental per diem rates, as authorized under the Long Term Acute Care Hospital Quality Improvement Transfer Program Act [210 ILCS 155], shall be the amount in effect as of October 1, 2010.

2) No new hospital may qualify under the Long Term Acute Care Hospital Quality Improvement Transfer Program Act after June 14, 2012.

g) Effective for dates of service on and after July 1, 2018, rates in this Section are increased by 10.5 percent.

(Source: Amended at 42 Ill. Reg. 22401, effective November 29, 2018)

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Section 148.116 Reimbursement Methodologies for Children's Specialty Hospitals

Effective for dates of outpatient services on or after July 1, 2014 and inpatient discharges on or after July 1, 2014:

a) Inpatient general acute care services provided by a children's specialty hospital~~Children's Specialty Hospital~~ located in Illinois, as defined in Section 148.25(i) and excluded from the DRG PPS pursuant to 89 Ill. Adm. Code 149.50(b), shall, per day of covered inpatient care, be reimbursed as follows:

1) For a hospital that would not have met the definition of a children's specialty hospital as of July 1, 2013, $1,400.00 per day.

2) For a hospital that would have met the definition of a children's specialty hospital as of July 1, 2013, a rate equal to the per diem base rate in place on July 1, 2013, multiplied by a factor of 1.37.

3) The total payment for inpatient stay will equal the sum of:

A) The payment determined in this subsection; and

B) Any applicable adjustments to payment specified in Section 148.290.

b) Effective for dates of service on and after July 1, 2018, rates in subsection (a) are increased by 10.5 percent.

c~~b~~) For children's~~Children's~~ specialty hospitals defined in 148.25(i), outpatient and clinic services shall be reimbursed in accordance with Section 148.140.

d~~c~~) Access to Outpatient Care

1) To ensure access to outpatient care and maintain stability for children's specialty hospitals located in Illinois, the Department shall make annual outpatient transitional payments equal to the product of:

A) The amount of static payments made to the hospital in State fiscal year 2011 in accordance with 89 Ill. Adm. Code 148.126, 148.295, 148.296, ~~148.297~~ and 148.298 pursuant to the methodologies

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outlined in https://www.illinois.gov/hfs/medicalproviders/hospitals/hospitalratereform/Pages/default.aspx~~http://www2.illinois.gov/hfs/PublicInvolvement/ hospitalratereform/Pages/Rules.aspx~~; and

B) .8695.

2) The annual amount determined in this subsection shall be paid in monthly installments equal to 1/12 of the annual amount.

e~~d~~) The reimbursement methodologies in this Section shall be re-determined prior to July 1, 2018 if implementation of reform to hospital non-institutional service reimbursement occurs. In the absence of reform to hospital non-institutional service reimbursement, the reimbursement methodologies in this Section shall be re-determined to be effective on or after July 1, 2018.

f~~e~~) For cost reporting hospitals located outside of Illinois that meet the definition of a children's~~Children's~~ specialty hospital~~hospitals~~ as defined in Section 148.25(i) as of 6/30/14, for inpatient general acute care and rehabilitation services, the hospital shall have a per diem amount equal to the rate in place with the Department as of June 30, 2014. The total payment for inpatient stay will equal the sum of the payment determined in this Subsection and any applicable adjustments to payments specified in Section 148.290.

(Source: Amended at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.117 Outpatient Assistance Adjustment Payments

Effective for dates of service on or after July 1, 2014, except when specifically designated otherwise in this Section:

a) Qualifying Criteria. Outpatient Assistance Adjustment Payments, as described in subsection (b) of this Section, shall be made to Illinois hospitals meeting one of the criteria identified in this subsection (a):

1) Prior to July 1, 2018, a~~A~~ general acute care hospital that qualifies for Disproportionate Share Adjustment Payments for rate year 2007, as defined in Section 148.120, that has an emergency care percentage greater than 85%.

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2) A general acute care hospital located outside of Cook County that qualifies for Medicaid Percentage Adjustment Payments for rate year 2007 as defined in Section 148.122, is a trauma center recognized by the Illinois Department of Public Health (DPH) as of July 1, 2006, has an emergency care percentage greater than 58%, and has provided more than 1,000 Medicaid Non-emergency/Screening outpatient ambulatory procedure listing services in the outpatient assistance base year.

3) Prior to July 1, 2018, a~~A~~ hospital that has an MIUR of greater than 50% and an emergency care percentage greater than 80%, and that provided more than 6,000 Medicaid outpatient ambulatory procedure listing services in the outpatient assistance base year.

4) Prior to July 1, 2018, a~~A~~ hospital that has an MIUR of greater than 70% and an emergency care percentage greater than 90%.

5) Prior to July 1, 2018, a~~A~~ general acute care hospital, not located in Cook County, that is not a trauma center recognized by DPH as of July 1, 2006 and did not qualify for Medicaid Percentage Adjustment payments for rate year 2007, as defined in Section 148.122, has an MIUR of greater than 25% and an emergency care percentage greater than 50%, and that provided more than 8,500 Medicaid outpatient ambulatory procedure listing services in the outpatient assistance base year.

6) Prior to July 1, 2018, a~~A~~ general acute care hospital, not located in Cook County, that is a Level I trauma center recognized by DPH as of July 1, 2006, has an emergency care percentage greater than 50%, and provided more than 16,000 Medicaid outpatient ambulatory procedure listing services, including more than 1,000 non-emergency screening outpatient ambulatory procedure listing services, in the outpatient assistance base year.

7) A general acute care hospital, not located in Cook County, that qualified for Medicaid Percentage Adjustment payments for rate year 2007, as defined in Section 148.122, has an emergency care percentage greater than 55%, and provided more than 12,000 Medicaid outpatient ambulatory procedure listing services, including more than 600 surgical group outpatient ambulatory procedure listing services and 7,000 emergency services in the outpatient assistance base year.

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8) A general acute care hospital that has an emergency care percentage greater than 75% and provided more than 15,000 Medicaid outpatient ambulatory procedure listing services in the outpatient assistance base year.

9) Prior to July 1, 2018, a~~A~~ rural hospital that has an MIUR of greater than 40% and provided more than 16,000 Medicaid outpatient ambulatory procedure listing services in the outpatient assistance base year.

10) Prior to July 1, 2018, a~~A~~ general acute care hospital, not located in Cook County, that is a trauma center recognized by DPH as of July 1, 2006, had more than 500 licensed beds in calendar year 2005, and provided more than 11,000 Medicaid outpatient ambulatory procedure listing services, including more than 950 surgical group outpatient ambulatory procedure listing services, in the outpatient assistance base year.

11) A general acute care hospital that is recognized as a Level I trauma center by DPH on the first day of the OAAP rate period, has Emergency Level I services greater than 2,000, Emergency Level II services greater than 8,000, and greater than 19,000 Medicaid outpatient ambulatory procedure listing services in the outpatient assistance base year.

b) Outpatient Assistance Adjustment Payments

1) For hospitals qualifying under subsection (a)(1), the rate is $850.00 for dates of service through February 28, 2014. For dates of service on March 1, 2014 through June 30, 2014, the rate is $1,523.00. For dates of service on or after July 1, 2014, the rate is $0.00.

2) For hospitals qualifying under subsection (a)(2), the rate is $290.00 for dates of service on or after July 1, 2014.

3) For hospitals qualifying under subsection (a)(3), the rate is $250.00 for dates of service on or after July 1, 2014 through June 30, 2018. For dates of service on or after July 1, 2018, the rate is $0.00.

4) For hospitals qualifying under subsection (a)(4), the rate is $336.25 for dates of service on or after July 1, 2014 through June 30, 2018. For dates of service on or after July 1, 2018, the rate is $0.00.

5) For hospitals qualifying under subsection (a)(5), the rate is $110.00 for dates of service on or after July 1, 2014 through June 30, 2018. For dates of service on or after July 1, 2018, the rate is $0.00.

6) For hospitals qualifying under subsection (a)(6), the rate is $200.00 for dates of service on or after July 1, 2014 through June 30, 2018. For dates of service on or after July 1, 2018, the rate is $0.00.

7) For hospitals qualifying under subsection (a)(7), the rate is $247.50 for dates of service on July 1, 2014 through March 31, 2017. For dates of service on April 1, 2017 through June 30, 2018, the rate is $610.20. Effective July 1, 2018, the rate is $154.00.~~For dates of service on or after July 1, 2018, the rate is $0.00.~~

8) For hospitals qualifying under subsection (a)(8), the rate is $205.00 for dates of service on or after July 1, 2014. Effective July 1, 2018, the rate is $70.00.

9) For hospitals qualifying under subsection (a)(9), the rate is $65.00 for dates of service on or after July 1, 2014 through June 30, 2018. For dates of service on or after July 1, 2018, the rate is $0.00.

10) For hospitals qualifying under subsection (a)(10), the rate is $90.00 for dates of service on or after July 1, 2014 through June 30, 2018. For dates of service on or after July 1, 2018, the rate is $0.00.

11) For hospitals qualifying under subsection (a)(11), the rate is $47.00 for dates of service on or after July 1, 2010.

c) Payment to a Qualifying Hospital

1) The total annual payments to a qualifying hospital shall be the product of the hospital's rate multiplied by the Medicaid outpatient ambulatory procedure listing services in the outpatient assistance adjustment base year.

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2) For the outpatient assistance adjustment period for fiscal year 2010 and after, total payments will equal the amount determined using the methodologies described in subsection (c)(1) and shall be paid to the hospital, at least, on a quarterly basis.

3) The product of subsection (c)(1) will be multiplied by the applicable tiering of Section 148.296(d).

4~~3~~) Payments described in this Section are subject to federal approval.

d) Definitions

1) "Emergency care percentage" means a fraction, the numerator of which is the total Group 3 ambulatory procedure listing services as described in Section 148.140(b)(1)(C), excluding services for individuals eligible for Medicare, provided by the hospital in State fiscal year 2005 contained in the Department's data base adjudicated through June 30, 2006, and the denominator of which is the total ambulatory procedure listing services as described in Section 148.140(b)(1), excluding services for individuals eligible for Medicare, provided by the hospital in State fiscal year 2005 contained in the Department's data base adjudicated through June 30, 2006.

2) "General acute care hospital" is a hospital that does not meet the definition of a hospital contained in Section 148.25(a) and (d).

3) "Outpatient Ambulatory Procedure Listing Payments" means, for a given hospital, the sum of payments for ambulatory procedure listing services as described in Section 148.140(b)(1), excluding payments for individuals eligible for Medicare under Title XVIII of the Act (Medicaid/Medicare crossover days), as tabulated from the Department's paid claims data for admissions occurring in the outpatient assistance base period that were adjudicated by the Department through June 30, 2006.

4) "Outpatient assistance year" means, beginning January 1, 2007, the 6-month period beginning on January 1, 2007 and ending June 30, 2007, and beginning July 1, 2007, the 12-month period beginning July 1 of the year and ending June 30 of the following year.

5) "Outpatient assistance base period" means the 12-month period beginning on July 1, 2004 and ending June 30, 2005.

6) "Surgical group outpatient ambulatory procedure listing services" means, for a given hospital, the sum of ambulatory procedure listing services as described in Section 148.140(b)(1)(A), excluding services for individuals eligible for Medicare under Title XVIII of the Act (Medicaid/Medicare crossover days), as tabulated from the Department's paid claims data for admissions occurring in the outpatient assistance base period that were adjudicated by the Department through June 30, 2006.

7) "Non-emergency/screening outpatient ambulatory procedure listing services" means, for a given hospital, the sum of ambulatory procedure listing services as described in Section 148.140(b)(1)(C)(iii), excluding services for individuals eligible for Medicare under Title XVIII of the Act (Medicaid/Medicare crossover days), as tabulated from the Department's paid claims data for admissions occurring in the outpatient assistance base period that were adjudicated by the Department through June 30, 2006.

8) "High tech diagnostic Medicaid outpatient ambulatory procedure listing services" means, for a given hospital, the sum of ambulatory procedure listing services described in Section 148.140(b)(1)(B)(ii), excluding services for individuals eligible for Medicare under Title XVIII of the Act (Medicaid/Medicare crossover days), as tabulated from the Department's paid claims data for admissions occurring in the outpatient assistance base period that were adjudicated by the Department through June 30, 2006.

e) Payment Limitations: In order to be eligible for any new payment or rate increase under this Section that would otherwise become effective for dates of service on or after July 1, 2010, a hospital located in a geographic area of the State in which the Department mandates some or all of the beneficiaries of the Medical Assistance Program residing in the area to enroll in a Care Coordination program as defined in 305 ILCS 5/5-30 must be a Coordinated Care Participating Hospital as defined in Section 148.295(g)(5). This payment limitation takes effect six months after the Department begins mandatory enrollment in the geographic area.

f) Expiration of Payment Criteria and Rates. The payment criteria and corresponding rates found in subsections: (a)(1),(a)(3) through (a)(6), (a)(9),

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(a)(10), (b)(1), (b)(3) through (b)(6), (b)(9), and (b)(10) are no longer in effect as of July 1, 2018.

(Source: Amended at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.126 Safety Net Adjustment Payments

Effective for dates of service on or after July 1, 2014, except when specifically designated otherwise in this Section:

a) Qualifying criteria: Safety net adjustment payments shall be made to a qualifying hospital, as defined in this subsection (a), unless the hospital does not provide comprehensive emergency treatment services as defined in 77 Ill. Adm. Code 250.710(a) on or after July 1, 2006, but did provide comprehensive emergency treatment services as defined in 77 Ill. Adm. Code 250.710(a) on January 1, 2006. A hospital not otherwise excluded under subsection (b) shall qualify for payment if it meets one of the following criteria:

1) Prior to July 1, 2018, the~~The~~ hospital has, as provided in subsection (e)(6), an MIUR equal to or greater than 40 percent.

2) Prior to July 1, 2018, the~~The~~ hospital is, as of October 1, 2001, a rural hospital, as described in Section 148.446(a)(1), that meets all of the following criteria:

A) Has an MIUR greater than 33 percent.

B) Is designated a perinatal level two center by the Illinois Department of Public Health.

C) Has fewer than 125 licensed beds.

3) Prior to July 1, 2018, the~~The~~ hospital meets all of the following criteria:

A) Has an MIUR greater than 30 percent.

B) Had an occupancy rate greater than 80 percent in the safety net hospital base year.

C) Provided greater than 15,000 total days in the safety net hospital base year.

4) The hospital meets all of the following criteria:

A) Does not already qualify under subsections (a)(1) through (a)(3).

B) Has an MIUR greater than 25 percent.

C) Had an occupancy rate greater than 68 percent in the safety net hospital base year.

D) Provided greater than 12,000 total days in the safety net hospital base year.

5) Prior to July 1, 2018, the~~The~~ hospital meets all of the following criteria in the safety net base year:

A) Is a psychiatric hospital, as described in Section 148.25(d)(1).

B) Has licensed beds greater than 120.

C) Has an average length of stay less than 10 days.

6) The hospital meets all of the following criteria in the safety net base year:

A) Does not already qualify under subsections (a)(1) through (a)(5) of this Section.

B) Has an MIUR greater than 17 percent.

C) Has licensed beds greater than 450.

D) Has an average length of stay less than four days.

7) Prior to July 1, 2018, the~~The~~ hospital meets all of the following criteria in the safety net base year:

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A) Does not already qualify under subsections (a)(1) through (a)(6) of this Section.

B) Has an MIUR greater than 21 percent.

C) Has licensed beds greater than 350.

D) Has an average length of stay less than 3.15 days.

8) Prior to July 1, 2018, the~~The~~ hospital meets all of the following criteria in the safety net base year:

A) Does not already qualify under subsections (a)(1) through (a)(7) of this Section.

B) Has a Combined MIUR greater than 25 percent.

C) Has an MIUR greater than 12 percent.

D) Is designated a perinatal Level II center by the Illinois Department of Public Health.

E) Has licensed beds greater than 400.

F) Has an average length of stay less than 3.5 days.

9) Prior to July 1, 2018, the~~The~~ hospital meets all of the following criteria in the safety net base year:

A) Does not already qualify under subsections (a)(1) through (a)(8) of this Section.

B) Is located outside Health Service Area (HSA) 6.

C) Has an MIUR greater than 16%.

D) Has licensed beds greater than 475.

E) Has an average length of stay less than five days.

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10) The hospital meets all of the following criteria in the safety net base year:

A) Provided greater than 5,000 obstetrical care days.

B) Has a combined MIUR greater than 80%.

11) The hospital meets all of the following criteria in the safety net base year:

A) Does not already qualify under subsections (a)(1) through (a)(10) of this Section.

B) Has a CMIUR greater than 28 percent.

C) Is designated a perinatal Level II center by the Illinois Department of Public Health.

D) Has licensed beds greater than 320.

E) Had an occupancy rate greater than 37 percent in the safety net hospital base year.

F) Has an average length of stay less than 3.1 days.

12) The hospital meets all of the following criteria in the safety net base year:

A) Does not already qualify under subsections (a)(1) through (a)(11) of this Section.

B) Is a general acute care hospital.

C) Is designated a perinatal Level II center by the Illinois Department of Public Health.

D) Provided greater than 1,000 rehabilitation days in the safety net hospital base year.

b) For a hospital qualifying under subsection (a)(1) that is neither a rehabilitation hospital nor a children's hospital, that is located outside HSA 6, that has an MIUR

greater than 50 per centrum, and that:

1) Provides obstetrical care – $210.00 for dates of service on or after July 1, 2014 through June 30, 2018. For dates of service on or after July 1, 2018, the rate is $0.00.

2) Does not provide obstetrical care – $90.00 for dates of service on or after July 1, 2014 through June 30, 2018. For dates of service on or after July 1, 2018, the rate is $0.00.

c) For a hospital qualifying under subsection (a)(2), the rate shall be $55.00 for dates of service on or after July 1, 2014 through June 30, 2018. For dates of service on or after July 1, 2018, the rate is $0.00.

d) For a hospital qualifying under subsection (a)(3), the rate shall be $3.00 on or after July 1, 2014. For dates of service on or after July 1, 2018, the rate is $0.00.

e) For a hospital qualifying under subsection (a)(4), the rate shall be $140.00 on or after July 1, 2014. Effective July 1, 2018, the rate is $105.00.

f) For a hospital qualifying under subsection (a)(5), the rate shall be $119.50 on or after July 1, 2014 through June 30, 2018. For dates of service on or after July 1, 2018, the rate is $0.00.

g) For a hospital qualifying under subsection (a)(7), the rate shall be $221.00 on or after July 1, 2014 through June 30, 2018. For dates of service on or after July 1, 2018, the rate is $0.00.

h) For a hospital qualifying under (a)(8), the rate shall be $100.00 on or after July 1, 2014 through June 30, 2018. For dates of service on or after July 1, 2018, the rate is $0.00.

i) For a hospital qualifying under subsection (a)(9), the rate shall be $69.00 on or after July 1, 2014 through June 30, 2018. For dates of service on or after July 1, 2018, the rate is $0.00. ~~The reimbursement rate is contingent on federal approval.~~

j) For a hospital qualifying under subsection (a)(10), the rate is $56.00 for dates of service through February 28, 2014. For dates of service on or after March 1, 2014 through June 30, 2014, the rate is $136.00. For dates of service on or after July 1,

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2014, the rate is $56.00. Effective July 1, 2018, the rate is $40.00.

k) For a hospital qualifying under subsection (a)(11) of this Section, the rate is $197.00 on or after July 1, 2014.

l) For a hospital qualifying under subsection (a)(6) of this Section, the rate is $25.00 on or after July 1, 2014.

m) For a hospital qualifying under subsection (a)(12), the rate is $71.00 on or after July 1, 2014.

n) Payment to a Qualifying Hospital

1) The total annual payments to a qualifying hospital shall be the product of the hospital's rate multiplied by two multiplied by total days.

~~2)~~ ~~For the safety net adjustment period occurring in State fiscal year 2011, total payments will be determined through application of the methodologies described in subsection (c).~~

2~~3~~) For safety net adjustment periods occurring after State fiscal year 2010, total payments made under this Section shall be paid in installments on, at least, a quarterly basis.

3) The product of subsection (n)(1) will be multiplied by the applicable tiering of Section 148.296(d).

o) Definitions

1) "Average length of stay" means, for a given hospital, a fraction in which the numerator is the number of total days and the denominator is the number of total admissions.

2) "CMIUR" means, for a given hospital, the sum of the MIUR plus the Medicaid obstetrical inpatient utilization rate, determined as of October 1, 2001, as defined in Section 148.122(g)(3).

3) "General care admissions" means, for a given hospital, the number of hospital inpatient admissions for recipients of medical assistance under

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Title XIX of the Social Security Act, as tabulated from the Department's claims data for admissions occurring in the safety net hospital base year that were adjudicated by the Department by June 30, 2001, excluding admissions for: obstetrical care, as defined in subsection (m)(7); normal newborns; psychiatric care; physical rehabilitation; and those covered in whole or in part by Medicare (Medicaid/Medicare crossover admissions).

4) "HSA" means Health Service Area, as defined by DPH.

5) "Licensed beds" means, for a given hospital, the number of licensed beds, excluding long term care and substance abuse beds, as listed in the July 25, 2001, DPH report entitled "Percent Occupancy by Service in Year 2000 for Short Stay, Non-Federal Hospitals in Illinois."

6) "MIUR", for a given hospital, has the meaning as defined in Section 148.120(i)(4) and shall be determined in accordance with Section 148.120(c) and (f). For purposes of this Section, the MIUR determination that was used to determine a hospital's eligibility for Disproportionate Share Hospital Adjustment payments in rate year 2002 shall be the same determination used to determine a hospital's eligibility for safety net adjustment payments in the Safety Net Adjustment Period.

7) "Obstetrical care admissions" means, for a given hospital, the number of hospital inpatient admissions for recipients of medical assistance under Title XIX of the Social Security Act, as tabulated from the Department's claims data, for admissions occurring in the safety net hospital base year that were adjudicated by the Department through June 30, 2001, and were assigned by the Department a diagnosis related grouping (DRG) code of 370 through 375.

8) "Obstetrical care days" means, for a given hospital, days of hospital inpatient service associated with the obstetrical care admissions described in subsection (o)(7).

9) "Occupancy rate" means, for a given hospital, a fraction, the numerator of which is the hospital's total days, excluding long term care and substance abuse days, and the denominator of which is the hospital's total beds, excluding long term care and substance abuse beds, multiplied by 365 days. The data used for calculation of the hospital occupancy rate is as

listed in the July 25, 2001, Illinois Department of Public Health report entitled "Percent Occupancy by Service in Year 2000 for Short Stay, Non-Federal Hospitals in Illinois".

10) "Safety net hospital base year" means the 12-month period beginning on July 1, 1999, and ending on June 30, 2000.

11) "Safety net adjustment period" means, beginning July 1, 2002, the 12 month period beginning on July 1 of a year and ending on June 30 of the following year.

12) "Total admissions" means, for a given hospital, the number of hospital inpatient admissions for recipients of medical assistance under Title XIX of the Social Security Act, excluding admissions for individuals eligible for Medicare under Title XVIII of that Act (Medicaid/Medicare crossover admissions), as tabulated from the Department's claims data for admissions occurring in the safety net hospital base year that were adjudicated by the Department through June 30, 2001.

13) "Total days" means, for a given hospital, the sum of days of inpatient hospital service provided to recipients of medical assistance under Title XIX of the federal Social Security Act, excluding days for individuals eligible for Medicare under Title XVIII of that Act (Medicaid/Medicare crossover days), as tabulated from the Department's claims data for admissions occurring in the safety net hospital base year that were adjudicated by the Department through June 30, 2001.

p) Payment Limitations: In order to be eligible for any new payment or rate increase under this Section that would otherwise become effective for dates of service on or after July 1, 2010, a hospital located in a geographic area of the State in which the Department mandates some or all of the beneficiaries of the Medical Assistance Program residing in the area to enroll in a Care Coordination program as defined in 305 ILCS 5/5-30 must be a Coordinated Care Participating Hospital as defined in Section 148.295(b)(5). The payment limitation takes effect 60 days, unless extended by the Department in its sole discretion, after the Department begins mandatory enrollment in the geographic area.

q) Expiration of Payment Criteria and Rates. The payment criteria and corresponding rates found in subsections (a)(1) through (a)(3), (a)(5), (a)(7), (a)(9), (b), (c), (d), (f), (g), (h), and (i) are no longer in effect as of July 1, 2018.

(Source: Amended at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.140 Hospital Outpatient and Clinic Services

Effective for dates of service on or after July 1, 2014:

a) Fee-For-Service Reimbursement

1) Reimbursement for hospital outpatient services shall be made on a fee-for-service basis, except for:

A) Services described in subsection (b)(1).

B) End stage renal disease treatment (ESRDT) services, as described in subsection (g).

2) Except for the services reimbursed under the EAPG PPS, described in subsection (b)(1), fee-for-service reimbursement levels shall be at the lower of the hospital's usual and customary charge to the public or the Department's statewide maximum reimbursement screens. Hospitals will be required to bill the Department utilizing specific service codes. However, all specific client coverage policies (relating to client eligibility and scope of services available to those clients) that pertain to the service billed are applicable to hospitals in the same manner as to non-hospital providers who bill fee for service.

3) Hospitals are required to bill the Department utilizing specific service codes. All specific client coverage policies (relating to client eligibility and scope of services available to those clients) that pertain to the service billed are applicable to hospitals in the same manner as to non-hospital providers who bill fee-for-service.

4) Payments under Section 148.140(a)(4) shall cease as of June 30, 2014 for Maternal and Child Health Program Clinics.

b) EAPG PPS Reimbursement. Reimbursement under EAPG PPS, described in subsection (c), shall be all-inclusive for all services provided by the hospital, without regard to the amount charged by a hospital. Except as provided in subsection (b)(3), no separate reimbursement will be made for ancillary services or the services of hospital personnel.

1) Outpatient hospital services reimbursed through the EAPG PPS shall include:

A) Surgical services.

B) Diagnostic and therapeutic services.

C) Emergency department services.

D) Observation services.

E) Psychiatric treatment services.

2) Excluded from reimbursement under the EAPG PPS are outpatient hospital services reimbursed pursuant to 59 Ill. Adm. Code 131 and 132, 77 Ill. Adm. Code 2090, and Section 148.330 of this Part.

3) Exceptions to All-inclusive EAPG PPS Rate

A) A hospital may bill separately for:

i) Professional services of a physician who provided direct patient care.

ii) Chemotherapy services provided in conjunction with radiation therapy services.

iii) Physical rehabilitation, occupational or speech therapy services provided in conjunction with an APG PPS reimbursed service.

B) For the purposes of subsection (b)(3)(A), a physician means:

i) A physician salaried by the hospital. Physicians salaried by the hospital do not include radiologists, pathologists, nurse practitioners, or certified registered nurse anesthetists; no separate reimbursement will be allowed for those providers.

ii) A physician who is reimbursed by the hospital through a contractual arrangement to provide direct patient care.

iii) A group of physicians with a financial contract to provide emergency department care.

c) EAPG PPS Payment. The reimbursement to hospitals for outpatient services provided on the same day shall be the product, rounded to the nearest hundredth, of the following:

1) The EAPG weighting factor of the EAPG to which the service was assigned by the EAPG grouper.

2) The EAPG conversion factor, based on the sum of:

A) The product, rounded to the nearest hundredth, of:

i) the labor-related share;

ii) the Medicare IPPS wage index; and

iii) the applicable EAPG standardized amount.

B) The product, rounded to the nearest hundredth, of:

i) non-labor share; and

ii) the applicable EAPG standardized amount.

3) The applicable consolidation factor.

4) The applicable packaging factor.

5) The applicable discounting factor.

6) The applicable policy adjustment factors, as defined in subsection (f), for which the service qualifies.

d) EAPG Standardized Amount. The standardized amount established by the Department as the basis for EAPG conversion factor differs based on the provider type:

1) County-operated Large Public Hospital EAPG Standardized Amount. For a large public hospital, as defined in Section 148.25(a)(1), the EAPG standardized amount is determined in Section 148.160.

2) University-operated Large Public Hospital EAPG Standardized Amount. For a large public hospital, as defined in Section 148.25(a)(2), the EAPG standardized amount is determined in Section 148.170.

3) Critical Access Hospital EAPG Standardized Amount. For critical access hospitals, as defined in Section 148.25(g), the EAPG standardized amounts are determined separately for each critical access hospital such that simulated EAPG payments using outpatient base period paid claim data plus payments as defined in Section 148.456 net of tax costs are equal to the estimated costs of outpatient base period claims data with a rate year cost inflation factor applied. Effective July 1, 2018, simulated EAPG payments using outpatient base period paid claim data plus payments as defined in Section 148.404, net of tax costs equal to estimated costs as described in subsection (d)(3)(A).

4) Acute EAPG Standardized Amount

A) Qualifying Criteria. General acute hospitals and freestanding emergency centers as defined in 148.25(e) excluding providers in subsections (d)(1) through (d)(3), freestanding psychiatric hospitals, psychiatric distinct part units, freestanding rehabilitation hospitals, and rehabilitation distinct part units.

B) The acute EAPG standardized amount is based on a single statewide amount determined such that:

i) Simulated EAPG payments, without P.A. 97-0689~~SMART Act~~ reductions or policy adjustments defined in subsection (f), using general acute hospital outpatient base period paid claims data, result in approximately a $75 million increase compared to the amount derived in subsection (d)(4)(B)(ii).

ii) The sum of general acute hospital base period paid claims data reported payments and allocated outpatient static payments.

iii) Effective July 1, 2018, in-state hospital simulated EAPG payment using general acute hospital outpatient base period claims data less the rate reductions defined in P.A. 97-0689 results in approximately a $238 million increase inclusive of add-on payments as defined in Section 148.402, compared to the sum of the acute hospital outpatient based period claims allowed amount.

5) Psychiatric EAPG Standardized Amount

A) Qualifying Criteria. Freestanding psychiatric hospitals and psychiatric distinct part units.

B) The psychiatric EAPG standardized amount is based on a single statewide amount, determined such that:

i) Simulated EAPG payments, without policy adjustments defined in subsection (f), using freestanding psychiatric hospitals and psychiatric distinct part units outpatient base period paid claims data, results in payments approximately equal to the amount derived in subsection (d)(5)(B)(ii).

ii) The sum of freestanding psychiatric hospitals and psychiatric distinct part units outpatient base period paid claims data reported payments and allocated outpatient static payments.

iii) Effective July 1, 2018, in-state hospital simulated EAPG payment using freestanding psychiatric hospitals and

psychiatric distinct part units outpatient base period claims data less the rate reductions defined in P.A. 97-0689 results in approximately a $3,870,000 increase compared to the sum of psychiatric hospital outpatient based period claims allowed amount.

6) Rehabilitation EAPG Standardized Amount

A) Qualifying Criteria. Freestanding rehabilitation hospitals and rehabilitation distinct part units.

B) The rehabilitation EAPG standardized amount is based on a single statewide amount, determined such that:

i) Simulated EAPG payments, without P.A. 97-0689~~SMART Act~~ reductions or policy adjustments defined in subsection (f), using freestanding rehabilitation hospitals and rehabilitation distinct part units outpatient base period paid claims data, results in payments approximately equal to the annual derived in subsection (d)(6)(B)(ii).

ii) The sum of freestanding rehabilitation hospitals and rehabilitation distinct part units outpatient base period paid claims data reported payments and allocated outpatient static payments.

iii) Effective July 1, 2018, in-state hospital simulated EAPG payments using freestanding rehabilitation hospitals and rehabilitation distinct part units outpatient base period claims data less the rate reductions defined in P.A. 97-0689 results in approximately a $57,400 increase compared to the sum of rehabilitation hospital outpatient base period claims allowed amount.

7) Ambulatory Surgical Treatment Center (ASTC) EAPG Standardized Amount. For ASTC's, as defined in 89 Ill. Adm. Code 146.105, the EAPG standardized amount is determined such that simulated EAPG payments using outpatient base period paid claims data are equal to reported

payments of outpatient base period paid claims data as contained in the Department's claims data warehouse.

8) Out-of-state non-cost reporting hospital EAPG standardized amount. For non-cost reporting hospitals, the EAPG standardized amount is $362.32, and is not wage adjusted.

e) Discounting factor. The applicable discounting factor is based on the discounting flags designated by the EAPG grouper under default EAPG settings:

1) The discounting factor will be 1.0000, if the following criteria are met:

A) The service has not been designated with a Bilateral Procedure Discounting flag, Multiple Procedure Discounting flag, Repeat Ancillary Discounting flag or Terminated Procedure Discounting flag by the EAPG grouper under default EAPG settings; or

B) The service has not been designated with a Bilateral Procedure Discounting flag and has been designated with a Multiple Procedure Discounting flag by the EAPG grouper under default EAPG settings and the service has the highest EAPG weighting factor among other services with a Multiple Procedure Discounting flag provided on the same day.

2) The discounting factor will be 0.5000 if the following criteria are met:

A) The service has been designated with a Multiple Procedure Discounting flag, Repeat Ancillary Discounting flag or Terminated Procedure Discounting flag by the EAPG grouper under default EAPG settings; and if the Multiple Procedure Discounting flag is present, the service does not have the highest EAPG weighting factor among other services with a Multiple Procedure Discounting flag provided on the same day; and

B) The service has not been designated with a Bilateral Procedure Discounting flag by the EAPG grouper under default EAPG settings.

3) The discounting factor will be 0.7500 if the following criteria are met:

A) The service has been designated with a Bilateral Procedure Discounting flag by the EAPG grouper under default EAPG settings; and

B) The service has been designated with a Multiple Procedure Discounting flag, the Repeat Ancillary Discounting flag or Terminated Procedure Discounting flag by the EAPG grouper under default EAPG settings; and if the Multiple Procedure Discounting flag is present, the service does not have the highest EAPG weighting factor among other services with a Multiple Procedure Discounting flag provided on the same day.

4) The discounting factor will be 1.5000 if the following criteria are met:

A) The service has been designated with a Bilateral Procedure Discounting flag by the EAPG grouper under default EAPG settings; and

B) The service has not been designated with a Multiple Procedure Discounting flag, the Repeat Ancillary Discounting flag or Terminated Procedure Discounting flag by the EAPG grouper under default EAPG settings; or if the Multiple Procedure Discounting flag is present, the service has the highest EAPG weighting factor among other services with a Multiple Procedure Discounting flag provided on the same day.

f) Policy Adjustments. Claims for services by providers that meet certain criteria shall qualify for further adjustments to payment. If a claim qualifies for more than one policy adjustment, then the EAPG PPS payment will be multiplied by both factors.

1) Prior to July 1, 2018 Safety Net Hospital Qualifying Criteria

A) The service is described in subsection (b)(1), excluding Medicare crossover claims.

B) The hospital is a Safety Net hospital, as defined in Section 5-5e.1 of the Illinois Public Aid Code that is not:

i) A critical access hospital, as defined in Section 148.25(g).

ii) A large public hospital, as defined in Section 148.25(a).

C) Policy adjustment factor effective SFY 2015 and 2016 is 1.3218.

2) Prior to July 1, 2018 High Outpatient Volume Hospital Qualifying Criteria

A) The service is described in subsection (b)(1), excluding Medicare crossover claims.

B) The hospital is a High Outpatient Volume hospital, as defined in subsection (f)(2)(C) that is not:

i) A critical access hospital, as defined in Section 148.25(g).

ii) A large public hospital, as defined in Section 148.25(a).

iii) A Safety Net hospital, as defined in Section 5-5e.1 of the Illinois Public Aid Code.

C) A High Outpatient Volume hospital for which the high outpatient volume is at least:

i) 1.5 standard deviations above the mean regional high outpatient volume; or

ii) 1.5 standard deviations above the mean statewide high outpatient volume.

D) Policy adjustment factor effective SFY 2015 and 2016 is 1.3218.

3) Crossover Adjustment Factor

A) Acute EAPG standardized amounts, as defined in subsection (d)(4), shall be reduced by a Crossover Adjustment factor such that:

i) The absolute value of the total simulated payment reduction that occurs when applying the Crossover Adjustment Factor to simulated EAPG payments, including Policy Adjustments, using general acute hospital outpatient base period paid claims data, is equal to the amount derived in subsection (f)(3)(A)(ii):

ii) The difference of total simulated EAPG payments using general acute hospital outpatient crossover paid claims data, and general acute hospital outpatient crossover paid claims data total reported Medicaid net liability.

B) Crossover Adjustment Factor effective SFY 2015 and 2016 is 0.98912. Effective July 1, 2018, the Crossover Adjustment Factor is defined in (f)(3)(A)(i).

4) If a claim does not qualify for a Policy Adjustment described in subsections (f)(1) through (f)(3), the policy adjustment factor is 1.0.

5) High Outpatient Volume Hospital effective July 1, 2018.

A) High Outpatient Volume Hospital is defined as:

i) an Illinois hospital for which the high outpatient volume is at least one and one-half standard deviations above the mean regional high outpatient volume;

ii) an Illinois hospital for which the high outpatient volume is at least one and one-half standard deviations above the mean statewide high outpatient volume;

iii) an Illinois Safety-Net Hospital as defined in Section 149.100; or

iv) an Illinois Small Public Hospital as defined in Section 148.409.

B) Policy adjustment factor is set:

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i) For acute care claims such that total expenditures on qualifying claims less the rate reductions defined in P.A. 97-0689 is increased by $79.2 million more than base period qualifying claims allowed amount.

ii) For non-acute care claims to equal the factor in place prior to July 1, 2018.

6) The policy adjustment criteria found in subsections (f)(1) and (f)(2) are no longer in effect as of July 1, 2018.

g) Payment for outpatient end-stage renal disease treatment (ESRDT) services provided pursuant to Section 148.40(b) shall be made at the Department's payment rates, as follows:

1) For outpatient services or home dialysis treatments provided pursuant to Section 148.40(c)(2) or (c)(3), the Department will reimburse hospitals and clinics for ESRDT services at a rate that will reimburse the provider for the dialysis treatment and all related supplies and equipment, as defined in 42 CFR 405.2124 and 413.170 (2010). This rate will be the rate established by Medicare pursuant to 42 CFR 405.2124 and 413.170 (2010).

2) Payment for Non-routine Services. For services that are provided during outpatient or home dialysis treatment pursuant to Section 148.40(c)(2) or (c)(3), but are not defined as a routine service under 42 CFR 405.2163 (1994), separate payment will be made to independent laboratories, pharmacies, and medical supply providers pursuant to 89 Ill. Adm. Code 140.430 through 140.434, 140.440 through 140.50, and 140.75 through 140.481, respectively.

3) Payment for physician services relating to ESRDT will be made separately to physicians, pursuant to 89 Ill. Adm. Code 140.400.

4) Effective with dates of service July 1, 2013, hospital and freestanding chronic dialysis centers will receive an add-on payment of $60 per treatment day to the rate described in subsection (g)(1) for outpatient renal dialysis treatments or home dialysis treatments provided to Medicaid recipients under Title XIX of the Social Security Act, excluding services

for individuals eligible for Medicare under Title XVIII of that Act (Medicaid/Medicare crossovers) and excluding services provided under Subpart D: State Chronic Renal Disease Program, as defined in Sections 148.600 through 148.640.

h) Updates to EAPG PPS Reimbursement. The Department may annually review the components listed in subsection (c) and make adjustments as needed. Grouper shall be updated at least triennially and no more frequently than annually.

i) Definitions, as used in this Section:

"Aggregate ancillary cost-to-charge ratio" means the ratio of each hospital's total ancillary costs and charges reported in the Medicare cost report, excluding special purpose cost centers and the ambulance cost center, for the cost reporting period matching the outpatient base period claims data. Aggregate ancillary cost-to-charge ratios applied to SFY 2011 outpatient base period claims data will be based on fiscal year ending 2011 Medicare cost report data.

"Allowed amounts" means the calculated fee schedule amount prior to any adjustment for secondary payer amounts for fiscal year 2015 MCO encounter data adjusted with a completion factor and fee-for-service claims data, excluding Medicare dual eligible claims, renal dialysis claims, and therapy claims.

"Consolidation factor" means a factor of 0 percent applicable for services designated with a Same Procedure Consolidation flag or Clinical Procedure Consolidation flag by the EAPG grouper under default EAPG settings.

"Default EAPG settings" means the default EAPG grouper options in 3M's Core Grouping Software for each EAPG grouper version.

"Detailed ancillary cost-to-charge ratios" means for each standardized ancillary Medicare cost-center cost-to-charge ratios for each hospital calculated by dividing total costs in Worksheet C, Part 1, Column 5 and Worksheet B, Part 1, Columns 21 and 22 by total charges for each standardized ancillary Medicare cost center in Worksheet C, Part 1, Columns 6 and 7. For all hospitals missing Worksheet C, Part 1, Column 5 data, use Worksheet C, Part 1, Column 3 data. Use aggregate ancillary cost-to-charge ratios as a default when a cost-center specific cost-to-charge ratio is not available or the claim revenue code is all-inclusive ancillary.

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"EAPG" means Enhanced Ambulatory Patient Groups, as defined in the EAPG grouper, which is a patient classification system designed to explain the amount and type of resources used in an ambulatory visit. Services provided in each EAPG have similar clinical characteristics and similar resource use and cost.

"EAPG grouper" means the most recently released version of the EAPG software, distributed by 3M Health Information Systems, available to the Department as of January 1 of the calendar year during with the discharge occurred; except, for the calendar year beginning January 1, 2014, EAPG grouper means version 3.7 of the EAPG software. Effective July 1, 2018, "EAPG grouper" means the EAPG grouper version 3.11 of the Enhanced Ambulatory Patient Group (EAPG) software, distributed by 3M Health Information Systems.

"EAPG PPS" means the EAPG prospective payment system as described in this Section.

"EAPG weighting factor" means, for each EAPG, the product, rounded to the nearest ten-thousandth, of:

the national weighting factor, as published by 3M Health Information Systems for the EAPG grouper; and

the Illinois experience adjustment.

"Estimated cost of outpatient base period claims data" means:

Prior to July 1, 2018, the product of:

outpatient base period paid claims data total covered charges;

the critical access hospital's aggregate ancillary cost-to-charge ratio; and

a rate year cost inflation factor.

Effective July 1, 2018, the product of:

Outpatient base period claims data total covered charges;

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The critical access hospital's detailed ancillary cost-to-charge ratios; and

A rate year cost inflation factor.

"High outpatient volume" means the number paid outpatient claims described in subsection (b)(1) provided during the high volume outpatient base period paid claims data.

"High volume outpatient base period paid claims data" means:

Prior to July 1, 2018, SFY 2011 outpatient Medicaid fee-for-service paid claims data, excluding Medicare dual eligible claims, renal dialysis claims, and therapy claims, for EAPG PPS payment for services provided in SFY 2015 and 2016. For subsequent dates of service, the term means the SFY ending 30 months prior to the beginning of the calendar year during which the service is provided.

Effective July 1, 2018, SFY 2015 outpatient Medicaid fee-for-service paid claims data and completed MCO encounter claims data, excluding Medicare dual eligible claims, renal dialysis claims, and therapy claims, for EAPG PPS payment for services provided in SFY 2019 and 2020; for subsequent dates of service, the most recently available adjudicated 12 months of outpatient paid claims data to be identified by the Department.

"Illinois experience adjustment" means, for the calendar year beginning January 1, 2014, a factor of 1.0; for subsequent calendar years, means the factor applied to 3M EAPG national weighting factors when updating EAPG grouper versions determined such that the arithmetic mean EAPG weighting factor under the new EAPG grouper version is equal to the arithmetic mean EAPG weighting factor under the prior EAPG grouper version using outpatient base period claims data.

"In-state" means all:

Illinois hospitals; and

out-of-state hospitals that are designated a level I pediatric trauma center or a level I trauma center by the Illinois Department of Public Health as of December 1, 2017.

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"Labor-related share" means that portion of the statewide standardized amount that is allocated in the EAPG PPS methodology to reimburse the costs associated with personnel. The labor-related share for a hospital is 0.60.

"Mean regional high outpatient volume" means the quotient, rounded to the nearest tenth, resulting from the number of paid outpatient services described in subsections (b)(1)(A) through (D), provided by hospitals within a region, based on outpatient base period paid claims data.

"Mean statewide high outpatient volume" means the quotient, rounded to the nearest tenth, resulting from the number of paid outpatient services described in subsections (b)(1)(A) through (D), provided by hospitals within the state, based on outpatient base period paid claims data.

"Medicare IPPS wage index" means for in-state providers and out-of-state Illinois Medicaid cost reporting providers, the wage index used for inpatient reimbursement as described in 89 Ill. Adm. Code 149.100. For out-of-state non-cost reporting providers, the wage index used to adjust the EAPG standardized amount shall be a factor of 1.0.

"Non-labor share" means the difference resulting from the labor-related share being subtracted from 1.0.

"Outpatient base period paid claims data" means:

Prior to July 1, 2018, SFY 2011 outpatient Medicaid fee-for-service paid claims data, excluding Medicare dual eligible claims, renal dialysis claims, and therapy claims, for EAPG PPS payment for services provided in SFY 2015, 2016 and 2017; ~~for subsequent dates of service, the term means the most recently available adjudicated 12 months of outpatient paid claims data to be identified by the Department.~~

Effective July 1, 2018, for in-state SFY 2015 outpatient Medicaid fee-for-service paid claims data and completed MCO encounter claims data, excluding Medicare dual eligible claims, renal dialysis claims, and therapy claims, for EAPG PPS payment for services provided in SFY 2019 and 2020; for subsequent dates of service, the most recently available

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adjudicated 12 months of outpatient paid claims data to be identified by the Department.

"Outpatient crossover paid claims data" means:

Prior to July 1, 2018, SFY 2011 outpatient Medicaid/Medicare dual eligible fee-for-service paid claims data, excluding renal dialysis claims and therapy claims, for EAPG PPS payment for services provided in SFY 2015, 2016 and 2017; for subsequent dates of service, the term means most recently available adjudicated 12-months of outpatient paid claims data to be identified by the Department.

Effective July 1, 2018, SFY 2015 outpatient Medicaid/Medicare dual eligible fee-for-service paid claims data, excluding renal dialysis claims and therapy claims, for EAPG PPS payment for services provided in SFY 2019 and 2020; for subsequent dates of service, the most recently available adjudicated 12 months of outpatient paid claims data to be identified by the Department.

"Packaging factor" means a factor of 0 percent applicable for services designated with a Packaging flag by the EAPG grouper under default EAPG settings plus EAPG 430 (CLASS I CHEMOTHERAPY DRUGS), EAPG 435 (CLASS I PHARMACOTHERAPY), EAPG 495 (MINOR CHEMOTHERAPY DRUGS), EAPG 496 (MINOR PHARMACOTHERAPY), and EAPGs 1001-1020 (DURABLE MEDICAL EQUIPMENT LEVEL 1-20), and non-covered revenue codes defined in the Handbook for Hospital Services.

"Rate year cost inflation factor" means the cost inflation from the midpoint of the outpatient base period paid claims data to the midpoint of the rate year based on changes in Centers for Medicare and Medicaid Services (CMMS) input price index levels. For critical access hospital rates effective SFY 2015, the rate year cost inflation factor will be based on changes in CMMS input price index levels from the midpoint of SFY 2011 to SFY 2015.

"Region" means, for a given hospital, the rate region, as defined in 89 Ill. Adm. Code 140.Table J, within which the hospital is located.

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"Total covered charges" means the amount entered for revenue code 001 in column 53 (Total Charges) on the Uniform Billing Form (form CMMS 1450), or one of its electronic transaction equivalents.

(Source: Amended at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.160 Payment Methodology for County-Owned Large Public Hospitals

a) Effective for dates of outpatient services on or after July 1, 2014 and inpatient discharges on July 1, 2014 through December 31, 2015:

1) Inpatient Reimbursement Methodology
In accordance with 89 Ill. Adm. Code 149.50(b)(5), county-owned hospitals, as defined in Section 148.25(a)(1), are excluded from the DRG PPS for reimbursement for inpatient hospital services and are reimbursed on a per diem basis.

A) Inpatient Per Diem Rate Calculation
County-owned hospital inpatient per diem rates are calculated as follows:

i) Each county-owned hospital's inpatient base year costs, including operating capital and direct medical education costs, shall be calculated using inpatient base period claims data and Medicare cost report data with reporting periods matching the inpatient base period. Effective July 1, 2018, direct and indirect medical education costs shall be reduced from the inpatient base year cost.

ii) The inpatient base year costs shall be inflated from the midpoint of the inpatient base period claims data to the midpoint of the time period for which rates are being set (rate period) based on an inflation methodology determined by the Department and approved by Centers for Medicare and Medicaid Services (CMMS).

iii) Calculate the sum of:

- The total hospital inflated base year costs, excluding non-Medicare crossover claims, in the inpatient base period claims data; and

- Total uncovered Medicare crossover claim cost in the inpatient base period claims data.

iv) The inpatient per diem rate shall be the quotient of:

- Combined inflated base year cost and uncovered Medicare crossover claims cost, per subsection (a)(1)(C); and

- Total hospital base year covered days, excluding non-Medicare crossover claims, in the inpatient base period claims data.

v) The inpatient per diem rates shall be reduced if resulting payments exceed available Department funding or the CMMS Upper Payment Limit.

B) Rate Updates
County-owned hospital per diem rates shall be updated on an annual basis using more recent inpatient base period claims data, Medicare cost report data and cost inflation data.

C) New hospitals, for which inpatient base period claims data or Medicare cost reports are not on file, will be reimbursed the per diem rate calculated in subsection (a)(1)(A).

D) Review Procedure
The review procedure shall be in accordance with Section 148.310.

2) Outpatient Reimbursement Methodology
Large public hospitals, as defined in Section 148.25(a), are included in the EAPG PPS for reimbursement for outpatient hospital services as described in Section 148.140, and are to receive provider-specific EAPG standardized amounts.

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A) Outpatient EAPG Standardized Amount Calculation
County-owned hospital outpatient EAPG standardized amounts are calculated as follows:

i) Each county-owned hospital's outpatient base year costs, including operating, capital and direct medical education costs, shall be calculated using outpatient base period claims data and Medicare cost report data with reporting periods matching the outpatient base period.

ii) The outpatient base year costs shall be inflated from the midpoint of the outpatient base period claims data to the midpoint of the rate period based on an inflation methodology determined by the Department and approved by CMMS.

iii) Prior to July 1, 2018, EAPG standardized amounts shall be determined for each county-owned hospital such that simulated EAPG payments are equal to outpatient base period costs inflated to the rate period, based on outpatient based period paid claims data. Effective July 1, 2018, EAPG standardized amounts shall be determined for each county-owned hospital such that simulated EAPG payments are equal to outpatient base period costs inflated to the rate period, based on outpatient based period claims data, less an amount calculated in Section 148.406(f).

iv) EAPG standardized amounts shall be reduced if resulting payments exceed available HFS funding or the CMMS Upper Payment Limit.

B) Rate Updates and Adjustments

i) County-owned hospital EAPG standardized amounts shall be updated on an annual basis using more recent outpatient base period claims data, Medicare cost report data, and costs inflation data.

ii) Restructuring Adjustments

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Adjustments to outpatient base year costs, as described in subsection (a)(2)(A), will be made to reflect restructuring since filing the base year costs reports. The restructuring must have been mandated to meet State, federal or local health and safety standards. The allowable Medicare/Medicaid costs (see 42 CFR 405, Subpart D, (1982)) must be incurred as a result of mandated restructuring and identified from the most recent audited cost reports available before or during the rate year. The restructuring cost must be significant, i.e., on a per unit basis; they must constitute one percent or more of the total allowable Medicare/Medicaid unit costs for the same time period. The Department will use the most recent available cost reports to determine restructuring costs.

C) New hospitals, for which outpatient base period claims data or Medicare cost reports are not on file, will be reimbursed the EAPG standardized amount calculated in subsection (a)(2)(A).

D) Review Procedure
The review procedure shall be in accordance with Section 148.320.

3) Definitions, as used in this Section:

"Inpatient base period paid claims data" means:

Prior to July 1, 2018, Medicaid fee-for-service inpatient paid claims data from the State fiscal year ending 36 months prior to the beginning of the rate period.

Effective July 1, 2018, Medicaid fee-for-service and MCO encounter inpatient claims data from the State fiscal year ending 12 months prior to the beginning of the rate period.

"Outpatient base period paid claims data" means:

Prior to July 1, 2018, Medicaid fee-for-service outpatient paid claims data from the State fiscal year ending 36 months prior to the beginning of the rate period, excluding crossover claims.

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Effective July 1, 2018, Medicaid fee-for-service and MCO encounter outpatient claims data from the State fiscal year ending 12 months prior to the beginning of the rate period, excluding crossover claims.

"Rate period" means the State fiscal year for which the county-owned hospital inpatient and outpatient rates are effective.

b) Effective for inpatient acute care discharges on or after January 1, 2016, county-owned hospitals, as defined in Section 148.25(a)(1), shall be reimbursed at allowable cost on a DRG basis. The DRG base payment shall be the product, rounded to the nearest hundredth, of:

1) The DRG weighting factor of the DRG and SOI (severity of illness), to which the inpatient stay was assigned by the grouper.

2) The DRG base rate determined:

A) Prior to July 1, 2018, such that simulated base period as defined in subsection (a)(3) DRG payments are equal to adjusted base period costs, as determined in subsection (a)(1)(A)(ii); and.

B) Effective July 1, 2018, such that simulated DRG payments are equal to inpatient base period costs inflated to the rate period, based on inpatient based period claims data, less an amount calculated in Section 148.406(c).

(Source: Amended at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.170 Payment Methodology for University-Owned Large Public Hospitals

a) Effective for dates of outpatient services on or after July 1, 2014 and inpatient discharges on July 1, 2014 through December 31, 2015:

1) Inpatient Reimbursement Methodology
In accordance with 89 Ill. Adm. Code 149.50(b)(5), a large public hospital, as defined in Section 148.25(a)(2), is excluded from the DRG PPS for reimbursement for inpatient hospital services and shall be

reimbursed on a per diem basis.

A) Inpatient Per Diem Rate Calculation
University-owned hospital inpatient per diem rates are calculated as follows:

i) Each University-owned hospital's inpatient base year costs, including operating, capital and direct medical education costs, shall be calculated using inpatient base period claims data and Medicare cost report data with reporting periods matching the inpatient base period. Effective July 1, 2018, direct and indirect medical education costs shall be reduced from the inpatient base year cost.

ii) The inpatient base year costs shall be inflated from the midpoint of the inpatient base period claims data to the midpoint of the time period, for which rates are being set (rate period) based on an inflation methodology determined by the Department and approved by the Center for Medicare and Medicaid Services (CMMS).

iii) Calculate the sum of:

- The total hospital inflated base year costs, excluding non-Medicare crossover claims, in the inpatient base period claims data; and

- Total uncovered Medicare crossover claim cost in the inpatient base period claims data.

iv) The inpatient per diem rate shall be the quotient of:

- Combined inflated base year cost and uncovered Medicare crossover claims cost, per subsection (a)(1)(A)(iii); and

- Total hospital base year covered days, excluding non-Medicare crossover claims, in the inpatient base period claims data.

v) The inpatient per diem rates shall be reduced if resulting payments exceed available Department funding or the CMMS Upper Payment Limit.

B) Rate Updates and Adjustments
University-owned hospital per diem rates shall be updated on an annual basis using more recent inpatient base period claims data, Medicare cost report data and cost inflation data.

C) New hospitals, for which inpatient base period claims data or Medicare cost reports are not on file, will be reimbursed the per diem rate calculated in subsection (a)(1)(A).

D) Review Procedure
The review procedure shall be in accordance with Section 148.310.

E) Applicable Adjustment for DSH Hospitals
The criteria and methodology for making applicable adjustments to DSH hospitals shall be in accordance with Section 148.120.

2) Outpatient Reimbursement Methodology
Large public hospitals, as defined in Section 148.25(a)(2), are included in the EAPG PPS for reimbursement for outpatient hospital services as described in Section 148.140 and are to receive a provider-specific EAPG standardized amount.

A) Outpatient EAPG Standardized Amount Calculation
University-owned hospital outpatient EAPG standardized amount is calculated as follows:

i) Each University-owned hospital's outpatient base year costs, including operating, capital and direct medical education costs, shall be calculated using outpatient base period claims data and Medicare cost report data with reporting periods matching the outpatient base period.

ii) The outpatient base year costs shall be inflated from the midpoint of the outpatient base period claims data to the

midpoint of the rate period based on an inflation methodology determined by the Department and approved by CMMS.

iii) Prior to July 1, 2018, EAPG standardized amounts shall be determined for each State-owned hospital such that simulated EAPG payments are equal to outpatient base period costs inflated to the rate period, based on outpatient based period paid claims data. Effective July 1, 2018, EAPG standardized amounts shall be determined for each county-owned hospital such that simulated EAPG payments are equal to outpatient base period costs inflated to the rate period, based on outpatient based period claims data, less an amount calculated in 148.406(f).

iv) EAPG standardized amounts shall be reduced if resulting payments exceed available Department funding or the Centers for Medicare and Medicaid Services Upper Payment Limit.

B) Rate Updates and Adjustments
State-owned hospital EAPG standardized amounts shall be updated on an annual basis using more recent outpatient base period claims data, Medicare cost report data and cost inflation data.

C) Review Procedure
The review procedure shall be in accordance with Section 148.310.

3) Definitions, as used in this Section:

"Inpatient base period paid claims data" means:

Prior to July 1, 2018, Medicaid fee-for-service inpatient paid claims data from the State fiscal year ending 36 months prior to the beginning of the rate period.

Effective July 1, 2018, Medicaid fee-for-service and MCO encounter inpatient claims data from the State fiscal year ending 12 months prior to the beginning of the rate period.

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"Outpatient base period paid claims data" means:

Prior to July 1, 2018, Medicaid fee-for-service outpatient paid claims data from the State fiscal year ending 36 months prior to the beginning of the rate period, excluding crossover claims.

Effective July 1, 2018, Medicaid fee-for-service and MCO encounter outpatient claims data from the State fiscal year ending 12 months prior to the beginning of the rate period, excluding crossover claims.

"Rate period" means the State fiscal year for which the University-owned hospital inpatient and outpatient rates are effective.

b) Effective for inpatient acute care discharges on or after January 1, 2016, University-owned hospitals, as defined in Section 148.25(a)(2), shall be reimbursed at allowable cost on a DRG basis. The DRG base payment shall be the product, rounded to the nearest hundredth, of:

1) The DRG weighting factor of the DRG and SOI, to which the inpatient stay was assigned by the grouper.

2) Prior to July 1, 2018, the~~The~~ DRG base rate determined such that simulated base period as defined in subsection (a)(3) DRG payments are equal to adjusted base period costs, as determined in subsection (a)(1)(A)(ii). Effective July 1, 2018, the DRG base rate shall be determined such that simulated DRG payments are equal to inpatient base period costs inflated to the rate period, based on inpatient based period claims data, less an amount calculated in Section 148.406(c).

(Source: Amended at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.295 Critical Hospital Adjustment Payments

Effective for dates of service on or after July 1, 2014, except those Sections specifically designated otherwise, Critical Hospital Adjustment Payments (CHAP) shall be made to all eligible hospitals excluding county-owned hospitals, as described in Section 148.25(a) for inpatient admissions occurring on or after July 1, 1998, in accordance with this Section. For a

hospital that is located in a geographic area of the State in which the Department mandates some or all of the beneficiaries of the Medical Assistance Program residing in the area to enroll in a Care Coordination program as defined in 305 ILCS 5/5-30 no new payment or rate increase that would otherwise become effective for dates of service on or after July 1, 2010 shall take effect under this Section unless the qualifying hospital also meets the definition of a Coordinated Care Participating Hospital as defined in subsection (g)(5) of this Section no later than six months after the effective date of the first mandatory enrollment in the Coordinated Care Program.

a) Direct Hospital Adjustment (DHA) Criteria

1) Qualifying Criteria
Hospitals may qualify for the DHA under this subsection (a) under the following categories unless the hospital does not provide comprehensive emergency treatment services as defined in 77 Ill. Adm. Code 250.710(a) on or after July 1, 2006, but did provide comprehensive emergency treatment services as defined in 77 Ill. Adm. Code 250.710(a) on January 1, 2006:

A) Except for hospitals operated by the University of Illinois, children's hospitals, psychiatric hospitals, rehabilitation hospitals and long term stay hospitals, all other hospitals located in Health Service Area (HSA) 6 that either:

i) were eligible for Direct Hospital Adjustments under the CHAP program as of July 1, 1999 and had a Medicaid inpatient utilization rate (MIUR) equal to or greater than the statewide mean in Illinois on July 1, 1999;

ii) were eligible under the Supplemental Critical Hospital Adjustment Payment (SCHAP) program as of July 1, 1999 and had an MIUR equal to or greater than the statewide mean in Illinois on July 1, 1999; or

iii) were county owned hospitals as defined in 89 Ill. Adm. Code 148.25(a)(1), and had an MIUR equal to or greater than the statewide mean in Illinois on July 1, 1999.

B) Illinois hospitals located outside of HSA 6 that had an MIUR greater than 60 percent on July 1, 1999 and an average length of

stay less than ten days. The following hospitals are excluded from qualifying under this subsection (c)(1)(B): children's hospitals; psychiatric hospitals; rehabilitation hospitals; and long term stay hospitals.

C) Prior to July 1, 2018, Children's hospitals, as defined under Section 148.125(d)(3), on July 1, 1999.

D) Illinois teaching hospitals with more than 40 graduate medical education programs on July 1, 1999 not qualifying under subsection (a)(1)(A), (B) or (C).

E) Prior to July 1, 2018, except~~Except~~ for hospitals operated by the University of Illinois, children's hospitals, psychiatric hospitals, rehabilitation hospitals, long term stay hospitals and hospitals otherwise qualifying in subsection (a)(1)(A) through (a)(1)(D), all other hospitals that had an MIUR greater than 23 percent on July 1, 1999, had an average length of stay less than four days, provided more than 4,200 total days and provided 100 or more Alzheimer days for patients diagnosed as having the disease.

2) DHA Rates

~~A)~~ ~~For hospitals qualifying under subsection (a)(1)(A) that have a Combined MIUR that is equal to or greater than one standard deviation above the Statewide mean Combined MIUR, but less than 1.5 standard deviation above the Statewide mean Combined MIUR, will continue to receive the rate in effect as of December 31, 2013, $105.00 per day for hospitals that do not provide obstetrical care and a rate of $142.00 per day for hospitals that do provide obstetrical care, for dates of service through June 30, 2014. For dates of service on or after July 1, 2014, the rate is $0.00.~~

AB~~B~~) Hospitals qualifying under subsection (a)(1)(A) with an average length of stay less than 3.9 days will continue to receive the rate in effect as of December 31, 2013, $254.00 per day, for dates of service on or after July 1, 2014.

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~~C)~~ ~~Hospitals receiving payments under subsection (a)(2)(A) that have an average length of stay less than four days will continue to have their rate increased by $650.00 per day for dates of service through February 28, 2014. For dates of service on or after March 1, 2014 through June 30, 2014, the rate is increased by $1,040.00 per day. For dates of service on or after July 1, 2014, the rate is $0.00.~~

~~D)~~ ~~Hospitals with a Combined MIUR greater than 75 percent that have more than 20,000 total days, have an average length of stay less than five days and have at least one graduate medical program will have their rate continue to be increased by $148.00 per day for dates of service through February 28, 2014. For dates of service on or after March 1, 2014 through June 30, 2014, the rate is increased by $287.00 per day. For dates of service on or after July 1, 2014, the rate is $0.00.~~

B~~E~~) Hospitals qualifying under subsection (a)(1)(B) that have more than 1,500 obstetrical days will continue to receive the rate in effect as of December 31, 2013, $224.00 per day, for dates of service on or after July 1, 2014.

C~~F~~) Prior to July 1, 2018, hospitals~~Hospitals~~ qualifying under subsection (a)(1)(C) that are not located in Illinois, have an MIUR greater than 45 percent, and greater than 4,000 days will continue to receive the rate in effect as of December 31, 2013, $117.00 per day, for dates of service on or after July 1, 2014 through June 30, 2018. For dates of service on or after July 1, 2018, the rate is $0.00.

~~G)~~ ~~Hospitals qualifying under subsection (a)(1)(E) will continue to receive the rate in effect as of December 31, 2013, $90.00 per day, for dates of service on or after July 1, 2014.~~

D~~H~~) Hospitals qualifying under subsection (a)(1)(D) with a combined MIUR that is equal to or greater than 35 percent will receive a rate of $54.00 for dates of service on or after July 1, 2014.

3) DHA Payments

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A) Payments under this subsection (a) will be made at least quarterly.

B) Payment rates will be multiplied by the total days.

C) The product of subsection (a)(3)(B) will be multiplied by the applicable tiering of Section 148.296(d).

b) Critical Hospital Adjustment Payment Definitions
The definitions of terms used with reference to calculation of the CHAP required by this Section are as follows:

1) "Alzheimer days" means total paid days contained in the Department's paid claims database with a ICD-9-CM diagnosis code of 331.0 for dates of service occurring in State fiscal year 2001 and adjudicated through June 30, 2002.

2) "CHAP base period" means State fiscal year 1994 for CHAP calculated for the July 1, 1995 CHAP rate period; State fiscal year1995 for CHAP calculated for the July 1, 1996 CHAP rate period; etc.

3) "CHAP rate period" means, beginning July 1, 1995, the 12 month period beginning on July 1 of the year and ending June 30 of the following year.

4) "Combined MIUR" means the sum of Medicaid Inpatient Utilization Rate (MIUR) as of July 1, 1999, and as defined in Section 148.120(i)(4), plus the Medicaid obstetrical inpatient utilization rate, as described in Section 148.120(i)(5), as of July 1, 1999.

5) "Coordinated Care Participating Hospital" means a hospital that is located in a county of the State in which the Department mandates some or all of the beneficiaries of the Medical Assistance Program residing in the area to enroll in a care coordination program as defined in 305 ILCS 5/5-30, including an out-of-state hospital in a county contiguous to a managed care region that is one of the following:

A) Has entered into a contract to provide hospital services with one or more MCOs to enrollees of the care coordination program.

B) Has not been offered a contract by a care coordination plan that the Department has determined to be a good faith offer when the plan pays not less than the Department would have paid on a fee-for-service basis, but excluding disproportionate share hospital adjustment payments or any other supplement payment that the Department pays directly, except to the extent those adjustments or supplemental payments are incorporated into the development of the applicable MCO capitated rates.

C) Is not licensed to serve the population mandated to enroll in the care coordination program.

D) As used in this subsection (b)(5), "MCO" means any entity that contracts with the Department to provide services when payment for medical services is made on a capitated basis.

6) "Medicaid general care admission" means hospital inpatient admissions that were subsequently adjudicated by the Department through the last day of June preceding the CHAP rate period and contained within the Department's paid claims data base, for recipients of medical assistance under Title XIX of the Social Security Act, excluding admissions for normal newborns, Medicare/Medicaid crossover admissions, psychiatric and rehabilitation admissions.

7) "Medicaid obstetrical care admission" means hospital inpatient admissions that were subsequently adjudicated by the Department through the last day of June preceding the CHAP rate period and contained within the Department's paid claims data base, for recipients of medical assistance under Title XIX of Social Security Act, with Diagnosis Related Grouping (DRG) of 370 through 375; and specifically excludes Medicare/Medicaid crossover claims.

8) "Total admissions" means total paid admissions contained in the Department's paid claims database, including obstetrical admissions multiplied by two and excluding Medicare crossover admissions, for dates of service occurring in State fiscal year 1998 and adjudicated through June 30, 1999.

9) "Total days" means total paid days contained in the Department's paid claims database, including obstetrical days multiplied by two and excluding Medicare crossover days, for dates of service occurring in State fiscal year 1998 and adjudicated through June 30, 1999.

10) "Total obstetrical days" means hospital inpatient days for dates of service occurring in State fiscal year 1998 and adjudicated through June 30, 1999, with an ICD-9-CM principal diagnosis code of 640.0 through 648.9 with a 5th digit of 1 or 2; 650; 651.0 through 659.9 with a 5th digit of 1, 2, 3, or 4; 660.0 through 669.9 with a 5th digit of 1, 2, 3, or 4; 670.0 through 676.9 with a 5th digit of 1 or 2; V27 through V27.9; V30 through V39.9; or any ICD-9-CM principal diagnosis code that is accompanied with a surgery procedure code between 72 and 75.99; and specifically excludes Medicare/Medicaid crossover claims.

(Source: Amended at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.296 Transitional Supplemental Payments

Effective for dates of service on or after July 1, 2014, to provide stability to the hospital industry in the midst of replacing a twenty year old reimbursement system that relied heavily on non-claims based static payments, in favor of an updated APR-DRG grouper for inpatient services and an entirely new outpatient reimbursement methodology in the EAPG system, the Department shall create transitional supplemental payments to hospitals. These payments are essential to maintaining access to care for an expanding population of Illinois Medical Assistance recipients for a limited time period to allow the hospital providers time to adjust to the new reimbursement policies, rates and methodologies.

a) Transitional Supplemental Payments shall be made to providers with a simulated payment loss under the new inpatient and outpatient systems combined.

1) The following providers will not qualify for Transitional Supplemental Payments:

A) University-owned large public hospitals, county-owned large public hospitals, children's specialty hospitals and non-cost reporting hospitals.

B) Providers with a simulated payment gain under the new inpatient and outpatient systems combined.

C) Out of state hospitals, effective July 1, 2018.

2) Simulated payment loss or gain under the new inpatient and outpatient systems combined shall be based on:

A) SFY 2013 legacy system reported claim payments: Reported payments in Illinois Medicaid FFS inpatient and outpatient paid claims data, including Medicare-Medicaid dual eligible claims and non-Medicare eligible claims, for claims with submittal dates during SFY 2013 and admission dates on or after July 1, 2011, excluding DSH payments outpatient therapy claims, and claims with invalid/ungroupable inpatient DRGs or outpatient EAPGs.

B) SFY 2013 new system simulated claim payments: Simulated payments under the new inpatient and outpatient systems using SFY 2013 claims data described in subsection (a)(2)(A), including MPA/MHVA payments and excluding DSH payments and inpatient GME payment increases.

C) SFY 2011 legacy system supplemental payments, excluding payments that will continue in current form in SFY 2015.

D) All legacy and new system payment amounts used to determine Transitional Supplemental Payments will be adjusted for SMART Act reductions.

E) Estimated payment gain or loss under the combined new inpatient and outpatient systems shall be determined as follows: (Simulated new system SFY 2013 claim payments) – [(Reported legacy system SFY 2013 claim payments) + (SFY 2011 legacy system supplemental payments)].

b) Transitional Supplemental Payments for qualifying providers shall be equal to the estimated payment loss under the combined new inpatient and outpatient systems, as defined in subsection (a)(2)(E).

c) Timing

1) The Department shall make Transitional Supplemental Payments for the first four years of the new inpatient and outpatient payment systems effective during SFY 2015 through SFY 2018.

2) Commencing January 2017, the Department shall convene a Technical Advisory Group to determine the need to continue any new supplemental payments to maintain access to care to be effective July 1, 2018. Any new supplemental payments may be based on one or more of the following considerations critical to maintaining access to care for those eligible for Medicaid services:

A) Provider-specific payment increases received from the Medicaid expansion population.

B) Provider-specific Medicaid volume (both total volume and Medicaid utilization rate).

C) Provider-specific new system payments compared to UPL cost.

D) Provider-specific new system payments compared to estimated payments under Medicare, using an aggregate Medicare payment-to-charge ratio.

E) Provider-specific payments under the hospital assessment.

F) Available inpatient and outpatient UPL gap for each provider class.

G) The financial implications of the loss of Transitional Supplemental Payments in excess of $10,000,000 and have an MIUR at least of 1.5 standard deviations above the mean.

H) An analysis of new hospital revenues and losses from all sources.

3) Effective July 1, 2018, the Department shall direct unused funds from legacy Transitional Supplemental Payments to increase either inpatient DRG PPS base rates or EAPG PPS conversion factors, adjust current policy adjustors defined in Section 148.140(f) and 89 Ill. Adm. Code

149.100(f) if needed, and/or create new policy adjustors, which may include but are not limited to, Perinatal level II or II+ facilities and expensive drugs and devices if needed, based on analysis and recommendations from the Technical Advisory Group defined in subsection (c)(2).

d) Effective July 1, 2018, a portion of the Transitional Payments shall be known as Transformation Payments.

1) Tier 1: A hospital with a rate year 2017 MIUR equal to or greater than 45% the payment shall be equal to 100% of payments outlined in subsection (a)(2).

2) Tier 2: A hospital with a rate year 2017 MIUR equal to or greater than 25% but less than 45% the payment shall be equal to 75% of payments outlined in subsection (a)(2).

3) Tier 3: A hospital with a rate year 2017 MIUR less than 25% the payment shall be equal to 50% outlined in subsection (a)(2).

(Source: Amended at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.297 Physician Development Incentive Payments (Repealed)

~~Effective for dates of service on or after July 1, 2014:~~

~~a) A Medicaid Graduate Medical Education (GME) fund in Illinois will support and align with the State's current and projected physician workforce needs and goals including:~~

~~1) Increasing the number of primary care providers in Illinois;~~

~~2) Increasing the number of primary care providers working in medically underserved areas; and~~

~~3) Increasing the number of providers who are trained to practice in a patient-centered medical home setting within an integrated delivery system.~~

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~~b) The performance criteria for incentive payments of the program will be as follows:~~

~~1) Resident Continuity Clinics~~

~~A) 50 percent of funds are set aside for GME program resident continuity clinics meeting standards for at least one of the following:~~

~~i) Level II or III Patient Centered Medical Homes by the National Center for Quality Assurance.~~

~~ii) Primary Care Medical Home Certification by TJC or another Health and Human Services Approved Accreditation Organization.~~

~~iii) Medical Home Accreditation by the Accreditation Association for Ambulatory Health Care.~~

~~B) Each program within a hospital meeting one of these certification or accreditation standards will receive an equal share of these funds.~~

~~2) Resident Practice Clinics~~

~~A) 25 percent of funds will be set aside for resident practice clinics with significant medically underserved populations.~~

~~B) Each program within a hospital meeting these standards will receive an equal share of these funds.~~

~~3) Continuity of Care Settings~~

~~A) 25 percent of funds set aside for written curricula in population medicine based on practice in continuity of care settings. The curriculum must contain competencies in population medicine. Population medicine curriculum competencies should include: preventive medicines; information technology for managing continuity of care practice panels; managing transitions of care;~~

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participating in team-based care and supporting patient-centered decision making. Programs must document that all residents received at least 20 hours a year in instruction in these areas.

B) Each program within a hospital meeting these standards will receive an equal share of these funds.

c) Residency programs and the sponsoring medical centers will collect all information to be submitted for this program to HFS by June 1 each GME rate year. This includes, proof of certification requirements required in subsection (b)(1)(A), internal GME residency program data, and queries of GME program recent graduates.

d) The submitted data from eligible GME programs will be reviewed for meeting program performance standards. The Department may require, for corroborating information and audit, any submission.

e) All GME residency programs meeting performance standards and qualifying to receive program funding will be announced annually. Subsequent to its determination of qualifying programs, the Department will disburse program funds to the hospitals that sponsor qualifying GME residency programs.

f) The Department shall recover, through repayment by or recoupment against other funds payable to the hospital, program funds that have been found to have been disbursed in error.

g) Definitions

1) "GME" means graduate medical education.

2) "GME rate year" means the 12-month period beginning on July 1 of each year, with the first GME rate year to begin on July 1, 2014.

3) "Primary care GME programs" means either Accreditation Council on Graduate Medical Education (ACGME) or American Osteopathic Association (AOA) Post Graduate accredited residency programs in Family Medicine, Internal Medicine, Pediatrics and Internal Medicine-Pediatrics. Programs that are dual accredited by the ACGME and AOA are only eligible for a single yearly payment.

~~4) "Significant medically underserved populations" means more than 50% of the individuals served by a qualifying residency practice clinic are enrolled in Medicaid or are uninsured. The denominator used in this calculation shall include all resident continuity clinics in a GME program practice. When more than one site is used for resident continuity of care practice, the designated practice site or sites used to calculate percent medically underserved must contain greater than 75% of all patients seen by residents in continuity practice.~~

(Source: Repealed at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.299 Medicaid Facilitation and Utilization Payments

Prior to July 1, 2018, Medicaid Facilitation and Utilization Payments shall be made on a monthly basis as follows:

a) Qualifying Hospitals. Hospitals may qualify for the Medicaid Facilitation and Utilization Payments if they meet any of the following criteria:

1) The hospital must be an Illinois general acute care hospital that had an increase over 35% of the total Medicaid days, excluding Medicare crossover days, from State fiscal year 2009 to State fiscal year 2013 as recorded in the Department's paid claims data, had more than 50 routine beds as included in the 2012 cost report filed with the Department, and, for State fiscal year 2013, the average length of stay was less than 4.5 days.

2) The hospital must be an Illinois general acute care hospital that had a Medicaid Inpatient Utilization Rate (MIUR), as defined in Section 148.120(i)(4), between 50 and 80 percent, is designated a Perinatal Level II facility, and had less than 110 routine beds as included in the 2012 Cost Report on file with the Department, and, for State fiscal year 2013, provided greater than 6,000 Medicaid days, excluding Medicare crossover days, as recorded in the Department's paid claims database.

3) The hospital must be an Illinois children's hospital, as defined in Section 148.25(d)(3)(B), had greater than 10 routine beds as included in the 2012

cost report on file with the Department, and for State fiscal year 2013, the average length of stay was less than 4.5 days.

b) Rates

1) Hospitals qualifying under subsection (a)(1) will receive the following:

A) If the hospital provided more than 4,000 covered Medicaid days, excluding Medicare crossover days in State fiscal year 2013, as recoded in the Department's paid claims database, the rate is $947.00 for dates of service on July 1, 2014 through June 30, 2015. For dates of service on July 1, 2015 through March 31, 2017, the rate is $0.00. For dates of service on or after April 1, 2017 through June 30, 2018, the rate is $738.00. For dates of service on or after July 1, 2018, the rate is $0.00.

B) If the hospital provided less than 4,000 covered Medicaid days, excluding Medicare crossover days, in State fiscal year 2013, as recoded in the Department's paid claims database, the rate is $76.00 for dates of service on July 1, 2014 through June 30, 2015. For dates of service on or after July 1, 2015, the rate is $0.00.

2) Hospitals qualifying under subsection (a)(2) will receive the following:

A) If the hospital had greater than 100 routine beds, as included in the 2012 cost report on file with the Department, the rate is $205.00 for dates of service on July 1, 2014 through June 30, 2015. For dates of service on or after July 1, 2015, the rate is $0.00.

B) If the hospital had less than 100 routine beds, as included in the 2012 cost report on file with the Department, the rate is $59.00 for dates of service on July 1, 2014 through June 30, 2015. For dates of service on or after July 1, 2015, the rate is $0.00.

3) Hospitals qualifying under subsection (a)(3) will receive a rate of $390.00 for dates of service on July 1, 2014 through June 30, 2015. For dates of service on or after July 1, 2015, the rate is $0.00.

c) Payment for a qualifying hospital shall be the product of the rate as defined in subsection (b), multiplied by the hospital's SFY 2013 covered days less Medicare crossover days as recorded in the Department's paid claims data (adjudicated through February 21, 2014).

d) The payment criteria and corresponding rates found in this Section are no longer in effect as of July 1, 2018.

(Source: Amended at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.401 Alzheimer's Treatment Access Payment

Effective for dates of service starting July 1, 2018 through June 30, 2020, except when specifically designated otherwise in this Section:

a) Qualifying Criteria. An Illinois academic medical center or teaching hospital as defined in Section 148.25(h) that is identified as the primary hospital affiliate of one of the regional Alzheimer's Disease Assistance Centers as designated by the Alzheimer's Disease Assistance Act [410 ILCS 405] and identified in the Illinois Department of Public Health Alzheimer's Disease State Plan dated December 2016.

b) Payment. A qualifying hospital shall receive a payment that is the product of the following factors:

1) $10,000,000;

2) A quotient of:

A) The numerator of which is the qualifying hospital's Fiscal Year 2015 total admissions; and

B) The denominator of which is the Fiscal Year 2015 total admissions for all hospitals meeting the qualifying criteria under this Section.

(Source: Added at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.402 Expensive Drugs and Devices Add-On Payment~~Medicaid Eligibility Payments (Repealed)~~

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a) Qualifying Criteria: Beginning July 1, 2018, in addition to the statewide standardized amounts for in-state hospitals as defined in Section 149.100(i), excluding critical access hospitals, the Department shall make an add-on payment for outpatient expensive devices and drugs. This add-on payment shall apply to claim lines that:

1) Are:

A) assigned with one of the following EAPGs: 490 or 1001 through 1020; and

B) coded with one of the following revenue codes: 0274 through 0276, 0278; or

2) Are assigned with one of the following EAPGs: 430 through 441, 443, 444, 460 to 465, 495, 496, 1090.

b) The add-on payment shall be the sum of the following calculations:

1) The product of:

A) The claim line's covered charges; and

B) The hospital's total acute cost to charge ratio as defined in subsection (3).

2) The sum of:

A) The claim line's EAPG payment; and

B) $1,000.

3) The product of:

A) The difference between subsections (2)(A) and (2)(B); and

B) 0.8.

c) For purposes of this Section, estimated claim cost is based on the product of the claim total covered charges and the hospital's Medicare IPPS outlier cost-to-charge ratio. The Medicare IPPS outlier cost-to-charge ratio is determined based on:

1) For Medicare IPPS hospitals, the outlier cost-to-charge ratio is based on the sum of the Medicare inpatient prospective payment system hospital-specific operating and capital outlier cost-to-charge ratios effective at the beginning of the federal fiscal year starting three months prior to the calendar year during which the discharge occurred.

2) For non-Medicare IPPS, the outlier cost-to-charge ratio is based on the sum of the Medicare inpatient prospective payment system statewide average operating and capital outlier cost-to-charge ratios for urban hospitals for the state in which the hospital is located, effective at the beginning of the federal fiscal year starting three months prior to the calendar year during which the discharge occurred.

(Source: Former Section repealed at 33 Ill. Reg. 501, effective December 30, 2008; new Section adopted at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.403 General Provisions – Inpatient

Effective for dates of service starting July 1, 2018 through June 30, 2020, except when specifically designated otherwise in this Section:

a) General Provisions. Unless otherwise indicated, the following apply to these Sections: 148.401, 148.407, 148.408, 148.409, 148.410, 148.411, 148.414, 148.415, 148.416, 148.417, and 148.418.

1) Payments

A) Effective July 1, 2018, payments shall be paid in 12 installments on or before the 7th State business day of the month.

B) The Department may adjust payments made under these Sections to comply with federal law or regulations regarding disproportionate share, hospital-specific payment limitations on government-owned or government-operated hospitals.

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C) If the State or federal Centers for Medicare and Medicaid Services finds that any federal upper payment limit applicable to the payments under these Sections is exceeded, then the payments under these Sections that exceed the applicable federal upper payment limit shall be reduced uniformly to the extent necessary to comply with the federal limit.

b) Definitions. As used in this Section, unless the context requires otherwise:

1) *"General acute care admissions" means, for a given hospital, the sum of inpatient hospital admissions provided to recipients of medical assistance under Title XIX of the Social Security Act for general acute care, excluding admissions for individuals eligible for Medicare under Title XVIII of the Social Security Act (Medicaid/Medicare crossover admissions), as tabulated from the Department's paid claims data for general acute care admissions occurring during State fiscal year 2015 as of October 28, 2016.*

2) *"Occupancy ratio" is determined utilizing the Illinois Department of Public Health Hospital Profile CY15 – Facility Utilization Data – Source 2015 Annual Hospital Questionnaire. Utilizes all beds and days including observation days but excludes Long Term Care and Swing bed and their associated beds and days.*

3) *"Outpatient services" means, for a given hospital, the sum of the number of outpatient encounters identified as unique services provided to recipients of medical assistance under Title XIX of the Social Security Act for general acute care, psychiatric care, and rehabilitation care, excluding outpatient services for individuals eligible for Medicare under Title XVIII of the Social Security Act (Medicaid/Medicare crossover services), as tabulated from the Department's paid claims data for outpatient services occurring during State fiscal year 2015 as of October 28, 2016.*

4) *"Total days" means, for a given hospital, the sum of inpatient hospital days provided to recipients of medical assistance under Title XIX of the Social Security Act for general acute care, psychiatric care, and rehabilitation care, excluding days for individuals eligible for Medicare under Title XVIII of the Social Security Act (Medicaid/Medicare crossover*

days), as tabulated from the Department's paid claims data for total days occurring during State fiscal year 2015 as of October 28, 2016.

5) *"Total admissions" means, for a given hospital, the sum of inpatient hospital admissions provided to recipients of medical assistance under Title XIX of the Social Security Act for general acute care, psychiatric care, and rehabilitation care, excluding admissions for individuals eligible for Medicare under Title XVIII of that Act (Medicaid/Medicare crossover admissions), as tabulated from the Department's paid claims data for admissions occurring during State fiscal year 2015 as of October 28, 2016.* [305 ILCS 5/5A-12.6(p)]

6) "Academic medical centers and major teaching hospital" means the academic medical centers and major teaching hospital definition found in Section 148.25.

7) ""MIUR" means Medicaid inpatient utilization rate for rate year 2017.

8) "Publicly owned hospital" means any hospital owned by a political subdivision.

9) As used in this subsection, "service credit factor" is determined based on a hospital's rate year 2017 Medicaid inpatient utilization rate ("MIUR") rounded to the nearest whole percentage.

c) Rate reviews

1) A hospital shall be notified in writing of the results of the payment determination pursuant to the applicable Section.

2) Hospitals shall have a right to appeal the calculation of, or their ineligibility for, payment if the hospital believes that the Department has made a technical error. The appeal must be submitted in writing to the Department and must be received or postmarked within 30 days after the date of the Department's notice to the hospital of its qualification for the payment amounts, or a letter of notification that the hospital does not qualify for payments. Such a request must include a clear explanation of the reason for the appeal and documentation that supports the desired

correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

(Source: Added at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.404 General Provisions – Outpatient~~Medicaid High Volume Adjustment Payments (Repealed)~~

Effective for dates of service starting July 1, 2018 through June 30, 2020, except when specifically designated otherwise in this Section:

a) General Provisions. Unless otherwise indicated, the following apply to Sections 148.412, 148.413, 148.419, and 148.420:

1) Payments

A) Effective July 1, 2018, payments shall be paid in 12 installments on or before the 7th State business day of the month.

B) The Department may adjust payments made under these Sections to comply with federal law or regulations regarding disproportionate share, hospital-specific payment limitations on government-owned or government-operated hospitals.

C) If the State or federal Centers for Medicare and Medicaid Services finds that any federal upper payment limit applicable to the payments under these Sections is exceeded, then the payments under these Sections that exceed the applicable federal upper payment limit shall be reduced uniformly to the extent necessary to comply with the federal limit.

b) Definitions. As used in this Section, unless the context requires otherwise:

"Hospital" means an Illinois hospital, except as otherwise noted in Sections 148.412, 148.413, 148.419, and 148.420.

"MIUR" means Medicaid inpatient utilization rate as defined in 148.25(i)(4) for rate year 2017.

"Outpatient services" means, for a given hospital, the sum of the number of outpatient encounters identified as unique services provided to recipients of medical assistance under Title XIX of the Social Security Act for general acute care, psychiatric care, and rehabilitation care, excluding outpatient services for individuals eligible for Medicare under Title XVIII of the Social Security Act (Medicaid/Medicare crossover services), as tabulated from the Department's paid claims data for outpatient services occurring during State fiscal year 2015 that was adjudicated by the Department through October 28, 2016. [305 ILCS 5/5A-12.6 (p)]

"Region" as defined in Section 148.140.

c) Rate reviews

1) A hospital shall be notified in writing of the results of the payment determination pursuant to these Sections.

2) Hospitals shall have a right to appeal the calculation of, or their ineligibility for, payment if the hospital believes that the Department has made a technical error. The appeal must be submitted in writing to the Department and must be received or postmarked within 30 days after the date of the Department's notice to the hospital of its qualification for the payment amounts, or a letter of notification that the hospital does not qualify for payments. Such a request must include a clear explanation of the reason for the appeal and documentation that supports the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

(Source: Former Section repealed at 33 Ill. Reg. 501, effective December 30, 2008; new Section adopted at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.405 Graduate Medical Education (GME) Payment

Effective for dates of service starting July 1, 2018 through June 30, 2020, except when specifically designated otherwise in this Section:

a) Definitions. As used in this Section, unless the context requires otherwise:

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1) Medicare cost report ending in 2015, as reported in Medicare cost reports released on October 19, 2016, with data through September 30, 2016.

2) "Hospital's annualized Medicaid Intern Resident Cost" is the product of the following factors:

A) Annualized intern and resident costs obtained from Worksheet B Part I, Column 21 and 22 the sum of lines 30 through 43, 50 through 76, 90 through 93,96 through 98, and 105 through 112;

B) A quotient of:

i) The numerator of which is the hospital's Medicaid days (Worksheet S3 Part I, Column 7, Lines 14 and 16 through 18); and

ii) The denominator of which is the hospital's total days (Worksheet S3 Part I, Column 8, Lines 14 and 16 through 18); and

3) "Hospital Annualized Medicaid Indirect Medical Education (IME) payment" is the product of the following factors:

A) Hospital IME payments (Worksheet E Part A, Line 29, Col 1); and

B) A quotient of:

i) The numerator of which is the hospital Medicaid days (Worksheet S3 Part I, Column 7, Lines 14 and 16 through 18); and

ii) The denominator of which is the hospital Medicare days (Worksheet S3 Part I, Column 6, Lines 14 and 16 through 18).

b) Qualifying Criteria: An Illinois hospital, excluding large public hospitals defined in Section 148.25, reporting intern and resident cost on its Medicare cost report ending in 2015 shall be eligible for a Graduate Medical Education (GME) payment.

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c) Payment. A qualifying hospital shall receive a payment that is the product of the following factors:

1) The sum of each hospital's annualized Medicaid Intern Resident Cost and annualized Medicaid IME payment; and

2) 33 percent.

(Source: Added at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.406 Graduate Medical Education (GME) Payment for Large Public Hospitals~~Intensive Care Adjustment Payments~~

Effective for dates of service starting July 1, 2018 through June 30, 2020, except when specifically designated otherwise in this Section:

a) Inpatient Graduate Medical Education (GME) Payment

1) Definitions. As used in this Section, unless the context requires otherwise:

A) "Medicare cost report" means the Medicare cost report ending in 2015, as reported in Medicare cost reports released on October 19, 2016, with data through September 30, 2016.

B) "Hospital's Annualized Medicaid Inpatient Intern Resident Cost" is the product of the following factors:

i) Annualized intern and resident costs obtained from Worksheet B Part I, Column 21 and 22 the sum of lines 30 through 43, 50 through 76, 90 through 93, 96 through 98, and 105 through112;

ii) A quotient of:

- The numerator of which is the hospital's Medicaid days (Worksheet S3 Part I, Column 7, Lines 2 through 4, 14 and 16 through 18); and

- The denominator of which is the hospital's total days (Worksheet S3 Part I, Column 8, Lines 14 and 16 through18); and.

iii) The quotient of:

- The numerator of which is the hospital's total inpatient charges; and
- The denominator of which is the hospital's total charges.

C) "Hospital Annualized Medicaid Indirect Medical Education (IME) Payment" is the product of the following factors:

i) Hospital IME payments (Worksheet E Part A, Line 29, Col 1); and

ii) The quotient of:

- The numerator of which is the hospital Medicaid days (Worksheet S3 Part I, Column 7, Lines 2 through 4, 14 and 16 through 18), and
- The denominator of which is the hospital Medicare days (Worksheet S3 Part I, Column 6, Lines 2 through 4, 14 and 16 through 18).

2) Qualifying Criteria: An Illinois large public hospital reporting intern and resident cost on its Medicare cost report ending in 2015 shall be eligible for an inpatient GME payment.

3) Payment. A qualifying large public hospital shall receive a payment that is the sum of each large public hospital's annualized Medicaid Intern Resident Cost and annualized Medicaid IME payment.

b) Outpatient (GME) Payment

1) Definitions. As used in this Section, unless the context requires otherwise:

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A) "Medicare Cost Report" means the Medicare cost report ending in 2015, as reported in Medicare cost reports released on October 19, 2016, with data through September 30, 2016.

B) "Hospital's Annualized Medicaid Outpatient Intern Resident Cost" is the product of the following factors:

i) Annualized intern and resident costs obtained from Worksheet B Part I, Column 21 and 22 the sum of lines 30 through 43, 50 through 76, 90 through 93,96 through 98, and 10 through 112; and

ii) A quotient of:

- the numerator of which is the hospital's Medicaid days (Worksheet S3 Part I, Column 7, Lines 2 through 4, 14 and 16 through 18); and

- the denominator of which is the hospital's total days (Worksheet S3 Part I, Column 8, Lines 14 and 16 through 18); and

C) The quotient of:

i) The numerator of which is the hospital's total outpatient charges; and

ii) The denominator of which is the hospital's total charges.

2) Qualifying Criteria: A large public hospital reporting intern and resident cost on its Medicare cost report ending in 2015 shall be eligible for a outpatient graduate medical education payment.

3) Payment. A qualifying large public hospital shall receive an outpatient GME payment that is equal to subsection (d)(2).

(Source: Former Section repealed at 33 Ill. Reg. 501, effective December 30, 2008; new Section adopted at 42 Ill. Reg. 22401, effective November 29, 2018)

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Section 148.407 Medicaid High Volume Hospital Access Payment

Effective for dates of service starting July 1, 2018 through June 30, 2020, except when specifically designated otherwise in this Section:

a) Qualifying Criteria. To qualify for a Medicaid high volume hospital access payment, a hospital shall:

1) Not qualify as a Medicaid dependent hospital, per Section 148.411;

2) Be an Illinois general acute care hospital with the highest number of FY 2015 total admissions that when ranked in descending order from the highest FY 2015 total admissions to the lowest FY 2015 total admissions, in the aggregate, sum to at least 50% of the total admissions for all such hospitals in FY 2015.

b) Payments. Each qualifying hospital shall be paid a Medicaid dependent hospital access payment equal to the product of:

1) $300,000,000; and

2) A quotient, the numerator of which is the hospital's FY 2015 total admissions and the denominator of which is the FY 2015 total admissions for all hospitals meeting the qualifying criteria under this Section.

(Source: Added at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.408 Inpatient Simulated Base Rate Adjustment~~Trauma Center Adjustment Payments (Repealed)~~

Effective for dates of service starting July 1, 2018 through June 30, 2020, except when specifically designated otherwise in this Section:

a) Qualifying criteria. Non-publically owned hospitals qualifying for this Inpatient Simulated Base Rate Adjustment Payment include:

1) General acute care hospitals, as of July 1, 2018, located in Illinois;

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2) Psychiatric hospitals, as of July 1, 2018, located in Illinois;

3) Rehabilitation hospitals, as of July 1, 2018, located in Illinois;

4) Children's hospitals, as of July 1, 2018, located in Illinois; and

5) Children's hospitals located in St. Louis that are designated a Level III perinatal center by the Illinois Department of Public Health and also designated a Level I pediatric trauma center by the Illinois Department of Public Health as of December 1, 2017.

b) Definitions. As used in this Section, unless the context requires otherwise:

1) Tier 1: A hospital with a MIUR equal to or greater than 60% shall have a service credit factor of 200%.

2) Tier 2: A hospital with a MIUR equal to or greater than 33% but less than 60% shall have a service credit factor of 100%.

3) Tier 3: A hospital with a MIUR equal to or greater than 20% but less than 33% shall have a service credit factor of 50%.

4) Tier 4: A hospital with a MIUR less than 20% shall have a service credit factor of 10%.

5) Inpatient general acute care pool amount is equal to $268,051,572.

6) Inpatient Rehabilitation Care Pool amount is equal to $24,500,610.

7) Inpatient Psychiatric Care Pool amount is equal to $94,617,812.

c) Payment.

1) Each qualified hospital shall be assigned a pool allocation percentage for each category of service that is equal to the ratio of:

A) The hospital's estimated FY 2019 claims-based payments including all applicable FY 2019 policy adjusters;

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B) Multiplied by the applicable service credit factor for the hospital; and

C) Divided by the total of the FY 2019 claims-based payments including all FY 2019 policy adjusters for each category of service adjusted by each hospital's applicable service credit factor for all qualified hospitals.

2) For each category of service, a qualified hospital shall receive a Simulated Base Rate Adjustment payment equal to its pool allocation percentage multiplied by the total pool amount.

(Source: Former Section repealed at 33 Ill. Reg. 501, effective December 30, 2008; new Section adopted at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.409 Inpatient Small Public Hospital Access Payment

Effective for dates of service starting July 1, 2018 through June 30, 2020, except when specifically designated otherwise in this Section:

a) Qualifying Criteria. As used in this Section, *"Small Public Hospital" means any Illinois publicly owned hospital which is not a "Large Public Hospital" as defined in Section 148.25(a).* [305 ILCS 5/5A-12.6(m)(1)]

b) Payment. Each small public hospital shall be paid an Inpatient Small Public Hospital Access Payment equal to the product of:

1) $2,825,000; and

2) A quotient of:

A) The numerator of which is the hospital's FY 2015 total days; and

B) The denominator of which is the FY 2015 total days for all hospitals meeting the qualifying criteria under this Section.

(Source: Added at 42 Ill. Reg. 22401, effective November 29, 2018)

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Section 148.410 Long-Term Acute Care Access Payment ~~Psychiatric Rate Adjustment Payments (Repealed)~~

Effective for dates of service starting July 1, 2018 through June 30, 2020, except when specifically designated otherwise in this Section:

a) Qualifying Criteria. To qualify for a Long-Term Acute Care Access Payment, a hospital shall meet all of the following criteria:

1) Is a hospital located in Illinois;

2) Is not publicly owned;

3) Meets the definition of a Long-Term Acute Care Hospital;

4) Has a Rate Year 2017 Medicaid inpatient utilization rate equal to or greater than 25%; and

5) Has a calendar year 2015 occupancy ratio equal to or greater than 60%.

b) Payment. Each qualifying hospital shall be paid a Long-Term Acute Care Access Payment equal to the product of:

1) $19,000,000; and

2) A quotient of:

A) The numerator of which is the hospital's FY 2015 general acute care admissions; and

B) The denominator of which is the FY 2015 general acute care admissions for all hospitals meeting the qualifying criteria under this Section.

(Source: Former Section repealed at 33 Ill. Reg. 501, effective December 30, 2008; new Section adopted at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.411 Medicaid Dependent Hospital Access Payment

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Effective for dates of service starting July 1, 2018 through June 30, 2020, except when specifically designated otherwise in this Section:

a) Qualifying Criteria. To qualify for a Medicaid Dependent Hospital Access Payment, a hospital shall meet one of the following criteria:

1) Be a non-publicly owned general acute care hospital that is a Safety-Net Hospital, as defined in 305 ILCS 5/5-5e.1 for rate year 2017.

2) Be a pediatric hospital that is a Safety-Net Hospital, as defined in 305 ILCS 5/5-5e.1 for Rate Year 2017 and have a Medicaid inpatient utilization rate equal to or greater than 50%.

3) Be a general acute care hospital with a Medicaid inpatient utilization rate equal to or greater than 50% in Rate Year 2017.

b) Definitions. As used in this Section, unless the context requires otherwise:

1) A Tier 1 Medicaid Dependent Hospital means a qualifying hospital with a rate year 2017 Medicaid inpatient utilization rate equal to or greater than the statewide mean but less than the statewide mean plus 0.5 standard deviation.

2) A Tier 2 Medicaid Dependent Hospital means a qualifying hospital with a rate year 2017 Medicaid inpatient utilization rate equal to or greater than the statewide mean plus 0.5 standard deviations but less than the statewide mean plus one standard deviation.

3) A Tier 3 Medicaid Dependent Hospital means a qualifying hospital with a rate year 2017 Medicaid inpatient utilization rate equal to or greater than the statewide mean plus one standard deviation but less than the statewide mean plus 1.5 standard deviations.

4) A Tier 4 Medicaid Dependent Hospital means a qualifying hospital with a rate year 2017 Medicaid inpatient utilization rate equal to or greater than the statewide mean plus 1.5 standard deviations but less than the statewide mean plus 2 standard deviations.

5) A Tier 5 Medicaid Dependent Hospital means a qualifying hospital with a rate year 2017 Medicaid inpatient utilization rate equal to or greater than the statewide mean plus 2 standard deviations.

c) Payment: Medicaid Dependent Hospital Access Payments shall be determined as follows:

1) Each Tier 1 Medicaid Dependent Hospital shall be paid a Medicaid dependent hospital access payment equal to the product of:

A) $23,000,000; and

B) A quotient of:

i) The numerator of which is the hospital's FY 2015 total days; and

ii) The denominator of which is the FY 2015 total days for all hospitals eligible under this Section for this payment.

2) Each Tier 2 Medicaid Dependent Hospital shall be paid a Medicaid Dependent Hospital Access Payment equal to the product of:

A) $15,000,000; and

B) A quotient, the numerator of which is the hospital's FY 2015 total days and the denominator of which is the FY 2015 total days for all hospitals meeting the qualifying criteria under this Section.

3) Each Tier 3 Medicaid Dependent Hospital shall be paid a Medicaid Dependent Hospital Access Payment equal to the product of:

A) $15,000,000; and

B) A quotient, the numerator of which is the hospital's FY 2015 total days and the denominator of which is the FY 2015 total days for all hospitals meeting the qualifying criteria under this Section.

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4) Each Tier 4 Medicaid Dependent Hospital shall be paid a Medicaid Dependent Hospital Access Payment equal to the product of:

A) $53,000,000; and

B) A quotient, the numerator of which is the hospital's FY 2015 total days and the denominator of which is the FY 2015 total days for all hospitals meeting the qualifying criteria under this Section.

5) Each Tier 5 Medicaid Dependent Hospital shall be paid a Medicaid Dependent Hospital Access Payment equal to the product of:

A) $75,000,000; and

B) A quotient, the numerator of which is the hospital's FY 2015 total days and the denominator of which is the FY 2015 total days for all hospitals meeting the qualifying criteria under this Section.

(Source: Added at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.412 Outpatient Simulated Base Rate Adjustment ~~Rehabilitation Adjustment Payments (Repealed)~~

Effective for dates of service starting July 1, 2018 through June 30, 2020, except when specifically designated otherwise in this Section:

a) Qualifying Criteria. Non-publically owned hospitals qualifying for the Inpatient Simulated Base Rate Adjustment Payment include:

1) General acute care hospitals, as of July 1, 2018, located in Illinois;

2) Psychiatric hospitals, as of July 1, 2018, located in Illinois;

3) Rehabilitation hospitals, as of July 1, 2018, located in Illinois;

4) Children's hospitals, as of July 1, 2018, located in Illinois; and

5) Children's hospitals located in St. Louis that are designated a Level III perinatal center by the Illinois Department of Public Health and also

designated a Level I pediatric trauma center by the Illinois Department of Public Health as of December 1, 2017.

b) Definitions. As used in this Section, unless the context requires otherwise:

1) Tier 1: A hospital with a MIUR equal to or greater than 60% shall have a service credit factor of 200%.

2) Tier 2: A hospital with a MIUR equal to or greater than 33% but less than 60% shall have a service credit factor of 100%.

3) Tier 3: A hospital with a MIUR equal to or greater than 20% but less than 33% shall have a service credit factor of 50%.

4) Tier 4: A hospital with a MIUR less than 20% shall have a service credit factor of 10%.

c) Payment

1) Each qualified hospital shall be assigned a pool allocation percentage for each category of service that is equal to the ratio of:

A) The hospital's estimated FY 2019 claims-based payments, including all applicable FY 2019 policy adjusters;

B) Multiplied by the applicable service credit factor for the hospital; and

C) Divided by the total of the FY 2019 claims-based payments including all FY 2019 policy adjusters adjusted by each hospital's applicable service credit factor for all qualified hospitals.

2) A hospital shall receive a supplemental payment equal to its pool allocation percentage multiplied by the total pool amount of $328,828,641.

(Source: Former Section repealed at 33 Ill. Reg. 501, effective December 30, 2008; new Section adopted at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.413 Outpatient Small Public Hospital Access Payment

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Effective for dates of service starting July 1, 2018 through June 30, 2020, except when specifically designated otherwise in this Section:

a) Qualifying Criteria. As used in this Section, *"Small Public Hospital" means any Illinois publicly owned hospital which is not a "Large Public Hospital" as defined in Section 148.25(a)* [305 ILCS 5/5A-12.6(m)(1)].

b) Payment. Each Small Public Hospital shall be paid an outpatient access payment equal to the product of:

1) $24,000,000; and

2) A quotient of:

A) The numerator of which is the hospital's FY 2015 outpatient services; and

B) The denominator of which is the FY 2015 outpatient services for all hospitals meeting the qualifying criteria under this Section.

(Source: Added at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.414 Perinatal and Rural Care Access Payment ~~Supplemental Tertiary Care Adjustment Payments (Repealed)~~

Effective for dates of service starting July 1, 2018 through June 30, 2020, except when specifically designated otherwise in this Section:

a) Qualifying Criteria. An Illinois rural non-publically owned general acute care hospital that is classified as a Perinatal Level II or II+ Center qualifies for this payment if the hospital has:

1) 100 hospital beds or less, total admits are 1,250 or less, and has an occupancy ratio equal to or greater than 35%; or

2) An MIUR of at least 33% or greater in rate year 2017 with an occupancy ratio equal to or greater than 60%.

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b) Payment. A qualifying hospital shall receive a payment that is the product of the following factors:

1) $10,000,000; and

2) A quotient of:

A) The numerator of which is the qualifying hospital's State FY 2015 total admissions; and

B) The denominator of which is all State FY 2015 total admissions for qualifying hospitals.

c) Definitions. As used in this Section, unless the context requires otherwise:

1) "*Occupancy Ratio" is determined utilizing the IDPH Hospital Profile CY15 – Facility Utilization Data – Source 2015 Annual Hospital Questionnaire. Utilizes all beds and days including observation days but excludes Long Term Care and Swing bed and their associated beds and days.* (305 ILCS 5/5A-12.6 (p))

2) "Beds" is determined utilizing the IDPH Hospital Profile CY15 – Facility Utilization Data – Source 2015 Annual Hospital Questionnaire. Utilizes all beds and days but excludes Long Term Care beds and Swing bed.

3) "Perinatal Level II or II+" means a center as defined by the Illinois Department of Public Health as of December 1, 2017.

4) "Rural Hospital" refers to hospitals not located in a Metropolitan Statistical Area.

(Source: Former Section repealed at 33 Ill. Reg. 501, effective December 30, 2008; new Section adopted at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.415 Perinatal and Trauma Center Access Payment

Effective for dates of service starting July 1, 2018 through June 30, 2020, except when specifically designated otherwise in this Section:

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a) Qualifying Criteria. To qualify for a Perinatal and Trauma Care Access Payment, an Illinois non-publicly owned hospital must have a rate year 2017 Medicaid inpatient utilization rate equal to or greater than 20%, a calendar year 2015 occupancy ratio equal to or greater than 50% and meet one of the following criteria:

1) Be designated a Level III perinatal center and a Level I or II trauma center by the Illinois Department of Public Health as of December 1, 2017; or

2) Be designated a Level II or II+ perinatal center and a Level I or II trauma center by the Illinois Department of Public Health as of December 1, 2017.

b) Payment. Perinatal and Trauma Care Access Payments shall be determined as follows:

1) Each hospital qualifying under subsection (a)(1) shall be paid a Perinatal and Trauma Care Access Payment equal to the product of:

A) $160,000,000; and

B) A quotient of:

i) The numerator of which is the hospital's FY 2015 total admissions; and

ii) The denominator of which is the FY 2015 total admissions for all hospitals meeting the qualifying criteria under this Section.

2) Each hospital qualifying under subsection (a)(2) shall be paid a Perinatal and Trauma Care Access Payment equal to the product of:

A) $200,000,000; and

B) A quotient of:

i) The numerator of which is the hospital's FY 2015 total admissions; and

ii) The denominator of which is the FY 2015 total admissions for all hospitals meeting the qualifying criteria under this Section.

(Source: Added at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.416 Perinatal Care Access Payment~~Crossover Percentage Adjustment Payments (Repealed)~~

Effective for dates of service starting July 1, 2018 through June 30, 2020, except when specifically designated otherwise in this Section:

a) Qualifying Criteria. A hospital qualifies for a Perinatal Care Access Payment, if the hospital is one of the following:

1) An Illinois non-publicly owned hospital designated a Level II or II+ perinatal center by the Illinois Department of Public Health as of December 1, 2017.

2) An Illinois non-publicly owned hospital designated a Level III perinatal center by the Illinois Department of Public Health as of December 1, 2017.

b) Payment. Perinatal Care Access Payments shall be determined as follows:

1) Each hospital qualifying under subsection (a)(1), shall be paid a Perinatal Care Access Payment equal to the product of:

A) $200,000,000; and

B) A quotient of:

i) The numerator of which is the hospital's Fiscal Year 2015 total admissions; and

ii) The denominator of which is the Fiscal Year 2015 total admissions for all hospitals meeting the qualifying criteria under this Section.

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2) Each hospital qualifying under subsection (a)(2) shall be paid a Perinatal Care Access Payment equal to the product of:

A) $100,000,000; and

B) A quotient of:

i) The numerator of which is the hospital's Fiscal Year 2015 total admissions; and

ii) The denominator of which is the Fiscal Year 2015 total admissions for all hospitals meeting the qualifying criteria under this Section.

(Source: Former Section repealed at 33 Ill. Reg. 501, effective December 30, 2008; new Section adopted at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.417 Psychiatric Care Access Payment for Distinct Part Units

Effective for dates of service starting July 1, 2018 through June 30, 2020, except when specifically designated otherwise in this Section:

a) Qualifying Criteria. To qualify for a Psychiatric Care Access Payment for Distinct Part Units Payment, an In-state cost reporting acute care hospital must maintain a psychiatric distinct part unit, as defined in Section 148.25(c).

b) Payment. The annual payment amount shall be the greater of:

1) Zero; or

2) The difference of:

A) The product of:

i) Modeled payment increase;

ii) 90 percent; and

iii) 75 percent.

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B) The inpatient base period claims data allowed amount.

c) Definitions. As used in this Section, unless the context requires otherwise:

1) "DRG Modeled Payments" means the lesser of charges, or the product, rounded to the nearest hundredth, of:

A) The DRG weighting factor of the DRG and Severity of Illness (SOI), to which the inpatient stay was assigned by the DRG grouper; and

B) The DRG base rate, equal to the sum of:

i) The product, rounded to the nearest hundredth, of the Medicare IPPS labor share percentage, Medicare IPPS wage index (as defined in Section 148.418) and the psychiatric standardized amount.

ii) The product, rounded to the nearest hundredth, of the Medicare IPPS non-labor share percentage and the psychiatric standardized amount.

2) "Psychiatric standardized amount" means the average amount as the basis for the DRG base rate established by the Department such that simulated DRG PPS allowed amount, without PA 97-0689 reductions or GME factor adjustments, using psychiatric hospital inpatient based period paid claims data, are $59,637,125 more than the sum of psychiatric inpatient based period paid claims data allowed amounts.

3) "Medicare IPPS labor share percentage" means the Medicare inpatient prospective payment system operating standardized amount labor share percentage for the federal fiscal year ending three months prior to the calendar year during which the discharge occurred.

4) "Medicare IPPS non-labor share" means the difference of 1.0 and the Medicare IPPS labor share percentage.

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5) "Diagnosis Related Group" or "DRG" means diagnosis related group, as defined in the DRG grouper, based on the principal diagnosis, surgical procedure used, age of patient, etc.

6) "Severity of Illness" or "SOI" means one of four subclasses of each DRG, as published by 3M Health Information Systems for the DRG grouper that relate to severity of illness (the extent of physiologic de-compensation or organ system loss of function experience by the patient) and risk of (the likelihood of) dying.

7) "Inpatient base period claims data" means State FY 2015 inpatient psychiatric Medicaid fee-for-service and statistically completed MCO encounter claims data, excluding Medicare dual eligible claims.

8) "DRG weighting factor" means the product of each DRG and SOI combination, rounded to the nearest ten-thousandth, of the national weighting factor for that combination, as published by 3M Health Information Systems for the DRG grouper, and the Illinois experience adjustment.

9) "Illinois experience adjustment" means a quotient, rounded to the nearest ten-thousandth, of the constant 1.0000 divided by the arithmetic mean 3M APR-DRG national weighting factors of claims for inpatient stays using inpatient base period claims data.

10) "DRG grouper" means the version 33 of the All Patient Refined Diagnosis Related Grouping (APR-DRG) software, distributed by 3M Health Information Systems.

11) "Modeled payment increase" means the difference between: DRG modeled payments and the Actual Allowed Amount.

12) "Actual Allowed Amount" means the calculated Department fee schedule amount prior to any adjustment for secondary payer amounts for fiscal year 2015 psychiatric MCO encounter data adjusted with a completion factor and fee-for-service claims data, excluding Medicare dual eligible claims.

(Source: Added at 42 Ill. Reg. 22401, effective November 29, 2018)

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Section 148.418 Psychiatric Care Access Payment for Freestanding Psychiatric Hospitals ~~Long Term Acute Care Hospital Adjustment Payments (Repealed)~~

Effective for dates of service starting July 1, 2018 through June 30, 2020, except when specifically designated otherwise in this Section:

a) Qualifying Criteria. An Illinois freestanding psychiatric hospital, as defined in Section 148.25(d) shall qualify for the Psychiatric Care Access Payment for Freestanding Psychiatric Hospitals.

b) Payment. A qualifying hospital's payment shall be the greater of:

1) The product of:

A) Modeled payment increase;

B) 90 percent; and

C) 75 percent.

2) Zero.

c) Definitions. As used in this Section, unless the context requires otherwise:

1) DRG Weight Per Day = (DRG Weight) / (DRG Average Length of Stay)

2) Wage Index Adjustment = (Medicare IPPS Labor Share Percentage) x (Medicare IPPS Wage Index) + [1 - (Medicare IPPS Labor Share Percentage)]

3) Acuity- and Wage Index-Adjusted Days = (Covered Days) x (DRG Weight Per Day) x (Wage Index Adjustment)

4) DRG Per Diem Rate = (Enhanced Funding Pool) / (SUM of Acuity- and Wage Index-Adjusted Days)

5) "Modeled allowed amount" means the product of:

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A) Covered Days;

B) DRG Weight Per Day;

C) Wage Index Adjustment; and

D) DRG Per Diem Rate.

6) "Modeled payment increase" shall means be the difference in:

A) Modeled allowed amount; and

B) Actual allowed amount.

7) "Actual allowed amount" means the total allowed amount according to the Illinois Medicaid fee schedule, inclusive of a portion of the Illinois Medicaid fee schedule amount that is paid by a third party.

8) "DRG Weight" means the product of each DRG and SOI combination, rounded to the nearest ten-thousandth, of the national weighting factor for that combination, as published by 3M Health Information Systems for the Version 30 DRG grouper, and the Illinois Experience Adjustment.

9) "DRG Average Length of Stay" means for each DRG and SOI combination, the national arithmetic mean length of stay for that combination rounded to the nearest tenth, as published by 3M Health Information Systems for the Version 30 DRG grouper.

10) "Medicare IPPS wage index" means:

A) For hospitals identified as inpatient psychiatric in the quarterly CMS provider-specific files, the wage index is based on the Medicare Final Rule inpatient psychiatric facility prospective payment system (IPF PPS) post-reclass wage index effective October 1, 2016.

B) For hospitals not identified as inpatient psychiatric in the quarterly CMS provider-specific files and that are in-state or out-of-state Medicaid cost reporting hospitals, the wage index is based on the

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Medicare Proposed Rule inpatient prospective payment system (IPPS) post-reclass wage index effective October 1, 2017.

C) For hospitals not identified as inpatient psychiatric in the quarterly CMS provider-specific files and that are in-state non-Medicare IPPS hospitals and out-of-state non-Medicaid cost reporting hospitals, the wage index is based on the Medicare Proposed Rule inpatient prospective payment system wage index for the hospital's Medicare Core Based Statistical Area (CBSA) effective October 1, 2017.

11) "Medicare IPPS Labor Share Percentage" means:

A) For hospitals identified as inpatient psychiatric in the quarterly CMS provider-specific files, the labor share percentage is the Medicare Final Rule IPF PPS labor share percentage effective October 1, 2016, which is 0.7510.

B) For hospitals not identified as inpatient psychiatric in the quarterly CMS provider-specific files, the labor share percentage is the Medicare Proposed Rule IPPS labor share percentage effective October 1, 2017, which is 0.6830 for hospitals with a Medicare IPPS wage index greater than 1.0 and 0.6200 for all other hospitals.

12) "Enhanced Funding Pool" means $105,927,553.

(Source: Former Section repealed at 33 Ill. Reg. 501, effective December 30, 2008; new Section adopted at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.419 Safety-Net Hospital, Private Critical Access Hospital, and Outpatient High Volume Access Payments

Effective for dates of service starting July 1, 2018 through June 30, 2020, except when specifically designated otherwise in this Section:

a) Qualifying Criteria. A hospital qualifies for this payment if the hospital is one of the following:

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1) A Safety-Net Hospital, as defined in 305 ILCS 5/5-5e.1 for Rate Year 2017 that is not publicly owned.

2) A Critical Access Hospital that is not publicly owned.

3) A Tier 1 Outpatient High Volume Hospital.

4) A Tier 2 Outpatient High Volume Hospital.

5) A Tier 3 Outpatient High Volume Hospital.

b) Payment. Safety-Net Hospital, Private Critical Access Hospital, and Outpatient High Volume Access Payments shall be determined as follows:

1) Each hospital qualifying under subsection (a)(1) shall receive a payment that is equal to the product of:

A) $40,000,000; and

B) A quotient, the numerator of which is the hospital's FY 2015 outpatient services and the denominator of which is the FY 2015 outpatient services for all hospitals meeting the qualifying criteria under this Section.

2) Each hospital qualifying under subsection (a)(2) shall receive a payment that is equal to the product of:

A) $55,000,000; and

B) A quotient, the numerator of which is the hospital's FY 2015 outpatient services and the denominator of which is the FY 2015 outpatient services for all hospitals meeting the qualifying criteria under this Section.

3) Each hospital qualifying under subsection (a)(3) shall receive a payment that is equal to the product of:

A) $25,000,000; and

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B) A quotient, the numerator of which is the hospital's FY 2015 outpatient services and the denominator of which is the FY 2015 outpatient services for all hospitals meeting the qualifying criteria under this Section.

4) Each hospital qualifying under subsection (a)(4) shall receive a payment that is equal to the product of:

A) $25,000,000; and

B) A quotient, the numerator of which is the hospital's FY 2015 outpatient services and the denominator of which is the FY 2015 outpatient services for all hospitals meeting the qualifying criteria under this Section.

5) Each hospital qualifying under subsection (a)(5) shall receive a payment that is equal to the product of:

A) $58,000,000; and

B) A quotient, the numerator of which is the hospital's FY 2015 outpatient services and the denominator of which is the FY 2015 outpatient services for all hospitals meeting the qualifying criteria under this Section.

c) Definitions. As used in this Section, unless the context requires otherwise:

1) "Tier 1 Outpatient High Volume Hospital" means one of the following:

A) A non-publicly owned hospital, excluding a Safety-Net Hospital as defined in 305 ILCS 5/5-5e.1 for rate year 2017, with total outpatient services equal to or greater than the regional mean plus one standard deviation for all hospitals in the region but less than the mean plus 1.5 standard deviations;

B) An Illinois non-publicly owned hospital with total outpatient service units equal to or greater than the statewide mean plus one standard deviation; or

C) A non-publicly owned Safety-Net Hospital as defined in 305 ILCS 5/5-5e.1 for rate year 2017, with total outpatient services equal to or greater than the regional mean plus one standard deviation for all hospitals in the region.

2) "Tier 2 Outpatient High Volume Hospital" means a non-publicly owned hospital, excluding a Safety-Net Hospital as defined in 305 ILCS 5/5-5e.1 for rate year 2017, with total outpatient services equal to or greater than the regional mean plus 1.5 standard deviations for all hospitals in the region but less than the mean plus 2 standard deviations.

3) "Tier 3 Outpatient High Volume Hospital" means a non-publicly owned hospital, excluding a Safety-Net Hospital as defined in 305 ILCS 5/5-5e.1 for rate year 2017, with total outpatient services equal to or greater than the regional mean plus 2 standard deviations for all hospitals in the region.

(Source: Added at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.420 Trauma Care Access Payment~~Obstetrical Care Adjustment Payments (Repealed)~~

Effective for dates of service starting July 1, 2018 through June 30, 2020, except when specifically designated otherwise in this Section:

a) Qualifying Criteria. To qualify for a Trauma Care Access Payment, an Illinois non-publicly owned hospital shall meet one of the following criteria:

1) Be designated a Level I trauma center by the Illinois Department of Public Health as of December 1, 2017; or

2) Be designated a Level II trauma center by the Illinois Department of Public Health as of December 1, 2017.

b) Payment. Trauma Care Access Payments shall be determined as follows:

1) Each hospital qualifying under subsection (a)(1) shall be paid a Trauma Care Access Payment equal to the product of:

A) $160,000,000; and

B) A quotient of:

i) The numerator of which is the hospital's FY 2015 total admissions; and

ii) The denominator of which is the FY 2015 total admissions for all hospitals eligible under this paragraph for this payment.

2) Each hospital qualifying under subsection (a)(2) shall be paid a Trauma Care Access Payment equal to the product of:

A) $200,000,000; and

B) A quotient of:

i) The numerator of which is the hospital's FY 2015 total admissions; and

ii) The denominator of which is the FY 2015 total admissions for all hospitals eligible under this paragraph for this payment.

(Source: Former Section repealed at 33 Ill. Reg. 501, effective December 30, 2008; new Section adopted at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.436 Long Term Stay Hospital Per Diem Payments (Repealed)

~~Conversion of Static Payments to Per Diem Payments for Long Term Stay Hospital~~

~~a) Hospitals qualifying as a long term stay hospital on July 1, 2013, as defined at 89 Ill. Adm. Code 149.50(c)(4), shall have their payments paid as a per diem rate add-on for all current claims beginning with admissions on or after November 16, 2013.~~

~~b) Each long term stay hospital's per diem add-on shall be the sum of its annual payment amounts in accordance with Sections 148.126, 148.295 and 148.296 for State fiscal year 2011, divided by its covered days for dates of service in State~~

~~fiscal year 2011 as contained in the Department's Medicaid Management Information System (MMIS).~~

~~c)~~ ~~For the payments due and payable in the period beginning July 1, 2013 through November 15, 2013, each long term stay hospital will be paid an annual amount prorated. The prorated amount shall be the product of the sum of the long term stay hospital's annual payment amounts in accordance with Sections 148.126, 148.295 and 148.296 for State fiscal year 2013 multiplied by the quotient resulting from dividing 137 days by 365 days.~~

~~d)~~ ~~For discharges on or after July 1, 2014, this Section shall no longer be in effect and shall be replaced by 89 Ill. Adm. Code 148.115.~~

(Source: Repealed at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.440 High Volume Adjustment Payments (Repealed)

~~a)~~ ~~Qualifying criteria. With the exception of a large public hospital, a High Volume Adjustment payment shall be made to each general acute care hospital that provided and was paid for more than 20,500 Medicaid inpatient days.~~

~~b)~~ ~~Payment. Qualifying hospitals shall receive an annual payment that is the product of the hospital's Medicaid inpatient days and:~~

~~1)~~ ~~$350, for a hospital with a case mix index greater than or equal to the 85th percentile for all qualifying hospitals.~~

~~2)~~ ~~$100, for any other hospital.~~

(Source: Repealed at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.442 Inpatient Services Adjustment Payments (Repealed)

~~a)~~ ~~Qualifying criteria. With the exception of a large public hospital, all Illinois hospitals qualify for the Inpatient Services Adjustment payment.~~

~~b)~~ ~~Payment. A hospital shall receive an annual payment that is the sum of the following amounts for which it qualifies:~~

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~~1) A general acute care hospital shall receive an annual amount that is equal to 40% of its base inpatient payments.~~

~~2) A freestanding specialty hospital shall receive an annual amount that is equal to 60% of its base inpatient payments.~~

~~3) A children's hospital shall receive an annual amount that is equal to 20% of its base inpatient payments.~~

~~4) A children's hospital shall receive an annual amount that is equal to 20% of its payments for inpatient psychiatric services provided during State fiscal year 2005.~~

~~5) An Illinois hospital licensed by the Illinois Department of Public Health (IDPH) as a psychiatric or rehabilitation hospital shall receive an annual amount that is equal to the product of the following factors:~~

~~A) Medicaid inpatient days.~~

~~B) $1,000.~~

~~C) The positive percentage of change in the hospital's MIUR between 2005 and 2007.~~

~~6) A children's hospital shall receive an annual amount that is the product of the annual payment as defined in Section 148.298 on December 31, 2013, as seen in http://www2.illinois.gov/hfs/PublicInvolvement/hospitalratereform/Pages/Rules.aspx, multiplied by:~~

~~A) 2.50, for a hospital that is a freestanding children's hospital~~

~~B) 1.00, for any other hospital.~~

(Source: Repealed at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.444 Capital Needs Payments (Repealed)

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~~a) Qualifying criteria. With the exception of a large public hospital, a general acute care hospital with a 2007 MIUR of 10% or greater qualifies for the Capital Needs payment.~~

~~b) Payment. Qualifying hospitals shall receive an annual payment that is the product of the hospital's Medicaid inpatient days and:~~

~~1) The difference between the hospital's capital cost per diem and 75th percentile for all hospitals, for hospitals with a 2007 MIUR of 0.3694 or greater with a capital cost per diem that is less than the 75th percentile for all hospitals.~~

~~2) The difference between the hospital's capital cost per diem and 60th percentile for all hospital, for any other hospital~~

(Source: Repealed at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.446 Obstetrical Care Payments (Repealed)

~~a) Qualifying criteria. With the exception of a large public hospital, a general acute care hospital qualifies for the Obstetrical Care payment if the hospital is one of the following:~~

~~1) A rural hospital, defined as being located outside a metropolitan statistical area or located 15 miles or less from a county that is outside a metropolitan statistical area and that is licensed to perform medical/surgical or obstetrical services and has a combined approved total bed capacity of 75 or fewer beds in these two service categories as of the effective date of P.A. 88-88 (July 14, 1993), as determined by DPH and must have been notified in writing of any changes to a facility's bed count on or before the effective date of P.A. 88-88 (July 14, 1993), with a Medicaid obstetrical rate greater than 15%.~~

~~2) Classified, on December 31, 2006, as a perinatal level III hospital by IDPH and that had a case mix index equal to or greater than the 45th percentile of such perinatal level III hospitals.~~

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~~3) Classified, on December 31, 2006, as a perinatal level II or II+ hospital by IDPH and that had a case mix index equal to or greater than the 35th percentile, of such perinatal level II and II+ hospitals combined.~~

~~b) Payment. Qualifying hospitals shall receive an annual payment that is the product of the hospital's Medicaid obstetrical days and:~~

~~1) $1,500, for a hospital qualifying under subsection (a)(1).~~

~~2) $1,350, for a hospital qualifying under subsection (a)(2).~~

~~3) $900, for a hospital qualifying under subsection (a)(3).~~

(Source: Repealed at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.448 Trauma Care Payments (Repealed)

~~a) Qualifying criteria. With the exception of a large public hospital, a hospital qualifies for this payment if the hospital is one of the following:~~

~~1) A general acute care hospital that, as of July 1, 2007, was designated by DPH as a trauma center.~~

~~2) A children's hospital, located in a contiguous state, that has been designated a trauma hospital by that State providing more than 8,000 Illinois Medicaid days.~~

~~b) Payment. A hospital shall receive an annual payment that is the sum of the following amounts for which it qualifies:~~

~~1) The product of the hospital's Medicaid inpatient general acute care days and $400, for a general acute care hospital designated as a Level II trauma center as identified in Section 148.295(a)(3) and (a)(4) as of December 31, 2013, as seen in http://www2.illinois.gov/hfs/PublicInvolvement/hospitalratereform/Pages/Rules.aspx.~~

~~2) The product of the amount of the State fiscal year 2005 Medicaid capital payments and the factor of 3.75, for a general acute care hospital designated as a trauma center as defined in Section 148.295(a) on~~

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~~December 31, 2013, as seen in http://www2.illinois.gov/hfs/PublicInvolvement/hospitalratereform/Pages/Rules.aspx.~~

~~3) The product of the hospital's Medicaid general acute care inpatient days and $235, for a hospital that qualifies under (a)(2).~~

(Source: Repealed at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.450 Supplemental Tertiary Care Payments (Repealed)

~~a) Qualifying criteria. An Illinois hospital that qualified in SFY year 2007 for a payment described in Section 148.296, as in effect on December 31, 2013, as seen in http://www2.illinois.gov/hfs/PublicInvolvement/hospitalratereform/Pages/Rules.aspx.~~

~~b) Payment. A hospital shall receive an annual payment that is equal to the amount for which it qualified in SFY 2007 in Section 148.296, as was in effect on December 31, 2013, as seen in http://www2.illinois.gov/hfs/PublicInvolvement/hospitalratereform/Pages/Rules.aspx.~~

(Source: Repealed at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.452 Crossover Care Payments (Repealed)

~~a) Qualifying criteria. With the exception of a large public hospital, a general acute care hospital that had a ratio of crossover days to total medical assistance inpatient days (utilizing information from 2005 Illinois medical assistance paid claims) greater than 50% and the hospital's case mix index is equal to or greater than the 65th percentile of all case mix indices.~~

~~b) Payment. A qualifying hospital shall receive an annual payment that is the product of $1,125 and the inpatient days provided to individuals eligible for Medicaid, as recorded in the Department's paid claims data.~~

(Source: Repealed at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.454 Magnet Hospital Payments (Repealed)

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~~a) Qualifying criteria. With the exception of a large public hospital, a general acute care hospital or a freestanding children's hospital qualifies for Magnet Hospital payment if it meets both of the following criteria:~~

~~1) Was, as of February 1, 2008, designated as a "magnet hospital" by the American Nurses' Credentialing Center.~~

~~2) A case mix index that is equal to or greater than the 75th percentile for all hospitals.~~

~~b) Payment. A qualifying hospital shall receive an annual payment that is the product of the hospital's Medicaid inpatient days, eligibility growth factor, and:~~

~~1) $450, for a hospital that has a case mix index equal to or greater than the 75th percentile of all hospitals and an eligibility growth factor that is greater than the mean eligibility growth factor for counties in which the hospital is located.~~

~~2) $225, for a hospital that has an eligibility growth factor that is less than or equal to the mean eligibility growth factor for counties in which the hospital is located.~~

(Source: Repealed at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.456 Ambulatory Procedure Listing Increase Payments (Repealed)

~~a) Qualifying criteria. With the exception of a large public hospital, as defined in Section 148.458(a) Ambulatory Procedure Listing Increase payment shall be shall be made to each Illinois hospital.~~

~~b) Payment. Qualifying hospitals shall receive an annual payment that is the sum of:~~

~~1) For a hospital that is licensed by the Department of Public Health as a psychiatric specialty hospital, the product of:~~

~~A) The hospital's payments for type B psychiatric clinic services provided during SFY 2005 that reimbursed through methodologies defined in Section 148.140(b)(1)(e) on December 31, 2013, as seen in http://www2.illinois.gov/hfs/PublicInvolvement/~~

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~~hospitalratereform/Pages/Rules.aspx; and~~

~~B) 3.25.~~

~~2) For all other hospitals:~~

~~A) The hospital's payments for services provided during SFY 2005 that reimbursed through methodologies defined in Section 148.140(b)(1)(A) through (b)(1)(D) on December 31, 2013, as seen in http://www2.illinois.gov/hfs/PublicInvolvement/hospitalratereform/Pages/Rules.aspx; and~~

~~B) 2.20.~~

(Source: Repealed at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.458 General Provisions (Repealed)

~~Unless otherwise indicated, the following apply to Sections 148.440 through 148.456.~~

~~a) Definitions~~

~~"Base inpatient payments" means, for a given hospital, the sum of payments made using the rates for services provided during SFY 2005 and adjudicated by the Department through March 23, 2007.~~

~~"Capital cost per diem" means, for a given hospital, the quotient of:~~

~~the total capital costs determined using the most recent 2005 Medicare cost report as contained in the Healthcare Cost Report Information System file, for the quarter ending on December 31, 2006, divided by~~

~~the total inpatient days from the same cost report to calculate a capital cost per day.~~

~~The resulting capital cost per day is inflated to the midpoint of SFY 2009 utilizing the national hospital market price proxies hospital cost index. If a hospital's 2005 Medicare cost report is not contained in the Healthcare Cost~~

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Report Information System, the Department shall use the data reported on the hospital's 2005 Medicaid cost report.

"Case mix index" means, for a given hospital, the quotient resulting from dividing:

the sum of the all diagnosis related grouping relative weighting factors in effect on January 1, 2005, for all category of service 20 admissions for SFY 2005, excluding Medicare crossover admissions and transplant admissions reimbursed under Section 148.82, by

the total number of category of service 20 admissions for SFY 2005, excluding Medicare crossover admissions and transplant admissions reimbursed under Section 148.82.

"Children's hospital" means a hospital as described in 89 Ill. Adm. Code 149.50(c)(3).

"Eligibility growth factor" means the percentage by which the number of Medicaid recipients in the county increased from SFY 1998 to SFY 2005.

"Freestanding children's hospital" means an Illinois Children's hospital that is licensed by the Illinois Department of Public Health as a pediatric hospital.

"Freestanding specialty hospital" means an Illinois hospital that is neither a general acute care hospital nor a large public hospital nor a freestanding children's hospital.

"General acute care hospital" means an Illinois hospital that operates under a general license (i.e., is not licensed by the Illinois Department of Public Health as a psychiatric, pediatric, rehabilitation, or tuberculosis specialty hospital) and is not a long term stay hospital, as described in Section 148.25(d)(4).

"Large public hospital" means a county-owned hospital, as described in Section 148.25(a), a hospital organized under the University of Illinois Hospital Act, as described in Section 148.25(a), or a hospital owned or operated by a State agency, as described in Section 148.25(a).

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~~"Medicaid inpatient days" means, for a given hospital, the sum of days of inpatient hospital service provided to recipients of medical assistance under Title XIX of the federal Social Security Act, excluding days for individuals eligible for Medicare under Title XVIII of the Act (Medicaid/Medicare crossover days), for admissions occurring during SFY 2005 as adjudicated by the Department through March 23, 2007.~~

~~"Medicaid obstetrical days" means, for a given hospital, the sum of days of inpatient hospital service provided to Illinois recipients of medical assistance under Title XIX of the federal Social Security Act, assigned a diagnosis related group code of 370 through 375, excluding days for individuals eligible for Medicare under Title XVIII of the Act (Medicaid/Medicare crossover days), for admissions occurring during SFY 2005, adjudicated by the Department through March 23, 2007.~~

~~"Medicaid obstetrical rate" means, for a given hospital, a fraction, the numerator of which is the hospital's Medicaid obstetrical days and the denominator is the hospital's Medicaid inpatient days.~~

~~"Medicare crossover rate" means, for a given hospital, a fraction, the numerator of which is the number patient days provided to individuals eligible for both Medicare under Title XVIII and Medicaid under Title XIX of the federal Social Security Act and the denominator of which is the number patient days provided to individuals eligible for medical programs administered by the Department, both as recorded in the Department's paid claims data.~~

~~"MIUR" means Medicaid inpatient utilization rate as defined in Section 148.120(i)(4).~~

~~b)~~ ~~Payment~~

~~1)~~ ~~The annual amount of each payment for which a hospital qualifies shall be made in 12 equal installments on or before the seventh State business day of each month. If a hospital closes or ceases to do business, payments will be prorated based on the number of days the hospital was open during the State fiscal year in which the hospital closed or ceased to do business.~~

~~2)~~ ~~Monthly payments may be combined into a single payment to a qualifying hospital. Such a payment will represent the total monthly payment a~~

~~qualifying hospital receives pursuant to Sections 148.440 through 148.456.~~

~~3)~~ ~~The Department may adjust payments made pursuant to Article V-A of the Public Aid Code to comply with federal law or regulations regarding hospital-specific payment limitations on government-owned or government-operated hospitals.~~

~~4)~~ ~~If the federal Centers for Medicare and Medicaid Services finds that any federal upper payment limit applicable to the payments under Article V-A of the Illinois Public Aid Code is exceeded, then the payments under Article V-A of the Illinois Public Aid Code that exceed the applicable federal upper limit shall be reduced uniformly to the extent necessary to comply with the federal limit.~~

~~c)~~ ~~Rate Reviews~~

~~1)~~ ~~A hospital shall be notified in writing of the results of the payment determination pursuant to Sections 148.440 through 148.456.~~

~~2)~~ ~~Hospitals shall have a right to appeal the calculation of, or their ineligibility for, payment if the hospital believes that the Department has made a technical error. The appeal must be submitted in writing to the Department and must be received or postmarked within 30 days after the date of the Department's notice to the hospital of its qualification for the payment amounts, or a letter of notification that the hospital does not qualify for payments. Such a request must include a clear explanation of the reason for the appeal and documentation that supports the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.~~

(Source: Repealed at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.464 General Provisions (Repealed)

~~Unless otherwise indicated, the following apply to Sections 148.466 through 148.486.~~

~~a)~~ ~~For any children's hospital that did not charge for its services during the base period, the Department shall use data supplied by the hospital to determine~~

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~~payments using similar methodologies for freestanding children's hospitals under Sections 148.484 and 148.486.~~

~~b)~~ ~~For purposes of this Section, a hospital that is enrolled to provide Medicaid services during SFY 2009 shall have its utilization and associated reimbursements annualized prior to the payment calculations being performed.~~

~~c)~~ ~~Payments~~

~~1)~~ ~~For the period beginning June 10, 2012 through June 30, 2012, the annual payment on services will be prorated by multiplying the payment amount by a fraction, the numerator of which is 21 days and the denominator of which is 365 days.~~

~~2)~~ ~~Effective July 1, 2012, payments shall be paid in 12 equal installments on or before the 7th State business day of each month, except that no payment shall be due within 100 days after the later of the date of notification of federal approval of these payment methodologies or any waiver required under 42 CFR 433.68, at which time the sum of amounts required prior to the date of notification is due and payable.~~

~~3)~~ ~~Payments are not due and payable until these payment methodologies are approved by the federal Government and the assessment imposed under Section 5A-2(b-5) of the Public Aid Code, as implemented by 89 Ill. Adm. Code 140.80(b)(2), is determined to be a permissible tax under Title XIX of the Social Security Act.~~

~~4)~~ ~~Accelerated Schedule. The Department may, when practicable, accelerate the schedule upon which payments authorized under Sections 148.466 through 148.486 are made.~~

~~5)~~ ~~The Department may, in accordance with the IAPA, adjust payments under Sections 148.466 through 148.486 to comply with federal law or regulations regarding hospital-specific payment limitations on government-owned or government-operated hospitals.~~

~~6)~~ ~~If the federal Centers for Medicare and Medicaid Services find that any federal Upper Payment Limit applicable to the payments under Sections 148.466 through 148.486 is exceeded, then the payments under Sections~~

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148.466 through 148.486 that exceed the applicable federal Upper Payment Limit shall be reduced uniformly to the extent necessary to comply with the federal limit.

d) Definitions
Unless the context requires otherwise or unless provided otherwise in Sections 148.466 through 148.486, the terms used in Section 148.484 for qualifying criteria and payment calculations shall have the same meanings as those terms are given in this Part as in effect on October 1, 2011. Other terms shall be defined as indicated in this subsection (d).

"Medicaid Days", "Ambulatory Procedure Listing Services" and "Ambulatory Procedure Listing Payments" do not include any days, charges or services for which Medicare or a Managed Care Organization reimbursed on a capitated basis was liable for payment, except as explicitly stated otherwise in Sections 148.466 through 148.486.

"Ambulatory Procedure Listing Services" means, for a given hospital, ambulatory procedure listing services, as described in Section 148.140(b), as in effect on June 30, 2009, provided to recipients of medical assistance under Title XIX of the federal Social Security Act, excluding services for individuals eligible for Medicare under Title XVIII of the Social Security Act (Medicaid/Medicare crossover days), as tabulated from the Department's paid claims data for services occurring in SFY 2009 that were adjudicated by the Department through September 2, 2010.

"Case Mix Index" means, for a given hospital, the sum of the per admission (DRG) relative weighting factors in effect on January 1, 2005, for all general acute care admissions for SFY 2009, excluding Medicare crossover admissions and transplant admissions reimbursed under Section 148.82, as in effect on December 31, 2013, as seen in http://www2.illinois.gov/hfs/PublicInvolvement/hospitalratereform/Pages/Rules.aspx, divided by the total number of general acute care admissions for SFY 2009, excluding Medicare crossover admissions and transplant admissions reimbursed under Section 148.82, as was in effect on December 31, 2013, as seen in http://www2.illinois.gov/hfs/PublicInvolvement/hospitalratereform/Pages/Rules.aspx.

"Emergency Room Ratio" means, for a given hospital, a fraction, the denominator of which is the number of the hospital's outpatient ambulatory procedure listing

and end-stage renal disease treatment services provided for SFY 2009 and the numerator of which is the hospital's outpatient ambulatory procedure listing services for categories 3A, 3B and 3C for SFY 2009.

"Estimated Medicaid Inpatient Days" means a percentage of actual inpatient Medicaid days to total inpatient days for the period July 1, 2011 to June 30, 2012, applied to total actual inpatient days for SFY 2005.

"Estimated Medicaid Outpatient Services" means the percentage of actual outpatient Medicaid services to total outpatient services for the period of July 1, 2011 through June 30, 2012, applied to total actual outpatient services for SFY year 2005.

"Large Public Hospital" means hospital, as described in Section 148.25(a).

"Medicaid Inpatient Day" means, for a given hospital, the sum of days of inpatient hospital days provided to recipients of medical assistance under Title XIX of the federal Social Security Act, excluding days for individuals eligible for Medicare under Title XVIII of that Act (Medicaid/Medicare crossover days), as tabulated from the Department's paid claims data for admissions occurring during SFY 2009 that were adjudicated by the Department through June 30, 2010.

"Medicaid General Acute Care Inpatient Day" means, a Medicaid inpatient day, as described in this subsection (d), for general acute care hospitals, and specifically excludes days provided in the hospital's psychiatric or rehabilitation units.

"Outpatient End-Stage Renal Disease Treatment Services" means, for a given hospital, the services, as described in Section 148.140(g), provided to recipients of medical assistance under Title XIX of the federal Social Security Act, excluding payments for individuals eligible for Medicare under Title XVIII of that Act (Medicaid/Medicare crossover days), as tabulated from the Department's paid claims data for services occurring in SFY 2009 that were adjudicated by the Department through September 2, 2010.

e) Rate Reviews

1) A hospital shall be notified in writing of the results of the payment determination pursuant to Sections 148.466 through 148.486.

~~2) Hospitals shall have a right to appeal the calculation of their ineligibility for payments if the hospital believes that the Department has made a technical error. The appeal must be submitted in writing to the Department and must be received or postmarked within 30 days after the date of the Department's notice to the hospital of its qualification for the payment amounts, or a letter of notification that the hospital does not qualify for payments. Such a request must include a clear explanation of the reason for the appeal and documentation that supports the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.~~

(Source: Repealed at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.466 Magnet and Perinatal Hospital Adjustment Payments (Repealed)

~~a) Qualifying Criteria. With the exception of a large public hospital, an Illinois general acute care hospital qualifies for a Magnet and Perinatal Hospital Payment if it meets both of the following criteria:~~

~~1) Was recognized as a "magnet hospital" by the American Nurses Credentialing Center as of August 25, 2011.~~

~~2) Was designated a Level III Perinatal Center as of September 14, 2011.~~

~~b) Payment. A qualifying hospital shall receive an annual payment that is the product of the hospital's Medicaid general acute care inpatient days and:~~

~~1) $470 for hospitals with a case mix index equal to or greater than the 80th percentile of case mix indices for all Illinois hospitals.~~

~~2) $170 for all other hospitals.~~

(Source: Repealed at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.468 Trauma Level II Hospital Adjustment Payments (Repealed)

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~~a) Qualifying Criteria. With the exception of a large public hospital, an Illinois general acute care hospital shall qualify for the Trauma Level II Payment if it was designated as a Level II trauma center as of July 1, 2011.~~

~~b) Payment. A qualifying hospital shall receive an annual payment that is the product of the hospital's Medicaid general acute care inpatient days and:~~

~~1) $470, for hospitals with a case mix index equal to or greater than the 50th percentile of case mix indices for all Illinois hospitals.~~

~~2) $170, for all other hospitals.~~

~~c) For the purposes of this adjustment, hospitals located in the same city that alternate their trauma center designation as defined in Section 148.295(a)(2) on December 31, 2013, as seen in http://www2.illinois.gov/hfs/PublicInvolvement/hospitalratereform/Pages/Rules.aspx, shall have the adjustment provided under this Section divided between the two hospitals.~~

(Source: Repealed at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.470 Dual Eligible Hospital Adjustment Payments (Repealed)

~~a) Qualifying Criteria. With the exception of a large public hospital, an Illinois general acute care hospital shall qualify for the Dual Eligible Hospital Payment if it meets both of the following criteria:~~

~~1) Has a ratio of crossover days to total inpatient days for programs administered by the Department under Title XIX of the Social Security Act (utilizing information from 2009 paid claims) that is greater than 50%.~~

~~2) Has a case mix index equal to or greater than the 75th percentile of case mix indices for all Illinois hospitals.~~

~~b) Payment. A qualifying hospital shall receive an annual payment that is the product of the hospital's Medicaid inpatient days, including crossover days, and $400.~~

(Source: Repealed at 42 Ill. Reg. 22401, effective November 29, 2018)

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Section 148.472 Medicaid Volume Hospital Adjustment Payments (Repealed)

~~a) Qualifying Criteria. With the exception of a large public hospital, an Illinois general acute care hospital shall qualify for the Medicaid Volume Hospital Payment if it meets all of the following criteria:~~

~~1) Provided more than 10,000 Medicaid inpatient days of care;~~

~~2) Has a Medicaid Inpatient Utilization Rate (MIUR) of at least 29.05%, for the rate year 2011 Disproportionate Share determination; and~~

~~3) Is not eligible for Medicaid Percentage Adjustment (MPA) Payments for rate year 2011.~~

~~b) Payment. A qualifying hospital shall receive an annual payment that is the product of the hospital's Medicaid inpatient days and $135.~~

(Source: Repealed at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.474 Outpatient Service Adjustment Payments (Repealed)

~~a) Qualifying Criteria. With the exception of a large public hospital, Outpatient Service Adjustment Payments shall be paid to each Illinois hospital.~~

~~b) Payment. A qualifying hospital shall receive an annual payment that is the product of $100 and the hospital's outpatient Ambulatory Procedure Listing services (excluding categories 3B and 3C) and the hospital's outpatient end-stage renal disease treatment services.~~

(Source: Repealed at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.476 Ambulatory Service Adjustment Payments (Repealed)

~~a) Qualifying Criteria. With the exception of a large public hospital, Ambulatory Service Adjustment Payments shall be paid to each Illinois hospital.~~

~~b) Payment. Qualifying hospitals shall receive an annual payment that is:~~

~~1) For each Illinois freestanding psychiatric hospital, the product of $200 and the hospital's Ambulatory Procedure Listing services for category 5A.~~

~~2) For all other Illinois hospitals, the product of $105 and the hospital's outpatient Ambulatory Procedure Listing services for categories 3A, 3B and 3C.~~

(Source: Repealed at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.478 Specialty Hospital Adjustment Payments (Repealed)

~~a) Qualifying Criteria. With the exception of a large public hospital, Specialty Hospital Payments shall be paid to an Illinois hospital that is one of the following:~~

~~1) A Long Term Acute Care Hospital.~~

~~2) A hospital devoted exclusively to the treatment of cancer.~~

~~b) Payment. A qualifying hospital shall receive an annual payment that is the product of $700 and the hospital's outpatient Ambulatory Procedure Listing services and the hospital's end-stage renal disease treatment services (including services provided to individuals eligible for both Medicaid and Medicare).~~

(Source: Repealed at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.480 ER Safety Net Payments (Repealed)

~~a) Qualifying Criteria. With the exception of a large public hospital, an Illinois general acute care hospital shall qualify for the ER Safety Net Payment if it meets all of the following criteria:~~

~~1) Has an emergency room ratio equal to or greater than 55%;~~

~~2) Was not eligible for Medicaid percentage adjustments payments in rate year 2011;~~

~~3) Has a case mix index equal to or greater than the 20th percentile; and~~

4) ~~Was not designated as a trauma center by the Illinois Department of Public Health on July 1, 2011.~~

b) ~~Payment. A qualifying hospital shall receive an annual payment that is the product of the hospital's Ambulatory Procedure Listing services and outpatient end-stage renal disease treatment services and:~~

1) ~~$225 for each hospital with an emergency room ratio equal to or greater than 74%.~~

2) ~~$65 for all other hospitals.~~

(Source: Repealed at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.482 Physician Supplemental Adjustment Payments (Repealed)

a) ~~Qualifying Criteria. With the exception of a large public hospital, physician services eligible for this Physician Supplemental Adjustment Payment are those provided by physicians employed by or who have a contract to provide services to patients of the following hospitals:~~

1) ~~Illinois general acute care hospitals that:~~

A) ~~Provided at least 17,000 Medicaid inpatient days of care in State fiscal year 2009; and~~

B) ~~Was eligible for Medicaid Percentage Adjustment Payments in rate year 2011.~~

2) ~~Illinois freestanding children's hospitals, as defined in Section 148.25.~~

b) ~~Payment. A qualifying hospital shall receive an annual payment based upon a total pool of $6,960,000. This pool shall be allocated among the eligible hospitals based on the following:~~

1) ~~The difference between the upper payment limit for what could have been paid under Medicaid for physician services provided during State fiscal year 2009 by physicians employed by, or who had a contract with, the hospital, and the amount that was paid under Medicaid for those services.~~

~~2) In no event shall an individual hospital receive an annual, aggregate adjustment amount on physician services in excess of $435,000, except that any amount that is not distributed to a hospital because of the upper payment limit shall be reallocated among the remaining eligible hospitals that are below the upper payment limit on a proportionate basis.~~

(Source: Repealed at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.484 Freestanding Children's Hospital Adjustment Payments (Repealed)

~~a) Qualifying Criteria. With the exception of a large public hospital, an Illinois freestanding children's hospital that did not bill for services in 2005 shall qualify for the Freestanding Children's Hospital Adjustment Payments.~~

~~b) Payment. A qualifying hospital shall receive an annual amount that is the product of the following:~~

~~1) Estimated Medicaid inpatient days; and~~

~~2) The quotient of the sum of the amounts calculated for children's hospitals at Section 148.442(b)(3) and (b)(6) and the Medicaid inpatient days for those same hospitals.~~

(Source: Repealed at 42 Ill. Reg. 22401, effective November 29, 2018)

Section 148.486 Freestanding Children's Hospital Outpatient Adjustment Payments (Repealed)

~~a) Qualifying Criteria. With the exception of a large public hospital, an Illinois freestanding children's hospital that did not bill for services in 2005 shall qualify for the Freestanding Children's Hospital Outpatient Payments.~~

~~b) Payment. A qualifying hospital shall receive an annual amount that is the product of the following:~~

~~1) Estimated Medicaid outpatient services reimbursed through methodologies described in Section 148.140(b)(1)(A) through (D); and~~

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~~2)~~ ~~The quotient of the sum of the amounts calculated at Section 148.456(b)(2) and services provided during State fiscal year 2005 reimbursed through methodologies described in Section 148.140(b)(1)(A) through (D) for those same hospitals.~~

(Source: Repealed at 42 Ill. Reg. 22401, effective November 29, 2018)

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1) Heading of the Part: Diagnosis Related Grouping (DRG) Prospective Payment System (PPS)

2) Code Citation: 89 Ill. Adm. Code 149

3)

Section Number:	Adopted Action:
149.100	Amendment

4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]

5) Effective Date of Rule: November 28, 2018

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

7) Does this rulemaking contain incorporations by reference? No

8) A copy of the adopted rulemaking, including any materials incorporated by reference, is on file in the Agency's principal office and is available for public inspection.

9) Notice of Proposal published in *Illinois Register*: 42 Ill. Reg. 13418; July 13, 2018

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

11) Differences between Proposal and Final Version: JCAR suggested stylistic changes including: changing "three" to "third"; removing subsection labels; correcting capitalization errors; deleting repetitive words, and reordering the wording of definitions for "In-state standardized amount" and "Out-of-state standardized amount".

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

13) Will this rulemaking replace an emergency rule currently in effect? Yes

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

15) Summary and Purpose of Rulemaking: This amendment implements a new hospital provider assessment and new hospital payment methodologies pursuant to PA 100-581 and PA 100-580.

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

Christopher Gange
Acting General Counsel
Illinois Department of Healthcare and Family Services
201 South Grand Avenue East, 3rd Floor
Springfield IL 62763-0002

HFS.Rules@Illinois.gov

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

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TITLE 89: SOCIAL SERVICES
CHAPTER I: DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES
SUBCHAPTER d: MEDICAL PROGRAMS

PART 149
DIAGNOSIS RELATED GROUPING (DRG) PROSPECTIVE PAYMENT SYSTEM (PPS)

Section

AUTHORITY: Implementing and authorized by Articles III, IV, V, VI and VII and Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. III, IV, V, VI and VII and 12-13].

SOURCE: Recodified from 89 Ill. Adm. Code 140.940 through 140.972 at 12 Ill. Reg. 7401; amended at 12 Ill. Reg. 12095, effective July 15, 1988; amended at 13 Ill. Reg. 554, effective January 1, 1989; amended at 13 Ill. Reg. 15070, effective September 15, 1989; amended at 15 Ill.

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Reg. 1826, effective January 28, 1991; emergency amendment at 15 Ill. Reg. 16308, effective November 1, 1991, for a maximum of 150 days; amended at 16 Ill. Reg. 6195, effective March 27, 1992; emergency amendment at 16 Ill. Reg. 11937, effective July 10, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 14733, effective October 1, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 19868, effective December 7, 1992; amended at 17 Ill. Reg. 3217, effective March 1, 1993; emergency amendment at 17 Ill. Reg. 17275, effective October 1, 1993, for a maximum of 150 days; amended at 18 Ill. Reg. 3378, effective February 25, 1994; amended at 19 Ill. Reg. 10674, effective July 1, 1995; amended at 21 Ill. Reg. 2238, effective February 3, 1997; emergency amendment at 22 Ill. Reg. 13064, effective July 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 19866, effective October 30, 1998; amended at 25 Ill. Reg. 8775, effective July 1, 2001; amended at 26 Ill. Reg. 13676, effective September 3, 2002; emergency amendment at 27 Ill. Reg. 11080, effective July 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 18872, effective November 26, 2003; amended at 28 Ill. Reg. 2836, effective February 1, 2004; amended at 38 Ill. Reg. 15477, effective July 2, 2014; amended at 41 Ill. Reg. 1059, effective January 19, 2017; emergency amendment at 42 Ill. Reg. 13876, effective July 2, 2018, for a maximum of 150 days; amended at 42 Ill. Reg. 22533, effective November 28, 2018.

Section 149.100 Methodology for Determining DRG PPS Payment Rates

Effective for dates of discharge on or after July 1, 2014:

a) Inpatient hospital services that are not excluded from the DRG PPS pursuant to Section 149.50(b) shall be reimbursed as determined in this Section.

b) Total DRG PPS Payment. Under the DRG PPS, services to inpatients who are:

1) Discharges shall be paid pursuant to subsection (c).

2) Transfers shall be paid pursuant to subsection (g).

3) The total payment for an inpatient stay will equal the sum of the payment determined in subsection (c) or (g), as applicable, and any applicable adjustments to payment specified in 89 Ill. Adm. Code 148.290.

c) DRG PPS Payment for Discharges. The reimbursement to hospitals for inpatient services based on discharges shall be the product, rounded to the nearest hundredth, of the following:

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1) The greater of:

A) 1.0000; or

B) highest policy adjustment factor, as defined in subsection (f), for which the inpatient stay qualifies.

2) The sum of the DRG base payment, as defined in subsection (d), and any applicable outlier adjustment, as determined in Section 149.105, for which the claim qualifies.

d) For in-state (as defined in Section 148.140), non-Large Public Hospitals, the~~The~~ DRG base payment for a claim shall be the product, rounded to the nearest hundredth, of:

1) The DRG weighting factor of the DRG and SOI, to which the inpatient stay was assigned by the DRG grouper.

2) The DRG base rate, equal to the sum of:

A) The product, rounded to the nearest hundredth, of the Medicare IPPS labor share percentage, Medicare inpatient prospective payment system (IPPS) wage index, in-state~~statewide~~ standardized amount and graduate medical education (GME) factor.

B) The product, rounded to the nearest hundredth, of the Medicare IPPS non-labor share percentage, the in-state~~statewide~~ standardized amount and the GME factor.

3) Effective July 1, 2018, for out-of-state, cost reporting hospitals, the DRG base payment for a claim shall be the product, rounded to the nearest hundredth, of:

A) The DRG weighting factor of the DRG and SOI, to which the inpatient stay was assigned by the DRG grouper; and

B) The DRG base rate, equal to the sum of:

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i) The product, rounded to the nearest hundredth, of the Medicare IPPS labor share percentage, Medicare IPPS wage index, the out-of-state standardized amount and the GME factor.

ii) The product, rounded to the nearest hundredth, of the Medicare IPPS non-labor share percentage, the out-of-state standardized amount and the GME factor.

e) Medicare IPPS Wage Index. For purposes of this Section, the Medicare IPPS wage index is determined based on:

1) For Medicare IPPS hospitals that are in-state or are out-of-state Medicaid cost reporting hospitals, the wage index is based on the Medicare inpatient prospective payment system post-reclass wage index effective at the beginning of the federal fiscal year starting three months prior to the calendar year during which the discharge occurred; except, for the calendar year beginning January 1, 2014, the wage index is based on the Medicare IPPS hospital post-reclass wage index effective October 1, 2012.

2) For in-state non-Medicare IPPS hospitals and out-of-state non-Medicaid cost reporting hospitals, the wage index is based on the Medicare inpatient prospective payment system wage index for the hospital's Medicare CBSA effective at the beginning of the federal fiscal year starting three months prior to the calendar year during which the discharge occurred; except, for the calendar year beginning January 1, 2014, the wage index is based on the Medicare IPPS wage index for the hospital's Medicare CBSA effective October 1, 2012.

f) Policy Adjustments. Claims for inpatient stays that meet certain criteria may qualify for further adjustments to payment.

1) Transplantation Services

A) Policy adjustment factor: 2.11.

B) Qualifying Criteria

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i) The hospital meets all requirements to perform transplantation services, including but not limited to those detailed in 89 Ill. Adm. Code 148.82.

ii) The claim has been grouped to one of the following DRGs:

001 Liver transplant.
002 Heart and/or lung transplant.
003 Bone marrow transplant.
006 Pancreas transplant.
440 Kidney transplant.

2) Trauma Services

A) Policy adjustment factor:

i) 2.9100, if the hospital is a level I trauma center.

ii) 2.7600, if the hospital is a level II trauma center.

B) Criteria:

i) Hospital is recognized by the Department of Public Health as a level I or II trauma center on the date of admission.

ii) The claim has been grouped to one of the following DRG:

020 Craniotomy for trauma.
055 Head trauma, with coma lasting more than one hour or no coma.
056 Brain contusion/laceration and complicated skull fracture, coma less than one hour or no coma.
057 Concussion, closed skull fracture not otherwise specified, uncomplicated intracranial injury, coma less than one hour or no coma.
135 Major chest and respiratory trauma.
308 Hip and femur procedures for trauma, except joint replacement.

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384 Contusion, open wound and other trauma to skin and subcutaneous tissue.
841 Extensive third degree burns with skin graft, as of July 1, 2018.
842 Full thickness burns with graft, as of July 1, 2018.
843 Extensive burns without skin graft, as of July 1, 2018.
844 Partial thickness burns with or without graft, as of July 1, 2018.
910 Craniotomy for multiple significant trauma.
911 Extensive abdominal/thoracic procedures for multiple significant trauma.
912 Musculoskeletal and other procedures for multiple significant trauma.
930 Multiple significant trauma, without operating room procedure.

3) Perinatal Services

A) Policy adjustment factor:

i) 1.3500, if the DRG to which the claim is grouped has an SOI of 1.

ii) 1.4300, if the DRG to which the claim is grouped has an SOI of 2.

iii) 1.4100, if the DRG to which the claim is grouped has an SOI of 3.

iv) 1.5400, if the DRG to which the claim is grouped has an SOI of 4.

B) Criteria:

i) Hospital was recognized by the Department of Public Health as a level III perinatal center on the date of admission. Effective July 1, 2018, hospital was recognized by the Department of Public Health as a level II or II+ or III perinatal center on the date of admission.

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ii) The claim has been grouped to one of the following major diagnostic categories (MDC):

14 Pregnancy, childbirth and puerperium.

15 Newborn and other neonates.

4) Safety Net

A) Policy adjustment factor: $57.50 per general acute care day.

B) Qualifying criteria: safety-net hospital defined in 305 ILCS 5/5-5e.1 excluding pediatric hospitals as defined in 89 Ill. Adm. Code 148.25(d)(3).

C) Effective: for dates of service on and after July 1, 2014 ~~through June 30, 2018~~.

5) Crossover Adjustment Factor effective July 1, 2018. DRG standardized amounts, as defined in subsection (i), shall be reduced by a Crossover Adjustment factor such that:

A) The absolute value of the total simulated payment reduction that occurs when applying the Crossover Adjustment factor to simulated DRG payments, including Policy Adjustments, using general acute hospital inpatient base period claims data, is equal to:

B) The difference of: total simulated DRG payments using general acute hospital inpatient crossover claims data, and general acute hospital inpatient crossover claims data total reported Medicaid net liability.

g) DRG PPS Payment for Transfers. The reimbursement to hospitals for inpatient services provided to transfers shall be the lesser of:

1) The amount that would have been paid pursuant to subsection (c) had the inpatient been a discharge; or

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2) The product, rounded to the nearest hundredth, of the following:

A) The quotient resulting from dividing the amount that would have been paid pursuant to subsection (c) had the inpatient been a discharge by the DRG average length of stay for the DRG to which the inpatient claim has been assigned.

B) The length of stay plus the constant 1.0.

h) Updates to DRG PPS Reimbursement. The Department may annually review the components listed in subsection (c) and make adjustments as needed. Grouper shall be updated at least triennially and no more frequently than annually.

i) Definitions

"Allocated static payments" means the adjustment payments made to the hospital pursuant to 89 Ill. Adm. Code 148.105, 148.115, 148.126, 148.295, 148.296 and 148.298 during State fiscal year 2011, excluding those payments that continue after July 1, 2014, pursuant to the methodologies outlined in rule as of February 21, 2014 (see https://www.illinois.gov/hfs/medicalproviders/hospitals/hospitalratereform/Pages/default.aspx),~~http://www2.illinois.gov/hfs/PublicInvolvement/hospitalratereform/Pages/ Rules.aspx),~~ as determined by the Department, allocated to general acute services based on the ratio of general acute claim charges to total inpatient claim charges determined using inpatient base period claims data.

"Allowed amounts", effective July 1, 2018, means the calculated fee schedule amount prior to any adjustment for secondary payer amounts for fiscal year 2015 MCO encounter data adjusted with a completion factor and fee-for-service claims data, excluding Medicare dual eligible claims.

"Discharge" means a hospital inpatient that:

has been formally released from the hospital, except when the patient is a transfer; or

died in the hospital.

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"DRG" means diagnosis related group, as defined in the DRG grouper, based on the principal diagnosis, surgical procedure used, age of patient, etc.

"DRG average length of stay" means, for each DRG and SOI combination, the national arithmetic mean length of stay for that combination rounded to the nearest tenth, as published by 3M Health Information Systems for the DRG grouper.

"DRG grouper" means:

Prior to January 1, 2014, the most recently released version of the All Patient Refined Diagnosis Related Grouping (APR-DRG) software, distributed by 3M Health Information Systems, available to the Department as of January 1 of the calendar year during which the discharge occurred.~~; except that, for the calendar year beginning~~

Effective January 1, 2014, ~~DRG grouper means~~ version 30 of the APR-DRG software.

Effective July 1, 2018, DRG grouper version 33 of the All Patient Refined Diagnosis Related Grouping (APR-DRG) software, distributed by 3M Health Information Systems.

"DRG PPS" means the DRG prospective payment system described in this Part.

"DRG weighting factor" means each DRG and SOI combination shall equal the product, rounded to the nearest ten-thousandth, of the national weighting factor for that combination, as published by 3M Health Information Systems for the DRG grouper and the Illinois experience adjustment.

"GME factor" means the Graduate Medical Education factor applied to major teaching hospitals, as defined in 89 Ill. Adm. Code 148.25(h). Simulated payments under the new inpatient system with GME factor adjustments shall be $3 million greater than simulated payments under the new inpatient system would have been without the GME factor adjustments, using inpatient base period paid claims data.

"Illinois experience adjustment" means:

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for the calendar year beginning January 1, 2014, a quotient, computed by dividing the constant 1.0000 by the arithmetic mean 3M APR-DRG national weighting factors of claims for inpatient stays subject to reimbursement under the DRG PPS using inpatient base period paid claims data, rounded to the nearest ten-thousandth;

for subsequent calendar years, the factor applied to 3M APR-DRG national weighting factors, when updating DRG grouper versions determined such that the arithmetic mean DRG weighting factor under the new DRG grouper version is equal to the arithmetic mean DRG weighting factor under the prior DRG grouper version using inpatient base period claims data.

"Inpatient base period claims data" means:

Prior to July 1, 2018, State fiscal year 2011 inpatient Medicaid fee-for-service paid claims data, excluding Medicare dual eligible claims, for DRG PPS payment for services provided in State fiscal years 2015, 2016 and 2017; for subsequent dates of service, the most recently available adjudicated 12 months of inpatient paid claims data to be identified by the Department.

Effective July 1, 2018, State fiscal year 2015 inpatient Medicaid claims data allowed amounts, for DRG PPS payment for services provided in State fiscal years 2019 and 2020 for subsequent dates of service, the most recently available adjudicated 12 months of inpatient paid claims data to be identified by the Department.

"Inpatient stay" means a formal admission into a hospital, pursuant to the order of a licensed practitioner permitted by the state in which the hospital is located to admit patients to a hospital that requires at least one overnight stay.

"In-state standardized amount", effective July 1, 2018, means, for all Illinois hospitals and out-of-state hospitals that are designated a level I pediatric trauma center or a level I trauma center by the Illinois Department of Public Health as of December 1, 2017, the average amount as the basis for the DRG base rate established by the Department, such that simulated DRG PPS allowed amounts, less PA 97-689 reductions, results in approximately a $238.5 million increase inclusive of policy adjustors effective July 1, 2018, as defined in subsections

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(f)(2) and (f)(3), compared to the sum of the inpatient based period claims data allowed amounts.

"Length of stay" means the number of days the patient was an inpatient in the hospital, with the day the patient became a discharge or transfer not counting toward the length of stay.

"Medical assistance" means one of the programs administered by the Department that provides health care coverage to Illinois residents.

"Medicare CBSA" means the Core-Based Statistical Areas for a hospital's location effective in the Medicare inpatient prospective payment system at the beginning of the federal fiscal year starting three months prior to the calendar year during which the discharge occurred.

"Medicare IPPS labor share percentage" means the Medicare inpatient prospective payment system operating standardized amount labor share percentage for the federal fiscal year ending three months prior to the calendar year during which the discharge occurred; except, for the calendar year beginning January 1, 2014, the labor share percentage in the Medicare inpatient prospective payment system for the federal fiscal year beginning October 1, 2012, which is 0.6880 for a hospital with a Medicare IPPS wage index greater than 1.0 or 0.6200 for all other hospitals.

"Medicare IPPS non-labor share" means the difference of 1.0 and the Medicare IPPS labor share percentage.

"MDC" means major diagnostic category – group of similar DRGs, such as all those affecting a given organ system of the body.

"Out-of-state standardized amount", effective July 1, 2018, means, for cost-reporting hospitals located outside of Illinois that are not included in the in-state standardized amount definition, the average amount as the basis for the DRG base rate established by the Department, such that simulated DRG PPS allowed amounts, without PA 97-689 reductions or GME factor adjustments, using general acute hospital inpatient based period claims data, are equal to the sum of inpatient based period claims data allowed amounts.

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"SOI" means one of four subclasses of each DRG, as published by 3M Health Information Systems for the DRG grouper that relate to severity of illness (the extent of physiologic decompensation or organ system loss of function experienced by the patient) and risk of (the likelihood of) dying.

"Statewide standardized amount" means the average amount as the basis for the DRG base rate established by the Department such that simulated DRG PPS payments, without P.A. 97-0689~~SMART Act~~ reductions or GME factor adjustments, using general acute hospital inpatient based period paid claims data, are $355 million less than the sum of inpatient based period paid claims data reported payments and allocated inpatient static payments.

"Transfer" means a hospital inpatient that has been placed in the care of another hospital, except that a transfer does not include an inpatient claim that has been assigned to DRG 580 (Neonate, transferred, less than five days old, not born here) or 581 (Neonate, transferred, less than five days old, born here).

(Source: Amended at 42 Ill. Reg. 22533, effective November 28, 2018)

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1) Heading of the Part: Hospital Reimbursement Changes

2) Code Citation: 89 Ill. Adm. Code 152

3)

Section Number:	Adopted Action:
152.150	Repealed

4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]

5) Effective Date of Rule: November 28, 2018

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

7) Does this rulemaking contain incorporations by reference? No

8) A copy of the adopted rule, including any materials incorporated by reference, is on file in the Agency's principal office and is available for public inspection.

9) Notice of Proposal published in the *Illinois Register*: 42 Ill. Reg. 13420; July 13, 2018

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

11) Differences Between Proposal and Final Version: None

12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? No changes were requested.

13) Will this rulemaking replace an emergency rule currently in effect? Yes

14) Are there any other rulemakings pending on this Part? Yes

Section Number:	Proposed Action:	*Illinois Register* Citation:
152.300	Amendment	42 Ill. Reg. 8711; June 1, 2018

15) Summary and Purpose of Rulemaking: This amendment is necessary to implement a new hospital provider assessment and new hospital payment methodologies pursuant to PA 100-581 and PA 100-580.

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

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENT

Christopher Gange
Acting General Counsel
Illinois Department of Healthcare and Family Services
201 South Grand Avenue East, 3rd Floor
Springfield IL 62763-0002

HFS.Rules@Illinois.gov

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

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENT

TITLE 89: SOCIAL SERVICES
CHAPTER I: DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES
SUBCHAPTER e: GENERAL TIME-LIMITED CHANGES

PART 152
HOSPITAL REIMBURSEMENT CHANGES

Section

AUTHORITY: Implementing and authorized by Articles III, IV, V and VI and Sections 12-13 and 14-8 of the Illinois Public Aid Code [305 ILCS 5/Arts. III, IV, V and VI and Sections 12-13 and 14-8].

SOURCE: Emergency rules adopted at 18 Ill. Reg. 2150, effective January 18, 1994, for maximum of 150 days; adopted at 18 Ill. Reg. 10141, effective June 17, 1994; emergency amendment at 19 Ill. Reg. 6706, effective May 12, 1995, for a maximum of 150 days; emergency amendment at 19 Ill. Reg. 10236, effective June 30, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 16272, effective November 27, 1995; emergency amendment at 20 Ill. Reg. 9272, effective July 1, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 15712, effective November 27, 1996; emergency amendment at 21 Ill. Reg. 9544, effective July 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 16153, effective November 26, 1997; emergency amendment at 25 Ill. Reg. 218, effective January 1, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 6966, effective May 28, 2001; emergency amendment at 25 Ill. Reg. 16122, effective December 3, 2001, for a maximum of 150 days; amended at 26 Ill. Reg. 7309, effective April 29, 2002; emergency amendment at 29 Ill. Reg. 10299, effective July 1, 2005, for a maximum of 150 days; amended at 29 Ill. Reg. 19997, effective November 23, 2005; emergency amendment at 30 Ill. Reg. 11847, effective July 1, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 18703, effective November 27, 2006; emergency amendment at 32 Ill. Reg. 529, effective January 1, 2008, for a maximum of 150 days; amended at 32 Ill. Reg. 8730, effective May 29, 2008; amended at 35 Ill. Reg. 10114, effective June 15, 2011; emergency amendment at 36 Ill. Reg. 10410, effective July 1, 2012 through June 30, 2013; emergency amendment at 37 Ill. Reg. 282, effective January 1, 2013 through June 30, 2013; amended at 37 Ill. Reg. 10517,

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effective June 27, 2013; emergency amendment at 37 Ill. Reg. 13589, effective August 1, 2013, for a maximum of 150 days; emergency amendment at 37 Ill. Reg. 16003, effective September 27, 2013, for a maximum of 150 days; amended at 38 Ill. Reg. 882, effective December 23, 2013; amended at 38 Ill. Reg. 15527, effective July 2, 2014; amended at 41 Ill. Reg. 1064, effective January 19, 2017; emergency amendment at 42 Ill. Reg. 13890, effective July 2, 2018, for a maximum of 150 days; amended at 42 Ill. Reg. 22547, effective November 28, 2018.

Section 152.150 Hospital Payment Documentation and Coding Improvement Adjustment (Repealed)

~~Effective for dates of service on or after July 1, 2014:~~

~~a) Inpatient Hospital Payment Documentation and Coding Improvement (DCI) Adjustment~~

~~1) The Department shall monitor changes in inpatient hospital statewide average case mix for services provided in the first two years following implementation of the APR-DRG payment methodology, and retrospectively adjust DRG base rates to offset the impact of paid case mix differential attributable to DCI.~~

~~2) Measuring case mix differential attributable to DCI:~~

~~A) Calculate the percentage point change, rounded to the nearest hundredth, in statewide average case mix using Version 30 of the Medicare-Severity DRG (MS-DRG) grouper and relative weights for:~~

~~i) Claims with dates of service in State fiscal year 2011 of like populations when compared to fiscal years 2015 and 2016.~~

~~ii) Claims with dates of service in State fiscal years 2015 and 2016 of like populations when compared to fiscal year 2011, consistent with subsection (a)(3).~~

~~B) Calculate the percentage point change, rounded to the nearest hundredth, in statewide average case mix using Version 30 of the APR-DRG weighting factors for the same periods specified in~~

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~~subsection (a)(1)(A).~~

~~C)~~ ~~The case mix differential that is attributable to DCI is equal to the difference between the change in the aggregate APR-DRG case mix and the change in the aggregate MS-DRG case mix for the claims described in subsection (a)(1)(A).~~

~~D)~~ ~~Claims for services provided in State fiscal years 2015 and 2016 that were not paid by the Department using the APR-DRG payment methodology shall be excluded when measuring the case mix differential.~~

~~3)~~ ~~Timing:~~

~~A)~~ ~~Calculate case mix differential attributable to DCI for claims with Dates of Service (DOS) in SFY 2015 (first year of implementation) as of:~~

~~i)~~ ~~July 1, 2015, using all claims adjudicated as of that date with DOS in SFY 2015.~~

~~ii)~~ ~~January 1, 2016, using all claims adjudicated as of that date with DOS in SFY 2015.~~

~~iii)~~ ~~April 1, 2016, using all claims adjudicated as of that date with DOS in SFY 2015.~~

~~B)~~ ~~Calculate case mix differential attributable to DCI for claims with DOS in SFY 2016 (second year of implementation) as of:~~

~~i)~~ ~~July 1, 2016, using all claims adjudicated as of that date with DOS in SFY 2016.~~

~~ii)~~ ~~January 1, 2017, using all claims adjudicated as of that date with DOS in SFY 2016.~~

~~iii)~~ ~~April 1, 2017, using all claims adjudicated as of that date with DOS in SFY 2016.~~

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4) Adjusting for case mix changes attributable to DCI:

A) For any measurement period described in subsection (a)(3), if the case mix differential attributable to DCI is greater than two percentage points, the Department will adjust the DRG base rates by the measured case mix differential less two percentage points.

B) For any measurement period described in subsection (a)(3), if the case mix differential attributable to DCI is less than minus two percentage points, the Department will adjust the DRG base rates by the measured case mix differential plus two percentage points.

C) The Department will retroactively adjust the payments for all claims adjudicated as of the measurement period for the changes in the DRG base rates.

b) Outpatient Hospital Payment Documentation and Coding Improvement Adjustment

1) The Department shall monitor changes in outpatient hospital case mix for services provided in the first two years following implementation of the Enhanced Ambulatory Procedure Grouping (EAPG) payment methodology, and retrospectively adjust EAPG conversion factors to offset the impact of the case mix differential attributable to DCI.

2) Measuring case mix differential attributable to DCI:

A) Calculate the percentage point change, rounded to the nearest hundredth, in statewide average case mix using Ambulatory Procedures List (APL) relative values for the claims data periods listed in this subsection (b)(2)(A). Relative values will be determined for each APL using SFY 2011 outpatient claims data priced using APL payment amounts in effect on December 31, 2010, by dividing the APL's average payment per service unit by the statewide APL payment for service unit.

i) Claims with DOS in SFY 2011.

ii) Claims with DOS in SFY 2015 and 2016, consistent with subsection (b)(3).

B) Calculate the percentage point change, rounded to the nearest hundredth, in statewide average case mix using Version 3.7 of the EAPG grouper and the EAPG weighting factors for the same periods.

C) The case mix differential that is attributable to DCI is equal to the difference between the change in the aggregate EAPG case mix and the change in the aggregate APL case mix, for the claims described in subsections (b)(2)(A)(i) and (ii).

D) Claims for services provided in SFY 2015 and 2016 that were not paid by the Department using the EAPG payment methodology shall be excluded when measuring the case mix differential.

3) Timing:

A) Calculate case mix differential attributable to DCI for claims with DOS in SFY 2015 (first year of implementation) as of:

i) July 1, 2015, using all claims adjudicated as of that date with DOS in SFY 2015.

ii) January 1, 2016, using all claims adjudicated as of that date with DOS in SFY 2015.

iii) April 1, 2016, using all claims adjudicated as of that date with DOS in SFY 2015.

B) Calculate case mix differential attributable to DCI for claims with DOS in SFY 2016 (second year of implementation) as of:

i) July 1, 2016, using all claims adjudicated as of that date with DOS in SFY 2016.

ii) January 1, 2017, using all claims adjudicated as of that date with DOS in SFY 2016.

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iii) April 1, 2017, using all claims adjudicated as of that date with DOS in SFY 2016.

4) Adjusting for case mix changes attributable to DCI:

A) For any measurement period described in subsection (b)(3), if the case mix differential attributable to DCI is greater than two percentage points, the Department will adjust the EAPG conversion factor by the measured case mix differential less two percentage points.

B) For any measurement period described in subsection (b)(3), if the case mix differential attributable to DCI is less than minus two percentage points, the Department will adjust the EAPG conversion factor by the measured case mix differential plus two percentage points.

C) The Department will retroactively adjust the payments for all claims adjudicated as of the measurement period for the changes in the EAPG conversion factors.

D) The EAPG conversion factor, after adjustments pursuant to subsections (b)(4)(A) and (B), shall be in effect until the next measurement period.

e) Public Act 98-651, effective June 16, 2014, authorizes the Department, after consulting with the hospital community, to replace this Section within 12 months after its effective date. If the Department does not file rules to replace this Section within 12 months after the effective date of PA 98-651, this Section as amended effective July 1, 2014 shall remain in effect until modified by rule by the Department. *Nothing in PA 98-651 shall be construed to mandate that the Department file a replacement rule* [305 ILCS 5/14-12(c)].

(Source: Repealed at 42 Ill. Reg. 22547, effective November 28, 2018)

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Child Care

2) Code Citation: 89 Ill. Adm. Code 50

3)

Section Numbers:	Adopted Actions:
50.230	Amendment
50.320	Amendment

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

5) Effective Date of Rules: November 27, 2018

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

7) Does this rulemaking contain incorporations by reference? No

8) A copy of the adopted rules, 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*: 42 Ill. Reg. 13430; July 13, 2018

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

11) Differences between Proposal and Final Version: Several substantive changes were made to the text of the proposed rulemaking since First Notice. The changes pertained to a Client's/applicant's eligiblity to receive child care services while they attend an education or training program under this Section. In addition, some grammatical corrections were made in this rulemaking.

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

13) Will this rulemaking replace an emergency rule currently in effect? Yes

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

15) Summary and Purpose of Rulemaking: Pursuant to provisions of 305 ILCS 5/9A-11, this rulemaking indexes the child care income eligibility guidelines so that the threshold for

child care benefits is no less than 185% of the most current federal poverty level for each family size effective July 1, 2018. This rulemaking also adjusts the amount of the parent co-payment fee for the Child Care Assistance Program and describes the criterions for which client attending education and training may be approved. Families eligible to receive child care services while they attend an education or training program under this Section must not already possess a Bachelor's, Master's or Doctorate Degree.

16) Information and questions regarding these adopted rules 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 IL 62762

217/785-9772

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

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

TITLE 89: SOCIAL SERVICES
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES
SUBCHAPTER a: GENERAL PROGRAM PROVISIONS

PART 50
CHILD CARE

SUBPART A: GENERAL PROVISIONS

SUBPART B: APPLICABILITY

SUBPART C: PAYMENT FEES

SUBPART D: PROVIDER REQUIREMENTS

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

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NOTICE OF ADOPTED AMENDMENTS

50.810 Applicability
50.820 Staff Qualifications for License Exempt School-Age Providers
50.830 Training Standards for License Exempt School-Age Providers

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

SOURCE: Emergency rules adopted at 21 Ill. Reg. 9502, effective July 1, 1997, for a maximum of 150 days; adopted at 21 Ill. Reg. 14961, effective November 10, 1997; emergency amendment at 22 Ill. Reg. 12816, effective July 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 21037, effective November 27, 1998; emergency amendment at 23 Ill. Reg. 10875, effective August 20, 1999, for maximum of 150 days; amended at 24 Ill. Reg. 1058, effective January 10, 2000; emergency amendment at 24 Ill. Reg. 6604, effective April 5, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 13987, effective September 1, 2000; amended at 24 Ill. Reg. 15423, effective October 10, 2000; emergency amendment at 25 Ill. Reg. 2735, effective February 5, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 8176, effective June 23, 2001; emergency amendment at 25 Ill. Reg. 8443, effective July 1, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 14854, effective October 31, 2001; emergency amendment at 25 Ill. Reg. 16116, effective December 1, 2001, for a maximum of 150 days; amended at 26 Ill. Reg. 7113, effective April 25, 2002; amended at 27 Ill. Reg. 12090, effective July 14, 2003; amended at 27 Ill. Reg. 18411, effective November 24, 2003; amended at 28 Ill. Reg. 6895, effective April 23, 2004; emergency amendment at 28 Ill. Reg. 10121, effective July 1, 2004, for a maximum of 150 days; emergency expired November 27, 2004; amended at 29 Ill. Reg. 2687, effective February 4, 2005; emergency amendment at 29 Ill. Reg. 13253, effective August 11, 2005, for a maximum of 150 days; emergency expired January 7, 2006; amended at 30 Ill. Reg. 11190, effective June 6, 2006; amended at 31 Ill. Reg. 12584, effective August 20, 2007; emergency amendment at 31 Ill. Reg. 13350, effective September 10, 2007, for a maximum of 150 days; emergency expired February 6, 2008; amended at 32 Ill. Reg. 6048, effective March 31, 2008; emergency amendment at 32 Ill. Reg. 6652, effective April 1, 2008, for a maximum of 150 days; amended at 32 Ill. Reg. 9604, effective June 20, 2008; amended at 32 Ill. Reg. 14742, effective August 28, 2008; amended at 33 Ill. Reg. 8195, effective June 8, 2009; emergency amendment at 33 Ill. Reg. 15889, effective November 1, 2009, for a maximum of 150 days; emergency amendment at 33 Ill. Reg. 16517, effective November 1, 2009, for a maximum of 150 days; emergency expired March 30, 2010; amended at 34 Ill. Reg. 5275, effective March 29, 2010; emergency amendment at 34 Ill. Reg. 8619, effective June 16, 2010, for a maximum of 150 days; emergency expired on November 12, 2010; amended at 34 Ill. Reg. 10512, effective July 8, 2010; amended at 34 Ill. Reg. 19539, effective December 6, 2010; amendment at 35 Ill. Reg. 1397, effective January 6, 2011; amended at 35 Ill. Reg. 3993, effective February 25, 2011; emergency amendment at 35 Ill. Reg. 6583, effective April 1, 2011, for a maximum of 150 days;

emergency expired August 28, 2011; amended at 35 Ill. Reg. 8878, effective May 25, 2011; amended at 36 Ill. Reg. 1564, effective January 17, 2012; amended at 36 Ill. Reg. 12104, effective July 10, 2012; amended at 36 Ill. Reg. 14513, effective September 12, 2012; amended at 36 Ill. Reg. 16085, effective October 29, 2012; amended at 38 Ill. Reg. 18490, effective August 22, 2014; amended at 38 Ill. Reg. 19513, effective September 17, 2014; emergency amendment at 39 Ill. Reg. 10072, effective July 1, 2015, for a maximum of 150 days; emergency rule modified in response to JCAR objection at 39 Ill. Reg. 15158, effective November 9, 2015, for the remainder of the 150 days; amended at 39 Ill. Reg. 15540, effective November 23, 2015; emergency amendment at 41 Ill. Reg. 12890, effective October 1, 2017, for a maximum of 150 days; amended at 42 Ill. Reg. 3745, effective February 7, 2018; amended at 42 Ill. Reg. 8491, effective May 8, 2018; emergency amendment at 42 Ill. Reg. 13898, effective July 1, 2018, for a maximum of 150 days; amended at 42 Ill. Reg. 22555, effective November 27, 2018.

SUBPART B: APPLICABILITY

Section 50.230 Child Care Eligibility

a) To the extent resources permit, it is the intent of the Department to provide child care services to all applicants that meet the eligibility requirements set forth in this Section. If it is necessary to limit participation to stay within the amounts appropriated or resources available to the Department for child care services, participation will be limited to the priority service groups specified in subsection (c)(6) and that limitation in participation shall remain until such time as sufficient resources are available to serve all eligible applicants.

b) Child care services are restricted to children under age 13 and to children under age 19 who are under court supervision or have physical or mental incapacities as documented by a statement from a local health provider or other health professional.

c) Parents and other relatives eligible to receive child care services include:

1) Recipients of Temporary Assistance for Needy Families (TANF) under Article IV of the Public Aid Code participating in work and/or training-related activities as specified in their RSP (see 89 Ill. Adm. Code 112.74) as approved by the Department's TANF case worker.

2) Working families, including teen parents enrolled full-time in elementary or high school or GED classes to obtain a high school degree or its

equivalent, whose monthly incomes do not exceed the following amounts by family size:

Family Size	Gross Monthly Base Income
2	$2,538~~2,504~~
3	$3,204~~3,149~~
4	$3,870~~3,793~~
5	$4,536~~4,437~~
6	$5,202~~5,082~~
7	$5,868~~5,726~~
8	$6,534~~6,371~~
9	$7,200~~7,015~~
10	$7,866~~7,659~~

The above income guidelines will be indexed annually so that the thresholds are no less than 185% of the most current federal poverty level for each family size.

3) Families who do not receive TANF and need child care services in order to attend school or training (up to and including the acquisition of ~~the first Associate Degree and/or~~ the first Bachelor's Degree) whose monthly income does not exceed the monthly income ceilings in subsection (c)(2). Clients can be approved for education/training activities that will lead to multiple certificates within a designated career path (from Certified Nursing Assistant to Licensed Practical Nurse, for example) or Associate Degrees, but only the first Bachelor's Degree. Clients may also be approved for additional vocational certificate programs if they are beginning a new career path in a new field or if classes are required to remain certified in their current employment. Child care services approved under this Part must be reasonably related to the education or training activity, including class hours and research, study, laboratory, library and transportation time, and unpaid educationally required work activities such as student teaching, an internship, a clinical, a practicum or an apprenticeship. Teen parents enrolled full-time in elementary or high school or GED classes will be eligible for full-time, full-year child care, including summers, when using a licensed child care provider, up to and including a three-month period after graduation, in order to secure

employment or to prepare for higher education. If a parent is claimed as a dependent by another person for federal income tax purposes, that parent is only eligible if his or her income, when added to the income of the other person, does not exceed the monthly income ceiling in subsection (c)(2) for that family size. All education programs under this Part must be administered by an educational institution accredited under requirements of State law, including, but not limited to, the Barber, Cosmetology, Esthetics, Hair Braiding, and Nail Technology Act of 1985 [225 ILCS 410], the Real Estate Act of 2000 [225 ILCS 454], the Public Community College Act [110 ILCS 805], the University of Illinois Act [110 ILCS 305], the Chicago State University Law [110 ILCS 660], the Eastern Illinois University Law [110 ILCS 665], the Governors State University Law [110 ILCS 670], the Illinois State University Law [110 ILCS 675], the Northeastern Illinois University Law [110 ILCS 680], the Northern Illinois University Law [110 ILCS 685], the Western Illinois University Law [110 ILCS 690], or the Department of Financial and Professional Regulation. Social service agencies that provide recognized English as a Second Language (ESL) and other adult education courses and programs are not required to hold or maintain any separate type of accreditation, as long as the program they offer is supported by an accredited institution.

A) Below Post-Secondary Education Eligibility and Participation Requirements

This category of education includes literacy and other adult basic education, English as a Second Language, and GED preparation programs. Clients/applicants who have already earned a vocational certificate are still eligible for below post-secondary education activities if they have not already earned a high school diploma or GED certificate.

i) There is no work requirement for the first 24 non-consecutive months the client participates. Families eligible to receive child care services while they attend an education or training program under this Section must not already possess a Bachelor's, Master's or Doctorate Degree.

ii) From the 25th month on, the client must work at least 20 hours per week. Child care provided to a teen parent to obtain a high school diploma or its equivalent does not

count against this 24-month limit. Individuals enrolled in below post-secondary education must maintain a "C" average if this measurement is used by the institution to determine satisfactory progress. The individual will be allowed one semester below a "C" average to bring the grades up to a "C" average. When grades are not used, progress will be determined by the written policy of the institution to establish a comparable grade level upon completion of the academic term. The determination of satisfactory progress must be reported upon completion of the academic term or twice a year if the program is continuous for 12 months.

B) Vocational Education Eligibility and Participation Requirements Programs in this category of education may be offered by a public community college, public or private university, or private business/technical school.

i) The program usually results in the receipt of a Certificate of Achievement or Completion and/or prepares the client for a specific job or to obtain a license required by some occupations. Families eligible to receive child care services while they attend an education or training program under this Section must not already possess a Bachelor's, Master's or Doctorate Degree. Clients/applicants may be approved for multiple vocational certificate programs if they are within a designated career path (from Certified Nursing Assistant to Licensed Practical Nurse, for example) or are beginning a new career path in a new field, or if classes are required to remain certified in their current employment.

ii) There is no work requirement for the first 24 non-consecutive months the client participates. From the 25th month on, the client must work at least 20 hours per week. Individuals enrolled in vocational education must maintain a "C" average if this measurement is used by the institution to determine satisfactory progress. The individual will be allowed one semester below a "C" average to bring the

grades up to a "C" average. When grades are not used, progress will be determined by the written policy of the institution to establish a comparable grade level upon completion of the academic term. The determination of satisfactory progress must be reported upon completion of the academic term or twice a year if the program is continuous for 12 months.

C) Post-Secondary Education

i) This category of education includes all undergraduate college level courses that could result in an Associate or the client's first Bachelor's Degree. Families eligible to receive child care services while they attend an education or training program under this Section must:

- be enrolled in a program accredited under requirements of State law as stated in subsection (c)(3).

- not already have a ~~an Associate or~~ Bachelor's, Master's or Doctorate Degree, if requesting child care to earn an Associate Degree. Child care will not be approved for attainment of a second Associate Degree.

- ~~not already have a Bachelor's Degree, if requesting child care to earn a Bachelor's Degree. Child care will not be approved for attainment of a second Bachelor's Degree.~~

- not be in an, or have completed an, advanced degree program (beyond a Bachelor's Degree). Child care will not be approved for education beyond the attainment of a Bachelor's Degree.

ii) There is no work requirement for the first 48 non-consecutive months the client participates. From the 49th month on, the client must work at least 20 hours per week.

Clients who do not work and who need child care to attend college must maintain a 2.5 grade point average (GPA) (on a 4.0 scale) if this measurement is used by the institution to determine satisfactory progress. Clients who work 20 hours or more per week in paid employment while they attend college must maintain a 2.0 GPA (on a 4.0 scale). In the absence of a GPA, satisfactory progress will be determined by the written policy of the institution. The determination of satisfactory progress, including test/retest results or GPA, must be reported upon completion of the academic term or twice a year if the program is continuous for 12 months. If the client's GPA falls below 2.5 or 2.0 for those students who work or at any time the client does not maintain satisfactory progress, the client may continue to go to school for another semester. If the GPA is below 2.5 or 2.0 two semesters in a row, the client will be ineligible for child care until his or her GPA is at or above 2.5 or 2.0.

D) For child care services received under education/training, a parent enrolled in web-based courses or correspondence learning from an accredited university or college is only eligible for child care assistance if both of the following are met:

i) The class is offered only at a regularly scheduled time (i.e., 11:00 a.m. every Monday and Wednesday) or the parent must leave the home to have access to a computer.

ii) The child or children for whom care is requested must be under the age of six, except during the summer or school breaks. Care shall not be authorized during the hours the child is in school or is home schooled, or if the child is in a two-parent family when the other parent is available to care for the child.

E) Study Time
Child care services may be granted for up to one hour of study time per week for each classroom hour or course credit. When possible, study periods should be arranged around regularly scheduled classes in order to provide a consistent and

uninterrupted routine for children in care. Study time granted to add an extra day of care must be approved first by the Department's Bureau of Child Care and Development Policy Unit.

4) Relatives (other than parents) who receive child-only TANF benefits as a Representative Payee for children in need of care while they work.

5) Families with active CCAP cases in which all parents in the household are called into active military duty and the relative caregivers are employed or in an approved education/training activity.

6) In the event the Department must limit participation due to insufficient appropriations or available resources, applicants included in the priority service groups are:

A) Recipients of Temporary Assistance for Needy Families as described in subsection (c)(1);

B) Teen parents enrolled full-time in elementary school, high school or GED classes to obtain a high school degree or its equivalent;

C) Families with a special needs child;

D) Working families whose monthly incomes do not exceed 185% of the most current Federal Poverty Level for their family size;

E) Families that are not recipients of TANF whose monthly incomes do not exceed 185% of the most current FPL for their family size that need child care assistance to participate in education and training.

d) All families must be residents of Illinois.

e) Payment for child care services to eligible parents may begin:

1) if care was provided at the time and all eligibility factors are met, on either:

A) the date of the parent's signature; or

B) one week (seven calendar days) prior to the stamped date of receipt by the Department or its agents, whichever is later; or

2) on the date the child care provider actually begins providing child care services, if the application is received in advance of services being provided and all eligibility factors are met.

f) Eligibility ceases 10 calendar days from the date of the termination notice sent to the parent by the Department or its agents following a determination of ineligibility. Care will be terminated immediately if it is determined the child is no longer enrolled with the approved provider.

(Source: Amended at 42 Ill. Reg. 22555, effective November 27, 2018)

SUBPART C: PAYMENT FEES

Section 50.320 Maximum Monthly Income and Parent Fee by Family Size and Income Level

Family Size 2	
Monthly Income	Monthly Co-Pay
$ 0 - 549~~542~~	$ 2.00
550 - 686~~543 - 677~~	3.00
687 - 823~~678 - 812~~	11.00
824 - 961~~813 - 948~~	18.00
962 - 1,098~~949 - 1,083~~	28.00
1,099 - 1,235~~1,084 - 1,218~~	40.00
1,236 - 1,372~~1,219 - 1,354~~	55.00~~54.00~~
1,373 - 1,509~~1,355 - 1,489~~	71.00~~70.00~~
1,510 - 1,646~~1,490 - 1,624~~	89.00~~88.00~~
1,647 - 1,784~~1,625 - 1,760~~	109.00~~107.00~~
1,785 - 1,921~~1,761 - 1,895~~	131.00~~129.00~~
1,922 - 2,058~~1,896 - 2,030~~	155.00~~153.00~~
2,059 - 2,195~~2,031 - 2,166~~	181.00~~178.00~~
2,196 - 2,332~~2,167 - 2,301~~	209.00~~206.00~~
2,333 - 2,469~~2,302 - 2,436~~	239.00~~235.00~~

Family Size 3	
Monthly Income	Monthly Co-Pay
$ 0 - 693~~681~~	$ 2.00
694 - 866~~682 - 851~~	3.00
867 - 1,039~~852 - 1,021~~	14.00
1,040 - 1,213~~1,022 - 1,192~~	23.00~~22.00~~
1,214 - 1,386~~1,193 - 1,362~~	36.00~~35.00~~
1,387 - 1,559~~1,363 - 1,532~~	51.00~~50.00~~
1,560 - 1,732~~1,533 - 1,702~~	69.00~~68.00~~
1,733 - 1,905~~1,703 - 1,872~~	89.00~~88.00~~
1,906 - 2,078~~1,873 - 2,042~~	112.00~~110.00~~
2,079 - 2,252~~2,043 - 2,213~~	137.00~~135.00~~
2,253 - 2,425~~2,214 - 2,383~~	165.00~~162.00~~
2,426 - 2,598~~2,384 - 2,553~~	195.00~~192.00~~
2,599 - 2,771~~2,554 - 2,723~~	228.00~~224.00~~
2,772 - 2,944~~2,724 - 2,893~~	264.00~~259.00~~
2,945 - 3,117~~2,894 - 3,063~~	301.00~~296.00~~

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

2,470 - 2,5382,437 - 2,504	258.00254.00	3,118 - 3,2043,064 - 3,149	326.00320.00

Family Size 4	
Monthly Income	Monthly Co-Pay
$ 0 - 837820	$ 2.00
838 - 1,046821 - 1,025	3.00
1,047 - 1,2551,026 - 1,230	17.00
1,256 - 1,4651,231 - 1,435	27.00
1,466 - 1,6741,436 - 1,640	43.0042.00
1,675 - 1,8831,641 - 1,845	62.0060.00
1,884 - 2,0921,846 - 2,050	83.0081.00
2,093 - 2,3012,051 - 2,255	108.00105.00
2,302 - 2,5102,256 - 2,460	135.00133.00
2,511 - 2,7202,461 - 2,665	166.00162.00
2,721 - 2,9292,666 - 2,870	199.00195.00
2,930 - 3,1382,871 - 3,075	236.00231.00
3,139 - 3,3473,076 - 3,280	276.00270.00
3,348 - 3,5563,281 - 3,485	318.00312.00
3,557 - 3,7653,486 - 3,690	364.00357.00
3,766 - 3,8703,691 - 3,793	393.00385.00

Family Size 5	
Monthly Income	Monthly Co-Pay
$ 0 - 981960	$ 2.00
982 - 1,226961 - 1,200	3.00
1,227 - 1,4711,201 - 1,439	20.00
1,472 - 1,7171,440 - 1,679	32.00
1,718 - 1,9621,680 - 1,919	50.0049.00
1,963 - 2,2071,920 - 2,159	72.0071.00
2,208 - 2,4522,160 - 2,399	97.0095.00
2,453 - 2,6972,400 - 2,639	126.00123.00
2,698 - 2,9422,640 - 2,878	158.00155.00
2,943 - 3,1882,879 - 3,118	194.00190.00
3,189 - 3,4333,119 - 3,358	234.00229.00
3,434 - 3,6783,359 - 3,598	277.00271.00
3,679 - 3,9233,599 - 3,838	323.00316.00
3,924 - 4,1683,839 - 4,078	373.00365.00
4,169 - 4,4134,079 - 4,317	427.00417.00
4,414 - 4,5364,318 - 4,437	461.00451.00

Family Size 6	
Monthly Income	Monthly Co-Pay
$ 0 - 1,1251,099	$ 2.00
1,126 - 1,4061,100 - 1,374	3.00
1,407 - 1,6871,375 - 1,648	23.00
1,688 - 1,9691,649 - 1,923	37.0036.00
1,970 - 2,2501,924 - 2,198	58.0056.00
2,251 - 2,5312,199 - 2,472	83.0081.00
2,532 - 2,8122,473 - 2,747	112.00109.00
2,813 - 3,0932,748 - 3,022	145.00141.00
3,094 - 3,3743,023 - 3,296	182.00178.00

Family Size 7	
Monthly Income	Monthly Co-Pay
$ 0 - 1,2691,238	$ 2.00
1,270 - 1,5861,239 - 1,548	3.00
1,587 - 1,9031,549 - 1,857	26.00
1,904 - 2,2211,858 - 2,167	42.0041.00
2,222 - 2,5382,168 - 2,476	65.0064.00
2,539 - 2,8552,477 - 2,786	93.0091.00
2,856 - 3,1722,787 - 3,095	126.00123.00
3,173 - 3,4893,096 - 3,405	163.00159.00
3,490 - 3,8063,406 - 3,714	205.00200.00

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

3,375 - 3,6563,297 - 3,571	223.00218.00
3,657 - 3,9373,572 - 3,846	268.00262.00
3,938 - 4,2183,847 - 4,120	317.00310.00
4,219 - 4,4994,121 - 4,395	371.00362.00
4,500 - 4,7804,396 - 4,670	428.00418.00
4,781 - 5,0614,671 - 4,944	489.00478.00
5,062 - 5,2024,945 - 5,082	529.00516.00

3,807 - 4,1243,715 - 4,024	251.00245.00
4,125 - 4,4414,025 - 4,333	302.00295.00
4,442 - 4,7584,334 - 4,643	358.00349.00
4,759 - 5,0754,644 - 4,952	418.00408.00
5,076 - 5,3924,953 - 5,262	483.00471.00
5,393 - 5,7095,263 - 5,571	552.00538.00
5,710 - 5,8685,572 - 5,726	596.00582.00

Family Size 8	
Monthly Income	Monthly Co-Pay
$ 0 - 1,4131,378	$ 2.00
1,414 - 1,7661,379 - 1,722	3.00
1,767 - 2,1191,723 - 2,066	29.0028.00
2,120 - 2,4732,067 - 2,411	46.0045.00
2,474 - 2,8262,412 - 2,755	73.0071.00
2,827 - 3,1792,756 - 3,099	104.00101.00
3,180 - 3,5323,100 - 3,444	140.00137.00
3,533 - 3,8853,445 - 3,788	182.00177.00
3,886 - 4,2383,789 - 4,132	228.00223.00
4,239 - 4,5924,133 - 4,477	280.00273.00
4,593 - 4,9454,478 - 4,821	337.00328.00
4,946 - 5,2984,822 - 5,165	398.00388.00
5,299 - 5,6515,166 - 5,510	465.00454.00
5,652 - 6,0045,511 - 5,854	537.00524.00
6,005 - 6,3575,855 - 6,198	614.00599.00
6,358 - 6,5346,199 - 6,371	664.00647.00

Family Size 9	
Monthly Income	Monthly Co-Pay
$ 0 -1,5571,517	$ 2.00
1,558 - 1,9461,518 - 1,896	3.00
1,947 - 2,3351,897 - 2,275	32.0031.00
2,336 - 2,7252,276 - 2,655	51.0050.00
2,726 - 3,1142,656 - 3,034	80.0078.00
3,115 - 3,5033,035 - 3,413	114.00112.00
3,504 - 3,8923,414 - 3,792	155.00151.00
3,893 - 4,2813,793 - 4,171	200.00195.00
4,282 - 4,6704,172 - 4,550	252.00245.00
4,671 - 5,0604,551 - 4,930	308.00301.00
5,061 - 5,4494,931 - 5,309	371.00361.00
5,450 - 5,8385,310 - 5,688	439.00428.00
5,839 - 6,2275,689 - 6,067	513.00500.00
6,228 - 6,6166,068 - 6,446	592.00577.00
6,617 - 7,0056,447 - 6,825	677.00660.00
7,006 - 7,2006,826 - 7,015	732.00713.00

Family Size 10	
Monthly Income	Monthly Co-Pay
$ 0 - 1,7011,656	$ 2.00
1,702 - 2,1261,657 - 2,070	3.00
2,127 - 2,5512,071 - 2,484	35.0034.00
2,552 - 2,9772,485 - 2,898	56.0054.00
2,978 - 3,4022,899 - 3,312	87.0085.00

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

3,403 - 3,8273,313 - 3,726	125.00122.00
3,828 - 4,2523,727 - 4,140	169.00164.00
4,253 - 4,6774,141 - 4,554	219.00213.00
4,678 - 5,1024,555 - 4,968	275.00268.00
5,103 - 5,5284,969 - 5,382	337.00328.00
5,529 - 5,9535,383 - 5,796	405.00395.00
5,954 - 6,3785,797 - 6,210	480.00467.00
6,379 - 6,8036,211 - 6,624	560.00545.00
6,804 - 7,2286,625 - 7,038	647.00630.00
7,229 - 7,6537,039 - 7,452	740.00720.00
7,654 - 7,8667,453 - 7,659	799.00778.00

(Source: Amended at 42 Ill. Reg. 22555, effective November 27, 2018)

DEPARTMENT OF INNOVATION AND TECHNOLOGY

NOTICE OF ADOPTED RULES

1) Heading of the Part: Mandatory Cybersecurity Training

2) Code Citation: 80 Ill. Adm. Code 4000

3)

Section Numbers:	Adopted Actions:
4000.100	New Section
4000.105	New Section
4000.200	New Section
4000.205	New Section

4) Statutory Authority: Implementing and authorized by Section 25(c) of the Data Security on State Computers Act [20 ILCS 450/25(c)], implementing Section 25 of the Data Security on State Computers Act [20 ILCS 450/25] and Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15].

5) Effective Date of Rules: January 1, 2019

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

7) Does this rulemaking contain incorporations by reference? No

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

9) Notice of Proposal published in the *Illinois Register*: 42 Ill. Reg. 14173; July 27, 2018

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

11) Differences between Proposal and Final Version: The only changes made were the ones agreed upon with JCAR. Only grammatical and technical changes were made. No substantive changes were made.

12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreement letter issued by JCAR? None were made.

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

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

DEPARTMENT OF INNOVATION AND TECHNOLOGY

NOTICE OF ADOPTED RULES

15) Summary and Purpose of Rulemaking: These rules detail the manner in which the Mandatory Cybersecurity Training requirement will be administered by the Department, as provided by the legislature in Section 25 of the Data Security on State Computers Act [20 ILCS 450/25(b)].

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

Illinois Department of Innovation and Technology
Attn: Josué Barba
120 W. Jefferson St.
Springfield IL 62702

217/524-1294
fax: 217/524-0755
email: josue.barba@illinois.gov

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

DEPARTMENT OF INNOVATION AND TECHNOLOGY

NOTICE OF ADOPTED RULES

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES
SUBTITLE J: TECHNOLOGY
CHAPTER I: DEPARTMENT OF INNOVATION AND TECHNOLOGY

PART 4000
MANDATORY CYBERSECURITY TRAINING

SUBPART A: INTRODUCTION

Section
4000.100 Purpose
4000.105 Definitions

SUBPART B: TRAINING REQUIREMENTS AND RESPONSIBILITIES

Section
4000.200 Training to be Provided by Department of Innovation and Technology
4000.205 Responsibility of Employees and Employer Agencies, Boards and Commissions

AUTHORITY: Implementing and authorized by Section 25 of the Data Security on State Computers Act [20 ILCS 450].

SOURCE: Adopted at 42 Ill. Reg. 22571, effective January 1, 2019.

SUBPART A: INTRODUCTION

Section 4000.100 Purpose

This Part implements the annual State of Illinois' employee cybersecurity training requirements set forth in Section 25 of the Data Security on State Computers Act [20 ILCS 450].

Section 4000.105 Definitions

Terms not defined in this Section shall have the same meaning as in the State Officials and Employees Ethics Act [5 ILCS 430]. The following definitions are applicable for purposes of this Part:

"Act" means the Data Security on State Computers Act [20 ILCS 450].

DEPARTMENT OF INNOVATION AND TECHNOLOGY

NOTICE OF ADOPTED RULES

"Agency" or "DoIT" means the Department of Innovation and Technology.

"Designated Contact" means the State employee appointed by an agency, board or commission to serve as the entity's cybersecurity-training liaison with DoIT and shall monitor and support that entity's compliance with the cybersecurity training requirements of this Part.

"Employee" means:

any person employed full-time, part-time, or pursuant to a contract and whose employment duties are subject to the direction and control of an employer with regard to the material details of how the work is to be performed;

any appointed or elected commissioner, trustee, director, or board member of a board of a State agency, including any retirement system or investment board subject to the Illinois Pension Code [40 ILCS 5]*; or*

any other appointee [5 ILCS 430/1-5];

but does not include an employee of the legislative branch, the judicial branch, a public university of the State, or a constitutional officer other than the Governor. (Section 25(a) of the Act).

SUBPART B: TRAINING REQUIREMENTS AND RESPONSIBILITIES

Section 4000.200 Training to be Provided by Department of Innovation and Technology

a) *Every employee shall annually undergo training by the Department of Innovation and Technology concerning cybersecurity.* (Section 25(b) of the Act).

b) *The training shall include, but not be limited to, detecting phishing scams, preventing spyware infections and identity theft, and preventing and responding to data breaches.* (Section 25(b) of the Act).

c) DoIT shall provide access to electronic-based, in-person, or paper-based cybersecurity training, with reasonable efforts made to provide training in the format requested to accommodate the needs of the employee and his or her employing agency.

1) All employees are encouraged to complete cybersecurity training through electronic means.

2) In-person training may include a web conference service component.

d) DoIT shall establish a minimum of two training periods per year. Tentative training dates will be provided by DoIT, via electronic mail, to each Designated Contact by January 15th of each calendar year.

e) DoIT shall confirm training dates at least 60 calendar days prior to the training to each Designated Contact.

Section 4000.205 Responsibility of Employees and Employer Agencies, Boards and Commissions

a) Each agency, board and commission with an employee required to complete cybersecurity training shall designate an internal contact to monitor and track compliance with the cybersecurity training requirements.

b) The agency, board or commission shall promptly notify DoIT of its selection, including contact information for that Designated Contact. This information shall be submitted at security.training@illinois.gov.

c) To facilitate delivery of training materials, each agency, board and commission with employees required to complete annual cybersecurity training shall maintain a list identifying each employee who is required to complete annual cybersecurity training. The Designated Contact shall notify DoIT of the number of employees in its agency required to complete cybersecurity training.

d) Upkeep of the employee list referenced in subsection (a) is the sole responsibility of the employer agency, board or commission.

1) The Designated Contact shall provide to DoIT the employee list, as well as the email address of each employee, and any further information DoIT may request, no later than 30 calendar days prior to the training launch. DoIT's notice of the training will include what information the Designated Contact is required to provide.

2) The Designated Contact shall be responsible for providing paper copies of the training materials to those employees within his or her agency who do not have State-issued computers.

3) The Designated Contact shall annually provide to DoIT the list of those employees who have completed cybersecurity training.

e) Each agency, board and commission is responsible for responding to audit requests for information regarding completion of cybersecurity training within that specific agency, board or commission.

f) Each employee is responsible for ensuring that he or she is able to timely complete the mandatory cybersecurity training in person, online, or in paper form. In the event that the training is not completed, disciplinary action may be enforced by the employee's supervising agency.

THE ILLINOIS LIQUOR CONTROL COMMISSION

NOTICE OF ADOPTED AMENDMENT

1) Heading of the Part: The Illinois Liquor Control Commission

2) Code Citation: 11 Ill. Adm. Code 100

3)

Section Number:	Adopted Action:
100.500	New Section

4) Statutory Authority: 235 ILCS 5/3-12; 235 ILCS 5/6-5, 5/6-6, 5/6-6.63

5) Effective Date of Rule: November 29, 2018

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

7) Does this rulemaking contain incorporations by reference? No

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

9) Notice of Proposal published in the *Illinois Register*: 42 Ill. Reg. 7735; May 4, 2018

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

11) Differences between Proposal and Final Version: The only changes made were the ones agreed upon with JCAR. Only grammatical and technical changes were made. No substantive changes were made.

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

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

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

Section Numbers:	Proposed Actions:	*Illinois Register* Citations:
100.40	Repealed	41 Ill. Reg. 14998; December 15, 2017
100.130	Repealed	41 Ill. Reg. 14998; December 15, 2017
100.190	Repealed	41 Ill. Reg. 14998; December 15, 2017
100.230	Repealed	41 Ill. Reg. 14998; December 15, 2017
100.275	Repealed	41 Ill. Reg. 14998; December 15, 2017

THE ILLINOIS LIQUOR CONTROL COMMISSION

NOTICE OF ADOPTED AMENDMENT

100.285	Amendment	41 Ill. Reg. 14998; December 15, 2017
100.310	Repealed	41 Ill. Reg. 14998; December 15, 2017
100.370	Repealed	41 Ill. Reg. 14998; December 15, 2017
100.380	Repealed	41 Ill. Reg. 14998; December 15, 2017
100.390	Repealed	41 Ill. Reg. 14998; December 15, 2017
100.420	Repealed	41 Ill. Reg. 14998; December 15, 2017
100.430	Repealed	41 Ill. Reg. 14998; December 15, 2017
100.180	Amendment	41 Ill. Reg. 15193; December 26, 2017

15) Summary and Purpose of Rulemaking: This rulemaking establishes regulations that implement provisions of the Liquor Control Act of 1934 ("Act") governing "of value" transactions between retailers and manufacturers, distributors and importing distributors. The term, "of value," originates in the Federal Tied House Laws, 27 U.S.C. 205 (a), (b) and (c). The objective of these laws is to provide a clear framework for permissible and prohibited interactions between retailers and manufacturers and distributors in order to promote a competitive alcohol market. The Illinois General Assembly has enacted its own "tied-house" provisions at 235 ILCS 5/6-5, 5/6-6 and 5/6-6.3. This rulemaking implements those provisions. The rules provide that except as allowed by the Act, it is unlawful for any licensed manufacturer, non-resident dealer, distributor, importing distributor or foreign importer ("Industry Member") to furnish, give, or lend money or anything of value, or to otherwise loan or extend credit, directly or indirectly, to a licensed retailer. Licensed retailers are similarly prohibited from accepting or receiving money or any item of value from an Industry Member. The rules also prohibit "of value" activities between Industry Members and third parties, where the resulting benefits flow indirectly to retailers. The rules detail prohibited "of value" activities by Industry Members (including shelf space payment, display service and slotting fees; provision of credit to retailers; maintenance of a security interest in the real or personal property of retailers; loan guarantees for retailers; and prohibited advertising services). The rules set out requirements for maintenance of books and records by licensees and extensively discuss the numerous exceptions to prohibited "of value" activities (these include provisions governing signage; sale of equipment and supplies to retailers; quantity discounting; provision of samples; use of social media advertising; promotional events at retailer locations; provision of consumer advertising specialties; provision of educational seminars; service and inspection of draft beer, wine or distilled spirits systems; provision of courtesy wagons, coil boxes, cold plates and pumps; product donations; customized labels for wine and spirits; provision or sale of non-alcoholic merchandise; and stocking, rotation, resetting and pricing services).

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

THE ILLINOIS LIQUOR CONTROL COMMISSION

NOTICE OF ADOPTED AMENDMENT

Pamela Paziotopoulos
Deputy General Counsel
Illinois Liquor Control Commission
100 West Randolph St., Ste. 7-801
Chicago IL 60601

312/814-1801

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

THE ILLINOIS LIQUOR CONTROL COMMISSION

NOTICE OF ADOPTED AMENDMENT

TITLE 11: ALCOHOL, HORSE RACING, LOTTERY, AND VIDEO GAMING
SUBTITLE A: ALCOHOL
CHAPTER I: ILLINOIS LIQUOR CONTROL COMMISSION

PART 100
THE ILLINOIS LIQUOR CONTROL COMMISSION

Section

THE ILLINOIS LIQUOR CONTROL COMMISSION

NOTICE OF ADOPTED AMENDMENT

100.275	Hotel/Motel Mini Bars and Room Service
100.280	Giving Away of Alcoholic Liquors
100.285	Tastings, Product Sampling and Test Marketing
100.290	Refilling
100.300	Authorization to Remove Bottles
100.310	Food Service at Park Districts
100.320	Airplanes
100.325	Boats/Riverboat Gaming
100.326	Auction Liquor Licenses
100.330	Advertising
100.340	Petitions for the Adoption, Amendment or Repeal of a Rule
100.350	Procedures For Filing Appeals From an Order of the Local Liquor Control Commissioner
100.360	Review on Record – Certification of Ordinance
100.370	Procedures Before the Commission
100.380	Ex Parte Consultations
100.390	Transcripts – Administrative Review
100.400	Procedures Before the Commission on Disputes under Section 35 of the Illinois Wine and Spirits Industry Fair Dealing Act (Repealed)
100.410	~~Representation of Licensees before the~~ Commission Meetings ~~(Repealed)~~
100.420	Wine Maker Self-Distribution
100.430	Craft Brewer Self-Distribution
100.460	Revoked Licenses
100.480	Importation of Alcoholic Liquor
100.500	"Of Value" Provisions – General Applicability

AUTHORITY: Implementing and authorized by Section 3-12(a)(2) of the Liquor Control Act [235 ILCS 5/3-12(a)(2)].

SOURCE: Rules and Regulations of the Illinois Liquor Commission, amended March 31, 1977; amended July 7, 1977; amended at 3 Ill. Reg. 12, p. 65, effective March 22, 1979; codified at 5 Ill. Reg. 10706; amended at 8 Ill. Reg. 6041, effective April 19, 1984; amended at 12 Ill. Reg. 19387, effective November 7, 1988; amended at 18 Ill. Reg. 4811, effective March 9, 1994; amended at 20 Ill. Reg. 834, effective January 2, 1996; expedited correction at 20 Ill. Reg. 4469, effective January 2, 1996; amended at 21 Ill. Reg. 5542, effective May 1, 1997; amended at 23 Ill. Reg. 3787, effective March 15, 1999; emergency amendment at 23 Ill. Reg. 8687, effective July 13, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 13609, effective October 28, 1999; amended at 25 Ill. Reg. 13596, effective October 15, 2001; amended at 26 Ill. Reg. 17966, effective December 9, 2002; amended at 27 Ill. Reg. 17386, effective November 10, 2003;

THE ILLINOIS LIQUOR CONTROL COMMISSION

NOTICE OF ADOPTED AMENDMENT

amended at 39 Ill. Reg. 4433, effective March 12, 2015; amended at 39 Ill. Reg. 10386, effective July 10, 2015; amended at 42 Ill. Reg. 22577, effective November 29, 2018.

Section 100.500 "Of Value" Provisions – General Applicability

a) Except as allowed by the Act, it shall be unlawful for any licensed manufacturer, non-resident dealer, distributor, importing distributor, foreign importer, any of their officers, managers, partners, owners, employees, agents, or affiliates, or any member of the family of such manufacturer, non-resident dealer, distributor, importing distributor, or foreign importer (collectively referred to as an "industry member") to furnish, give or lend money or anything of value, or otherwise loan extend credit (other than merchandising credit in the ordinary course of business for a period not to exceed 30 days, as permitted by Section 6-5 of the Act, and Section 100.90 of this Part), directly or indirectly to a licensed retailer or any officer, associate, member, representative, agent or employee of that licensee ("retailer"). It is likewise unlawful for any retailer, as defined in this subsection, to accept or receive money or any item of value from an industry member. A retailer does not include a special event retailer as defined in Section 1-3.17.1 of the Act.

b) Third-Party Arrangements. The furnishing, giving, renting, lending or selling of equipment, fixtures, signs, supplies, money, services or other thing of value, not specifically allowed by this Section, by an industry member to a third party, when the benefits resulting from the things of value flow to a retailer, is an indirect furnishing of a thing of value within the meaning of Sections 6-5 and 6-6 of the Act. Indirect furnishing of a thing of value includes, but is not limited to, making payments for advertising to a retailer association or a display company when the resulting benefits flow to an individual retailer. An indirect furnishing of a thing of value does not arise when the industry member did not intend that the thing of value would be furnished to a retailer by a third party, or the industry member did not reasonably foresee that the thing of value would have been furnished to the retailer.

c) Violations of the "Of Value" Provisions of Sections 6-5 and 6-6. Performance of the following activities or provision of the following items violates the provisions on giving anything "of value" under Sections 6-5 and 6-6 of the Act:

1) Shelf Space Payments, Display Service and Slotting Fees Prohibition. An industry member shall not directly or indirectly offer or give anything "of

THE ILLINOIS LIQUOR CONTROL COMMISSION

NOTICE OF ADOPTED AMENDMENT

value" to a retailer, and a retailer shall not directly or indirectly request or accept anything "of value" from an industry member, in exchange for offering for sale or displaying an industry member's product on a retailer's shelf, on a tap handle, at any other desired location within the retail establishment, or on a retailer's website.

2) Credit to Retailers. An industry member shall not provide credit to retailers unless permitted by Section 6-5 of the Act as implemented by Section 100.90 of this Part. The statute provides the following parameters for extending credit to retailers:

A) No credit extensions are allowed on the purchase of beer by retailers. The full invoice cost of beer must be paid in cash as defined in Section 100.90(j) by the retailer on or before the delivery date.

B) An industry member selling wine or spirits to a retailer may extend a merchandising credit in the ordinary course of business not to exceed 30 days.

3) Security Interest. An industry member's acquisition of a mortgage on any of the real or personal property a retailer uses in its alcoholic beverage business is a prohibited interest in the retailer's property, except to the extent a lien or other security interest is acquired only in the industry member's products sold to the retailer in order to secure payment of goods sold on credit, if that credit is permissible under Section 6-5 of the Act.

4) Guaranteeing Loans. An industry member is prohibited from guaranteeing any loan or repayment of any financial obligation owed by a retailer, and a retailer is prohibited from guaranteeing any loan or repayment of any financial obligation owed by an industry member.

5) Industry Member Advertising. An industry member shall not give, and a retailer shall not accept, anything of value in exchange for any advertising service, including but not limited to:

A) Display space advertising or placement of ads in a retailer's publications, including a retailer's website; or

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B) Payments to a third party for advertisements in which the primary purpose of the advertisement promotes a retailer's business or aspects of the retailer's business.

d) Exceptions to the "Of Value" Provisions of Sections 6-5 and 6-6 of the Act. Having due regard for public health, established trade customs not contrary to the public interest, the purposes of the Act, and the items or activities permissible under the "of value" provisions of Sections 6-5 and 6-6, performance of the following activities or provision of the following items is permissible under Sections 6-5 and 6-6, as long as the performance or provision is not conditioned upon an activity or arrangement intended to create a "tied-house" as defined in 27 USC 305(b).

1) All licensees shall maintain records on the licensed premises, subject to a Section 100.130(e) waiver, for all items furnished to retailers, or received by retailers, under Sections 6-5 and 6-6 and this Section 100.500 for a period of three years. Commercial records or invoices may be used to satisfy this recordkeeping requirement, provided that all required information listed in this subsection (d)(1) is contained in these commercial records or invoices. These records must include:

A) The name and address of the retailer receiving the item;

B) The date furnished;

C) The item furnished;

D) The cost of the furnished item to the industry member, determined by the invoice price paid by the industry member; and

E) Charges to the retailer for any item.

2) Signage. An industry member may provide signage to a retailer, and a retailer may accept signage from an industry member, so long as the signage, in the aggregate, does not exceed the number of signs allowed or the cost adjustment factor dollar limitations under Section 6-6.

3) Product Displays. An industry member shall not directly or indirectly offer or give anything "of value" to a retailer, and a retailer shall not

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directly or indirectly request or accept anything "of value" from an industry member, in exchange for setting up product or other displays, or renting displays, shelf, cold box, storage or warehouse space at a retail establishment (i.e., slotting fee or allowance), except as specifically permitted by Section 6-6.3. The act by an industry member of giving or selling product displays to a retailer is permissible if the total value of the product display does not exceed $300 per brand at any time per retail location. The value of a product display is the actual cost to the industry member that initially purchased the product display or, if the industry member did not purchase the product display, the fair market value of the product display. Transportation and installation costs are not included in the $300 value.

A) A product display means any racks, bins, barrels, casks, coolers (having a fair market value of no more than $175, with no exterior plumbing or electrical hookup), buckets, glass or transparent display cases, shelving or similar items whose primary function is to hold and display alcoholic liquors at point-of-sale, at or on a retail licensed premises. Product displays may also include "display enhancers" that are exclusive of trade fixtures and equipment and include only items that convey the product display sales programming message to consumers. All product displays, including display enhancers, must cumulatively fall within the dollar limitation of product displays.

B) All product displays must bear conspicuous and substantial advertising matter on the product of the industry member that is permanently inscribed or securely affixed. The name and address of the retailer may appear on the product display.

C) Industry members may not pool or combine dollar limitations to provide a retailer with a product display in excess of $300 per brand.

D) The giving or selling of product displays may be conditioned upon the purchase of alcoholic liquor advertised on those displays in a quantity necessary for the initial completion of the display. No other condition can be imposed by the industry member on the retailer in order for the retailer to obtain the product display.

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4) Equipment, Fixtures, Furniture and Supplies. Except as provided under the Act, an industry member cannot give, lend, lease, furnish or sell furniture, equipment or fixtures to a retailer. An industry member may sell equipment and supplies to retailers if the equipment or supplies are sold to the retailer for a price that is not less than the cost of the equipment or supplies. For purposes of this Section, the cost of equipment or supplies is the amount that the industry member paid for the equipment or supplies if the industry member did not acquire them from another industry member. If the industry member selling equipment or supplies to a retailer acquired the equipment or supplies from another industry member (initial selling industry member), the cost of the equipment or supplies is the amount that the initial selling industry member paid for them. In either case, if the equipment or supplies were manufactured or produced by an industry member, the cost of the equipment or supplies is deemed to be the fair market price of the equipment or supplies. The sale price must be collected from the retailer by the industry member within 30 days after the date of the sale. Equipment and supplies includes items such as glassware (or similar containers made of other material), dispensing accessories, carbon dioxide (and other gasses used in dispensing equipment), coasters, trays, napkins, cups and buckets. Dispensing accessories include items such as standards, faucets, cold plates, rods, vents, taps, tap standards, hoses, washers, couplings, gas gauges, vent tongues, shanks, check valves, and counter-top branded shot machines.

5) Quantity Discounting. Quantity discounting is permissible only if an industry member offers the same quantity price discount to all similarly situated retailers in the same geographic area who agree to purchase the required predetermined quantity of alcoholic liquor of the same brand. A "quantity discount" is when an industry member offers a retailer a discount at the time of sale based upon an agreement by which the retailer will purchase a predetermined number of products in return for receiving a discount on the same goods purchased. However, the following activities are prohibited:

A) An industry member may not require a retailer to take and dispose of any quota of alcoholic liquors. Bona fide quantity discounts shall not be deemed to be quota sales.

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B) An industry member may not require a retailer to purchase one product in order to purchase another. This includes combination sales if one or more products may be purchased only in combination with other products and not individually. However, an industry member is not prohibited from selling, at a special combination price, two or more kinds or brands of products to a retailer provided:

i) The retailer has the option of purchasing either product at the usual price; and

ii) The retailer is not required to purchase any product it does not want.

C) The furnishing of free warehousing by delaying delivery of alcoholic liquors beyond the time that payment for the product is received, or if a retailer is purchasing on credit as permitted by Section 6-5 of the Act, as implemented by Section 100.90 of this Part, delaying final delivery of product beyond the close of the 30-day credit period, is the furnishing of an "of value" service in violation of Section 6-5.

D) Subsections (d)(5)(A) through (C) notwithstanding, this Section does not prohibit legitimate sales programming among or between the industry tiers in which the primary purpose of the programming is to increase product sales and merchandising to retailers and is not a subterfuge to provide prohibited "of value" inducements to a retailer. These legitimate sales programs are lawful if:

i) Sales incentives are temporary and designed and implemented to produce product volume growth with retailers;

ii) The sales incentives to retailers are based on volume and discounted pricing, including discounts in the form of cash, credits, rebates, alcoholic liquor products, and product displays;

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iii) The sales incentives are documented on related sales or credit memoranda; and

iv) The sales incentives are offered to all similarly situated retailers.

E) The use of product credits and rebates, such as "end of month", "end of year", "end of period", or other such temporary cumulative discounts, credits and rebates from an industry member to a retailer is an adjustment of the purchase price based on volume purchasing and, as such, is not a violation of Section 6-5 of the Act. These cumulative discounts are considered to be a form of pricing arrangement; provided they are made pursuant to a written agreement, entered into at the time of sale; extend for a specific period of time; are calculated based solely upon the purchases made by the retailer receiving the cumulative discount; and are documented on related sales and credit memoranda. If the retailer is part of a group of retailers with common ownership, however, cumulative discounts, credits or rebates may be provided in one aggregate payment for all retailers within the common ownership structure. In this case, the cumulative discount, credit or rebate must be calculated based upon the volume purchases of each individual retailer, with supporting documentation that denotes the portion of the discount, credit or rebate attributable to each individual retailer.

F) "No Charge" Products. Price-to-retailer sales incentives that include volume-based discounts on the purchase price, and/or "no charge" products that represent an additional overall discount on the related alcoholic liquor product purchased, is an adjustment of the purchase price based on volume purchasing if made at the time of sale, and if the amount of the product given at no charge with the order is not so great as to constitute a subterfuge in which the pricing aspect is merely a means to provide a retailer with a "gift" or "free" product. These transactions are not a violation of Section 6-5 or 6-6 of the Act. However, "penny deals" and other such transactions in which the "no charge" or deeply discounted products (i.e., $.01 per case) are not related to a corresponding volume purchase are considered free product and a violation of

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Section 6-5 or 6-6. Deals regarding product closeouts and other such deep discounting, non-ordinary business transactions are not prohibited under this subsection (d)(5)(F). "No charge" goods must be listed and indicated as such on the invoice to the retailer. The importing distributor or distributor must have records to support the volume-based discount and the purchase price. The provisions of Section 100.280 prohibiting a licensee from giving away alcoholic liquor for commercial purposes is applicable.

6) Samples. If a retailer has not purchased a brand of alcoholic liquor from an industry member during the immediately preceding 12-month period, it is not an "of value" violation for an industry member to provide that retailer with not more than 384 ounces of any brand of beer, 3 liters of any brand of wine, and 3 liters of any brand of spirits. These sample requirements do not apply to consumer tastings.

7) Social Media Advertising. An industry member may use social media to advertise product location communications that inform the public where its products may be purchased (retail locators) and pre-announcing any promotional activity to be held on a retailer's premises, if otherwise permitted by the Act, provided:

A) The industry member does not give compensation to, or receive compensation from, directly or indirectly, the retail license holder for social media advertising.

B) If the social media advertising is a product location communication, the purpose of the communication must be limited to allowing a consumer to determine the availability of a specific product at a retailer. If the social media pre-announces promotional activity at a retailer's premise, the focus of the social media advertising must be the product promotion and any reference to the retailer should provide only necessary information, such as location of the event.

C) The advertisement does not contain the retail price of the product.

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D) All social media advertising must also comply with all applicable rules and regulations issued by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury.

E) The industry member does not offer social media advertising to a specific retailer to the exclusion of other, similarly situated retailers.

8) Industry Member Promotional Events at Retailer Locations. Any promotional event sponsored by an industry member at a retailer's premises that primarily promotes the retailer's business and does not promote, or only incidentally promotes, the industry member's brand or brands of products violates the "of value" provisions of Section 6-5 of the Act. Industry member promotional events held at retailer premises must focus on the industry member or brands being promoted and all reference to the retailer in any advertisement shall be limited to the name and address of the retailer, which shall be relatively inconspicuous in relation to the advertisement as a whole. Promotional events include, but are not limited to, tastings, samplings, bottle signings, public product launch events, or other similar methods of brand promotion. The promotions shall be available to all similarly situated retailers without a purchase requirement imposed upon a retailer.

9) Consumer Advertising Specialties. Consumer advertising specialties, which are items, including but not limited to trading stamps, non-alcoholic mixers, pouring racks, ash trays, bottle or can openers, corkscrews, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, postcards, pencils, shirts, caps and visors, that are intended to be given to and received by the consumer, may be given by an industry member to a retailer, as long as the retailer gives all the items away to consumers.

A) The industry member may not, directly or indirectly, pay or credit the retailer for using or distributing these items, or for any expense incidental to their use.

B) Only if the retailer pays for the consumer advertising specialties may the items be retailer-specific. Consumer advertising

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specialties must bear conspicuous and substantial advertising matter about the brand or the industry member.

10) Educational Seminars. An industry member may give or sponsor educational seminars for employees of retailers either at the industry member's premises or at the retail establishment. Examples of these educational seminars include seminars dealing with use of a retailer's equipment, training seminars for employees of retailers, or tours of the industry member's plant premises. This subsection (d)(10) does not authorize an industry member to pay a retailer's expense in conjunction with an educational seminar (such as travel and lodging). Industry members may provide nominal hospitality during the event, including meals and local transportation.

11) Industry members may service, balance or inspect draft beer, wine or distilled spirits systems at regular intervals, and may provide labor to replace or install rods, taps, faucets, fittings and lines in draft beer, wine or distilled spirits dispensing equipment. However, free cleaning of coils by an industry member or by a company whose services are paid for by an industry member shall be considered something of value in violation of Sections 6-5 and 6-6 of the Act.

12) Courtesy wagons, coil boxes, cold plates or pumps may be supplied to a retailer, by an industry member, free of charge one time per year for a one-day period. However, the industry member shall not supply free beer, wine or distilled spirits to a retailer for the event.

13) Courtesy wagons, coil boxes, cold plates or pumps may be supplied to a retailer, by an industry member, for an event that is given by or under the auspices or sponsorship of a municipal, religious, charitable, fraternal or social organization that is a holder of a Special Event License. However, the industry member shall not supply free beer, wine or distilled spirits to a retailer for the event.

14) Product Donations. An industry member may make contributions of cash, alcoholic liquor products, non-alcoholic products, services, equipment or signs to a not-for-profit organization, including but not limited to charitable organizations, religious organizations, trade associations, political organizations, and fraternal organizations. An industry member

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may not make contributions of alcoholic liquor products to any not-for-profit organization that has a local municipal and State of Illinois retail license. These donations shall be subject to the following conditions:

A) Donations of alcoholic liquor products may not be given for commercial purposes. The proof of donative intent is on the industry member;

B) An industry member must maintain invoices on its licensed premises for a period of three years for all alcoholic liquor products donated to not-for-profit organizations;

C) Signage dollar limitations contained in Section 6-6 of the Act do not apply to signage and advertising materials donated to a not-for-profit organization; and

D) Advertising and signage referencing the industry member must be reasonably commensurate with a donative intent to ensure that the charitable donation is not being made for a commercial purpose, in violation of Section 100.280. The proof of donative intent is on the industry member.

15) Customized Label for Wine and Spirits Products. Wine or spirits customized label programs may be offered by industry members to retailers. A customized label program is defined as a sale in which the retailer purchases a single barrel of wine or spirits and the retailer has the option of selecting the product blend, age, estate, barrel or wood type in which the wine or spirits is stored or aged. Custom label programs must be offered to all similarly situated retailers who agree to purchase the program, under the following guidelines:

A) All formulas and brand rights to the wine and spirits products must be owned by industry members; no brand rights to the wine or spirits product, or exclusive use of the blend or product options, may be offered to, or accepted by, the retailer;

B) An individual, non-exclusive custom label may include the retailer's name, provided there is a matching Federal Certificate of

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Label Approval and no language on the label or container suggests or implies that the wine or spirits is exclusive to the retailer; and

C) Any product displays that are a part of the customized label program must adhere to the rules on product displays set forth in subsection (d)(3).

16) Non-Alcoholic Merchandise. An industry member who is also in business as a bona fide producer or vendor of merchandise other than "alcohol", "spirits", "wine", "beer" or "alcoholic liquor", as those terms are defined in Article I of the Act, may furnish, give, sell or offer to sell that non-alcoholic merchandise to retailers as provided in Section 6-6.3 of the Act. However, non-alcoholic merchandise may not be used by an industry member to induce or cause a retailer to engage in any activity prohibited by the Act or this Part.

17) Stocking, Rotation, Resetting, and Pricing Services

A) Industry members, at retail licensed establishments, may stock alcoholic liquors they sell, provided that alcoholic liquor products of other industry members are not moved, altered or disturbed. This stocking may be done only during the course of, or within 24 hours after, a regular sales call or delivery to the retailer. The stocking is considered service incidental to a sales call or delivery. Stocking is defined as any placing of alcoholic liquors where they are to be stored or where they are offered for sale.

B) Industry members may rotate their own alcoholic liquor products at a retailer's premises during the normal course of a sales call or a delivery. Rotation is defined as moving newer, fresher product from a storage area to a point-of-sale area and the replenishing of the point-of-sale area with fresh product. Rotation may be performed at any location within a retailer's premises.

C) Industry members are permitted to participate in or be present at merchandising resets conducted at a retailer's premises no more than four times per year. Resets are defined as large-scale rearrangement of the alcoholic liquor products at a retailer's premises. During resets, industry members may stock or restock

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entire sections of point-of-sale locations at the retailer's premises. No reset shall occur without at least 14 days prior notice made by the retailer to all industry members whose alcoholic liquor products are carried by the retailer. Industry members may only move, alter, disturb or displace their alcoholic liquor products and the products of properly notified but nonattending industry members.

D) Industry members may provide to retailers recommended diagrams, shelf plans or shelf schematics that suggest beneficial display locations for their alcoholic liquor products at the retailer's premises. Industry members may not condition pricing discounts, credits, rebates, access to brands, or provision of any other item or activity permissible under the Act or this Section upon a retailer's choice to implement or not implement diagrams, shelf plans or shelf schematics.

E) Industry members may not affix prices to products on behalf of retailers. This prohibition includes the indirect affixing of prices to product, including entering prices into a retailer's computer system. This prohibition does not prohibit industry members, after stocking a shelf, from affixing shelf tags that identify the product and price of the alcoholic liquor; however, at no time may an industry member delegate or contract this service to a third party. Shelf tags are considered point-of-sale advertising materials and are subject to the provisions of Section 6-6 of the Act. If permitted stocking by an industry member involves movement and a change in the placement of its product on the retailer's shelf, shelf tags may be moved to the new position of the product.

(Source: Added at 42 Ill. Reg. 22577, effective November 29, 2018)

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1) Heading of the Part: Standards Applicable to Transporters of Hazardous Waste

2) Code Citation: 35 Ill. Adm. Code 723

3)

Section Numbers:	Adopted Actions:
723.110	Amendment
723.112	Amendment
723.120	Amendment
723.121	Amendment
723.125	Amendment

4) Statutory Authority: 415 ILCS 5/7.2, 22.4, and 27

5) Effective Date of Rules: November 19, 2018

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

7) Does this rulemaking contain incorporations by reference? No

8) The adopted rulemaking, a copy of the Board's opinion and order adopted October 4, 2018 in consolidated docket R17-14/R17-15/R18-12/R18-31, and all materials incorporated by reference are on file at the Board's principal office and are available for public inspection and copying.

9) Notice of Proposal published in the *Illinois Register*: 42 Ill. Reg. 10999; June 22, 2018

10) Has JCAR issued a Statement of Objection to this rulemaking? No. Section 22.4 of the Environmental Protection Act [415 ILCS 5/22.4] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

11) Differences between the Proposal and Final Version: A table in a document entitled "Identical-in-Substance Rulemaking Addendum (Final)" that the Board added to consolidated docket R17-14/R17-15/R18-12/R18-31 summarizes the differences between the amendments adopted in the October 4, 2018 opinion and order and those proposed by the Board on May 24, 2018.

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The differences are limited to minor corrections suggested by JCAR staff or resulting from the Board's review of its proposal. The changes are not intended to have substantive effect and intend to clarify the rules without deviating from the substance of the federal amendments on which this proceeding is based.

12) Have all the changes agreed upon by the Board and JCAR been made as indicated in the agreements issued by JCAR? Section 22.4 of the Environmental Protection Act [415 ILCS 5/22.4] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by JCAR.

Since the Notices of Proposed Amendments appeared in the June 22, 2018 issue of the *Illinois Register*, the Board received suggestions for revisions from JCAR. The Board evaluated each suggestion and incorporated some into the adopted rules, as detailed in the Identical-in-Substance Rulemaking Addendum (Final) in consolidated docket R17-14/R17-15/R18-12/R18-31, as described in item 11 above. See that Addendum for additional details on JCAR suggestions and the Board actions on each. One table in itemizes changes made in response to various suggestions. Another table indicates suggestions not incorporated into the text, with a brief explanation for each.

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

14) Are there any other rulemakings pending on this Part? Yes

Section Numbers:	Proposed Actions:	*Illinois Register* Citations:
723.120	Amendment	42 Ill. Reg. 15694; August 17, 2018
723.121	Amendment	42 Ill. Reg. 15694; August 17, 2018

15) Summary and Purpose of Rulemaking: The amendments to Part 723 are a segment larger Board rulemaking. The consolidated docket R17-14/R17-15/R18-11/R18-31 rulemaking also includes amendments to 35 Ill. Adm. Code 702 through 705, 720 through 722, 724 through 728, 730, 733, 738, 739, and 810 through 812. Due to the extreme volume of the consolidated docket, each Part is covered by a notice in four separate issues of the Illinois Register. Included in this issue are the third group for publication: 35 Ill. Adm. Code 723, 724, and 726.

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When the Board filed the adopted rules and submitted them for publication in the *Illinois Register*, the anticipated schedule for publication of all 20 parts of this rulemaking was as follows:

Group 1: Parts 702, 703, 704, 705, 720, 810, 811, and 812
Group 2: Parts 721 and 722
Group 3: Parts 723, 724, and 726
Group 4: Parts 725, 727, and 730
Group 5: Parts 728, 733, 738, and 739

Section 22.4(a) of the Environmental Protection Act (Act) [415 ILCS 5/22.4(a)] (2016) requires the Board to adopt hazardous waste rules that are identical-in-substance to United States Environmental Protection Agency's (USEPA's) Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste rules. Section 22.4(a) requires the Board to use the identical-in-substance rulemaking procedure of Section 7.2(b) of the Act [415 ILCS 5/7.2(b)] (2014). The Illinois hazardous waste rules are in 35 Ill. Adm. Code 702, 703, 705, 720 through 728, 733, 738, and 739. The Board reserved docket R17-14 to incorporate USEPA amendments adopted during the period July 1, 2016 through December 31, 2016 into the Illinois hazardous waste rules. Similarly, the Board reserved docket R18-12 for USEPA hazardous waste rules adopted during the period July 1, 2017 through December 31, 2017 and consolidated it with dockets R17-14, R17-15, and R18-12.

The consolidated docket R17-14/R17-15/R18-11/R18-31 rulemaking updates the Illinois hazardous waste, underground injection control (UIC), and Municipal Solid Waste Landfill (MSWLF) rules to incorporate amendments adopted by the United States Environmental Protection Agency (USEPA) during calendar years 2016 and 2017, embracing two update periods: July 1, 2016 through December 31, 2016 and July 1, 2017 through December 31, 2017.

The following USEPA actions form the basis for the consolidated docket R17-14/R17-15/R18-11/R18-31 rulemaking:

November 28, 2016 (81 Fed. Reg. 85696)—Hazardous Waste Export-Import Revisions: USEPA revised requirements for importing and exporting hazardous waste at 40 C.F.R. 260 through 267, 271, and 273. USEPA intended to provide greater protection of human health and the environment and greater consistency with current requirements for shipments between members of the Organization for Economic Cooperation and

Development (OECD). USEPA also intended to implement electronic submission of import- and export-related documents into an Automated Export System.

November 28, 2016 (81 Fed. Reg. 85732)—Generator Improvements Rule (GIR): USEPA adopted the GIR, which extensively revised requirements for hazardous waste generators. USEPA revised all parts of the hazardous waste rules: 40 C.F.R. 260 through 268, 270, 271, 273, and 279. The GIR also included revisions to RCRA Subtitle D rules in 40 C.F.R. 257 and 258. The federal MSWLF rules are codified in 40 C.F.R. 258. USEPA intended that reorganizing the hazardous waste generator requirements would make them simpler. USEPA also intended to address gaps in the rules to make them more effective and protective of human health and the environment. USEPA also corrected inadvertent errors and removed obsolete provisions.

August 29, 2017 (82 Fed. Reg. 41015)—Automated Export System (AES) Filing Compliance Date: USEPA established the AES filing compliance date for hazardous waste exports. As of December 31, 2017, exporters of manifested hazardous waste, universal waste, spent lead-acid batteries for recycling or disposal, and cathode ray tubes (CRTs) for recycling must use the AES for export shipments. After the AES filing compliance date, the use of paper reporting was no longer permissible for these exports.

December 26, 2017 (82 Fed. Reg. 60894)—Barring Claims of Confidential Business Information (CBI) for Hazardous Waste Import, Export, and Transit Documents: USEPA further revised the rules for imports and exports of hazardous waste. No person can assert a confidential business information (CBI) claim for documents relating to import, export, and transit of hazardous waste or to export of excluded CRTs.

Specifically, the amendments to Part 723 incorporate USEPA's actions of November 28, 2016 adopting hazardous waste export-import revisions and the Generator Improvements Rule.
The consolidated docket R17-14/R17-15/R18-11/R18-31 rulemaking further makes numerous corrections and non-substantive stylistic revisions that the Board found are needed.

Tables appear in the Identical-in-Substance Rulemaking Addendum (Final) in consolidated docket R17-14/R17-15/R18-12/R18-31, as described in item 11 above, that list corrections and amendments. Persons interested in the details of those corrections and amendments should refer to the Addendum.

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Section 22.4(a) of the Environmental Protection Act [415 ILCS 5/22.4(a)] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

16) Information and questions regarding these adopted rules shall be directed to: Please reference consolidated docket R17-14/R17-15/R18-12/R18-31 and direct inquiries to the following person:

Michael J. McCambridge
Staff Attorney
Illinois Pollution Control Board
100 W. Randolph Suite 11-500
Chicago IL 60601

312/814-6924
michael.mccambridge@illinois.gov

Request copies of the Board's opinion and order of October 4, 2018 at 312/814-3620. You may also obtain a copy of the Board's opinion and order from the Internet at http://www.ipcb.state.il.us.

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

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: HAZARDOUS WASTE OPERATING REQUIREMENTS

PART 723
STANDARDS APPLICABLE TO
TRANSPORTERS OF HAZARDOUS WASTE

SUBPART A: GENERAL

Section
723.110 Scope
723.111 USEPA Identification Number
723.112 Transfer Facility Requirements
723.113 Electronic Reporting

SUBPART B: COMPLIANCE WITH THE MANIFEST SYSTEM AND RECORDKEEPING

Section
723.120 The Manifest System
723.121 Compliance with the Manifest
723.122 Recordkeeping
723.125 Electronic Manifest Signatures

SUBPART C: HAZARDOUS WASTE DISCHARGES

Section
723.130 Immediate Action
723.131 Discharge Cleanup

AUTHORITY: Implementing Section 7.2 and 22.4 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/7.2, 22.4 and 27].

SOURCE: Adopted in R81-22 at 5 Ill. Reg. 9781, effective May 17, 1982; amended and codified in R81-22 at 6 Ill. Reg. 4828, effective May 17, 1982; amended in R84-9 at 9 Ill. Reg. 11961, effective July 24, 1985; amended in R86-19 at 10 Ill. Reg. 20718, effective December 2, 1986; amended in R86-46 at 11 Ill. Reg. 13570, effective August 4, 1987; amended in R87-5 at

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11 Ill. Reg. 19412, effective November 12, 1987; amended in R95-6 at 19 Ill. Reg. 9945, effective June 27, 1995; amended in R96-10/R97-3/R97-5 at 22 Ill. Reg. 589, effective December 16, 1997; amended in R97-21/R98-3/R98-5 at 22 Ill. Reg. 17965, effective September 28, 1998; amended in R06-5/R06-6/R06-7 at 30 Ill. Reg. 3180, effective February 23, 2006; amended in R06-16/R06-17/R06-18 at 31 Ill. Reg. 881, effective December 20, 2006; amended in R07-5/R07-14 at 32 Ill. Reg. 11969, effective July 14, 2008; amended in R11-2/R11-16 at 35 Ill. Reg. 17959, effective October 14, 2011; amended in R15-1 at 39 Ill. Reg. 1711, effective January 12, 2015; amended in R17-14/R17-15/R18-12/R18-31 at 42 Ill. Reg. 22595, effective November 19, 2018.

SUBPART A: GENERAL

Section 723.110 Scope

a) These regulations establish standards which apply to persons transporting hazardous waste into, out of or through Illinois if the transportation requires a manifest under 35 Ill. Adm. Code 722.

b) These regulations do not apply to on-site transportation of hazardous waste by generators or by owners or operators of permitted hazardous waste management facilities.

c) A transporter of hazardous waste must also comply with 35 Ill. Adm. Code 722, "Standards Applicable to Generators of Hazardous Waste~~,~~", if either of the following occurs:

1) It transports hazardous waste into the United States from abroad; or

2) It mixes hazardous waste of different DOT shipping descriptions by placing them into a single container.

d) A transporter of hazardous waste ~~subject to the manifesting requirements of 35 Ill. Adm. Code 722 or the waste management standards of 35 Ill. Adm. Code 733~~ that is being imported from or exported to any other country~~of the countries listed in 35 Ill. Adm. Code 722.158(a)(1)~~ for purposes of recovery or disposal is subject to this Subpart and to all other relevant requirements of 35 Ill. Adm. Code 722.Subpart H, including, but not limited to, 35 Ill. Adm. Code 722.183(d) and 722.184 for movement documents.

e) The regulations in this Part do not apply to transportation during an explosives or munitions emergency response, conducted in accordance with 35 Ill. Adm. Code 724.101(g)(8)(A)(iv) or (g)(8)(D) or 35 Ill. Adm. Code 725.101(c)(11)(A)(iv) or (c)(11)(D), and 35 Ill. Adm. Code 703.121(a)(4) or (c).

f) 35 Ill. Adm. Code 726.303 identifies how the requirements of this Part apply to military munitions classified as solid waste under 35 Ill. Adm. Code 726.302.

(Source: Amended at 42 Ill. Reg. 22595, effective November 19, 2018)

Section 723.112 Transfer Facility Requirements

a) A transporter that ~~who~~ stores manifested shipments of hazardous waste in containers meeting the independent requirements of 35 Ill. Adm. Code 722.130 at a transfer facility for a period of 10~~ten~~ days or less is not subject to regulations under 35 Ill. Adm. Code 702, 703, 724, 725, 727, or 728 with respect to the storage of those wastes.

b) When consolidating the contents of two or more containers with the same hazardous waste into a new container, or when combining and consolidating two different hazardous wastes that are compatible with each other, the transporter must mark its containers of 119 gallons (450 ℓ) or less capacity with the following information:

1) The words "Hazardous Waste"; and

2) The applicable USEPA hazardous waste numbers in Subparts C and D of 35 Ill. Adm. Code 721, or in compliance with 35 Ill. Adm. Code 722.132(c).

(Source: Amended at 42 Ill. Reg. 22595, effective November 19, 2018)

SUBPART B: COMPLIANCE WITH THE MANIFEST SYSTEM AND RECORDKEEPING

Section 723.120 The Manifest System

a) No Acceptance Without a Manifest~~acceptance without a manifest.~~

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1) Manifest Requirement~~requirement~~. A transporter may not accept hazardous waste from a generator unless the transporter is also provided with a manifest form (USEPA Form 8700-22, and if necessary, USEPA Form 8700-22A) signed in accordance with the provisions of 35 Ill. Adm. Code 723.123, or is provided with an e-Manifest that is obtained, completed, and transmitted in accordance with 35 Ill. Adm. Code 722.120(a)(3) and signed with a valid and enforceable electronic signature as described in 35 Ill. Adm. Code 722.125.

2) Exports. For exports of hazardous waste subject to Subpart H of 35 Ill. Adm. Code 722, a transporter may not accept hazardous waste without a manifest signed by the generator in accordance with this Section, as appropriate, and for exports occurring under the terms of a consent issued by USEPA on or after December 31, 2016, a movement document that includes all information required by 35 Ill. Adm. Code 722.183(d).

~~A)~~ ~~In the case of exports other than those subject to Subpart H of 35 Ill. Adm. Code 722, a transporter may not accept such waste from a primary exporter or other person if the transporter knows that the shipment does not conform to the USEPA Acknowledgement of Consent; and unless, in addition to a manifest signed by the generator in accordance with this Section, the transporter must also be provided with a USEPA Acknowledgement of Consent that, except for shipment by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)).~~

~~B)~~ ~~For exports of hazardous waste subject to Subpart H of 35 Ill. Adm. Code 722, a transporter may not accept hazardous waste without a tracking document that includes all information required by 35 Ill. Adm. Code 722.184.~~

3) This subsection (a)(3) corresponds with 40 CFR 263.20(a)(3), an applicability statement that became obsolete for the purposes of the Illinois rules on September 6, 2006. This statement maintains structural parity with the corresponding federal regulations.

4) Use of e-Manifest − Legal Equivalence to Paper Forms for Participating Transporters~~legal equivalence to paper forms for participating transporters~~. E-Manifests that are obtained, completed, and transmitted in

accordance with 35 Ill. Adm. Code 722.120(a)(3), and used in accordance with this Section in lieu of USEPA Forms 8700-22 and 8700-22A, are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, carry, provide, give, use, or retain a manifest.

A) Any requirement in 35 Ill. Adm. Code 720 through 728 to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 35 Ill. Adm. Code 722.125.

B) Any requirement in 35 Ill. Adm. Code 720 through 728 to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when a copy of an e-Manifest is transmitted to the other person by submission to the e-Manifest System.

C) Any requirement in 35 Ill. Adm. Code 720 through 728 for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an e-Manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment, except that, to the extent that the hazardous materials regulation on shipping papers for carriage by public highway requires transporters of hazardous materials to carry a paper document to comply with 49 CFR 177.817, incorporated by reference in 35 Ill. Adm. Code 720.111, a hazardous waste transporter must carry one printed copy of the e-Manifest on the transport vehicle.

D) Any requirement in 35 Ill. Adm. Code 720 through 728 for a transporter to keep or retain a copy of a manifest is satisfied by the retention of an e-Manifest in the transporter's account on the e-Manifest System, provided that such copies are readily available for viewing and production if requested by any USEPA or authorized state inspector.

E) No transporter may be held liable for the inability to produce an e-Manifest for inspection under this Section if that transporter can demonstrate that the inability to produce the e-Manifest is

exclusively due to a technical difficulty with the USEPA e-Manifest System for which the transporter bears no responsibility.

BOARD NOTE: The Board has rendered the language "any requirement in these regulations" in corresponding 40 CFR 263.20(a)(4)(i) ~~723.20(a)(4)(A)~~ through (a)(4)(iv)~~(a)(4)(D)~~ as "any requirement in any provision of 35 Ill. Adm. Code 720 through 728" in the appropriate segments of this subsection (a)(4).

5) A transporter may participate in the e-Manifest System either by accessing the e-Manifest System from the transporter's own electronic equipment, or by accessing the e-Manifest System from the equipment provided by a participating generator, by another transporter, or by a designated facility.

6) Special Procedures When~~procedures when~~ e-Manifest Is Not Available~~is not available~~. If after a manifest has been originated electronically and signed electronically by the initial transporter, and the e-Manifest System should become unavailable for any reason, then the following requirements apply:

A) The transporter in possession of the hazardous waste when the e-Manifest becomes unavailable must reproduce sufficient copies of the printed manifest that is carried on the transport vehicle pursuant to subsection (a)(4)(C)(i)~~ of this Section,~~ or obtain and complete another paper manifest for this purpose. The transporter must reproduce sufficient copies to provide the transporter and all subsequent waste handlers with a copy for their files, plus two additional copies that will be delivered to the designated facility with the hazardous waste.

B) On each printed copy, the transporter must include a notation in the Special Handling and Additional Description space (Item 14) that the paper manifest is a replacement manifest for a manifest originated in the e-Manifest System, must include (if not pre-printed on the replacement manifest) the manifest tracking number of the e-Manifest that is replaced by the paper manifest, and must also include a brief explanation why the e-Manifest was not available for completing the tracking of the shipment electronically.

C) A transporter signing a replacement manifest to acknowledge receipt of the hazardous waste must ensure that each paper copy is individually signed and that a legible handwritten signature appears on each copy.

D) From the point at which the e-Manifest is no longer available for tracking the waste shipment, the paper replacement manifest copies must be carried, signed, retained as records, and given to a subsequent transporter or to the designated facility, following the instructions, procedures, and requirements that apply to the use of all other paper manifests.

7) Special Proceduresprocedures for Electronic Signature Methods Undergoing Testselectronic signature methods undergoing tests. If a transporter using an e-Manifest signs this manifest electronically using an electronic signature method that is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the transporter must sign the e-Manifest electronically and also sign with an ink signature the transporter acknowledgement of receipt of materials on the printed copy of the manifest that is carried on the vehicle in accordance with subsection (a)(4)(C)(i) of this Section. This printed copy bearing the generator's and transporter's ink signatures must also be presented by the transporter to the designated facility to sign in ink to indicate the receipt of the waste materials or to indicate discrepancies. After the owner or operator of the designated facility has signed this printed manifest copy with its ink signature, the printed manifest copy must be delivered to the designated facility with the waste materials.

8) Imposition of user fee for e-Manifest use. A transporter that is a user of the e-Manifest System may be assessed a user fee by USEPA for the origination or processing of each e-Manifest. USEPA has stated that it will maintain and update from time-to-time the current schedule of e-Manifest user fees, which must be determined based on current and projected e-Manifest System costs and level of use of the e-Manifest System. USEPA has stated that it will publish the current schedule of e-Manifest user fees as an appendix to 40 CFR 262.

b) Before transporting the hazardous waste, the transporter must sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The transporter must return a signed copy to the generator before leaving the generator's property.

c) The transporter must ensure that the manifest accompanies the hazardous waste. In the case of exports occurring under the terms of a consent issued by USEPA to the exporter on or after December 31, 2016, the transporter must ensure that a movement document that includes all information required by 35 Ill. Adm. Code 722.183(d) also accompanies the hazardous waste. In the case of imports occurring under the terms of a consent issued by USEPA to the country of export or the importer on or after December 31, 2016, the transporter must ensure that a movement document that includes all information required by 35 Ill. Adm. Code 722.184(d) ~~In the case of exports, the transporter must ensure that a copy of the USEPA Acknowledgement of Consent~~ also accompanies the hazardous waste.

d) A transporter that delivers a hazardous waste to another transporter or to the designated facility must do the following:

1) It must obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest;

2) It must retain one copy of the manifest in accordance with Section 723.122; and

3) It must give the remaining copies of the manifest to the accepting transporter or designated facility.

e) Subsections (c), (d), and (f) do not apply to water (bulk shipment) transporters if all of the following are true:

1) The hazardous waste is delivered by water (bulk shipment) to the designated facility;

2) A shipping paper containing all the information required on the manifest (excluding the USEPA identification numbers, generator certification and signatures) accompanies the hazardous waste and, for exports or imports occurring under the terms of a consent issued by USEPA, a movement

document that includes all information required by 35 Ill. Adm. Code 722.183(d) or 722.184(d) ~~, a USEPA Acknowledgement of Consent~~ accompanies the hazardous waste;

3) The delivering transporter obtains the date of delivery and handwritten signature of the owner or operator designated facility on either the manifest or the shipping paper;

4) The person delivering the hazardous waste to the initial water (bulk shipment) transporter obtains the date of delivery and signature of the water (bulk shipment) transporter on the manifest and forwards it to the designated facility; and

5) A copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with Section 723.122.

f) For shipments involving rail transportation, the following requirements apply instead of subsections (c), (d), and (e), which do not apply:

1) When accepting hazardous waste from a non-rail transporter, the initial rail transporter must do the following:

A) It must sign and date the manifest acknowledging acceptance of the hazardous waste;

B) It must return a signed copy of the manifest to the non-rail transporter;

C) It must forward at least three copies of the manifest to the following entities:

i) The next non-rail transporter, if any;

ii) The designated facility, if the shipment is delivered to that facility by rail; or

iii) The last rail transporter designated to handle the waste in the United States;

D) It must retain one copy of the manifest and rail shipping paper in accordance with Section 723.122.

2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the USEPA identification numbers, generator certification and signatures) and, for exports or imports occurring under the terms of a consent issued by USEPA, a movement document that includes all information required by 35 Ill. Adm. Code 722.183(d) or 722.184(d) ~~, a USEPA Acknowledgement of Consent~~ accompanies the hazardous waste at all times.

BOARD NOTE: Intermediate rail transporters are not required to sign ~~either~~ the manifest, movement document, or shipping paper.

3) When delivering hazardous waste to the designated facility, a rail transporter must do the following:

A) It must obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or the shipping paper (if the manifest has not been received by the facility); and

B) It must retain a copy of the manifest or signed shipping paper in accordance with Section 723.122.

4) When delivering hazardous waste to a non-rail transporter a rail transporter must do the following:

A) It must obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and

B) It must retain a copy of the manifest in accordance with Section 723.122.

5) Before accepting hazardous waste from a rail transporter, a non-rail transporter must sign and date the manifest and provide a copy to the rail transporter.

g) Transporters that transport hazardous waste out of the United States must do the following:

1) Sign and date the manifest in the International Shipments block to indicate the date that the hazardous waste left the United States;

2) Retain one copy in accordance with Section 723.122(d);

3) Return a signed copy of the manifest to the generator; and

4) For paper manifests only, the transporter must do the following: ~~Give a copy of the manifest to a U.S. Customs official at the point of departure from the United States.~~

A) Send a copy of the manifest to the e-Manifest System in accordance with the allowable methods specified in 35 Ill. Adm. Code 724.171(a)(2)(E); and

B) For shipments initiated prior to December 31, 2017, when instructed by the exporter to do so, give a copy of the manifest to a U.S. Customs official at the point of departure from the United States.

h) A transporter transporting hazardous waste from a generator that generates greater than 100 kg (220lbs) ~~kilograms~~ but less than 1,000 kg (2,200 lbs) ~~kilograms~~ of hazardous waste in a calendar month need not comply with this Section or Section 723.122 provided that:

1) The waste is being transported pursuant to a reclamation agreement provided for in 35 Ill. Adm. Code 722.120(e);

2) The transporter records, on a log or shipping paper, the following information for each shipment:

A) The name, address and USEPA Identification Number (35 Ill. Adm. Code 722.118 ~~722.112~~) of the generator of the waste;

B) The quantity of waste accepted;

C) All shipping information required by the United States Department of Transportation;

D) The date the waste is accepted; and

3) The transporter carries this record when transporting waste to the reclamation facility; and

4) The transporter retains these records for a period of at least three years after termination or expiration of the agreement.

(Source: Amended at 42 Ill. Reg. 22595, effective November 19, 2018)

Section 723.121 Compliance with the Manifest

a) The transporter must deliver the entire quantity of hazardous waste which he has accepted from a generator or a transporter to:

1) The designated facility listed on the manifest; or

2) The alternate designated facility, if the hazardous waste cannot be delivered to the designated facility because an emergency prevents delivery; or

3) The next designated transporter; or

4) The place outside the United States designated by the generator.

b) Non-Delivery~~Non-delivery~~ of the Hazardous Waste~~hazardous waste.~~

1) If the hazardous waste cannot be delivered in accordance with subsection (a) ~~of this Section~~ because of an emergency condition other than rejection of the waste by the designated facility, then the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

2) If hazardous waste is rejected by the designated facility while the transporter is on the premises of the designated facility, then the transporter must obtain the following, as appropriate:

A) For a partial load rejection or for regulated quantities of container residues: a copy of the original manifest that includes the facility's date and signature, the manifest tracking number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue in the discrepancy block of the original manifest. The transporter must retain a copy of this manifest in accordance with Section 723.122 and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter must obtain a new manifest to accompany the shipment, and the new manifest must include all of the information required in 35 Ill. Adm. Code 724.172(e)(1) through (e)(6) or (f)(1) through (f)(6) or 725.172(e)(1) through (e)(6) or (f)(1) through (f)(6).

B) For a full load rejection that will be taken back by the transporter: a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection in the discrepancy block of the manifest, and the name, address, phone number, and USEPA identification number for the alternate facility or generator to whom the shipment must be delivered. The transporter must retain a copy of the manifest in accordance with Section 723.122, and give a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter must obtain a new manifest for the shipment and comply with 35 Ill. Adm. Code724.172(e)(1) through (e)(6) or (f)(1) through (f)(6) or 725.172(e)(1) through (e)(6) or (f)(1) through (f)(6).

(Source: Amended at 42 Ill. Reg. 22595, effective November 19, 2018)

Section 723.125 Electronic Manifest Signatures

a) e-Manifest signatures must meet the criteria described in 35 Ill. Adm. Code 722.125.

b) This subsection (b) corresponds with 40 CFR 263.25(b), a provision that USEPA has marked "reserved.". This statement maintains structural consistency with the corresponding federal rule.

(Source: Amended at 42 Ill. Reg. 22595, effective November 19, 2018)

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NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

2) Code Citation: 35 Ill. Adm. Code 724

3)

Section Numbers:	Adopted Actions:
724.101	Amendment
724.103	Amendment
724.110	Amendment
724.112	Amendment
724.113	Amendment
724.114	Amendment
724.115	Amendment
724.116	Amendment
724.117	Amendment
724.118	Amendment
724.119	Amendment
724.132	Amendment
724.133	Amendment
724.156	Amendment
724.171	Amendment
724.172	Amendment
724.173	Amendment
724.175	Amendment
724.176	Amendment
724.190	Amendment
724.191	Amendment
724.193	Amendment
724.196	Amendment
724.197	Amendment
724.198	Amendment
724.199	Amendment
724.200	Amendment
724.201	Amendment
724.213	Amendment
724.216	Amendment
724.217	Amendment
724.218	Amendment
724.219	Amendment

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724.241	Amendment
724.242	Amendment
724.243	Amendment
724.245	Amendment
724.247	Amendment
724.270	Amendment
724.274	Amendment
724.275	Amendment
724.279	Amendment
724.290	Amendment
724.291	Amendment
724.292	Amendment
724.293	Amendment
724.295	Amendment
724.296	Amendment
724.297	Amendment
724.298	Amendment
724.300	Amendment
724.321	Amendment
724.323	Amendment
724.327	Amendment
724.328	Amendment
724.332	Amendment
724.350	Amendment
724.351	Amendment
724.353	Amendment
724.358	Amendment
724.372	Amendment
724.373	Amendment
724.376	Amendment
724.378	Amendment
724.380	Amendment
724.382	Amendment
724.401	Amendment
724.404	Amendment
724.410	Amendment
724.412	Amendment
724.413	Amendment
724.414	Amendment

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724.416	Amendment
724.440	Amendment
724.443	Amendment
724.444	Amendment
724.445	Amendment
724.650	Amendment
724.651	Amendment
724.652	Amendment
724.653	Amendment
724.654	Amendment
724.655	Amendment
724.670	Amendment
724.671	Amendment
724.673	Amendment
724.675	Amendment
724.701	Amendment
724.930	Amendment
724.931	Amendment
724.932	Amendment
724.933	Amendment
724.934	Amendment
724.935	Amendment
724.950	Amendment
724.951	Amendment
724.952	Amendment
724.953	Amendment
724.954	Amendment
724.955	Amendment
724.956	Amendment
724.957	Amendment
724.958	Amendment
724.960	Amendment
724.961	Amendment
724.962	Amendment
724.963	Amendment
724.964	Amendment
724.980	Amendment
724.983	Amendment
724.984	Amendment

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724.985	Amendment
724.986	Amendment
724.987	Amendment
724.988	Amendment
724.989	Amendment
724.990	Amendment
724.1101	Amendment
724.1102	Amendment
724.1201	Amendment
724.1202	Amendment
724.Appendix I	Amendment

4) Statutory Authority: 415 ILCS 5/7.2, 22.4, and 27

5) Effective Date of Rules: November 19, 2018

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

7) Does this rulemaking contain incorporations by reference? No

8) The adopted rulemaking, a copy of the Board's opinion and order adopted October 4, 2018 in consolidated docket R17-14/R17-15/R18-12/R18-31, and all materials incorporated by reference are on file at the Board's principal office and are available for public inspection and copying.

9) Notice of Proposal published in the *Illinois Register*: 42 Ill. Reg. 11594; June 29, 2018

10) Has JCAR issued a Statement of Objection to this rulemaking? No. Section 22.4 of the Environmental Protection Act [415 ILCS 5/22.4] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

11) Differences between Proposal and Final Version: A table in a document entitled "Identical-in-Substance Rulemaking Addendum (Final)" that the Board added to consolidated docket R17-14/R17-15/R18-12/R18-31 summarizes the differences between the amendments adopted in the October 4, 2018 opinion and order and those proposed by the Board on May 24, 2018.

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The differences are limited to minor corrections suggested by JCAR staff or resulting from the Board's review of its proposal. The changes are not intended to have substantive effect and intend to clarify the rules without deviating from the substance of the federal amendments on which this proceeding is based.

12) Have all the changes agreed upon by the Board and JCAR been made as indicated in the agreements issued by JCAR? Section 22.4 of the Environmental Protection Act [415 ILCS 5/22.4] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by JCAR.

Since the Notices of Proposed Amendments appeared in the June 29, 2018 issue of the *Illinois Register*, the Board received suggestions for revisions from JCAR. The Board evaluated each suggestion and incorporated some into the adopted rules, as detailed in the Identical-in-Substance Rulemaking Addendum (Final) in consolidated docket R17-14/R17-15/R18-12/R18-31, as described in item 11 above. See that Addendum for additional details on JCAR suggestions and the Board actions on each. One table in itemizes changes made in response to various suggestions. Another table indicates suggestions not incorporated into the text, with a brief explanation for each.

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

14) Are there any other rulemakings pending on this Part? Yes

Section Numbers:	Proposed Actions:	*Illinois Register* Citations:
724.171	Amendment	42 Ill. Reg. 15711; August 17, 2018
724.986	Amendment	42 Ill. Reg. 15711; August 17, 2018

15) Summary and Purpose of Rulemaking: The amendments to Part 724 are a segment larger Board rulemaking. The consolidated docket R17-14/R17-15/R18-11/R18-31 rulemaking also includes amendments to 35 Ill. Adm. Code 702 through 705, 720 through 723, 725 through 728, 730, 733, 738, 739, and 810 through 812. Due to the extreme volume of the consolidated docket, each Part is covered by a notice in five separate issues of the Illinois Register. Included in this issue are the third group for publication: 35 Ill. Adm. Code 723, 724, and 726.

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Section 22.4(a) of the Environmental Protection Act (Act) [415 ILCS 5/22.4(a)] (2016) requires the Board to adopt hazardous waste rules that are identical-in-substance to United States Environmental Protection Agency's (USEPA's) Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste rules. Section 22.4(a) requires the Board to use the identical-in-substance rulemaking procedure of Section 7.2(b) of the Act [415 ILCS 5/7.2(b)] (2014). The Illinois hazardous waste rules are in 35 Ill. Adm. Code 702, 703, 705, 720 through 728, 733, 738, and 739. The Board reserved docket R17-14 to incorporate USEPA amendments adopted during the period July 1, 2016 through December 31, 2016 into the Illinois hazardous waste rules. Similarly, the Board reserved docket R18-12 for USEPA hazardous waste rules adopted during the period July 1, 2017 through December 31, 2017 and consolidated it with dockets R17-14, R17-15, and R18-12.

To save space, a more detailed description of the subjects and issues involved in the consolidated docket R17-14/R17-15/R18-11/R18-31 rulemaking in this issue of the *Illinois Register* only in the answer to question 5 in the Notice of Adopted Amendments for 35 Ill. Adm. Code 723. A comprehensive description is contained in the Board's opinion and order of October 4, 2018, adopting amendments in consolidated docket R17-14/R17-15/R18-11/R18-31. The opinion and order is available from the address below.

Specifically, the amendments to Part 724 incorporate USEPA's actions of November 28, 2016 adopting hazardous waste export-import revisions and the Generator Improvements Rule.

The consolidated docket R17-14/R17-15/R18-11/R18-31 rulemaking further makes numerous corrections and non-substantive stylistic revisions that the Board found are needed.

Tables appear in the Identical-in-Substance Rulemaking Addendum (Final) in consolidated docket R17-14/R17-15/R18-12/R18-31, as described in item 11 above, that list corrections and amendments. Persons interested in the details of those corrections and amendments should refer to the Addendum.

Section 22.4(a) of the Environmental Protection Act [415 ILCS 5/22.4(a)] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

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16) Information and questions regarding these adopted rules shall be directed to: Please reference consolidated docket R17-14/R17-15/R18-12/R18-31 and direct inquiries to the following person:

Michael J. McCambridge
Staff Attorney
Illinois Pollution Control Board
100 W. Randolph Suite 11-500
Chicago IL 60601

312/814-6924
michael.mccambridge@illinois.gov

Request copies of the Board's opinion and order of October 4, 2018 at 312/814-3620. You may also obtain a copy of the Board's opinion and order from the Internet at http://www.ipcb.state.il.us.

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POLLUTION CONTROL BOARD

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SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: HAZARDOUS WASTE OPERATING REQUIREMENTS

PART 724
STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

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AUTHORITY: Implementing Sections 7.2 and 22.4 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/7.2, 22.4, and 27].

SOURCE: Adopted in R82-19 at 7 Ill. Reg. 14059, effective October 12, 1983; amended in R84-9 at 9 Ill. Reg. 11964, effective July 24, 1985; amended in R85-22 at 10 Ill. Reg. 1136, effective January 2, 1986; amended in R86-1 at 10 Ill. Reg. 14119, effective August 12, 1986; amended in R86-28 at 11 Ill. Reg. 6138, effective March 24, 1987; amended in R86-28 at 11 Ill. Reg. 8684, effective April 21, 1987; amended in R86-46 at 11 Ill. Reg. 13577, effective August 4, 1987; amended in R87-5 at 11 Ill. Reg. 19397, effective November 12, 1987; amended in R87-39 at 12 Ill. Reg. 13135, effective July 29, 1988; amended in R88-16 at 13 Ill. Reg. 458, effective December 28, 1988; amended in R89-1 at 13 Ill. Reg. 18527, effective November 13, 1989; amended in R90-2 at 14 Ill. Reg. 14511, effective August 22, 1990; amended in R90-10 at 14 Ill. Reg. 16658, effective September 25, 1990; amended in R90-11 at 15 Ill. Reg. 9654, effective June 17, 1991; amended in R91-1 at 15 Ill. Reg. 14572, effective October 1, 1991; amended in R91-13 at 16 Ill. Reg. 9833, effective June 9, 1992; amended in R92-1 at 16 Ill. Reg. 17702, effective November 6, 1992; amended in R92-10 at 17 Ill. Reg. 5806, effective March 26, 1993; amended in R93-4 at 17 Ill. Reg. 20830, effective November 22, 1993; amended in R93-16 at 18 Ill. Reg. 6973, effective April 26, 1994; amended in R94-7 at 18 Ill. Reg. 12487, effective July 29, 1994; amended in R94-17 at 18 Ill. Reg. 17601, effective November 23, 1994; amended in R95-6 at 19 Ill. Reg. 9951, effective June 27, 1995; amended in R95-20 at 20 Ill. Reg. 11244, effective August 1, 1996; amended in R96-10/R97-3/R97-5 at 22 Ill. Reg. 636, effective December 16, 1997; amended in R98-12 at 22 Ill. Reg. 7638, effective April 15, 1998; amended in R97-21/R98-3/R98-5 at 22 Ill. Reg. 17972, effective September 28, 1998; amended in R98-21/R99-2/R99-7 at 23 Ill. Reg. 2186, effective January 19, 1999; amended in R99-15 at 23 Ill. Reg. 9437, effective July 26, 1999; amended in R00-5 at 24 Ill. Reg. 1146, effective January 6, 2000; amended in R00-13 at 24 Ill. Reg. 9833, effective June 20, 2000; expedited correction at 25 Ill. Reg. 5115, effective June 20, 2000; amended in R02-1/R02-12/R02-17 at 26 Ill. Reg. 6635, effective April 22, 2002; amended in R03-7 at 27 Ill. Reg. 3725, effective February 14, 2003; amended in R05-8 at 29 Ill. Reg. 6009, effective April 13, 2005; amended in R05-2 at 29 Ill. Reg. 6365, effective April 22, 2005; amended in R06-5/R06-6/R06-7 at 30 Ill. Reg. 3196, effective February 23, 2006; amended in R06-16/R06-17/R06-18 at 31 Ill. Reg. 893, effective December 20, 2006; amended in R07-5/R07-14 at 32 Ill. Reg. 12365, effective July 14, 2008; amended in R09-3 at 33 Ill. Reg. 1106, effective December 30, 2008; amended in R09-16/R10-4 at 34 Ill. Reg. 18873, effective November 12, 2010; amended in R11-2/R11-16 at 35 Ill. Reg. 17965, effective October 14, 2011; amended in R13-15 at 37 Ill. Reg. 17773, effective October 24, 2013; amended in R15-1 at 39 Ill. Reg. 1724, effective January 12, 2015; amended in R16-7 at 40 Ill. Reg. 11726, effective August 9, 2016; amended in R17-14/R17-15/R18-12/R18-31 at 42 Ill. Reg. 22614, effective November 19, 2018.

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SUBPART A: GENERAL PROVISIONS

Section 724.101 Purpose, Scope, and Applicability

a) The purpose of this Part is to establish minimum standards that define the acceptable management of hazardous waste.

b) The standards in this Part apply to owners and operators of all facilities that treat, store, or dispose of hazardous waste, except as specifically provided otherwise in this Part or 35 Ill. Adm. Code 721.

c) This Part applies to a person disposing of hazardous waste by means of ocean disposal subject to a permit issued pursuant to the federal Marine Protection, Research and Sanctuaries Act (33 USC 1401 et seq.) only to the extent they are included in a RCRA permit by rule granted to such a person pursuant to 35 Ill. Adm. Code 703.141. A "RCRA permit" is a permit required by Section 21(f) of the Environmental Protection Act ~~[415 ILCS 5/21(f)]~~and 35 Ill. Adm. Code 703.121.

BOARD NOTE: This Part does apply to the treatment or storage of hazardous waste before it is loaded onto an ocean vessel for incineration or disposal at sea.

d) This Part applies to a person disposing of hazardous waste by means of underground injection subject to a permit issued by the Agency pursuant to Section 12(g) of the Environmental Protection Act ~~[415 ILCS 5/12(g)]~~ only to the extent they are required by Subpart F of 35 Ill. Adm. Code 704.

BOARD NOTE: This Part does apply to the above-ground treatment or storage of hazardous waste before it is injected underground.

e) This Part applies to the owner or operator of a POTW (publicly owned treatment works) that treats, stores, or disposes of hazardous waste only to the extent included in a RCRA permit by rule granted to such a person pursuant to 35 Ill. Adm. Code 703.141.

f) This subsection (f) corresponds with 40 CFR 264.1(f), which provides that the federal regulations do not apply to T/S/D activities in authorized states, except under limited, enumerated circumstances. This statement maintains structural consistency with USEPA rules.

g) This Part does not apply to the following:

1) The owner or operator of a facility permitted by the Agency pursuant to Section 21 of the Environmental Protection Act ~~[415 ILCS 5/21]~~ to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation pursuant to this Part by 35 Ill. Adm. Code 722.114~~721.105~~.

BOARD NOTE: The owner or operator may be subject to 35 Ill. Adm. Code 807 and may have to have a supplemental permit pursuant to 35 Ill. Adm. Code 807.210.

2) The owner or operator of a facility managing recyclable materials described in 35 Ill. Adm. Code 721.106(a)(2) through (a)(4) (except to the extent that requirements of this Part are referred to in Subpart C, F, G, or H of 35 Ill. Adm. Code 726 or 35 Ill. Adm. Code 739).

3) A generator accumulating waste on-site in compliance with 35 Ill. Adm. Code 722.114, 722.115, 722.116, or 722.117~~722.134~~.

4) A farmer disposing of waste pesticides from the farmer's own use in compliance with 35 Ill. Adm. Code 722.170.

5) The owner or operator of a totally enclosed treatment facility, as defined in 35 Ill. Adm. Code 720.110.

6) The owner or operator of an elementary neutralization unit or a wastewater treatment unit, as defined in 35 Ill. Adm. Code 720.110, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in Table T to 35 Ill. Adm. Code 728) or reactive (D003) waste to remove the characteristic before land disposal, the owner or operator must comply with the requirements set out in Section 724.117(b).

7) This subsection (g)(7) corresponds with 40 CFR 264.1(g)(7), reserved by USEPA. This statement maintains structural consistency with USEPA rules.

8) Immediate Response~~response.~~

A) Except as provided in subsection (g)(8)(B) ~~of this Section~~, a person engaged in treatment or containment activities during immediate response to any of the following situations:

i) A discharge of a hazardous waste;

ii) An imminent and substantial threat of a discharge of hazardous waste;

iii) A discharge of a material that becomes a hazardous waste when discharged; or

iv) An immediate threat to human health, public safety, property, or the environment from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosives or munitions emergency response specialist as defined in 35 Ill. Adm. Code 720.110.

B) An owner or operator of a facility otherwise regulated by this Part must comply with all applicable requirements of Subparts C and D ~~of this Part~~.

C) Any person that is covered by subsection (g)(8)(A) ~~of this Section~~ and that continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this Part and 35 Ill. Adm. Code 702, 703, and 705 for those activities.

D) In the case of an explosives or munitions emergency response, if a federal, State, or local official acting within the scope of his or her official responsibilities or an explosives or munitions emergency response specialist determines that immediate removal of the material or waste is necessary to adequately protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters that do not have USEPA identification numbers and without the preparation of a

manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

9) A transporter storing manifested shipments of hazardous waste in containers meeting 35 Ill. Adm. Code 722.130 at a transfer facility for a period of ten days or less.

10) The addition of absorbent materials to waste in a container (as defined in 35 Ill. Adm. Code 720) or the addition of waste to absorbent material in a container, provided these actions occur at the time waste is first placed in the container, and Sections 724.117(b), 724.271, and 724.272 are complied with.

11) A universal waste handler or universal waste transporter (as defined in 35 Ill. Adm. Code 720.110) that handles any of the wastes listed below is subject to regulation pursuant to 35 Ill. Adm. Code 733 when handling the following universal wastes:

A) Batteries, as described in 35 Ill. Adm. Code 733.102;

B) Pesticides, as described in 35 Ill. Adm. Code 733.103;

C) Mercury-containing equipment, as described in 35 Ill. Adm. Code 733.104; and

D) Lamps, as described in 35 Ill. Adm. Code 733.105.

h) This Part applies to owners and operators of facilities that treat, store, or dispose of hazardous wastes referred to in 35 Ill. Adm. Code 728.

i) 35 Ill. Adm. Code 726.505 identifies when this Part applies to the storage of military munitions classified as solid waste pursuant to 35 Ill. Adm. Code 726.302. The treatment and disposal of hazardous waste military munitions are subject to the applicable permitting, procedural, and technical standards in 35 Ill. Adm. Code 702, 703, 705, 720 through 728, and 738.

j) Subparts B, C, and D ~~of this Part~~ and Section 724.201 do not apply to remediation waste management sites. (However, some remediation waste management sites may be a part of a facility that is subject to a traditional RCRA permit because the facility is also treating, storing, or disposing of hazardous wastes that are not remediation wastes. In these cases, Subparts B, C, and D ~~of this Part~~, and Section 724.201 do apply to the facility subject to the traditional RCRA permit.) Instead of Subparts B, C, and D ~~of this Part~~, the owner or operator of a remediation waste management site must comply with the following requirements:

1) The owner or operator must obtain a USEPA identification number by applying to USEPA Region 5 using USEPA Form 8700-12, as described in Section 724.111;

2) The owner or operator must obtain a detailed chemical and physical analysis of a representative sample of the hazardous remediation wastes to be managed at the site. At a minimum, the analysis must contain all of the information that must be known to treat, store, or dispose of the waste according to this Part and 35 Ill. Adm. Code 728, and the owner or operator must keep the analysis accurate and up to date;

3) The owner or operator must prevent people who are unaware of the danger from entering the site, and the owner or operator must minimize the possibility for unauthorized people or livestock entering onto the active portion of the remediation waste management site, unless the owner or operator can demonstrate the following to the Agency:

A) That physical contact with the waste, structures, or equipment within the active portion of the remediation waste management site will not injure people or livestock that may enter the active portion of the remediation waste management site; and

B) That disturbance of the waste or equipment by people or livestock that enter onto the active portion of the remediation waste management site will not cause a violation of the requirements of this Part;

4) The owner or operator must inspect the remediation waste management site for malfunctions, deterioration, operator errors, and discharges that may be causing or may lead to a release of hazardous waste constituents to

the environment or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment, and the owner or operator must remedy the problem before it leads to a human health or environmental hazard. Where a hazard is imminent or has already occurred, the owner or operator must immediately take remedial action;

5) The owner or operator must provide personnel with classroom or on-the-job training on how to perform their duties in a way that ensures the remediation waste management site complies with this Part, and on how to respond effectively to emergencies;

6) The owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste, and the owner or operator must prevent threats to human health and the environment from ignitable, reactive, and incompatible waste;

7) For remediation waste management sites subject to regulation under Subparts I through O and Subpart X ~~of this Part~~, the owner or operator must design, construct, operate, and maintain a unit within a 100-year floodplain to prevent washout of any hazardous waste by a 100-year flood, unless the owner or operator can meet the requirements of Section 724.118(b);

8) The owner or operator must not place any non-containerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine, or cave;

9) The owner or operator must develop and maintain a construction quality assurance program for all surface impoundments, waste piles, and landfill units that are required to comply with Sections 724.321(c) and (d), 724.351(c) and (d), and 724.401(c) and (d) at the remediation waste management site, according to Section 724.119;

10) The owner or operator must develop and maintain procedures to prevent accidents and a contingency and emergency plan to control accidents that occur. These procedures must address proper design, construction, maintenance, and operation of remediation waste management units at the

site. The goal of the plan must be to minimize the possibility of, and the hazards from, a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. The plan must explain specifically how to treat, store, and dispose of the hazardous remediation waste in question, and must be implemented immediately whenever a fire, explosion, or release of hazardous waste or hazardous waste constituents occurs that could threaten human health or the environment;

11) The owner or operator must designate at least one employee, either on the facility premises or on call (that is, available to respond to an emergency by reaching the facility quickly), to coordinate all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan;

12) The owner or operator must develop, maintain, and implement a plan to meet the requirements in subsections (j)(2) through (j)(6) and (j)(9) through (j)(10) ~~of this Section~~; and

13) The owner or operator must maintain records documenting compliance with subsections (j)(1) through (j)(12) ~~of this Section~~.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.103 Relationship to Interim Status Standards

A facility owner or operator that has fully complied with the requirements for interim status − as defined in Section 3005(e) of RCRA and regulations under Subpart C of 35 Ill. Adm. Code 703 − must comply with the regulations specified in 35 Ill. Adm. Code 725 in lieu of the regulations in this Part, until final administrative disposition of his permit application is made, except as provided under Subpart S of this Part.

BOARD NOTE: As stated in Section 21(f) of the Illinois Environmental Protection Act ~~[415 ILCS 5/21(f)]~~, the treatment, storage, or disposal of hazardous waste is prohibited, except in

accordance with a RCRA permit. 35 Ill. Adm. Code 703, Subpart C provides for the continued operation of an existing facility that meets certain conditions until final administrative disposition of the owner's or operator's permit application.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

SUBPART B: GENERAL FACILITY STANDARDS

Section 724.110 Applicability

a) The regulations in this Subpart B apply to owners and operators of all hazardous waste facilities, except as provided in Section 724.101 and subsection (b) ~~of this Section~~.

b) Section 724.118(b) applies only to facilities subject to regulation under Subparts I through O and ~~Subpart~~ X ~~of this Part~~.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.112 Required Notices

~~a)~~ ~~Receipt from a foreign source.~~

a~~1~~) The owner or operator of a facility that is arranging ~~has arranged~~ to receive hazardous waste subject to Subpart H of 35 Ill. Adm. Code 722 from a foreign source must submit~~notify~~ the following required notices: ~~Regional Administrator in writing at least four weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.~~

1) As required by 35 Ill. Adm. Code 722.184(b), for imports where the competent authority of the country of export does not require the foreign exporter to submit to it a notification proposing export and obtain consent from USEPA and the competent authorities for the countries of transit, such owner or operator of the facility, if acting as the importer, must provide notification of the proposed transboundary movement in English to USEPA using the allowable methods listed in 35 Ill. Adm. Code 722.182(e) at least 60 days before the first shipment is expected to depart the country of export. The notification may cover up to one year of

shipments of wastes having similar physical and chemical characteristics; the same United Nations/USDOT identification number from the Hazardous Materials Table in 49 CFR 172.101, incorporated by reference in 35 Ill. Adm. Code 720.111; the same USEPA hazardous waste numbers (from Subpart C or D of 35 Ill. Adm. Code 721); the waste codes from the lists in the OECD Guidance Manual, incorporated by reference in 35 Ill. Adm. Code 720.111; and being sent from the same foreign exporter.

2) As required by 35 Ill. Adm. Code 722.184(d)(2)(O), ~~The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to Subpart H of 35 Ill. Adm. Code 722 must provide~~ a copy of the movement document bearing all required signatures ~~to the foreign exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance, Environmental Protection Agency, Washington, DC 20460; to the Bureau of Land, Division of Land Pollution Control, Illinois Environmental Protection Agency, P.O. Box 19276, Springfield, IL 62794-9276; and to the competent authorities of all other countries concerned~~ within three working days after receipt of the shipment to the foreign exporter; to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste, respectively; and, on or after the electronic import-export reporting compliance date, to USEPA electronically using USEPA's Waste Import Export Tracking System (WIETS). The original of the signed movement document must be maintained at the facility for at least three years. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on USEPA's WIETS, provided that copies are readily available for viewing and production if requested by any USEPA or Agency inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with USEPA's WIETS for which the owner or operator of a facility bears no responsibility. ~~In addition, such owner or operator must send a certificate of recovery to the foreign exporter, to the competent authority of the country of export, to USEPA's Office of Enforcement and Compliance Assurance at the above address by mail, by e-mail without a digital signature followed by mail, or by fax followed by mail. The owner or operator must complete this sending of a~~

~~certificate of recovery as soon as possible, but no later than 30 days after the completion of recovery, and no later than one calendar year following the receipt of the hazardous waste.~~

3) As required by 35 Ill. Adm. Code 722.184(f)(4), if the facility has physical control of the waste and it must be sent to an alternate facility or returned to the country of export, such owner or operator of the facility must inform USEPA, using the allowable methods listed in 35 Ill. Adm. Code 722.184(b)(1) of the need to return or arrange alternate management of the shipment.

4) As required by 35 Ill. Adm. Code 722.184(g), the facility owner or operator must do the following:

A) The owner or operator must send copies of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than 30 days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to the competent authority of the country of export that controls the shipment as an export of hazardous waste. For shipments recycled or disposed of on or after the electronic import-export reporting compliance date, to USEPA electronically using USEPA's WIETS.

B) If the facility performed any of recovery operations R12, R13, or RC16 or disposal operations D13 through D15 or DC17, the owner or operator must promptly, within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11 or RC16 or one of disposal operations D1 through D12 or DC15 or DC16, send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility to the competent authority of the country of export that controls the shipment as an export of hazardous waste. On or after the electronic import-export reporting compliance date, the owner or operator must make this submission to USEPA electronically using USEPA's WIETS. The recovery and disposal operations in this subsection (a)(4)(B) are defined in 35 Ill. Adm. Code 722.181.

b) The owner or operator of a facility that receives hazardous waste from an off-site source (except where the owner or operator is also the generator) must inform the generator in writing that the owner or operator has the appropriate permits for, and will accept, the waste that the generator is shipping. The owner or operator must keep a copy of this written notice as part of the operating record.

c) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator must notify the new owner or operator in writing of the requirements of this Part and 35 Ill. Adm. Code 702 and 703.

BOARD NOTE: An owner's or operator's failure to notify the new owner or operator of the requirements of this Part in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.113 General Waste Analysis

a) Analysis~~:~~

1) Before an owner or operator treats, stores, or disposes of any hazardous wastes, or non-hazardous wastes if applicable under Section 724.213(d), the owner or operator must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis must contain all the information that must be known to treat, store, or dispose of the waste in accordance with this Part and 35 Ill. Adm. Code 728.

2) The analysis may include data developed under 35 Ill. Adm. Code 721 and existing published or documented data on the hazardous waste or on hazardous waste generated from similar processes.

BOARD NOTE: For example, the facility's records of analyses performed on the waste before the effective date of these regulations or studies conducted on hazardous waste generated from processes similar to that which generated the waste to be managed at the facility may be included in the data base required to comply with subsection (a)(1)~~ of this Section~~. The owner or operator of an off-site facility may arrange for the generator

of the hazardous waste to supply part or all of the information required by subsection (a)(1) ~~of this Section~~, except as otherwise specified in 35 Ill. Adm. Code 728.107(b) and (c). If the generator does not supply the information, and the owner or operator chooses to accept a hazardous waste, the owner or operator is responsible for obtaining the information required to comply with this Section.

3) The analysis must be repeated as necessary to ensure that it is accurate and up to date. At a minimum, the analysis must be repeated as follows:

A) When the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous waste, or non-hazardous waste if applicable under Section 724.213(d), has changed; and

B) For off-site facilities, when the results of the inspection required in subsection (a)(4) ~~of this Section~~ indicate that the hazardous waste received at the facility does not match the waste designated on the accompanying manifest or shipping paper.

4) The owner or operator of an off-site facility must inspect and, if necessary, analyze each hazardous waste shipment received at the facility to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.

b) The owner or operator must develop and follow a written waste analysis plan that describes the procedures that it will carry out to comply with subsection (a) ~~of this Section~~. The owner or operator must keep this plan at the facility. At a minimum, the plan must specify the following:

1) The parameters for which each hazardous waste, or non-hazardous waste if applicable under Section 724.213(d), will be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with subsection (a) ~~of this Section~~).

2) The test methods that will be used to test for these parameters.

3) The sampling method that will be used to obtain a representative sample

of the waste to be analyzed. A representative sample may be obtained using either of the following:

A) One of the sampling methods described in Appendix A to 35 Ill. Adm. Code 721; or

B) An equivalent sampling method.

BOARD NOTE: See 35 Ill. Adm. Code 720.121.

4) The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date.

5) For off-site facilities, the waste analyses that hazardous waste generators have agreed to supply.

6) Where applicable, the methods that will be used to meet the additional waste analysis requirements for specific waste management methods as specified in Sections 724.117, 724.414, 724.441, 724.934(d), 724.963(d), and 724.983 and 35 Ill. Adm. Code 728.107.

7) For surface impoundments exempted from land disposal restrictions under 35 Ill. Adm. Code 728.104(a), the procedures and schedules for the following:

A) The sampling of impoundment contents;

B) The analysis of test data; and

C) The annual removal of residues that are not delisted under 35 Ill. Adm. Code 720.122 or which exhibit a characteristic of hazardous waste and either of the following is true of the waste:

i) The residues do not meet applicable treatment standards of Subpart D of 35 Ill. Adm. Code 728; or

ii) Where no treatment standards have been established, such residues are prohibited from land disposal under 35 Ill. Adm. Code 728.132 or 728.139 or such residues are

prohibited from land disposal under 35 Ill. Adm. Code 728.133(f).

8) For owners and operators seeking an exemption to the air emission standards of Subpart CC ~~of this Part~~ in accordance with Section 724.982, the following information:

A) If direct measurement is used for the waste determination, the procedures and schedules for waste sampling and analysis and the analysis of test data to verify the exemption.

B) If knowledge of the waste is used for the waste determination, any information prepared by the facility owner or operator or by the generator of the waste, if the waste is received from off-site, that is used as the basis for knowledge of the waste.

c) For off-site facilities, the waste analysis plan required in subsection (b) ~~of this Section~~ must also specify the procedures that will be used to inspect and, if necessary, analyze each shipment of hazardous waste received at the facility to ensure that it matches the identity of the waste designated on the accompanying manifest or shipping paper. At a minimum, the plan must describe the following:

1) The procedures that will be used to determine the identity of each movement of waste managed at the facility;

2) The sampling method that will be used to obtain a representative sample of the waste to be identified, if the identification method includes sampling; and

3) The procedures that the owner or operator of an off-site landfill receiving containerized hazardous waste will use to determine whether a hazardous waste generator or treater has added a biodegradable sorbent to the waste in the container.

BOARD NOTE: 35 Ill. Adm. Code 703 requires that the waste analysis plan be submitted with Part B of the permit application.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

Section 724.114 Security

a) The owner or operator must prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of the facility, unless the owner or operator demonstrates the following to the Agency:

1) That physical contact with the waste, structures or equipment within the active portion of the facility will not injure unknowing or unauthorized persons or livestock that may enter the active portion of a facility; and

2) That disturbance of the waste or equipment, by the unknowing or unauthorized entry of persons or livestock onto the active portion of a facility, will not cause a violation of the requirements of this Part.

BOARD NOTE: 35 Ill. Adm. Code 703 requires that an owner or operator who wishes to make the demonstration referred to above must do so with Part B of the permit application.

b) Unless the owner or operator has made a successful demonstration under subsections (a)(1) and (a)(2) ~~of this Section~~, a facility must have the following:

1) A 24-hour surveillance system (e.g., television monitoring or surveillance by guards or facility personnel) that continuously monitors and controls entry onto the active portion of the facility; or

2) Physical Barriers~~barriers.~~

A) An artificial or natural barrier (e.g., a fence in good repair or a fence combined with a cliff), which completely surrounds the active portion of the facility; and

B) A means to control entry, at all times, through the gates or other entrances to the active portion of the facility (e.g., an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

BOARD NOTE: The requirements of subsection (b) ~~of this Section~~ are satisfied if the facility or plant within which the active portion is located itself has a

surveillance system, or a barrier and a means to control entry, that complies with the requirements of subsection (b)(1) or (b)(2) ~~of this Section~~.

c) Unless the owner or operator has made a successful demonstration under subsections (a)(1) and (a)(2) ~~of this Section~~, a sign with the legend, "Danger − Unauthorized Personnel Keep Out~~,~~", must be posted at each entrance to the active portion of a facility, and at other locations, in sufficient numbers to be seen from any approach to this active portion. The sign must be legible from a distance of at least 25 feet. Existing signs with a legend other than "Danger − Unauthorized Personnel Keep Out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous.

BOARD NOTE: See Section 724.217(b) for discussion of security requirements at disposal facilities during the post-closure care period.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.115 General Inspection Requirements

a) The owner or operator must conduct inspections often enough to identify problems in time to correct them before they harm human health or the environment. The owner or operator must inspect the facility for malfunctions and deterioration, operator errors, and discharges that may be causing or may lead to either of the following:

1) Release of hazardous waste constituents to the environment; or

2) A threat to human health.

b) Inspection Schedule~~schedule.~~

1) The owner or operator must develop and follow a written schedule for inspecting monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

2) The owner or operator must keep this schedule at the facility.

3) The schedule must identify the types of problems (e.g., malfunctions or deterioration) that are to be looked for during the inspection (e.g., inoperative sump pump, leaking fitting, eroding dike, etc.).

4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in Sections 724.274, 724.293, 724.295, 724.326, 724.354, 724.378, 724.403, 724.447, 724.702, 724.933, 724.952, 724.953, 724.958, and 724.983 through 724.990, where applicable. 35 Ill. Adm. Code 703 requires the inspection schedule to be submitted with Part B of the permit application. The Agency must evaluate the schedule, along with the rest of the application, to ensure that it adequately protects human health and the environment. As part of this review, the Agency may modify or amend the schedule as may be necessary.

~~BOARD NOTE: 35 Ill. Adm. Code 703 requires the inspection schedule to be submitted with Part B of the permit application. The Agency must evaluate the schedule along with the rest of the application to ensure that it adequately protects human health and the environment. As part of this review, the Agency may modify or amend the schedule as may be necessary.~~

5) This subsection (b)(5) corresponds with 40 CFR 264.15(b)(5), which became obsolete when USEPA terminated the Performance Track Program at 74 Fed. Reg. 22741 (May 14, 2009). USEPA has recognized that program-related rules are no longer effective at 75 Fed. Reg. 12989, 12992, note 1 (Mar. 18, 2010). This statement maintains structural consistency with the corresponding federal requirements.

c) The owner or operator must remedy any deterioration or malfunction of equipment or structures that the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action must be

taken immediately.

d) The owner or operator must record inspections in an inspection log or summary. The owner or operator must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made and the date, and nature of any repairs or other remedial actions.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.116 Personnel Training

a) The Personnel Training Program~~personnel training program.~~

1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this Part. The owner or operator must ensure that this program includes all the elements described in the document required under subsection (d)(3) ~~of this Section~~.

BOARD NOTE: 35 Ill. Adm. Code 703 requires that owners and operators submit with Part B of the RCRA permit application, an outline of the training program used (or to be used) at the facility and a brief description of how the training program is designed to meet actual jobs tasks.

2) This program must be directed by a person trained in hazardous waste management procedures, and must include instruction that teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

3) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including, where applicable:

A) Procedures for using, inspecting, repairing, and replacing facility

emergency and monitoring equipment;

B) Key parameters for automatic waste feed cut-off systems;

C) Communications or alarm systems;

D) Response to fires or explosions;

E) Response to groundwater contamination incidents; and

F) Shutdown of operations.

4) For facility employees that have receive emergency response training pursuant to the federal Occupational Safety and Health Administration (OSHA) regulations at 29 CFR 1910.120(p)(8) and (q), the facility is not required to provide separate emergency response training pursuant to this Section, provided that the overall facility OSHA emergency response training meets all the requirements of this Section.

b) Facility personnel must successfully complete the program required in subsection (a) ~~of this Section~~ within six months after the effective date of these regulations or six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of these regulations must not work in unsupervised positions until they have completed the training requirements of subsection (a) ~~of this Section~~.

c) Facility personnel must take part in an annual review of the initial training required in subsection (a) ~~of this Section~~.

d) The owner or operator must maintain the following documents and records at the facility:

1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

2) A written job description for each position listed under subsection (d)(1) ~~of this Section~~. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill,

education or other qualifications, and duties of employees assigned to each position;

3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under subsection (d)(1) ~~of this Section~~;

4) Records that document that the training or job experience required under subsections (a), (b), and (c) ~~of this Section~~ has been given to, and completed by, facility personnel.

e) Training records on current personnel must be kept until closure of the facility; training records on former employees must be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.117 General Requirements for Ignitable, Reactive, or Incompatible Wastes

a) The owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction including but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flame to specially designated locations. "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

b) Where specifically required by this Part, the owner or operator of a facility that treats, stores or disposes ignitable or reactive waste, or mixes incompatible waste and other materials, must take precautions to prevent reactions that do the following:

1) Generate extreme heat or pressure, fire or explosions, or violent reactions;

2) Produce uncontrolled toxic mists, fumes, dusts or gases in sufficient quantities to threaten human health or the environment;

3) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

4) Damage the structural integrity of the device or facility;

5) Through other like means threaten human health or the environment.

c) When required to comply with subsection~~subsections~~ (a) or (b) ~~of this Section~~, the owner or operator must document that compliance. This documentation may be based on references to published scientific or engineering literature, data from trial tests (e.g., bench scale or pilot scale tests), waste analyses (as specified in Section 724.113), or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.118 Location Standards

a) Seismic Considerations~~considerations.~~

1) Portions of new facilities where treatment, storage or disposal of hazardous waste will be conducted must not be located within 61 meters (200 feet) of a fault that has had displacement in Holocene time.

2) As used in subsection (a)(1) ~~of this Section~~:

A) "Fault" means a fracture along which rocks on one side have been displaced with respect to those on the other side.

B) "Displacement" means the relative movement of any two sides of a fault measured in any direction.

C) "Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene to the present.

BOARD NOTE: Procedures for demonstrating compliance with this standard in Part B of the permit application are specified in 35 Ill. Adm. Code 703.182. Facilities that are located in political jurisdictions other

than those listed in appendix VI to 40 CFR 264 (Political Jurisdictions in Which Compliance with § 264.18(a) Must Be Demonstrated), incorporated by reference in 35 Ill. Adm. Code 720.111(b), are assumed to be in compliance with this requirement.

b) Floodplains~~.~~

1) A facility located in a 100-year floodplain must be designed, constructed, operated and maintained to prevent washout of any hazardous waste by a 100-year flood, unless the owner or operator can demonstrate the following to the Agency's satisfaction:

A) That procedures are in effect that will cause the waste to be removed safely, before flood waters can reach the facility, to a location where the wastes will not be vulnerable to flood waters; or

B) For existing surface impoundments, waste piles, land treatment units, landfills and miscellaneous units, that no adverse effect on human health or the environment will result if washout occurs, considering the following:

i) The volume and physical and chemical characteristics of the waste in the facility;

ii) The concentration of hazardous constituents that would potentially affect surface waters as a result of washout;

iii) The impact of such concentrations on the current or potential uses of and water quality standards established for the affected surface waters; and

iv) The impact of hazardous constituents on the sediments of affected surface waters or the soils of the 100-year floodplain that could result from washout;

2) As used in subsection (b)(1)~~ of this Section~~:

A) "100-year floodplain" means any land area that is subject to a one percent or greater chance of flooding in any given year from any

source.

B) "Washout" means the movement of hazardous waste from the active portion of the facility as a result of flooding.

C) "100-year flood" means a flood that has a one percent chance of being equalled or exceeded in any given year.

BOARD NOTE: Requirements pertaining to other federal laws that affect the location and permitting of facilities are found in 40 CFR 270.3. For details relative to these laws, see USEPA's~~EPA's~~ manual for SEA (special environmental area) requirements for hazardous waste facility permits. Though USEPA~~EPA~~ is responsible for complying with these requirements, applicants are advised to consider them in planning the location of a facility to help prevent subsequent project delays. Facilities may be required to obtain from the Illinois Department of Transportation on a permit or certification that a facility is flood-proofed.

c) Salt dome formations, salt bed formations, underground mines and caves. The placement of any non-containerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground cave or mine is prohibited.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.119 Construction Quality Assurance Program

a) Construction Quality Assurance~~quality assurance~~ (CQA) Program~~program.~~

1) A CQA program is required for all surface impoundment, waste pile and landfill units that are required to comply with Sections 724.321(c) and (d), 724.351(c) and (d), and 724.401(c) and (d). The program must ensure that the constructed unit meets or exceeds all design criteria and specifications in the permit. The program must be developed and implemented under the direction of a CQA officer who is a registered professional engineer.

2) The CQA program must address the following physical components, where applicable:

A) Foundations;

B) Dikes;

C) Low-permeability soil liners;

D) Geomembranes (flexible membrane liners);

E) Leachate collection and removal systems and leak detection systems; and

F) Final cover systems.

b) Written CQA Planplan. The owner or operator of units subject to the CQA program under subsection (a) of this Section must develop and implement a written CQA plan. The plan must identify steps that will be used to monitor and document the quality of materials and the condition and manner of their installation. The CQA plan must include the following:

1) Identification of applicable units, and a description of how they will be constructed.

2) Identification of key personnel in the development and implementation of the CQA plan, and CQA officer qualifications.

3) A description of inspection and sampling activities for all unit components identified in subsection (a)(2) of this Section, including observations and tests that will be used before, during and after construction to ensure that the construction materials and the installed unit components meet the design specifications. The description must cover: Sampling size and locations; frequency of testing; data evaluation procedures; acceptance and rejection criteria for construction materials; plans for implementing corrective measures; and data or other information to be recorded and retained in the operating record under Section 724.173.

c) Contents of Programprogram.

1) The CQA program must include observations, inspections, tests and measurements sufficient to ensure the following:

A) Structural stability and integrity of all components of the unit identified in subsection (a)(2) ~~of this Section~~;

B) Proper construction of all components of the liners, leachate collection and removal system, leak detection system, and final cover system, according to permit specifications and good engineering practices and proper installation of all components (e.g., pipes) according to design specifications;

C) Conformity of all materials used with design and other material specifications under Sections 724.321, 724.351, and 724.401.

2) The CQA program must include test fills for compacted soil liners, using the same compaction methods as in the full scale unit, to ensure that the liners are constructed to meet the hydraulic conductivity requirements of Sections 724.321(c)(1)(A)(ii), 724.351(c)(1)(A)(ii), or 724.401(c)(1)(A)(ii) in the field. Compliance with the hydraulic conductivity requirements must be verified by using in-situ testing on the constructed test fill. The Agency must accept an alternative demonstration, in lieu of a test fill, where data are sufficient to show that a constructed soil liner will meet the hydraulic conductivity requirements of Sections 724.321(c)(1)(A)(ii), 724.351(c)(1)(A)(ii), or 724.401(c)(1)(A)(ii) in the field.

d) Certification. Waste must not be received in a unit subject to Section 724.119 until the owner or operator has submitted to the Agency by certified mail or hand delivery a certification signed by the CQA officer that the approved CQA plan has been successfully carried out and that the unit meets the requirements of Sections 724.321(c) or (d), 724.351(c) or (d), or 724.401(c) or (d); and the procedure in 35 Ill. Adm. Code 703.247(b) has been completed. Documentation supporting the CQA officer's certification must be furnished to the Agency upon request.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

SUBPART C: PREPAREDNESS AND PREVENTION

Section 724.132 Required Equipment

AllA11 facilities must be equipped with the following, unless the owner or operator demonstrates to the Agency that none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below:

a) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

b) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

c) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment and decontamination equipment; and

d) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers or water spray systems.

BOARD NOTE: 35 Ill. Adm. Code 703 requires that an owner or operator who wishes to make the demonstration referred to above must do so with Part B of the permit application.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.133 Testing and Maintenance of Equipment

AllA11 facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

SUBPART D: CONTINGENCY PLAN AND EMERGENCY PROCEDURES

Section 724.156 Emergency Procedures

a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or the designee when the emergency coordinator is on call) must immediately do the following:

1) He or she must activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

2) He or she must notify appropriate State or local agencies with designated response roles if their help is needed.

b) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.

c) Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-off from water or chemical agents used to control fire and heat-induced explosions).

d) If the emergency coordinator determines that the facility has had a release, fire, or explosion that could threaten human health or the environment outside the facility, the emergency coordinator must report the findings as follows:

1) If the assessment indicates that evacuation of local areas may be advisable, the emergency coordinator must immediately notify appropriate local authorities. The emergency coordinator must be available to help appropriate officials decide whether local areas should be evacuated; and

2) The emergency coordinator must immediately notify either the government official designated as the on-scene coordinator for that geographical area or the National Response Center (using their 24-hour toll free number 800-424-8802). The report must include the following:

A) The name and telephone number of the reporter;

B) The name and address of the facility;

C) The time and type of incident (e.g., release, fire);

D) The name and quantity of materials involved, to the extent known;

E) The extent of injuries, if any; and

F) The possible hazards to human health or the environment outside the facility.

e) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing release waste, and removing or isolating containers.

f) If the facility stops operations in response to a fire, explosion, or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

g) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

BOARD NOTE: Unless the owner or operator can demonstrate, in accordance with 35 Ill. Adm. Code 721.103(d) or (e), that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of 35 Ill. Adm. Code 722, 723, and 724.

h) The emergency coordinator must ensure that the following is true in the affected areas of the facility:

1) No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

~~i) The owner or operator must notify the Agency and appropriate state and local authorities that the facility is in compliance with subsection (h) of this Section~~

~~before operations are resumed in the affected areas of the facility.~~

ij~~)~~) The owner or operator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, the owner or operator must submit a written report on the incident to the Agency. The report must include the following:

1) The name, address, and telephone number of the owner or operator;

2) The name, address, and telephone number of the facility;

3) The date, time, and type of incident (e.g., fire, explosion);

4) The name and quantity of materials involved;

5) The extent of injuries, if any;

6) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

7) The estimated quantity and disposition of recovered material that resulted from the incident.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

SUBPART E: MANIFEST SYSTEM, RECORDKEEPING AND REPORTING

Section 724.171 Use of Manifest System

a) Receipt of Manifested Hazardous Waste~~.~~

1) If a facility receives hazardous waste accompanied by a manifest, the owner, operator, or its agent must sign and date the manifest, as indicated in subsection (a)(2), to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

2) If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator, or its agent must do the following:

A) The owner, operator, or agent must sign and date, by hand, each copy of the manifest;

B) The owner, operator, or agent must note any discrepancies (as defined in Section 724.172) on each copy of the manifest;

C) The owner, operator, or agent must immediately give the transporter at least one copy of the manifest;

D) The owner, operator, or agent must send a copy (Page 3) of the manifest to the generator within 30 days after delivery;

E) Within 30 days after delivery, the owner, operator, or agent must send the top copy (Page 1) of the manifest to the e-Manifest System for purposes of data entry and processing. In lieu of mailing this paper copy to the e-Manifest System operator, the owner or operator may transmit to the e-Manifest System operator an image file of Page 1 of the manifest, or both a data string file and the image file corresponding to Page 1 of the manifest. Any data or image files transmitted to USEPA under this subsection (a) must be submitted in data file and image file formats that are acceptable to USEPA and that are supported by USEPA's electronic reporting requirements and by the e-Manifest System; and

F) The owner, operator, or agent must retain at the facility a copy of each manifest for at least three years after the date of delivery.

3) The owner or operator of~~If~~ a facility receiving~~receives~~ hazardous waste subject to Subpart H of 35 Ill. Adm. Code 722~~,imported~~ from a foreign source must do the following:~~,the receiving facility must mail a copy of the manifest and documentation confirming USEPA's consent to the import of hazardous waste to the following address within 30 days after delivery: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A),~~

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

~~U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460.~~

A) List the relevant consent number from consent documentation supplied by USEPA to the facility for each waste listed on the manifest, matched to the relevant list number for the waste from block 9b. If additional space is needed, the owner or operator should use Continuation Sheets (USEPA Form 8700–22A); and

B) Send a copy of the manifest within 30 days of delivery to USEPA using the addresses listed in 35 Ill. Adm. Code 722.182(e) until the facility can submit such a copy to the e-Manifest system per subsection (a)(2)(E).

b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste that is accompanied by a shipping paper containing all the information required on the manifest (excluding the USEPA identification numbers, generator's certification, and signatures), the owner or operator, or the owner or operator's agent, must do the following:

1) It must sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

2) It must note any significant discrepancies (as defined in Section 724.172(a)) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper;

BOARD NOTE: The Board does not intend that the owner or operator of a facility whose procedures under Section 724.113(c) include waste analysis must perform that analysis before signing the shipping paper and giving it to the transporter. Section 724.172(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.

3) It must immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

4) The owner or operator must send a copy of the signed and dated manifest or a signed and dated copy of the shipping paper (if the manifest has not been received within 30 days after delivery) to the generator within 30 days after the delivery; and

BOARD NOTE: Section 722.123(c) requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment).

5) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of 35 Ill. Adm. Code 722. The provisions of 35 Ill. Adm. Code 722.115, 722.116, and 722.117 are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of 35 Ill. Adm. Code 722.115, 722.116, and 722.117 only apply to owners or operators that are shipping hazardous waste that they generated at that facility or operating as a large quantity generator consolidating hazardous waste from very small quantity generators under 35 Ill. Adm. Code 722.117(f).

~~BOARD NOTE: The provisions of 35 Ill. Adm. Code 722.134 are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of Section 722.134 only apply to owners or operators that are shipping hazardous waste that they generated at that facility.~~

d) As required by 35 Ill. Adm. Code 722.184(d)(2)(O), within~~Within~~ three working days after the receipt of a shipment subject to Subpart H of 35 Ill. Adm. Code 722, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the foreign exporter and~~;~~ ~~to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; to the Bureau of Land, Division of Land Pollution Control, Illinois Environmental Protection Agency, P.O. Box 19276, Springfield, IL 62794-9276; and to~~ competent authorities of the~~all other concerned~~ countries of export and transit that control the shipment as an export or transit of hazardous waste. On or after the electronic

import-export reporting compliance date, to USEPA electronically using USEPA's WIETS. The original copy of the movement document must be maintained at the facility for at least three years from the date of signature. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on USEPA's WIETS, provided that copies are readily available for viewing and production if requested by any USEPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with USEPA's WIETS, for which the owner or operator of a facility bears no responsibility.

e) A facility must determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated federally) as hazardous wastes under its state hazardous waste program. A facility must also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to that state.

f) Legal Equivalence to Paper Manifests. E-Manifests that are obtained, completed, transmitted in accordance with 35 Ill. Adm. Code 722.120(a)(3), and used in accordance with this Section in lieu of the paper manifest form are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in 35 Ill. Adm. Code 720 through 728 to obtain, complete, sign, provide, use, or retain a manifest.

1) Any requirement in 35 Ill. Adm. Code 720 through 728 for the owner or operator of a facility to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 35 Ill. Adm. Code 722.125.

2) Any requirement in 35 Ill. Adm. Code 720 through 728 to give, provide, send, forward, or to return to another person a copy of the manifest is satisfied when a copy of an e-Manifest is transmitted to the other person.

3) Any requirement in 35 Ill. Adm. Code 720 through 728 for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an e-Manifest is accessible during transportation and forwarded to the person or

persons who are scheduled to receive delivery of the hazardous waste shipment.

4) Any requirement in 35 Ill. Adm. Code 720 through 728 for an owner or operator to keep or retain a copy of each manifest is satisfied by the retention of the facility's e-Manifest copies in its account on the e-Manifest System, provided that such copies are readily available for viewing and production if requested by any USEPA or Agency inspector.

5) No owner or operator may be held liable for the inability to produce an e-Manifest for inspection under this Section if the owner or operator can demonstrate that the inability to produce the e-Manifest is due exclusively to a technical difficulty with the e-Manifest System for which the owner or operator bears no responsibility.

g) An owner or operator may participate in the e-Manifest System either by accessing the e-Manifest System from the owner's or operator's electronic equipment, or by accessing the e-Manifest System from portable equipment brought to the owner's or operator's site by the transporter that delivers the waste shipment to the facility.

h) Special Procedures Applicable to Replacement Manifests. If a facility receives hazardous waste that is accompanied by a paper replacement manifest for a manifest that was originated electronically, the following procedures apply to the delivery of the hazardous waste by the final transporter:

1) Upon delivery of the hazardous waste to the designated facility, the owner or operator must sign and date each copy of the paper replacement manifest by hand in Item 20 (Designated Facility Certification of Receipt) and note any discrepancies in Item 18 (Discrepancy Indication Space) of the paper replacement manifest;

2) The owner or operator of the facility must give back to the final transporter one copy of the paper replacement manifest;

3) Within 30 days after delivery of the hazardous waste to the designated facility, the owner or operator of the facility must send one signed and dated copy of the paper replacement manifest to the generator and send an

additional signed and dated copy of the paper replacement manifest to the e-Manifest System; and

4) The owner or operator of the facility must retain at the facility one copy of the paper replacement manifest for at least three years after the date of delivery.

i) Special Procedures Applicable~~procedures applicable~~ to Electronic Signature Methods Undergoing Tests~~electronic signature methods undergoing tests~~. If an owner or operator using an e-Manifest signs this manifest electronically using an electronic signature method that is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, the owner or operator must also sign with an ink signature the facility's certification of receipt or discrepancies on the printed copy of the manifest provided by the transporter. Upon executing its ink signature on this printed copy, the owner or operator must retain this original copy among its records for at least three years after the date of delivery of the waste.

j) Imposition of User Fee for e-Manifest Use. An owner or operator that is a user of the e-Manifest System may be assessed a user fee by USEPA for the origination or processing of each e-Manifest. An owner or operator may also be assessed a user fee by USEPA for the collection and processing of paper manifest copies that owners or operators must submit to the e-Manifest System operator under subsection (a)(2)(E). USEPA has stated that it would maintain and update from time-to-time the current schedule of e-Manifest System user fees, which will be determined based on current and projected e-Manifest System costs and level of use of the e-Manifest System. USEPA has said that it would publish the current schedule of e-Manifest user fees as an appendix to 40 CFR 262.

k) E-Manifest Signatures. E-Manifest signatures must meet the criteria described in 35 Ill. Adm. Code 722.125.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.172 Manifest Discrepancies

a) "Manifest discrepancies" are defined as any one of the following:

1) Significant differences (as defined by subsection (b) ~~of this Section~~) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives;

2) Rejected wastes, which may be a full or partial shipment of hazardous waste that the treatment, storage, or disposal facility cannot accept; or

3) Container residues, which are residues that exceed the quantity limits for empty containers set forth in 35 Ill. Adm. Code 721.107(b).

b) "Significant differences in quantity" are defined as the appropriate of the following: for bulk waste, variations greater than 10 percent in weight; or, for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. "Significant differences in type" are defined as obvious differences that can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or as toxic constituents not reported on the manifest or shipping paper.

c) Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Agency a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

d) Rejection of Hazardous Waste~~hazardous waste.~~

1) Upon rejecting waste or identifying a container residue that exceeds the quantity limits for empty containers set forth in 35 Ill. Adm. Code 721.107(b), the facility owner or operator must consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility owner or operator may return the rejected waste or residue to the generator. The facility owner or operator must send the waste to the alternative facility or to the generator within 60 days after the rejection or the container residue identification.

2) While the facility owner or operator is making arrangements for forwarding rejected wastes or residues to another facility under this Section, it must ensure that either the delivering transporter retains custody of the waste, or the facility owner or operator must provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under subsection (e) or (f) ~~of this Section~~.

e) Except as provided in subsection (e)(7) ~~of this Section~~, for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility owner or operator is required to prepare a new manifest in accordance with 35 Ill. Adm. Code 722.120(a) and the instructions set forth in subsections (e)(1) through (e)(6) ~~of this Section~~:

1) The facility owner or operator must write the generator's USEPA identification number in Item 1 of the new manifest. The facility owner or operator must write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then the facility owner or operator must write the generator's site address in the designated space in Item 5.

2) The facility owner or operator must write the name of the alternate designated facility and the facility's USEPA identification number in the designated facility block (Item 8) of the new manifest.

3) The facility owner or operator must copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

4) The facility owner or operator must copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

5) The facility owner or operator must write the USDOT description for the rejected load or the residue in Item 9 (USDOT Description) of the new manifest and write the container types, quantity, and volumes of waste.

6) The facility owner or operator must sign the Generator's/Offeror's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation, and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

7) For full load rejections that are made while the transporter remains present at the facility, the facility owner or operator may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the Alternate Facility space. The facility owner or operator must retain a copy of this manifest for its records, and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility owner or operator must use a new manifest and comply with subsections (e)(1) through (e)(6) ~~of this Section~~.

f) Except as provided in subsection (f)(7) ~~of this Section~~, for rejected wastes and residues that must be sent back to the generator, the facility owner or operator is required to prepare a new manifest in accordance with 35 Ill. Adm. Code 722.120(a) and the instructions set forth in subsections (f)(1) through (f)(6) and (f)(8) ~~of this Section~~:

1) The facility owner or operator must write the facility's USEPA identification number in Item 1 of the new manifest. The facility owner or operator must write the facility's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the facility's site address, then the facility owner or operator must write the facility's site address in the designated space for Item 5 of the new manifest.

2) The facility owner or operator must write the name of the initial generator and the generator's USEPA identification number in the designated facility block (Item 8) of the new manifest.

3) The facility owner or operator must copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

4) The facility owner or operator must copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

5) The facility owner or operator must write the USDOT description for the rejected load or the residue in Item 9 (USDOT Description) of the new manifest and write the container types, quantity, and volumes of waste.

6) The facility owner or operator must sign the Generator's/Offeror's Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation.

7) For full load rejections that are made while the transporter remains at the facility, the facility owner or operator may return the shipment to the generator with the original manifest by completing Item 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility owner or operator must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility owner or operator must use a new manifest and comply with subsections (f)(1) through (f)(6) and (f)(8) ~~of this Section~~.

8) For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility owner or operator must also comply with the exception reporting requirements in 35 Ill. Adm. Code 722.142(a).

g) If a facility owner or operator rejects a waste or identifies a container residue that exceeds the quantity limits for empty containers set forth in 35 Ill. Adm. Code 721.107(b) after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility owner or operator must amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility owner or operator must also copy the manifest tracking number from Item 4 of the new manifest to the Discrepancy space of the amended manifest, and must re-sign and date the manifest to certify to the information as amended. The facility owner or operator must retain the amended manifest for at least three years from the date of

amendment, and must, within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to their being amended.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.173 Operating Record

a) The owner or operator must keep a written operating record at the facility.

b) The following information must be recorded as it becomes available and maintained in the operating record for three years unless otherwise provided as follows:

1) A description and the quantity of each hazardous waste received and the methods and dates of its treatment, storage, or disposal at the facility, as required by Appendix A ~~of this Part~~. This information must be maintained in the operating record until closure of the facility;

2) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram that shows each cell or disposal area. For all facilities, this information must include cross-references to manifest document numbers, if the waste was accompanied by a manifest. This information must be maintained in the operating record until closure of the facility;

BOARD NOTE: See Section 724.219 for related requirements.

3) Records and results of waste analyses and waste determinations performed as specified in Sections 724.113, 724.117, 724.414, 724.441, 724.934, 724.963, and 724.983 and in 35 Ill. Adm. Code 728.104(a) and 728.107;

4) Summary reports and details of all incidents that require implementing the contingency plan, as specified in Section 724.156(j);

5) Records and results of inspections, as required by Section 724.115(d) (except these data need to be kept only three years);

6) Monitoring, testing, or analytical data and corrective action data where

required by Subpart F ~~of this Part~~ or Sections 724.119, 724.291, 724.293, 724.295, 724.322, 724.323, 724.326, 724.352 through 724.354, 724.376, 724.378, 724.380, 724.402 through 724.404, 724.409, 724.702, 724.934(c) through (f), 724.935, 724.963(d) through (i), 724.964, and 724.982 through 724.990. Maintain in the operating record for three years, except for records and results pertaining to groundwater monitoring and cleanup, which must be maintained in the operating record until closure of the facility;

7) For off-site facilities, notices to generators as specified in Section 724.112(b);

8) All closure cost estimates under Section 724.242 and, for disposal facilities, all post-closure care cost estimates under Section 724.244. This information must be maintained in the operating record until closure of the facility;

9) A certification by the permittee, no less often than annually: that the permittee has a program in place to reduce the volume and toxicity of hazardous waste that the permittee generates, to the degree the permittee determines to be economically practicable, and that the proposed method of treatment, storage, or disposal is that practicable method currently available to the permittee that minimizes the present and future threat to human health and the environment;

10) Records of the quantities and date of placement for each shipment of hazardous waste placed in land disposal units under an extension of the effective date of any land disposal restriction granted pursuant to 35 Ill. Adm. Code 728.105, a petition pursuant to 35 Ill. Adm. Code 728.106 or a certification under 35 Ill. Adm. Code 728.108, and the applicable notice required of a generator pursuant to 35 Ill. Adm. Code 728.107(a). This information must be maintained in the operating record until closure of the facility;

11) For an off-site treatment facility, a copy of the notice, and the certification and demonstration, if applicable, required of the generator or the owner or operator under 35 Ill. Adm. Code 728.107 or 728.108;

12) For an on-site treatment facility, the information contained in the notice

(except the manifest number), and the certification and demonstration, if applicable, required of the generator or the owner or operator under 35 Ill. Adm. Code 728.107 or 728.108;

13) For an off-site land disposal facility, a copy of the notice, and the certification and demonstration, if applicable, required of the generator or the owner or operator of a treatment facility under 35 Ill. Adm. Code 728.107 or 728.108, whichever is applicable;

14) For an on-site land disposal facility, the information contained in the notice required of the generator or owner or operator of a treatment facility under 35 Ill. Adm. Code 728.107, except for the manifest number, and the certification and demonstration, required under 35 Ill. Adm. Code 728.108, whichever is applicable;

15) For an off-site storage facility, a copy of the notice, and the certification and demonstration if applicable, required of the generator or the owner or operator under 35 Ill. Adm. Code 728.107 or 728.108;

16) For an on-site storage facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required of the generator or the owner or operator under 35 Ill. Adm. Code 728.107 or 728.108;

17) Any records required under Section 724.101(j)(13);

18) Monitoring, testing, or analytical data where required by Section 724.447 must be maintained in the operating record for five years; and

19) Certifications, as required by Section 724.296(f), must be maintained in the operating record until closure of the facility.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.175 Annual Facility Activities Report

The owner or operator must complete~~prepare~~ and submit USEPA Form 8700-13 A/B ~~a single copy of an annual facility activities report~~ to the Agency by March 1 of each year and~~. The report form supplied by the Agency must be used for this report. The annual facility activities~~

~~report~~ must cover ~~facility~~ activities during the previous ~~calendar~~ year. ~~and must include the following information:~~

~~a) The USEPA identification number, name, and address of the facility;~~

~~b) The calendar year covered by the report;~~

~~c) For off-site facilities, the USEPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report must give the name and address of the foreign generator;~~

~~d) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information must be listed by USEPA identification number of each generator;~~

~~e) The method of treatment, storage, or disposal for each hazardous waste;~~

~~f) This subsection (f) corresponds with 40 CFR 264.75(f), which USEPA has designated as "reserved." This statement maintains structural consistency with the USEPA rules;~~

~~g) The most recent closure cost estimate under Section 724.242, and, for disposal facilities, the most recent post-closure cost estimate under Section 724.244;~~

~~h) For generators that treat, store or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated;~~

~~i) For generators that treat, store or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years, to the extent such information is available for years prior to 1984; and~~

~~j) The certification signed by the owner or operator of the facility or the owner or operator's authorized representative.~~

BOARD NOTE: Corresponding 40 CFR 264.75 requires biennial reporting. The Board has required annual reporting, since Section 20.1 of the Act ~~[415 ILCS 5/20.1 (2006)]~~ requires the

Agency to assemble annual reports, and only annual facility activities reports will enable the Agency to fulfill this mandate.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.176 Unmanifested Waste Report

a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper, as described by 35 Ill. Adm. Code 723.120(e), and if the waste is not excluded from the manifest requirement by 35 Ill. Adm. Code 260 through 265, then the owner or operator must prepare and submit a letter to the Agency within 15 days after receiving the waste. The unmanifested waste report must contain the following information:

1) The USEPA identification number, name, and address of the facility;

2) The date the facility received the waste;

3) The USEPA identification number, name, and address of the generator and the transporter, if available;

4) A description and the quantity of each unmanifested hazardous waste the facility received;

5) The method of treatment, storage, or disposal for each hazardous waste;

6) The certification signed by the owner or operator of the facility or its authorized representative; and

7) A brief explanation of why the waste was unmanifested, if known.

b) This subsection (b) corresponds with 40 CFR 264.76(b), which USEPA has marked "reserved.". This statement maintains structural consistency with the corresponding federal regulations.

BOARD NOTE: Small quantities of hazardous waste are excluded from regulation under this Part and do not require a manifest. Where a facility receives unmanifested hazardous wastes, USEPA has suggested that the owner or operator obtain from each generator a

certification that the waste qualifies for exclusion. Otherwise, USEPA has suggested that the owner or operator file an unmanifested waste report for the hazardous waste movement.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

SUBPART F: RELEASES FROM SOLID WASTE MANAGEMENT UNITS

Section 724.190 Applicability

a) Types of Units~~units.~~

1) Except as provided in subsection (b) ~~of this Section~~, the regulations in this Subpart F apply to owners and operators of facilities that treat, store or dispose of hazardous waste. The owner or operator must satisfy the requirements identified in subsection (a)(2) ~~of this Section~~ for all wastes (or constituents thereof) contained in solid waste management units at the facility regardless of the time at which waste was placed in such units.

2) All solid waste management units must comply with the requirements in Section 724.201. A surface impoundment, waste pile, land treatment unit, or landfill that receives hazardous waste after July 26, 1982 (referred to in this Subpart F as a "regulated unit") must comply with Sections 724.191 through 724.200, in lieu of Section 724.201, for purposes of detecting, characterizing, and responding to releases to the uppermost aquifer. The financial responsibility requirements of Section 724.201 apply to regulated units.

b) The owner or operator's regulated unit or units are not subject to regulation for releases into the uppermost aquifer under this Subpart F if the following is true:

1) The owner or operator is exempted pursuant to Section 724.101; or

2) The owner or operator operates a unit that the Agency finds:

A) Is an engineered structure.

B) Does not receive or contain liquid waste or waste containing free liquids.

C) Is designed and operated to exclude liquid, precipitation, and other runon and runoff.

D) Has both inner and outer layers of containment enclosing the waste.

E) Has a leak detection system built into each containment layer.

F) The owner or operator will provide continuing operation and maintenance of these leak detection systems during the active life of the unit and the closure and post-closure care periods.

G) To a reasonable degree of certainty, will not allow hazardous constituents to migrate beyond the outer containment layer prior to the end of the post-closure care period; or

3) The Agency finds, pursuant to Section 724.380(d), that the treatment zone of a land treatment unit that qualifies as a regulated unit does not contain levels of hazardous constituents that are above background levels of those constituents by an amount that is statistically significant, and if an unsaturated zone monitoring program meeting the requirements of Section 724.378 has not shown a statistically significant increase in hazardous constituents below the treatment zone during the operating life of the unit. An exemption pursuant to this subsection (b) can only relieve an owner or operator of responsibility to meet the requirements of this Subpart F during the post-closure care period; or

4) The Agency finds that there is no potential for migration of liquid from a regulated unit to the uppermost aquifer during the active life of the regulated unit (including the closure period) and the post-closure care period specified pursuant to Section 724.217. This demonstration must be certified by a qualified geologist or geotechnical engineer. In order to provide an adequate margin of safety in the prediction of potential migration of liquid, the owner or operator must base any predictions made pursuant to this subsection (b) on assumptions that maximize the rate of liquid migration; or

5) The owner or operator designs and operates a pile in compliance with

Section 724.350(c).

c) The regulations under this Subpart F apply during the active life of the regulated unit (including the closure period). After closure of the regulated unit, the following is true of the applicability of the regulations in this Subpart F:

1) Do not apply if all waste, waste residues, contaminated containment system components, and contaminated subsoils are removed or decontaminated at closure;

2) Apply during the post-closure care period pursuant to Section 724.217 if the owner or operator is conducting a detection monitoring program pursuant to Section 724.198; or

3) Apply during the compliance period pursuant to Section 724.196 if the owner or operator is conducting a compliance monitoring program pursuant to Section 724.199 or a corrective action program pursuant to Section 724.200.

d) This Subpart F applies to miscellaneous units if necessary to comply with Sections 724.701 through 724.703.

e) The regulations of this Subpart F apply to all owners and operators subject to 35 Ill. Adm. Code 703.161, when the Agency issues a post-closure care permit or other enforceable document that contains alternative requirements for the facility, as provided in 35 Ill. Adm. Code 703.161. When alternative requirements apply to a facility, a reference in this Subpart F to "in the permit" must mean "in the enforceable document.".

f) A permit or enforceable document can contain alternative requirements for groundwater monitoring and corrective action for releases to groundwater applicable to a regulated unit that replace all or part of the requirements of 35 Ill. Adm. Code 724.191 through 724.200, as provided pursuant to 35 Ill. Adm. Code 703.161, where the Board or Agency determines the following:

1) The regulated unit is situated among solid waste management units (or areas of concern), a release has occurred, and both the regulated unit and one or more solid waste management units (or areas of concern) are likely to have contributed to the release; and

2) It is not necessary to apply the groundwater monitoring and corrective action requirements of 35 Ill. Adm. Code 724.191 through 724.200 because alternative requirements will adequately protect human health and the environment.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.191 Required Programs

a) Owners and operators subject to this Subpart F must conduct a monitoring and response program as follows:

1) Whenever hazardous constituents pursuant to Section 724.193 from a regulated unit are detected at a compliance point pursuant to Section 724.195, the owner or operator must institute a compliance monitoring program pursuant to Section 724.199. "Detected" is defined as statistically significant evidence of contamination, as described in Section 724.198(f).

2) Whenever the groundwater protection standard pursuant to Section 724.192 is exceeded, the owner or operator must institute a corrective action program pursuant to Section 724.200. "Exceeded" is defined as statistically significant evidence of increased contamination, as described in Section 724.199(d).

3) Whenever hazardous constituents pursuant to Section 724.193 from a regulated unit exceed concentration limits pursuant to Section 724.194 in groundwater between the compliance point pursuant to Section 724.195 and the downgradient facility property boundary, the owner or operator must institute a corrective action program pursuant to Section 724.200; or

4) In all other cases, the owner or operator must institute a detection monitoring program pursuant to Section 724.198.

b) The Agency must specify in the facility permit the specific elements of the monitoring and response program. The Agency may include one or more of the programs identified in subsection (a) ~~of this Section~~ in the facility permit as may be necessary to adequately protect human health and the environment and must

specify the circumstances under which each of the programs will be required. In deciding whether to require the owner or operator to be prepared to institute a particular program, the Agency must consider the potential adverse effects on human health and the environment that might occur before final administrative action on a permit modification application to incorporate such a program could be taken.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.193 Hazardous Constituents

a) The Agency must specify in the facility permit the hazardous constituents to which the groundwater protection standard of Section 724.192 applies. Hazardous constituents are constituents identified in Appendix H of 35 Ill. Adm. Code 721 that have been detected in groundwater in the uppermost aquifer underlying a regulated unit and that are reasonably expected to be in or derived from waste contained in a regulated unit, unless the Agency has excluded them under subsection (b) ~~of this Section~~.

b) The Agency must exclude a constituent in Appendix H of 35 Ill. Adm. Code 721 from the list of hazardous constituents specified in the facility permit if it finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to grant an exemption, the Agency must consider the following:

1) Potential adverse effects on groundwater quality, considering the following:

A) The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

B) The hydrogeological characteristics of the facility and surrounding land;

C) The quantity of groundwater and the direction of groundwater flow;

D) The proximity and withdrawal rates of groundwater users;

E) The current and future uses of groundwater in the area;

F) The existing quality of groundwater, including other sources of contamination, and their cumulative impact on the groundwater quality;

G) The potential for health risks caused by human exposure to waste constituents;

H) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

I) The persistence and permanence of the potential adverse effects; and

2) Potential adverse effects on hydraulically-connected surface water quality, considering the following:

A) The volume and physical and chemical characteristics of the waste in the regulated unit;

B) The hydrogeological characteristics of the facility and surrounding land;

C) The quantity and quality of groundwater and the direction of groundwater flow;

D) The patterns of rainfall in the region;

E) The proximity of the regulated unit to surface waters;

F) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

G) The existing quality of surface water, including other sources of contamination, and the cumulative impact on surface water quality;

H) The potential for health risks caused by human exposure to waste constituents;

I) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

J) The persistence and permanence of the potential adverse effects.

c) In making any determination under subsection (b) ~~of this Section~~ about the use of groundwater in the area around the facility, the Agency must consider any identification of underground sources of drinking water and exempted aquifers made under 35 Ill. Adm. Code 704.123.

d) The Agency must make specific written findings in granting any exemptions under subsection (b) ~~of this Section~~.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.196 Compliance Period

a) The Agency must specify in the facility permit the compliance period during which the groundwater protection standard of Section 724.192 applies. The compliance period is the number of years equal to the active life of the waste management area (including any waste management activity prior to permitting, and the closure period.)

b) The compliance period begins when the owner or operator initiates a compliance monitoring program meeting the requirements of Section 724.199.

c) If the owner or operator is engaged in a corrective action program at the end of the compliance period specified in subsection (a) ~~of this Section~~, the compliance period is extended until the owner or operator can demonstrate that the groundwater protection standard of Section 724.192 has not been exceeded for a period of three consecutive years.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.197 General Groundwater Monitoring Requirements

The owner or operator must comply with the following requirements for any groundwater monitoring program developed to satisfy Section 724.198, 724.199, or 724.200.

a) The groundwater monitoring system must consist of a sufficient number of wells, installed at appropriate locations and depths to yield groundwater samples from the uppermost aquifer that fulfill the following requirements:

1) They represent the quality of background groundwater that has not been affected by leakage from a regulated unit. A determination of background groundwater quality may include sampling of wells that are not hydraulically upgradient from the waste management area where the following is true:

A) Hydrogeologic conditions do not allow the owner or operator to determine what wells are upgradient; or

B) Sampling at other wells will provide an indication of background groundwater quality that is as representative or more representative than that provided by the upgradient wells;

2) They represent the quality of groundwater passing the point of compliance; and

3) They allow for the detection of contamination when hazardous waste or hazardous constituents have migrated from the hazardous waste management area to the uppermost aquifer.

b) If a facility contains more than one regulated unit, separate groundwater monitoring systems are not required for each regulated unit provided that provisions for sampling the groundwater in the uppermost aquifer will enable detection and measurement at the compliance point of hazardous constituents from the regulated units that have entered the groundwater in the uppermost aquifer.

c) All monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of groundwater samples. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the groundwater.

d) The groundwater monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide a reliable indication of groundwater quality below the waste management area. At a minimum the program must include procedures and techniques for the following:

1) Sample collection;

2) Sample preservation and shipment;

3) Analytical procedures; and

4) Chain of custody control.

e) The groundwater monitoring program must include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents in groundwater samples.

f) The groundwater monitoring program must include a determination of the groundwater surface elevation each time groundwater is sampled.

g) In detection monitoring or where appropriate in compliance monitoring, data on each hazardous constituent specified in the permit will be collected from background wells and wells at the compliance points. The number and kinds of samples collected to establish background must be appropriate for the form of statistical test employed, following generally accepted statistical principles. The sample size must be as large as necessary to ensure with reasonable confidence that a contaminant release to groundwater from a facility will be detected. The owner or operator will determine an appropriate sampling procedure and interval for each hazardous constituent listed in the facility permit that must be specified in the unit permit upon approval by the Agency. This sampling procedure must fulfill the following requirements:

1) It may be a sequence of at least four samples, taken at an interval that assures, to the greatest extent technically feasible, that an independent sample is obtained, by reference to the uppermost aquifer's effective porosity, hydraulic conductivity and hydraulic gradient, and the fate and transport characteristics of the potential contaminants; or

2) It may be an alternate sampling procedure proposed by the owner or operator and approved by the Agency.

h) The owner or operator must specify one of the following statistical methods to be used in evaluating groundwater monitoring data for each hazardous constituent that, upon approval by the Agency, will be specified in the unit permit. The statistical test chosen must be conducted separately for each hazardous constituent in each well. Where practical quantification limits (pqls) are used in any of the following statistical procedures to comply with subsection (i)(5) ~~of this Section~~, the pql must be proposed by the owner or operator and approved by the Agency. Use of any of the following statistical methods must adequately protect human health and the environment and must comply with the performance standards outlined in subsection (i) ~~of this Section~~.

1) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

2) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

3) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

4) A control chart approach that gives control limits for each constituent.

5) Another statistical test method submitted by the owner or operator and approved by the Agency.

i) Any statistical method chosen pursuant to subsection (h) ~~of this Section~~ for specification in the unit permit must comply with the following performance standards, as appropriate:

1) The statistical method used to evaluate groundwater monitoring data must be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.

2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test must be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experimentwise error rate for each testing period must be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals or control charts.

3) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter value must be proposed by the owner or operator and approved by the Agency if the Agency finds it to adequately protect human health and the environment.

4) If a tolerance interval or a prediction interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, must be proposed by the owner or operator and approved by the Agency if the Agency finds these parameters to adequately protect human health and the environment. These parameters will be determined after considering the number of samples in the background database, the data distribution, and the range of the concentration values for each constituent of concern.

5) The statistical method must account for data below the limit of detection with one or more statistical procedures that adequately protect human health and the environment. Any practical quantification limit (pql) approved by the Agency pursuant to subsection (h) ~~of this Section~~ that is used in the statistical method must be the lowest concentration level that

can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

6) If necessary, the statistical method must include procedures to control or correct for seasonal and spatial variability, as well as temporal correlation in the data.

j) Groundwater monitoring data collected in accordance with subsection (g) ~~of this Section~~, including actual levels of constituents, must be maintained in the facility operating record. The Agency must specify in the permit when the data must be submitted for review.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.198 Detection Monitoring Program

An owner or operator required to establish a detection monitoring program under this Subpart F must, at a minimum, discharge the following responsibilities:

a) The owner or operator must monitor for indicator parameters (e.g., specific conductance, total organic carbon, or total organic halogen), waste constituents or reaction products that provide a reliable indication of the presence of hazardous constituents in groundwater. The Agency must specify the parameters or constituents to be monitored in the facility permit, after considering the following factors:

1) The types, quantities, and concentrations of constituents in wastes managed at the regulated unit;

2) The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the waste management area;

3) The detectability of indicator parameters, waste constituents, and reaction products in groundwater; and

4) The concentrations or values and coefficients of variation of proposed monitoring parameters or constituents in the groundwater background.

b) The owner or operator must install a groundwater monitoring system at the compliance point as specified under Section 724.195. The groundwater monitoring system must comply with Sections 724.197(a)(2), 724.197(b), and 724.197(c).

c) The owner or operator must conduct a groundwater monitoring program for each chemical parameter and hazardous constituent specified in the permit pursuant to subsection (a) ~~of this Section~~ in accordance with Section 724.197(g). The owner or operator must maintain a record of groundwater analytical data, as measured and in a form necessary for the determination of statistical significance under Section 724.197(h).

d) The Agency must specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit conditions under subsection (a) ~~of this Section~~ in accordance with Section 724.197(g).

e) The owner or operator must determine the groundwater flow rate and direction in the uppermost aquifer at least annually.

f) The owner or operator must determine whether there is statistically significant evidence of contamination for any chemical parameter or hazardous constituent specified in the permit pursuant to subsection (a) ~~of this Section~~ at a frequency specified under subsection (d) ~~of this Section~~.

1) In determining whether statistically significant evidence of contamination exists, the owner or operator must use the methods specified in the permit under Section 724.197(h). These methods must compare data collected at the compliance points to the background groundwater quality data.

2) The owner or operator must determine whether there is statistically significant evidence of contamination at each monitoring well at the compliance point within a reasonable period of time after completion of sampling. The Agency must specify in the facility permit what period of time is reasonable, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

g) If the owner or operator determines pursuant to subsection (f) ~~of this Section~~ that there is statistically significant evidence of contamination for chemical parameters or hazardous constituents specified pursuant to subsection (a) ~~of this Section~~ at any monitoring well at the compliance point, the owner or operator must do the following:

1) Notify the Agency of this finding in writing within seven days. The notification must indicate what chemical parameters or hazardous constituents have shown statistically significant evidence of contamination.

2) Immediately sample the groundwater in all monitoring wells and determine whether constituents in the list of Appendix I ~~of this Part~~ are present, and if so, in what concentration. However, the Agency must allow sampling for a site-specific subset of constituents from the Appendix I list ~~of this Part~~ and for other representative or related waste constituents if it determines that sampling for that site-specific subset of contaminants and other constituents is more economical and equally effective for determining whether groundwater contamination has occurred.

3) For any compounds in Appendix I ~~of this Part~~ found in the analysis pursuant to subsection (g)(2) ~~of this Section~~, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the Agency and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds set forth in subsection (g)(2) ~~of this Section~~, the hazardous constituents found during this initial Appendix I analysis will form the basis for compliance monitoring.

4) Within 90 days, submit to the Agency an application for a permit modification to establish a compliance monitoring program meeting the requirements of Section 724.199. The application must include the following information:

A) An identification of the concentration of any constituent in

Appendix I ~~of this Part~~ detected in the groundwater at each monitoring well at the compliance point;

B) Any proposed changes to the groundwater monitoring system at the facility necessary to meet the requirements of Section 724.199;

C) Any proposed additions or changes to the monitoring frequency, sampling and analysis procedures or methods, or statistical methods used at the facility necessary to meet the requirements of Section 724.199;

D) For each hazardous constituent detected at the compliance point, a proposed concentration limit under Section 724.194(a)(1) or (a)(2), or a notice of intent to seek an alternate concentration limit under Section 724.194(b).

5) Within 180 days, submit the following to the Agency:

A) All data necessary to justify an alternate concentration limit sought under Section 724.194(b); and

B) An engineering feasibility plan for a corrective action program necessary to meet the requirement of Section 724.200, unless the following is true:

i) All hazardous constituents identified under subsection (g)(2) ~~of this Section~~ are listed in Table 1 of Section 724.194 and their concentrations do not exceed the respective values given in that table; or

ii) The owner or operator has sought an alternate concentration limit under Section 724.194(b) for every hazardous constituent identified under subsection (g)(2) ~~of this Section~~.

6) If the owner or operator determines, pursuant to subsection (f) ~~of this Section~~, that there is a statistically significant difference for chemical parameters or hazardous constituents specified pursuant to subsection (a) ~~of this Section~~ at any monitoring well at the compliance point, the owner

or operator may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis or statistical evaluation, or natural variation in the groundwater. The owner or operator may make a demonstration under this subsection (g) in addition to, or in lieu of, submitting a permit modification application under subsection (g)(4) ~~of this Section~~; however, the owner or operator is not relieved of the requirement to submit a permit modification application within the time specified in subsection (g)(4) ~~of this Section~~ unless the demonstration made under this subsection (g) successfully shows that a source other than a regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this subsection (g), the owner or operator must do the following:

A) Notify the Agency in writing, within seven days of determining statistically significant evidence of contamination at the compliance point, that the owner or operator intends to make a demonstration under this subsection (g);

B) Within 90 days, submit a report to the Agency that demonstrates that a source other than a regulated unit caused the contamination or that the contamination resulted from error in sampling, analysis, or evaluation;

C) Within 90 days, submit to the Agency an application for a permit modification to make any appropriate changes to the detection monitoring program facility; and

D) Continue to monitor in accordance with the detection monitoring program established under this Section.

h) If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this Section, the owner or operator must, within 90 days, submit an application for a permit modification to make any appropriate changes to the program.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.199 Compliance Monitoring Program

An owner or operator required to establish a compliance monitoring program under this Subpart F must, at a minimum, discharge the following responsibilities:

a) The owner or operator must monitor the groundwater to determine whether regulated units are in compliance with the groundwater protection standard under Section 724.192. The Agency must specify the groundwater protection standard in the facility permit, including the following:

1) A list of the hazardous constituents identified under Section 724.193;

2) Concentration limits under Section 724.194 for each of those hazardous constituents;

3) The compliance point under Section 724.195; and

4) The compliance period under Section 724.196.

b) The owner or operator must install a groundwater monitoring system at the compliance point as specified under Section 724.195. The groundwater monitoring system must comply with Section 724.197(a)(2), 724.197(b), and 724.197(c).

c) The Agency must specify the sampling procedures and statistical methods appropriate for the constituents and facility, consistent with Section 724.197(g) and (h).

1) The owner or operator must conduct a sampling program for each chemical parameter or hazardous constituent in accordance with Section 724.197(g).

2) The owner or operator must record groundwater analytical data as measured and in a form necessary for the determination of statistical significance under Section 724.197(h) for the compliance period of the facility.

d) The owner or operator must determine whether there is statistically significant evidence of increased contamination for any chemical parameter or hazardous constituent specified in the permit, pursuant to subsection (a) ~~of this Section~~, at a

frequency specified under subsection (f) ~~of this Section~~.

1) In determining whether statistically significant evidence of increased contamination exists, the owner or operator must use the methods specified in the permit under Section 724.197(h). The methods must compare data collected at the compliance points to a concentration limit developed in accordance with Section 724.194.

2) The owner or operator must determine whether there is statistically significant evidence of increased contamination at each monitoring well at the compliance point within a reasonable time period after completion of the sampling. The Agency must specify that time period in the facility permit, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

e) The owner or operator must determine the groundwater flow rate and direction in the uppermost aquifer at least annually.

f) The Agency must specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with Section 724.197(g).

g) The owner or operator must annually determine whether additional hazardous constituents from Appendix I ~~of this Part~~, which could possibly be present but are not on the detection monitoring list in the permit, are actually present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in Section 724.198(f). To accomplish this, the owner or operator must consult with the Agency to determine the following on a case-by-case basis: which sample collection event during the year will involve enhanced sampling; the number of monitoring wells at the compliance point to undergo enhanced sampling; the number of samples to be collected from each of these monitoring wells; and, the specific constituents from Appendix I ~~of this Part~~ for which these samples must be analyzed. If the enhanced sampling event indicates that Appendix I constituents are present in the ground water that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the Agency, and repeat the analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these

additional constituents to the Agency within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then it must report the concentrations of these additional constituents to the Agency within seven days after completion of the initial analysis, and add them to the monitoring list.

h) If the owner or operator determines, pursuant to subsection (d) ~~of this Section~~ that any concentration limits under Section 724.194 are being exceeded at any monitoring well at the point of compliance, the owner or operator must do the following:

1) Notify the Agency of this finding in writing within seven days. The notification must indicate what concentration limits have been exceeded.

2) Submit to the Agency an application for a permit modification to establish a corrective action program meeting the requirements of Section 724.200 within 180 days, or within 90 days if an engineering feasibility study has been previously submitted to the Agency under Section 724.198(g)(5). The application must at a minimum include the following information:

A) A detailed description of corrective actions that will achieve compliance with the groundwater protection standard specified in the permit under subsection (a) ~~of this Section~~; and

B) A plan for a groundwater monitoring program that will demonstrate the effectiveness of the corrective action. Such a groundwater monitoring program may be based on a compliance monitoring program developed to meet the requirements of this Section.

i) If the owner or operator determines, pursuant to subsection (d) ~~of this Section~~, that the groundwater concentration limits under this Section are being exceeded at any monitoring well at the point of compliance, the owner or operator may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation, or natural variation in groundwater. In making a demonstration under this subsection (i), the owner or operator must do the following:

1) Notify the Agency in writing within seven days that it intends to make a demonstration under this subsection (i);

2) Within 90 days, submit a report to the Agency that demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent noncompliance with the standards resulted from error in sampling, analysis, or evaluation;

3) Within 90 days, submit to the Agency an application for a permit modification to make any appropriate changes to the compliance monitoring program at the facility; and

4) Continue to monitor in accord with the compliance monitoring program established under this Section.

j) If the owner or operator determines that the compliance monitoring program no longer satisfies the requirements of this Section, the owner or operator must, within 90 days, submit an application for a permit modification to make any appropriate changes to the program.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.200 Corrective Action Program

An owner or operator required to establish a corrective action program pursuant to this Subpart F must, at a minimum, discharge the following responsibilities:

a) The owner or operator must take corrective action to ensure that regulated units are in compliance with the groundwater protection standard pursuant to Section 724.192. The Agency must specify the groundwater protection standard in the facility permit, including the following:

1) A list of the hazardous constituents identified pursuant to Section 724.193;

2) Concentration limits pursuant to Section 724.194 for each of those hazardous constituents;

3) The compliance point pursuant to Section 724.195; and

4) The compliance period pursuant to Section 724.196.

b) The owner or operator must implement a corrective action program that prevents hazardous constituents from exceeding their respective concentration limits at the compliance point by removing the hazardous waste constituents or treating them in place. The permit will specify the specific measures that must be taken.

c) The owner or operator must begin corrective action within a reasonable time period after the groundwater protection standard is exceeded. The Agency must specify that time period in the facility permit. If a facility permit includes a corrective action program in addition to a compliance monitoring program, the permit will specify when the corrective action must begin and such a requirement will operate in lieu of Section 724.199(i)(2).

d) In conjunction with a corrective action program, the owner or operator must establish and implement a groundwater monitoring program to demonstrate the effectiveness of the corrective action program. Such a monitoring program may be based on the requirements for a compliance monitoring program pursuant to Section 724.199 and must be as effective as that program in determining compliance with the groundwater protection standard pursuant to Section 724.192 and in determining the success of a corrective action program pursuant to subsection (e) ~~of this Section~~ where appropriate.

e) In addition to the other requirements of this Section, the owner or operator must conduct a corrective action program to remove or treat in place any hazardous constituents pursuant to Section 724.193 that exceed concentration limits pursuant to Section 724.194 in groundwater, as follows:

1) At the following locations:

A) Between the compliance point pursuant to Section 724.195 and the downgradient facility property boundary; and

B) Beyond the facility boundary, where necessary to adequately protect human health and the environment, unless the owner or operator demonstrates to the Agency that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. The owner and operator are not relieved of all responsibility to clean up a release

that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis.

2) The permit will specify the following measures to be taken:

A) Corrective action measures pursuant to this subsection (e) must be initiated and completed within a reasonable period of time considering the extent of contamination.

B) Corrective action measures pursuant to this subsection (e) may be terminated once the concentration of hazardous constituents pursuant to Section 724.193 is reduced to levels below their respective concentration limits pursuant to Section 724.194.

f) The owner or operator must continue corrective action measures during the compliance period to the extent necessary to ensure that the groundwater protection standard is not exceeded. If the owner or operator is conducting corrective action at the end of the compliance period, the owner or operator must continue that corrective action for as long as necessary to achieve compliance with the groundwater protection standard. The owner or operator may terminate corrective action measures taken beyond the period equal to the active life of the waste management area (including the closure period) if the owner or operator can demonstrate, based on data from the groundwater monitoring program pursuant to subsection (d) ~~of this Section~~, that the groundwater protection standard of Section 724.192 has not been exceeded for a period of three consecutive years.

g) The owner or operator must report in writing to the Agency on the effectiveness of the corrective action program. The owner or operator must submit these reports annually.

h) If the owner or operator determines that the corrective action program no longer satisfies this Section, the owner or operator must, within 90 days, submit an application for a permit modification to make any appropriate changes to the program.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.201 Corrective Action for Solid Waste Management Units

a) The owner or operator of a facility seeking a permit for the treatment, storage, or disposal of hazardous waste must institute corrective action as necessary to adequately protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit.

b) Corrective action will be specified in the permit in accordance with this Section and Subpart S ~~of this Part~~. The permit will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.

c) The owner or operator must implement corrective action measures beyond the facility property boundary, where necessary to adequately protect human health and the environment, unless the owner or operator demonstrates to the Agency that, despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such actions. The owner and operator are not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. Assurances of financial responsibility for such corrective action must be provided.

d) This Section does not apply to remediation waste management sites unless they are part of a facility subject to a permit for treating, storing, or disposing of hazardous wastes that are not remediation wastes.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

SUBPART G: CLOSURE AND POST-CLOSURE CARE

Section 724.213 Closure; Time Allowed for Closure

a) All permits must require that, within 90 days after receiving the final volume of hazardous waste, or the final volume of non-hazardous wastes, if the owner or operator complies with all the applicable requirements of subsections (d) and (e) ~~of this Section~~, at a hazardous waste management unit or facility, the owner or operator treat, remove from the unit or facility, or dispose of on-site, all hazardous

wastes in accordance with the approved closure plan, unless the owner or operator makes the following demonstration by way of permit application or modification application. The Agency must approve a longer period if the owner or operator demonstrates that the following is true:

1) Either of the following:

A) The activities required to comply with this subsection (a) will, of necessity, take longer than 90 days to complete; or

B) All of the following is true:

i) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive non-hazardous wastes, if the owner or operator complies with subsections (d) and (e) ~~of this Section~~;

ii) There is a reasonable likelihood that the owner or operator or another person will recommence operation of the hazardous waste management unit or facility within one year; and

iii) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

2) The owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements.

b) All permits must require that the owner or operator complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes, if the owner or operator complies with all applicable requirements in subsections (d) and (e) ~~of this Section~~, at the hazardous waste management unit or facility, unless the owner or operator makes the following demonstration by way of permit application or modification application. The Agency must approve a longer closure period if the owner or operator

demonstrates as follows:

1) Either of the following:

A) The partial or final closure activities will, of necessity, take longer than 180 days to complete; or

B) All of the following:

i) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive non-hazardous wastes, if the owner or operator complies with subsections (d) and (e) ~~of this Section~~;

ii) There is reasonable likelihood that the owner or operator will recommence operation of the hazardous waste management unit or facility within one year; and

iii) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

2) The owner and operator have taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility including compliance with all applicable permit requirements.

c) The demonstration referred to in subsections (a)(1) and (b)(1) ~~of this Section~~ must be made as follows:

1) The demonstration in subsection (a)(1) ~~of this Section~~ must be made at least 30 days prior to the expiration of the 90-day period in subsection (a) ~~of this Section~~; and

2) The demonstration in subsection (b)(1) ~~of this Section~~ must be made at least 30 days prior to the expiration of the 180-day period in subsection (b) ~~of this Section~~, unless the owner or operator is otherwise subject to deadlines in subsection (d) ~~of this Section~~.

d) Continued Receiptreceipt of Non-Hazardous Wastenon-hazardous waste. The Agency must permit an owner or operator to receive only non-hazardous wastes in a landfill, land treatment unit, or surface impoundment unit after the final receipt of hazardous wastes at that unit if the following is true:

1) The owner or operator requests a permit modification in compliance with all applicable requirements in 35 Ill. Adm. Code 702, 703, and 705, and in the permit modification request demonstrates the following:

A) That the unit has the existing design capacity as indicated on the Part A application to receive non-hazardous wastes;

B) That there is a reasonable likelihood that the owner or operator or another person will receive non-hazardous wastes in the unit within one year after the final receipt of hazardous wastes;

C) That the non-hazardous wastes will not be incompatible with any remaining wastes in the unit, or with the facility design and operating requirements of the unit or facility pursuant to this Part;

D) That closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

E) That the owner or operator is operating and will continue to operate in compliance with all applicable permit requirements;

2) The request to modify the permit includes an amended waste analysis plan, groundwater monitoring and response program, human exposure assessment required pursuant to 35 Ill. Adm. Code 703.186, and closure and post-closure plans and updated cost estimates and demonstrations of financial assurance for closure and post-closure care, as necessary and appropriate, to reflect any changes due to the presence of hazardous constituents in the non-hazardous wastes, and changes in closure activities, including the expected year of closure if applicable pursuant to Section 724.212(b)(7), as a result of the receipt of non-hazardous wastes following the final receipt of hazardous wastes;

3) The request to modify the permit includes revisions, as necessary and

appropriate, to affected conditions of the permit to account for the receipt of non-hazardous wastes following receipt of the final volume of hazardous wastes; and

4) The request to modify the permit and the demonstrations referred to in subsections (d)(1) and (d)(2) ~~of this Section~~ are submitted to the Agency no later than 120 days prior to the date on which the owner or operator of the facility receives the known final volume of hazardous wastes at the unit or no later than 90 days after the effective date of this Section, whichever is later.

e) Surface Impoundments~~impoundments~~. In addition to the requirements in subsection (d) ~~of this Section~~, an owner or operator of a hazardous waste surface impoundment that is not in compliance with the liner and leachate collection system requirements in Section 724.321(c), (d), or (e) must receive non-hazardous wastes only as authorized by an adjusted standard pursuant to this subsection (e).

1) The petition for adjusted standard must include the following:

A) A plan for removing hazardous wastes; and

B) A contingent corrective measures plan.

2) The removal plan must provide for the following:

A) Removing all hazardous liquids; and

B) Removing all hazardous sludges to the extent practicable without impairing the integrity of the liner or liners, if any; and

C) Removal of hazardous wastes no later than 90 days after the final receipt of hazardous wastes. The Board will allow a longer time, if the owner or operator demonstrates the following:

i) That the removal of hazardous wastes will, of necessity, take longer than the allotted period to complete; and

ii) That an extension will not pose a threat to human health and the environment.

3) The following requirements apply to the contingent corrective measures plan:

A) It must meet the requirements of a corrective action plan pursuant to Section 724.199, based upon the assumption that a release has been detected from the unit.

B) It may be a portion of a corrective action plan previously submitted pursuant to Section 724.199.

C) It may provide for continued receipt of non-hazardous wastes at the unit following a release only if the owner or operator demonstrates that continued receipt of wastes will not impede corrective action.

D) It must provide for implementation within one year after a release, or within one year after the grant of the adjusted standard, whichever is later.

4) Definition of "Release~~release~~." A release is defined as a statistically significant increase (or decrease in the case of pH) over background values for detection monitoring parameters or constituents specified in the permit, or over the facility's groundwater protection standard at the or over the facility's groundwater protection standard at the point of compliance, if applicable, detected in accordance with the requirements in Subpart F ~~of this Part~~.

5) In the event of a release, the owner or operator of the unit must do the following:

A) Within 35 days, the owner or operator must file with the Board a petition for adjusted standard. If the Board finds that it is necessary to do so in order to adequately protect human health and the environment, the Board will modify the adjusted standard to require the owner or operator to fulfill the conditions of subsections (e)(5)(A)(i) and (e)(5) (A)(ii) ~~of this Section~~. The Board will retain jurisdiction or condition the adjusted standard so as to require the filing of a new petition to address any required

closure pursuant to subsection (e)(7) ~~of this Section~~.

i) Begin to implement that corrective measures plan in less than one year; or

ii) Cease the receipt of wastes until the plan has been implemented.

B) The owner or operator must implement the contingent corrective measures plan.

C) The owner or operator may continue to receive wastes at the unit if authorized by the approved contingent measures plan.

6) Annual Report~~report~~. During the period of corrective action, the owner or operator must provide annual reports to the Agency that do the following:

A) They must describe the progress of the corrective action program;

B) They must compile all groundwater monitoring data; and

C) They must evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

7) Required Closure~~closure~~. The owner or operator must commence closure of the unit in accordance with the closure plan and the requirements of this Part if the Board terminates the adjusted standard, or if the adjusted standard terminates pursuant to its terms.

A) The Board will terminate the adjusted standard if the owner or operator failed to implement corrective action measures in accordance with the approved contingent corrective measures plan.

B) The Board will terminate the adjusted standard if the owner or operator fails to make substantial progress in implementing the corrective measures plan and achieving the facility's groundwater protection standard, or background levels if the facility has not yet established a groundwater protection standard.

C) The adjusted standard will automatically terminate if the owner or operator fails to implement the removal plan.

D) The adjusted standard will automatically terminate if the owner or operator fails to timely file a required petition for adjusted standard.

8) Adjusted Standard Proceduresstandard procedures. The following procedures must be used in granting, modifying or terminating an adjusted standard pursuant to this subsection (e).

A) Except as otherwise provided, the owner or operator must follow the procedures of Section 28.1 of the Act [415 ILCS 5/28.1] and 35 Ill. Adm. Code 101 and 104 to petition the Board for an adjusted standard.

B) Initial justification. The Board will grant an adjusted standard pursuant to subsection (e)(1) of this Section if the owner or operator demonstrates that the removal plan and contingent corrective measures plans meet the requirements of subsections (e)(2) and (e)(3) of this Section.

C) The Board will include the following conditions in granting an adjusted standard pursuant to subsection (e)(1) of this Section:

i) A plan for removing hazardous wastes.

ii) A requirement that the owner or operator remove hazardous wastes in accordance with the plan.

iii) A contingent corrective measures plan.

iv) A requirement that, in the event of a release, the owner or operator must do as follows: within 35 days, file with the Board a petition for adjusted standard; implement the corrective measures plan; and, file semi-annual reports with the Agency.

v) A condition that the adjusted standard will terminate if the

owner or operator fails to do as follows: implement the removal plan; or timely file a required petition for adjusted standard.

vi) A requirement that, in the event the adjusted standard is terminated, the owner or operator must commence closure of the unit in accordance with the requirements of the closure plan and this Part.

D) Justification in the Event~~event~~ of a Release~~release~~. The Board will modify or terminate the adjusted standard pursuant to a petition filed pursuant to subsection (e)(5)(A) ~~of this Section~~, as provided in that subsection or in subsection (e)(7) ~~of this Section~~.

9) The Agency must modify the RCRA permit to include the adjusted standard.

10) The owner or operator may file a permit modification application with a revised closure plan within 15 days after an adjusted standard is terminated.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.216 Survey Plat

No later than the submission of the certification of closure of each hazardous waste disposal unit, the owner or operator must submit to any local zoning authority or authority with jurisdiction over local land use and to the Agency and record with land titles, a survey plat indicating the location and dimensions of landfill cells or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority or the authority with jurisdiction over local land use must contain a note, prominently displayed, that states the owner's and operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with the applicable regulations of Subpart G ~~of this Part~~.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.217 Post-Closure Care and Use of Property

a) Post-Closure Care Period~~care period.~~

1) Post-closure care for each hazardous waste management unit subject to the requirements of Sections 724.217 through 724.220 must begin after completion of closure of the unit and continue for 30 years after that date and must consist of at least the following:

A) Monitoring and reporting in accordance with the requirements of Subparts F, K, L, M, N, and X ~~of this Part~~; and

B) Maintenance and monitoring of waste containment systems in accordance with the requirements of Subparts F, K, L, M, N, and X ~~of this Part~~.

2) Any time preceding partial closure of a hazardous waste management unit subject to post-closure care requirements or final closure, or any time during the post-closure care period for a particular unit, the Board may, in accordance with the permit modification procedures of 35 Ill. Adm. Code 702, 703, and 705, do either of the following:

A) Shorten the post-closure care period applicable to the hazardous waste management unit or facility if all disposal units have been closed and the Board has found by an adjusted standard issue pursuant to Section 28.1 of the Act ~~[415 ILCS 5/28.1]~~ and 35 Ill. Adm. Code 101 and 104 that the reduced period is sufficient to adequately protect human health and the environment (e.g., leachate or groundwater monitoring results, characteristics of the waste, application of advanced technology or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure); or

B) Extend the post-closure care period applicable to the hazardous waste management unit or facility if the Board has found by an adjusted standard issue pursuant to Section 28.1 of the Act ~~[415 ILCS 5/28.1]~~and 35 Ill. Adm. Code 101 and 104 that the extended period is necessary to adequately protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels that may be harmful to human health and the environment).

b) The Agency must require continuation at partial or final closure of any of the security requirements of Section 724.114 during part or all of the post-closure period when either of the following is true:

1) Hazardous wastes may remain exposed after completion of partial or final closure; or

2) Access by the public or domestic livestock may pose a hazard to human health.

c) Post-closure use of property on or in which hazardous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liners, or any other components of the containment system or the function of the facility's monitoring systems, unless the Agency finds, by way of a permit modification, that the disturbance is necessary for either of the following reasons:

1) It is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

2) It is necessary to reduce a threat to human health or the environment.

d) All the post-closure care activities must be in accordance with the provisions of the approved post-closure plan as specified in Section 724.218.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.218 Post-Closure Care Plan; Amendment of Plan

a) Written Plan. The owner or operator of a hazardous waste disposal unit must have a written post-closure care plan. In addition, certain surface impoundments and waste piles from which the owner or operator intends to remove or decontaminate the hazardous wastes at partial or final closure are required by Sections 724.328(c)(1)(B) and 724.358(c)(1)(B) to have contingent post-closure care plans. Owners or operators of surface impoundments and waste piles not otherwise required to prepare contingent post-closure care plans under Sections 724.328(c)(1)(B) or 724.358(c)(1)(B) must submit a post-closure care plan to the Agency within 90 days from the date that the owner or operator or Agency determines that the hazardous waste management unit must be closed as a landfill,

subject to the requirements of Sections 724.217 through 724.220. The plan must be submitted with the permit application, in accordance with 35 Ill. Adm. Code 703.183, and approved by the Agency as part of the permit issuance proceeding under 35 Ill. Adm. Code 705. In accordance with 35 Ill. Adm. Code 703.241, the approved post-closure care plan will become a condition of any RCRA permit issued.

b) For each hazardous waste management unit subject to the requirements of this Section, the post-closure care plan must identify the activities that will be carried on after closure and the frequency of these activities, and include at least the following:

1) A description of the planned monitoring activities and frequencies that they will be performed to comply with Subparts F, K, L, M, N, and X ~~of this Part~~ during the post-closure care period.

2) A description of the planned maintenance activities, and frequencies at which they will be performed, to ensure the following:

A) The integrity of the cap and final cover or other containment systems in accordance with the requirements of Subparts F, K, L, M, N, and X ~~of this Part~~; and

B) The function of the facility monitoring equipment in accordance with the requirements of Subparts F, K, L, M, N, and X ~~of this Part~~.

3) The name, address, and phone number of the person or office to contact about the hazardous disposal unit during the post-closure care period.

4) For a facility where alternative requirements are established at a regulated unit under Section 724.190(f), 724.210(c), or 724.240(d), as provided under 35 Ill. Adm. Code 703.161, either the alternative requirements that apply to the regulated unit, or a reference to the enforceable document containing those requirements.

c) Until final closure of the facility, a copy of the approved post-closure care plan must be furnished to the Agency upon request, including request by mail. After final closure has been certified, the person or office specified in subsection (b)(3)

~~of this Section~~ must keep the approved post-closure care plan during the remainder of the post-closure care period.

d) Amendment of Plan~~plan~~. The owner or operator must submit a written notification of or request for a permit modification to authorize a change in the approved post-closure care plan in accordance with the applicable requirements of 35 Ill. Adm. Code 703 and 705. The written notification or request must include a copy of the amended post-closure care plan for review or approval by the Agency.

1) The owner or operator may submit a written notification or request to the Agency for a permit modification to amend the post-closure care plan at any time during the active life of the facility or during the post-closure care period.

2) The owner or operator must submit a written notification of or request for a permit modification to authorize a change in the approved post-closure care plan whenever any of the following occurs:

A) Changes in operating plans or facility design affect the post-closure care plan;

B) There is a change in the expected year of closure if applicable;

C) Events occur during the active life of the facility, including partial and final closures, that affect the approved post-closure care plan; or

D) The owner or operator requests establishment of alternative requirements to a regulated unit under Section 724.190(f), 724.210(c), or 724.240(d).

3) The owner or operator must submit a written request for a permit modification at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred that has affected the post-closure care plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous waste at closure and is not otherwise required to submit a contingent post-closure care plan under Sections 724.328(c)(1)(B) or 724.358(c)(1)(B) must submit a post-closure care plan to the Agency no

later than 90 days after the date that the owner or operator or Agency determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of Section 724.410. The Agency must approve, disapprove, or modify this plan in accordance with the procedure in 35 Ill. Adm. Code 703 and 705. In accordance with 35 Ill. Adm. Code 703.241, the approved post-closure care plan will become a permit condition.

4) The Agency may request modifications to the plan under the conditions described in subsection (d)(2) ~~of this Section~~. The owner or operator must submit the modified plan no later than 60 days after the request, or no later than 90 days if the unit is a surface impoundment or waste pile not previously required to prepare a contingent post-closure care plan. Any modifications requested by the Agency must be approved, disapproved, or modified in accordance with the procedure in 35 Ill. Adm. Code 703 and 705.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.219 Post-Closure Notices

a) No later than 60 days after certification of closure of each hazardous waste disposal unit, the owner or operator of a disposal facility must submit to the Agency, to the County Recorder and to any local zoning authority or authority with jurisdiction over local land use, a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator must identify the type, location, and quantity of the hazardous waste to the best of the owner or operator's knowledge and in accordance with any records the owner or operator has kept.

b) Within 60 days after certification of closure of the first hazardous waste disposal unit and within 60 days after certification of closure of the last hazardous waste disposal unit, the owner or operator must do the following:

1) Record a notation on the deed to the facility property − or on some other instrument that is normally examined during title search − that will in perpetuity notify any potential purchaser of the property as follows:

A) That the land has been used to manage hazardous wastes; and

B) That its use is restricted pursuant to this Subpart G; and

C) That the survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by subsection (a) ~~of this Section~~ and Section 724.216 have been filed with the Agency, the County Recorder and any local zoning authority or authority with jurisdiction over local land use; and

2) Submit a certification to the Agency, signed by the owner or operator, that the owner or operator has recorded the notation specified in subsection (b)(1) ~~of this Section~~, including a copy of the document in which the notation has been placed, to the Agency.

c) If the owner or operator or any subsequent owner or operator of the land upon which a hazardous waste disposal unit is located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, or contaminated soils, such person must request a modification to the post-closure plan in accordance with the applicable requirements in 35 Ill. Adm. Code 703 and 705. The owner and operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of Section 724.217(c). By removing hazardous waste, the owner or operator may become a generator of hazardous waste and must manage it in accordance with all applicable requirements of 35 Ill. Adm. Code 703 and 720 through 728, and 738. If the owner or operator is granted a permit modification or otherwise granted approval to conduct such removal activities, the owner or operator may request that the Agency approve either of the following:

1) The removal of the notation on the deed to the facility property or other instrument normally examined during title search; or

2) The addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

SUBPART H: FINANCIAL REQUIREMENTS

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

Section 724.241 Definitions of Terms as Used in This Subpart

For the purposes of this Subpart H, the following terms have the given meanings:

a) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 724.212.

b) "Current closure cost estimate" means that the most recent of the estimates prepared in accordance with Section 724.242(a), (b), and (c).

c) "Current post-closure cost estimate" means the most recent of the estimates prepared in accordance with Section 724.244(a), (b), and (c).

d) "Parent corporation" means a corporation that directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

e) "Post-closure plan" means the plan for post-closure care prepared in accordance with the requirements of Sections 724.217 through 724.220.

f) The following terms are used in the specifications for the financial test for closure, post-closure care, and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

"Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

"Current assets" means cash or other assets or resources commonly identified as those that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

"Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

"Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 35 Ill. Adm. Code

704.212(a), (b), and (c).

"Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

"Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

"Net working capital" means current assets minus current liabilities.

"Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles, such as goodwill and rights to patents or royalties.

g) In the liability insurance requirements the terms "bodily injury" and "property damage" have the meanings given below. The Board intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

"Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, that results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

"Bodily injury" means bodily injury, sickness, or disease sustained by a person, including death resulting from any of these at any time. However, this term does not include those liabilities that, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

BOARD NOTE: Derived from the Insurance Services Office, Inc. definition of this term.

"Environmental damage" means the injurious presence in or upon land, the atmosphere, or any watercourse or body of water of solid, liquid, gaseous, or thermal contaminants, irritants, or pollutants.

BOARD NOTE: Derived from the Insurance Services Office, Inc. definition of this term. This term is used in the definition of "pollution incident~~.~~".

"Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

"Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste.

BOARD NOTE: Derived from the Insurance Services Office, Inc. definition of this term. This definition is used in the definition of "pollution incident~~.~~".

"Pollution incident" means emission, discharge, release, or escape of pollutants into or upon land, the atmosphere or any watercourse or body of water, provided that such emission, discharge, release, or escape results in "environmental damage~~.~~". The entirety of any such emission, discharge, release, or escape must be deemed to be one "pollution incident~~.~~". "Waste" includes materials to be recycled, reconditioned, or reclaimed. The term "pollution incident" includes an "occurrence~~.~~".

BOARD NOTE: Derived from the Insurance Services Office, Inc. definition of this term. This definition is used in the definition of "property damage~~.~~".

"Property damage" means as follows:

Either of the following:

Physical injury to, destruction of or contamination of tangible property, including all resulting loss of use of that property; or

Loss of use of tangible property that is not physically injured, destroyed or contaminated, but has been evacuated, withdrawn from use or rendered inaccessible because of a "pollution incident~~.~~".

This term does not include those liabilities that, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage.

BOARD NOTE: Derived from the Insurance Services Office, Inc. definition of this term.

"Sudden accidental occurrence" means an occurrence that is not continuous or repeated in nature.

h) "Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that the Agency can reasonably determine that a substantial business relationship currently exists between the guarantor and the owner or operator that is adequate consideration to support the obligation of the guarantee relating to any liability towards a third party~~third-party~~. "Applicable state law~~,~~", as used in this subsection (h), means the laws of the State of Illinois and those of any sister state that govern the guarantee and the adequacy of the consideration.

BOARD NOTE: Derived from 40 CFR 264.141(h) (2017)~~(2014)~~ and the discussion at 53 Fed. Reg. 33938, 33941-33943 (Sep. 1, 1988). This term is also independently defined in 35 Ill. Adm. Code 725.141(h) and 727.240(b)(8). Any Agency determination that a substantial business relationship exists is subject to Board review pursuant to Section 40 of the Act ~~[415 ILCS 5/40]~~.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.242 Cost Estimate for Closure

a) The owner or operator must have detailed a written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in Sections 724.211 through 724.215 and applicable closure requirements in Sections 724.278, 724.297, 724.328, 724.358, 724.380, 724.410, 724.451, 724.701 through 724.703, and 724.1102.

1) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see Section 724.212(b)).

2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in Section 724.241(d)~~).~~.) The owner or operator may use costs for on-site disposal if the owner or operator demonstrates that on-site disposal capacity will exist at all times over the life of the facility.

3) The closure cost estimate must not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes if permitted by the Agency pursuant to Section 724.213(d), facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure. ~~hazardous wastes that might have economic value.~~

4) The owner or operator must not incorporate a zero cost for hazardous wastes, or non-hazardous wastes if permitted by the Agency pursuant to Section 724.213(d), that might have economic value.

b) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instruments used to comply with Section 724.243. For owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the

Agency as specified in Section 724.243(f)(3). The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product (Deflator) as published by the U.S. Department of Commerce in its Survey of Current Business, as specified in subsections (b)(1) and (b)(2) ~~of this Section~~. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

BOARD NOTE: The table of Deflators is available as Table 1.1.9.,"Implicit Price Deflators for Gross Domestic Product~~,~~", in the National Income and Product Account Tables, published by U.S. Department of Commerce, Bureau of Economic Analysis, National Economic Accounts, available on-line at the following web address: www.bea.gov/national/nipaweb/Table View.asp?SelectedTable=13&FirstYear=2002&LastYear=2004&Freq=Qtr.

c) During the active life of the facility the owner or operator must revise the closure cost estimate no later than 30 days after the Agency has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation, as specified in subsection ~~Section 724.242~~(b).

d) The owner or operator must keep the following at the facility during the operating life of the facility: the latest closure cost estimate prepared in accordance with subsections ~~Sections 724.242~~(a) and (c) and, when this estimate has been adjusted in accordance with subsection ~~Section 724.242~~(b), the latest adjusted closure cost estimate.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.243 Financial Assurance for Closure

An owner or operator of each facility must establish financial assurance for closure of the facility. The owner or operator must choose from the options that are specified in subsections (a)

through (f) ~~of this Section~~.

a) Closure Trust Fund~~trust fund.~~

1) An owner or operator may satisfy the requirements of this Section by establishing a closure trust fund that conforms to the requirements of this subsection (a) and submitting an original signed duplicate of the trust agreement to the Agency. An owner or operator of a new facility must submit the original signed duplicate of the trust agreement to the Agency at least 60 days before the date on which hazardous waste is first received for treatment, storage or disposal. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or State agency.

2) The wording of the trust agreement must be that specified in Section 724.251, and the trust agreement must be accompanied by a formal certification of acknowledgment, as specified in Section 724.251. Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current closure cost estimate covered by the agreement.

3) Payments into the trust fund must be made annually by the owner or operator over the term of the initial RCRA permit or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period~~.~~". The payments into the closure trust fund must be made as follows:

A) For a new facility, the first payment must be made before the initial receipt of hazardous waste for treatment, storage, or disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the Agency before this initial receipt of hazardous waste. The first payment must be at least equal to the current closure cost estimate, except as provided in subsection (g) ~~of this Section~~, divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by the following formula:

$$\text{Next Payment}\sout{\text{payment}} = \frac{(CE - CV)}{Y}$$

Where:

CE = the current closure cost estimate
CV = the current value of the trust fund
Y = the number of years remaining in the pay-in period

B) If an owner or operator establishes a trust fund as specified in 35 Ill. Adm. Code 725.243(a) and the value of that trust fund is less than the current closure cost estimate when a permit is awarded for the facility, the amount of the current closure cost estimate still to be paid into the trust fund must be paid in over the pay-in period as defined in subsection (a)(3)~~ of this Section~~. Payments must continue to be made no later than 30 days after each anniversary date of the first payment made pursuant to 35 Ill. Adm. Code 725. The amount of each payment must be determined by the following formula:

$$\text{Next Payment}\sout{\text{payment}} = \frac{(CE - CV)}{Y}$$

Where:

CE = the current closure cost estimate
CV = the current value of the trust fund
Y = the number of years remaining in the pay-in period

4) The owner or operator may accelerate payments into the trust fund or may deposit the full amount of the current closure cost estimate at the time the fund is established. However, the owner or operator must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subsection (a)(3)~~ of this Section~~.

5) If the owner or operator establishes a closure trust fund after having used one or more alternate mechanisms specified in this Section or in 35 Ill. Adm. Code 725.243, its first payment must be in at least the amount that

the fund would contain if the trust fund were established initially and annual payments made according to specifications of this subsection (a) and 35 Ill. Adm. Code 725.243, as applicable.

6) After the pay-in period is completed, whenever the current closure cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate or obtain other financial assurance as specified in this Section to cover the difference.

7) If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the Agency for release of the amount in excess of the current closure cost estimate.

8) If an owner or operator substitutes other financial assurance, as specified in this Section for all or part of the trust fund, it may submit a written request to the Agency for release of the amount in excess of the current closure cost estimate covered by the trust fund.

9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsection (a)(7) or (a)(8) ~~of this Section~~, the Agency must instruct the trustee to release to the owner or operator such funds as the Agency specifies in writing.

10) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursement for closure expenditures by submitting itemized bills to the Agency. The owner or operator may request reimbursement for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities, the Agency must instruct the trustee to make reimbursement in those amounts as the Agency specifies in writing if the Agency determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Agency determines

that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, it must withhold reimbursement of such amounts as it deems prudent until it determines, in accordance with subsection (i) ~~of this Section~~, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Agency does not instruct the trustee to make such reimbursements, the Agency must provide the owner or operator with a detailed written statement of reasons.

11) The Agency must agree to termination of the trust when either of the following occurs:

A) An owner or operator substitutes alternate financial assurance, as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (i).

b) Surety Bond Guaranteeing Payment~~bond guaranteeing payment~~ into a Closure Trust Fund~~closure trust fund.~~

1) An owner or operator may satisfy the requirements of this Section by obtaining a surety bond that conforms to the requirements of this subsection (b) and submitting the bond to the Agency. An owner or operator of a new facility must submit the bond to the Agency at least 60 days before the date on which hazardous waste is first received for treatment, storage or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

BOARD NOTE: The U.S. Department of the Treasury updates Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies~~,~~", on an annual basis pursuant to 31 CFR 223.16. Circular 570 is available on the Internet from the following website: http://www.fms.treas.gov/c570/.

2) The wording of the surety bond must be that specified in Section 724.251.

3) The owner or operator who uses a surety bond to satisfy the requirements of this Section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Agency. This standby trust fund must meet the requirements specified in subsection (a) ~~of this Section~~ except as follows:

A) An original, signed duplicate of the trust agreement must be submitted to the Agency with the surety bond; and

B) Until the standby trust fund is funded pursuant to the requirements of this Section, the following are not required by these regulations:

i) Payments into the trust fund as specified in subsection (a) ~~of this Section~~;

ii) Updating of Schedule A of the trust agreement (see 35 Ill. Adm. Code 724.251) to show current closure cost estimates;

iii) Annual valuations, as required by the trust agreement; and

iv) Notices of nonpayment as required by the trust agreement.

4) The bond must guarantee that the owner or operator will do one of the following:

A) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility;

B) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure is issued by the Board or a U.S. district court or other court of competent jurisdiction; or

C) Provide alternate financial assurance as specified in this Section, and obtain the Agency's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the bond

from the surety.

5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

6) The penal sum of the bond must be in an amount at least equal to the current closure cost estimate, except as provided in subsection (g) ~~of this Section~~.

7) Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Agency or obtain other financial assurance, as specified in this Section, to cover the increase. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the Agency.

8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.

9) The owner or operator may cancel the bond if the Agency has given prior written consent based on its receipt of evidence of alternate financial assurance as specified in this Section.

c) Surety Bond Guaranteeing Performance ~~bond guaranteeing performance~~ of Closure~~closure.~~

1) An owner or operator may satisfy the requirements of this Section by obtaining a surety bond that conforms to the requirements of this subsection (c) and submitting the bond to the Agency. An owner or operator of a new facility must submit the bond to the Agency at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond must be effective before this

initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

BOARD NOTE: The U.S. Department of the Treasury updates Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies~~,~~", on an annual basis pursuant to 31 CFR 223.16. Circular 570 is available on the Internet from the following website: http://www.fms.treas.gov/c570/.

2) The wording of the surety bond must be that specified in Section 724.251.

3) The owner or operator who uses a surety bond to satisfy the requirements of this Section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Agency. This standby trust must meet the requirements specified in subsection (a)~~ of this Section~~, except as follows:

A) An original, signed duplicate of the trust agreement must be submitted to the Agency with the surety bond; and

B) Unless the standby trust fund is funded pursuant to the requirements of this Section, the following are not required by these regulations:

i) Payments into the trust fund, as specified in subsection (a)~~ of this Section~~;

ii) Updating of Schedule A of the trust agreement (as specified in Section 724.251) to show current closure cost estimates;

iii) Annual valuations, as required by the trust agreement; and

iv) Notices of nonpayment, as required by the trust agreement.

4) The bond must guarantee that the owner or operator will do the following:

A) Perform final closure in accordance with the closure plan and other

requirements of the permit for the facility whenever required to do so; or

B) Provide alternative financial assurance, as specified in this Section, and obtain the Agency's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the bond from the surety.

5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final judicial determination or Board order finding that the owner or operator has failed to perform final closure in accordance with the approved closure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform final closure, as guaranteed by the bond, or will deposit the amount of the penal sum into the standby trust fund.

6) The penal sum of the bond must be in an amount at least equal to the current closure cost estimate.

7) Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Agency or obtain other financial assurance as specified in this Section. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the Agency.

8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.

9) The owner or operator may cancel the bond if the Agency has given prior written consent. The Agency must provide such written consent when either of the following occurs:

A) An owner or operator substitutes alternative financial assurance, as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (i) ~~of this Section~~.

10) The surety must not be liable for deficiencies in the performance of closure by the owner or operator after the Agency releases the owner or operator from the requirements of this Section in accordance with subsection (i) ~~of this Section~~.

d) Closure Letter~~letter~~ of Credit~~credit.~~

1) An owner or operator may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this subsection (d) and submitting the letter to the Agency. An owner or operator of a new facility must submit the letter of credit to the Agency at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The letter of credit must be effective before this initial receipt of hazardous waste. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

2) The wording of the letter of credit must be that specified in Section 724.251.

3) An owner or operator who uses a letter of credit to satisfy the requirements of this Section must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Agency must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Agency. This standby trust fund must meet the requirements of the trust fund specified in subsection (a) ~~of this Section~~, except as follows:

A) An original, signed duplicate of the trust agreement must be submitted to the Agency with the letter of credit; and

B) Unless the standby trust fund is funded pursuant to the requirements of this Section, the following are not required by these regulations.

i) Payments into the trust fund, as specified in subsection (a) ~~of this Section~~;

ii) Updating of Schedule A of the trust agreement (as specified in Section 724.251) to show current closure cost estimates;

iii) Annual valuations, as required by the trust agreement; and

iv) Notices of nonpayment, as required by the trust agreement.

4) The letter or credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date and providing the following information: the USEPA identification number, name and address of the facility, and the amount of funds assured for closure of the facility by the letter of credit.

5) The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Agency by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Agency have received the notice, as evidenced by the return receipts.

6) The letter of credit must be issued in an amount at least equal to the current closure cost estimate, except as provided in subsection (g) ~~of this Section~~.

7) Whenever the current closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance, as specified in this Section, to cover the increase. Whenever the current

closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate following written approval by the Agency.

8) Following a final judicial determination or Board order finding that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, the Agency may draw on the letter of credit.

9) If the owner or operator does not establish alternative financial assurance, as specified in this Section, and obtain written approval of such alternative assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice from issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Agency must draw on the letter of credit. The Agency may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Agency must draw on the letter of credit if the owner or operator has failed to provide alternative financial assurance, as specified in this Section, and obtain written approval of such assurance from the Agency.

10) The Agency must return the letter of credit to the issuing institution for termination when either of the following occurs:

A) An owner or operator substitutes alternative financial assurance, as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (i) ~~of this Section~~.

e) Closure Insurance~~insurance.~~

1) An owner or operator may satisfy the requirements of this Section by obtaining closure insurance that conforms to the requirements of this subsection (e) and submitting a certificate of such insurance to the Agency. An owner or operator of a new facility must submit the certificate of insurance to the Agency at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous

waste. At a minimum, the insurer must be licensed to transact the business of insurance or be eligible to provide insurance as an excess or surplus lines insurer in one or more States.

2) The wording of the certificate of insurance must be that specified in Section 724.251.

3) The closure insurance policy must be issued for a face amount at least equal to the current closure cost estimate, except as provided in subsection (g) ~~of this Section~~. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

4) The closure insurance policy must guarantee that funds will be available to close the facility whenever final closure occurs. The policy must also guarantee that, once final closure begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Agency to such party or parties, as the Agency specifies.

5) After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursement for closure expenditures by submitting itemized bills to the Agency. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the Agency must instruct the insurer to make reimbursement in such amounts, as the Agency specifies in writing, if the Agency determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the Agency determines that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, it must withhold reimbursement of such amounts that it deems prudent, until it determines, in accordance with subsection (i) ~~of this Section~~, that the owner or operator is no longer required to maintain financial assurance for closure of the facility. If the Agency does not instruct the insurer to make such reimbursements, the Agency must provide the owner or operator with a detailed written

statement of reasons.

6) The owner or operator must maintain the policy in full force and effect until the Agency consents to termination of the policy by the owner or operator, as specified in subsection (e)(10) ~~of this Section~~. Failure to pay the premium, without substitution of alternative financial assurance, as specified in this Section, will constitute a significant violation of these regulations, warranting such remedy as the Board may impose pursuant to the Environmental Protection Act. Such violation will be deemed to begin upon receipt by the Agency of a notice of future cancellation, termination or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

7) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

8) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Agency. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Agency and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur, and the policy will remain in full force and effect, in the event that on or before the date of expiration one of the following occurs:

A) The Agency deems the facility abandoned;

B) The permit is terminated or revoked or a new permit is denied;

C) Closure is ordered by the Board or a U.S. district court or other court of competent jurisdiction;

D) The owner or operator is named as debtor in a voluntary or

involuntary proceeding under 11 USC (Bankruptcy); or

E) The premium due is paid.

9) Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance, as specified in this Section to cover the increase. Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the Agency.

10) The Agency must give written consent to the owner or operator that it may terminate the insurance policy when either of the following occurs:

A) An owner or operator substitutes alternative financial assurance, as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (i) ~~of this Section~~.

f) Financial Test~~test~~ and Corporate Guarantee~~corporate guarantee~~ for Closure~~closure.~~

1) An owner or operator may satisfy the requirements of this Section by demonstrating that it passes a financial test, as specified in this subsection (f). To pass this test the owner or operator must meet the criteria of either subsection (f)(1)(A) or (f)(1)(B) ~~of this Section~~:

A) The owner or operator must have the following:

i) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5;

ii) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates; and the current plugging and abandonment cost estimates;

iii) Tangible net worth of at least $10 million; and

iv) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

B) The owner or operator must have the following:

i) A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

ii) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates;

iii) Tangible net worth of at least $10 million; and

iv) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure estimates and the current plugging and abandonment cost estimates.

2) The phrase "current closure and post-closure cost estimates~~,~~", as used in subsection (f)(1)~~ of this Section~~, refers to the cost estimates required to be shown in subsections 1-4 of the letter from the owner's or operator's chief financial officer (see Section 724.251). The phrase "current plugging and abandonment cost estimates~~,~~", as used in subsection (f)(1)~~ of this Section~~, refers to the cost estimates required to be shown in subsections 1-4 of the letter from the owner's or operator's chief financial officer (see 35 Ill. Adm. Code 704.240).

3) To demonstrate that it meets this test, the owner or operator must submit

the following items to the Agency:

A) A letter signed by the owner's or operator's chief financial officer and worded as specified in Section 724.251; and

B) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

C) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating the following:

i) That the accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

ii) In connection with that procedure, that no matters came to the accountant's attention which caused the accountant to believe that the specified data should be adjusted.

4) An owner or operator of a new facility must submit the items specified in subsection (f)(3) ~~of this Section~~ to the Agency at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal.

5) After the initial submission of items specified in subsection (f)(3) ~~of this Section~~, the owner or operator must send updated information to the Agency within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in subsection (f)(3) ~~of this Section~~.

6) If the owner or operator no longer meets the requirements of subsection (f)(1) ~~of this Section~~ the owner or operator must send notice to the Agency of intent to establish alternative financial assurance, as specified in this Section. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the

owner or operator no longer meets the requirements. The owner or operator must provide the alternative financial assurance within 120 days after the end of such fiscal year.

7) The Agency may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (f)(1) ~~of this Section~~, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (f)(3) ~~of this Section~~. If the Agency finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (f)(1) ~~of this Section~~, the owner or operator must provide alternative financial assurance, as specified in this Section, within 30 days after notification of such a finding.

8) The Agency may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the accountant's report on examination of the owner's or operator's financial statements (see subsection (f)(3)(B) ~~of this Section~~). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Agency must evaluate other qualifications on an individual basis. The owner or operator must provide alternative financial assurance, as specified in this Section, within 30 days after notification of the disallowance.

9) The owner or operator is no longer required to submit the items specified in subsection (f)(3) ~~of this Section~~ when either of the following occurs:

A) An owner or operator substitutes alternative financial assurance, as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (i) ~~of this Section~~.

10) An owner or operator may meet the requirements of this Section by obtaining a written guarantee, hereafter referred to as "corporate guarantee~~.~~". The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in

subsections (f)(1) through (f)(8) ~~of this Section~~, must comply with the terms of the corporate guarantee, and the wording of the corporate guarantee must be that specified in Section 724.251. The certified copy of the corporate guarantee must accompany the items sent to the Agency, as specified in subsection (f)(3) ~~of this Section~~. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the corporate guarantee must provide as follows:

A) If the owner or operator fails to perform final closure of a facility covered by the corporate guarantee in accordance with the closure plan and other permit requirements whenever required to do so, the guarantor will do so or establish a trust fund, as specified in subsection (a) ~~of this Section~~, in the name of the owner or operator.

B) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.

C) If the owner or operator fails to provide alternative financial assurance as specified in this Section and obtain the written approval of such alternative assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the owner or operator.

g) Use of Multiple Financial Mechanisms ~~multiple financial mechanisms~~. An owner or operator may satisfy the requirements of this Section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and

insurance. The mechanisms must be as specified in subsections (a), (b), (d), and (e) ~~of this Section~~, respectively, except that it is the combination of mechanisms, rather than the single mechanism, that must provide financial assurance for an amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, it may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Agency may use any or all of the mechanisms to provide for closure of the facility.

h) Use of a Financial Mechanism~~financial mechanism~~ for Multiple Facilities~~multiple facilities~~. An owner or operator may use a financial assurance mechanism specified in this Section to meet the requirements of this Section for more than one facility. Evidence of financial assurance submitted to the Agency must include a list showing, for each facility, the USEPA identification number, name, address, and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. The amount of funds available to the Agency must be sufficient to close all of the owner or operator's facilities. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the Agency may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

i) Release of the Owner~~owner~~ or Operator~~operator~~ from the Requirements~~requirements~~ of This~~this~~ Section. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final approved closure has been accomplished in accordance with the closure plan, the Agency must notify the owner or operator in writing that it is no longer required by this Section to maintain financial assurance for closure of the facility, unless the Agency determines that closure has not been in accordance with the approved closure plan. The Agency must provide the owner or operator a detailed written statement of any such determination that closure has not been in accordance with the approved closure plan.

j) Appeal. The following Agency actions are deemed to be permit modifications or refusals to modify for purposes of appeal to the Board (35 Ill. Adm. Code 702.184(e)(3)):

1) An increase in, or a refusal to decrease the amount of, a bond, letter of credit, or insurance;

2) Requiring alternative assurance upon a finding that an owner or operator or parent corporation no longer meets a financial test.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.245 Financial Assurance for Post-Closure Care

An owner or operator of a hazardous waste management unit subject to the requirements of Section 724.244 must establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility 60 days prior to the initial receipt of hazardous waste or the effective date of the regulation, whichever is later. The owner or operator must choose from among the following options:

a) Post-Closure Trust Fund~~.~~

1) An owner or operator may satisfy the requirements of this Section by establishing a post-closure trust fund that conforms to the requirements of this subsection (a) and submitting an original, signed duplicate of the trust agreement to the Agency. An owner or operator of a new facility must submit the original, signed duplicate of the trust agreement to the Agency at least 60 days before the date on which hazardous waste is first received for disposal. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or State agency.

2) The wording of the trust agreement must be that specified in Section 724.251 and the trust agreement accompanied by a formal certification of acknowledgment (as specified in Section 724.251). Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current post-closure cost estimate covered by the agreement.

3) Payments into the trust fund must be made annually by the owner or operator over the term of the initial RCRA permit or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period~~.~~". The payments into the post-closure trust fund must be made as follows:

A) For a new facility, the first payment must be made before the initial receipt of hazardous waste for disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the Agency before this initial receipt of hazardous waste. The first payment must be at least equal to the current post-closure cost estimate, except as provided in subsection (g), divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by the following formula:

$$\text{Next Payment} = \frac{(CE - CV)}{Y}$$

Where:

CE = the current closure cost estimate
CV = the current value of the trust fund
Y = the number of years remaining in the pay-in period

B) If an owner or operator establishes a trust fund, as specified in 35 Ill. Adm. Code 725.245(a), and the value of that trust fund is less than the current post-closure cost estimate when a permit is awarded for the facility, the amount of the current post-closure cost estimate still to be paid into the trust fund must be paid in over the pay-in period as defined in subsection (a)(3). Payments must continue to be made no later than 30 days after each anniversary date of the first payment made pursuant to 35 Ill. Adm. Code 725. The amount of each payment must be determined by the following formula:

$$\text{Next Payment} = \frac{(CE - CV)}{Y}$$

Where:

CE = the current closure cost estimate
CV = the current value of the trust fund

Y = the number of years remaining in the pay-in period

4) The owner or operator may accelerate payments into the trust fund or may deposit the full amount of the current post-closure cost estimate at the time the fund is established. However, the owner or operator must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subsection (a)(3).

5) If the owner or operator establishes a post-closure trust fund after having used one or more alternative mechanisms specified in this Section or in 35 Ill. Adm. Code 725.245, its first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of this subsection (a) and 35 Ill. Adm. Code 725.245, as applicable.

6) After the pay-in period is completed, whenever the current post-closure cost estimate changes during the operating life of the facility, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or obtain other financial assurance, as specified in this Section, to cover the difference.

7) During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current post-closure cost estimate, the owner or operator may submit a written request to the Agency for release of the amount in excess of the current post-closure cost estimate.

8) If an owner or operator substitutes other financial assurance as specified in this Section for all or part of the trust fund, it may submit a written request to the Agency for release of the amount in excess of the current post-closure cost estimate covered by the trust fund.

9) Within 60 days after receiving a request from the owner or operator for release of funds, as specified in subsection (a)(7) or (a)(8), the Agency must instruct the trustee to release to the owner or operator such funds as the Agency specifies in writing.

10) During the period of post-closure care, the Agency must approve a release of funds if the owner or operator demonstrates to the Agency that the value of the trust fund exceeds the remaining cost of post-closure care.

11) An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure care expenditures by submitting itemized bills to the Agency. Within 60 days after receiving bills for post-closure activities, the Agency must instruct the trustee to make requirements in those amounts that the Agency specifies in writing if the Agency determines that the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Agency does not instruct the trustee to make such reimbursements, the Agency must provide the owner or operator with a detailed written statement of reasons.

12) The Agency must agree to termination of the trust when either of the following occurs:

A) An owner or operator substitutes alternative financial assurance, as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (i).

b) Surety Bond Guaranteeing Payment into a Post-Closure Trust Fund.

1) An owner or operator may satisfy the requirements of this Section by obtaining a surety bond that conforms to the requirements of this subsection (b) and submitting the bond to the Agency. An owner or operator of a new facility must submit the bond to the Agency at least 60 days before the date on which hazardous waste is first received for disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

BOARD NOTE: The U.S. Department of the Treasury updates Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties

on Federal Bonds and as Acceptable Reinsuring Companies~~;~~", on an annual basis pursuant to 31 CFR 223.16. Circular 570 is available on the Internet from the following website: http://www.fms.treas.gov/c570/.

2) The wording of the surety bond must be that specified in Section 724.251.

3) The owner or operator who uses a surety bond to satisfy the requirements of this Section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Agency. This standby trust fund must meet the requirements specified in subsection (a), except as follows:

   A) An original, signed duplicate of the trust agreement must be submitted to the Agency with the surety bond; and

   B) Until the standby trust fund is funded pursuant to the requirements of this Section, the following are not required by these regulations:

      i) Payments into the trust fund, as specified in subsection (a);

      ii) Updating of Schedule A of the trust agreement (as specified in Section 724.251) to show current post-closure cost estimates;

      iii) Annual valuations, as required by the trust agreement; and

      iv) Notices of nonpayment, as required by the trust agreement.

4) The bond must guarantee that the owner or operator will do one of the following:

   A) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility;

   B) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin closure is issued by the Board or a U.S. district court or other court of competent jurisdiction; or

C) Provide alternative financial assurance as specified in this Section, and obtain the Agency's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the bond from the surety.

5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

6) The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate, except as provided in subsection (g).

7) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Agency or obtain other financial assurance, as specified in this Section, to cover the increase. Whenever the current post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the Agency.

8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidence by the return receipts.

9) The owner or operator may cancel the bond if the Agency has given prior written consent based on its receipt of evidence of alternative financial assurance, as specified in this Section.

c) Surety Bond Guaranteeing Performance of Post-Closure Care.

1) An owner or operator may satisfy the requirements of this Section by obtaining a surety bond that conforms to the requirements of this subsection (c) and submitting the bond to the Agency. An owner or

operator of a new facility must submit the bond to the Agency at least 60 days before the date on which hazardous waste is first received for disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

BOARD NOTE: The U.S. Department of the Treasury updates Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies", on an annual basis pursuant to 31 CFR 223.16. Circular 570 is available on the Internet from the following website: http://www.fms.treas.gov/c570/.

2) The wording of the surety bond must be that specified in Section 724.251.

3) The owner or operator who uses a surety bond to satisfy the requirements of this Section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Agency. This standby trust must meet the requirements specified in subsection (a), except as follows:

   A) An original, signed duplicate of the trust agreement must be submitted to the Agency with the surety bond; and

   B) Unless the standby trust fund is funded pursuant to the requirements of this Section, the following are not required:

      i) Payments into the trust fund, as specified in subsection (a);

      ii) Updating of Schedule A of the trust agreement (as specified in Section 724.251) to show current post-closure cost estimates;

      iii) Annual valuations, as required by the trust agreement; and

      iv) Notices of nonpayment, as required by the trust agreement.

4) The bond must guarantee that the owner or operator will do either of the

following:

A) Perform final post-closure care in accordance with the post-closure plan and other requirements of the permit for the facility; or

B) Provide alternative financial assurance, as specified in this Section, and obtain the Agency's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the bond from the surety.

5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final judicial determination or Board order finding that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other permit requirements, under the terms of the bond the surety will perform post-closure care in accordance with post-closure plan and other permit requirements or will deposit the amount of the penal sum into the standby trust fund.

6) The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate.

7) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum during the operating life of the facility, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance, as specified in this Section. Whenever the current closure cost estimate decreases during the operating life of the facility, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the Agency.

8) During the period of post-closure care, the Agency must approve a decrease in the penal sum if the owner or operator demonstrates to the Agency that the amount exceeds the remaining cost of post-closure care.

9) Under the terms of the bond, the surety may cancel the bond by sending

notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.

10) The owner or operator may cancel the bond if the Agency has given prior written consent. The Agency must provide such written consent when either of the following occurs:

A) An owner or operator substitutes alternative financial assurance as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (i).

11) The surety will not be liable for deficiencies in the performance of post-closure care by the owner or operator after the Agency releases the owner or operator from the requirements of this Section in accordance with subsection (i).

d) Post-Closure Letter of Credit.

1) An owner or operator may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this subsection (d) and submitting the letter to the Agency. An owner or operator of a new facility must submit the letter of credit to the Agency at least 60 days before the date on which hazardous waste is first received for disposal. The letter of credit must be effective before this initial receipt of hazardous waste. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or State agency.

2) The wording of the letter of credit must be that specified in Section 724.251.

3) An owner or operator who uses a letter of credit to satisfy the requirements of this Section must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Agency must be deposited by the issuing institution directly into the

standby trust fund in accordance with instructions from the Agency. This standby trust fund must meet the requirements of the trust fund specified in subsection (a), except as follows:

A) An original, signed duplicate of the trust agreement must be submitted to the Agency with the letter of credit; and

B) Unless the standby trust fund is funded pursuant to the requirements of this Section, the following are not required by these regulations:

i) Payments into the trust fund, as specified in subsection (a);

ii) Updating of Schedule A of the trust agreement (as specified in Section 724.251) to show current post-closure cost estimates;

iii) Annual valuations, as required by the trust agreement; and

iv) Notices of nonpayment, as required by the trust agreement.

4) The letter or credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date and providing the following information: the USEPA identification number, name and address of the facility, and the amount of funds assured for post-closure care of the facility by the letter of credit.

5) The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Agency by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Agency have received the notice, as evidenced by the return receipts.

6) The letter of credit must be issued in an amount at least equal to the current post-closure cost estimate, except as provided in subsection (g).

7) Whenever the current post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current post-closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the amount of the credit may be reduced to the amount of the current post-closure cost estimate following written approval by the Agency.

8) During the period of post-closure care, the Agency must approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the Agency that the amount exceeds the remaining cost of post-closure care.

9) Following a final judicial determination or Board order finding that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other permit requirements, the Agency may draw on the letter of credit.

10) If the owner or operator does not establish alternative financial assurance, as specified in this Section, and obtain written approval of such alternative assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Agency must draw on the letter of credit. The Agency may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Agency must draw on the letter of credit if the owner or operator has failed to provide alternative financial assurance, as specified in this Section, and obtain written approval of such assurance from the Agency.

11) The Agency must return the letter of credit to the issuing institution for termination when either of the following occurs:

A) An owner or operator substitutes alternative financial assurance, as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (i).

e) Post-Closure Insurance~~.~~

1) An owner or operator may satisfy the requirements of this Section by obtaining post-closure insurance that conforms to the requirements of this subsection (e) and submitting a certificate of such insurance to the Agency. An owner or operator of a new facility must submit the certificate of insurance to the Agency at least 60 days before the date on which hazardous waste is first received for disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed to transact the business of insurance or be eligible to provide insurance as an excess or surplus lines insurer in one or more states.

2) The wording of the certificate of insurance must be that specified in Section 724.251.

3) The post-closure insurance policy must be issued for a face amount at least equal to the current post-closure cost estimate, except as provided in subsection (g). The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

4) The post-closure insurance policy must guarantee that funds will be available to provide post-closure care of facility whenever the post-closure period begins. The policy must also guarantee that, once post-closure care begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Agency to such party or parties as the Agency specifies.

5) An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure care expenditures by submitting itemized bills to the Agency. Within 60 days after receiving bills for post-closure activities, the Agency must instruct the insurer to make reimbursement in such amounts as the Agency specifies in writing if the Agency determines that the post-closure care expenditures are in

accordance with the approved post-closure plan or otherwise justified. If the Agency does not instruct the insurer to make such reimbursements, the Agency must provide the owner or operator with a detailed written statement of reasons.

6) The owner or operator must maintain the policy in full force and effect until the Agency consents to termination of the policy by the owner or operator as specified in subsection (e)(11). Failure to pay the premium, without substitution of alternative financial assurance as specified in this Section, will constitute a significant violation of these regulations, warranting such remedy as the Board may impose pursuant to the Environmental Protection Act ~~[415 ILCS 5]~~. Such violation will be deemed to begin upon receipt by the Agency of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

7) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

8) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Agency. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Agency and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur, and the policy will remain in full force and effect, in the event that on or before the date of expiration one of the following occurs:

A) The Agency deems the facility abandoned;

B) The permit is terminated or revoked or a new permit is denied;

C) Closure is ordered by the Board or a U.S. district court or other

court of competent jurisdiction;

D) The owner or operator is named as debtor in a voluntary or involuntary proceeding under 11 USC (Bankruptcy); or

E) The premium due is paid.

9) Whenever the current post-closure cost estimate increases to an amount greater than the face amount of the policy during the life of the facility, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Agency or obtain other financial assurance, as specified in this Section, to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current post-closure cost estimate following written approval by the Agency.

10) Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer must thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.

11) The Agency must give written consent to the owner or operator that the owner or operator may terminate the insurance policy when either of the following occurs:

A) An owner or operator substitutes alternative financial assurance, as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (i).

f) Financial Test and Corporate Guarantee for Post-Closure Care.

1) An owner or operator may satisfy the requirements of this Section by

demonstrating that it passes a financial test as specified in this subsection (f). To pass this test the owner or operator must meet the criteria of either subsection (f)(1)(A) or (f)(1)(B):

A) The owner or operator must have the following:

i) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5;

ii) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates;

iii) Tangible net worth of at least $10 million; and

iv) Assets in the United States amounting to at least 90 percent of its total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

B) The owner or operator must have the following:

i) A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

ii) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and current plugging and abandonment cost estimates;

iii) Tangible net worth of at least $10 million; and

iv) Assets located in the United States amounting to at least 90 percent of its total assets or at least six times the sum of the current closure and post-closure cost estimates and the

current plugging and abandonment cost estimates.

2) The phrase "current closure and post-closure cost estimates~~,~~", as used in subsection (f)(1), refers to the cost estimates required to be shown in subsections 1 through 4 of the letter from the owner's or operator's chief financial officer (see Section 724.251). The phrase "current plugging and abandonment cost estimates~~,~~", as used in subsection (f)(1), refers to the cost estimates required to be shown in subsections 1 through 4 of the letter from the owner's or operator's chief financial officer (see 35 Ill. Adm. Code 704.240).

3) To demonstrate that it meets this test, the owner or operator must submit the following items to the Agency:

A) A letter signed by the owner's or operator's chief financial officer and worded as specified in Section 724.251;

B) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

C) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating the following:

i) The accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

ii) In connection with that procedure, no matters came to the accountant's attention that caused the accountant to believe that the specified data should be adjusted.

4) An owner or operator of a new facility must submit the items specified in subsection (f)(3) to the Agency at least 60 days before the date on which hazardous waste is first received for disposal.

5) After the initial submission of items specified in subsection (f)(3), the owner or operator must send updated information to the Agency within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in subsection (f)(3).

6) If the owner or operator no longer meets the requirements of subsection (f)(1), the owner or operator must send notice to the Agency of intent to establish alternative financial assurance, as specified in this Section. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements the owner or operator must provide the alternative financial assurance within 120 days after the end of such fiscal year.

7) Based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (f)(1), the Agency may require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (f)(3). If the Agency finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (f)(1), the owner or operator must provide alternative financial assurance, as specified in this Section, within 30 days after notification of such a finding.

8) The Agency may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the accountant's report on examination of the owner's or operator's financial statements (see subsection (f)(3)(B)). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Agency must evaluate other qualifications on an individual basis. The owner or operator must provide alternative financial assurance, as specified in this Section, within 30 days after notification of the disallowance.

9) During the period of post-closure care, the Agency must approve a decrease in the current post-closure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the Agency that the amount of the cost estimate exceeds the remaining cost of post-closure care.

10) The owner or operator is no longer required to submit the items specified

in subsection (f)(3) when either of the following occurs:

A) An owner or operator substitutes alternative financial assurance, as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (i).

11) An owner or operator may meet the requirements of this Section by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in subsections (f)(1) through (f)(9), and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be that specified in Section 724.251. A certified copy of the corporate guarantee must accompany the items sent to the Agency, as specified in subsection (f)(3). One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the corporate guarantee must provide as follows:

A) That if the owner or operator fails to perform post-closure care of a facility covered by the corporate guarantee in accordance with the post-closure plan and other permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in subsection (a) in the name of the owner or operator.

B) That the corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the

Agency, as evidenced by the return receipts.

C) That if the owner or operator fails to provide alternative financial assurance as specified in this Section and obtain the written approval of such alternative assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the owner or operator.

g) Use of Multiple Financial Mechanisms. An owner or operator may satisfy the requirements of this Section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit and insurance. The mechanisms must be as specified in subsections (a), (b), (d), and (e), respectively, except that it is the combination of mechanisms, rather than the single mechanism, that must provide financial assurance for an amount at least equal to the current post-closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, it may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Agency may use any or all of the mechanisms to provide for post-closure care of the facility.

h) Use of a Financial Mechanism for Multiple Facilities. An owner or operator may use a financial assurance mechanism specified in this Section to meet the requirements of this Section for more than one facility. Evidence of financial assurance submitted to the Agency must include a list showing, for each facility, the USEPA identification number, name, address, and the amount of funds for post-closure care assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. The amount of funds available to the Agency must be sufficient to close all of the owner or operator's facilities. In directing funds available through the mechanism for post-closure care of any of the facilities covered by the mechanism, the Agency may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

i) Release of the Owner or Operator from the Requirements of this Section. Within

60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the Agency must notify the owner or operator that it is no longer required to maintain financial assurance for post-closure care of that unit, unless the Agency determines that post-closure care has not been in accordance with the approved post-closure plan. The Agency must provide the owner or operator a detailed written statement of any such determination that post-closure care has not been in accordance with the approved post-closure plan.

j) Appeal. The following Agency actions are deemed to be permit modifications or refusals to modify for purposes of appeal to the Board (35 Ill. Adm. Code 702.184(e)(3)):

1) An increase in or a refusal to decrease the amount of a bond, letter of credit, or insurance;

2) Requiring alternative assurance upon a finding that an owner or operator or parent corporation no longer meets a financial test.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.247 Liability Requirements

a) Coverage for Sudden Accidental Occurrences~~sudden accidental occurrences~~. An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in subsections (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), or (a)(6) ~~of this Section~~:

1) An owner or operator may demonstrate the required liability coverage by having liability insurance, as specified in this subsection (a).

A) Each insurance policy must be amended by attachment of the

Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement and of the certificate of insurance must be that specified in Section 724.251. The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Agency. If requested by the Agency, the owner or operator must provide a signed duplicate original of the insurance policy. An owner or operator of a new facility must submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the Agency at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste.

B) Each insurance policy must be issued by an insurer that is licensed by the Illinois Department of Insurance.

2) An owner or operator may meet the requirements of this Section by passing a financial test or using the guarantee for liability coverage, as specified in subsections (f) and (g) ~~of this Section~~.

3) An owner or operator may meet the requirements of this Section by obtaining a letter of credit for liability coverage, as specified in subsection (h) ~~of this Section~~.

4) An owner or operator may meet the requirements of this Section by obtaining a surety bond for liability coverage, as specified in subsection (i) ~~of this Section~~.

5) An owner or operator may meet the requirements of this Section by obtaining a trust fund for liability coverage, as specified in subsection (j) ~~of this Section~~.

6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of

the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this Section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances pursuant to this subsection (a), the owner or operator must specify at least one such assurance as "primary" coverage and must specify other such assurance as "excess" coverage.

7) An owner or operator must notify the Agency within 30 days whenever any of the following occurs:

A) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in subsections (a)(1) through (a)(6) ~~of this Section~~;

B) A Certification of Valid Claim for bodily injury or property damages caused by sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage pursuant to subsections (a)(1) through (a)(6) ~~of this Section~~; or

C) A final court order establishing a judgement for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage pursuant to subsections (a)(1) through (a)(6) ~~of this Section~~.

b) Coverage for Nonsudden Accidental Occurrences~~nonsudden accidental occurrences~~. An owner or operator of a surface impoundment, landfill, land treatment facility, or disposal miscellaneous unit that is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. An owner or operator meeting the requirements of this Section may combine the

required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual aggregate. This liability coverage may be demonstrated as specified in subsections (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), or (b)(6) ~~of this Section~~:

1) An owner or operator may demonstrate the required liability coverage by having liability insurance, as specified in this subsection (b).

   A) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be that specified in Section 724.251. The wording of the certificate of insurance must be that specified in Section 724.251. The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Agency. If requested by the Agency, the owner or operator must provide a signed duplicate original of the insurance policy. An owner or operator of a new facility must submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the Agency at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste.

   B) Each insurance policy must be issued by an insurer that is licensed by the Illinois Department of Insurance.

2) An owner or operator may meet the requirements of this Section by passing a financial test or using the guarantee for liability coverage, as specified in subsections (f) and (g) ~~of this Section~~.

3) An owner or operator may meet the requirements of this Section by obtaining a letter of credit for liability coverage, as specified in subsection (h) ~~of this Section~~.

4) An owner or operator may meet the requirements of this Section by obtaining a surety bond for liability coverage, as specified in subsection (i) ~~of this Section~~.

5) An owner or operator may meet the requirements of this Section by obtaining a trust fund for liability coverage, as specified in subsection (j) ~~of this Section~~.

6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this Section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances pursuant to this subsection (b), the owner or operator must specify at least one such assurance as "primary" coverage and must specify other such assurance as "excess" coverage.

7) An owner or operator must notify the Agency within 30 days whenever any of the following occurs:

A) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in subsections (b)(1) through (b)(6) ~~of this Section~~;

B) A Certification of Valid Claim for bodily injury or property damages caused by sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage pursuant to subsections (b)(1) through (b)(6) ~~of this Section~~; or

C) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner

or operator or an instrument that is providing financial assurance for liability coverage pursuant to subsections (b)(1) through (b)(6) ~~of this Section~~.

c) Request for Adjusted Level~~adjusted level~~ of Required Liability Coverage~~required liability coverage~~. If an owner or operator demonstrates to the Agency that the levels of financial responsibility required by subsection (a) or (b) ~~of this Section~~ are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the owner or operator may obtain an adjusted level of required liability coverage from the Agency. The request for an adjusted level of required liability coverage must be submitted to the Agency as part of the application pursuant to 35 Ill. Adm. Code 703.182 for a facility that does not have a permit, or pursuant to the procedures for permit modification pursuant to 35 Ill. Adm. Code 705.128 for a facility that has a permit. If granted, the modification will take the form of an adjusted level of required liability coverage, such level to be based on the Agency assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Agency may require an owner or operator who requests an adjusted level of required liability coverage to provide such technical and engineering information as is necessary to determine a level of financial responsibility other than that required by subsection (a) or (b) ~~of this Section~~. Any request for an adjusted level of required liability coverage for a permitted facility will be treated as a request for a permit modification pursuant to 35 Ill. Adm. Code 703.271(e)(3) and 705.128.

d) Adjustments by the Agency. If the Agency determines that the levels of financial responsibility required by subsection (a) or (b) ~~of this Section~~ are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the Agency must adjust the level of financial responsibility required pursuant to subsection (a) or (b) ~~of this Section~~ as may be necessary to adequately protect human health and the environment. This adjusted level must be based on the Agency's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Agency determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill, or land treatment facility, the Agency may require that an owner or operator of the facility comply with subsection (b) ~~of this Section~~. An owner or operator must furnish to the Agency, within a time specified by the Agency in the request, which must be

not be less than 30 days, any information that the Agency requests to determine whether cause exists for such adjustments of level or type of coverage. Any adjustment of the level or type of coverage for a facility that has a permit will be treated as a permit modification pursuant to 35 Ill. Adm. Code 703.271(e)(3) and 705.128.

e) Period of Coverage~~coverage~~. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Agency must notify the owner or operator in writing that the owner or operator is no longer required by this Section to maintain liability coverage for that facility, unless the Agency determines that closure has not been in accordance with the approved closure plan.

f) Financial Test~~test~~ for Liability Coverage~~liability coverage.~~

1) An owner or operator may satisfy the requirements of this Section by demonstrating that it passes a financial test as specified in this subsection (f). To pass this test the owner or operator must meet the criteria of subsection (f)(1)(A) or (f)(1)(B) ~~of this Section~~:

A) The owner or operator must have the following:

i) Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test;

ii) Tangible net worth of at least $10 million; and

iii) Assets in the United States amounting to either of the following: at least 90 percent of the total assets; or at least six times the amount of liability coverage to be demonstrated by this test.

B) The owner or operator must have the following:

i) A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's;

ii) Tangible net worth of at least $10 million;

iii) Tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

iv) Assets in the United States amounting to either of the following: at least 90 percent of the total assets; or at least six times the amount of liability coverage to be demonstrated by this test.

2) The phrase "amount of liability coverage~~,~~"~~ ~~, as used in subsection (f)(1)~~ of this Section~~, refers to the annual aggregate amounts for which coverage is required pursuant to subsections (a) and (b)~~ of this Section~~.

3) To demonstrate that it meets this test, the owner or operator must submit the following three items to the Agency:

A) A letter signed by the owner's or operator's chief financial officer and worded as specified in Section 724.251. If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by Sections 724.243(f) and 724.245(f) and 35 Ill. Adm. Code 725.243(e) and 725.245(e), and liability coverage, it must submit the letter specified in Section 724.251 to cover both forms of financial responsibility; a separate letter, as specified in Section 724.251, is not required.

B) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

C) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating the following:

i) The accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial

statements for the latest fiscal year with the amounts in such financial statements; and

ii) In connection with that procedure, no matters came to the accountant's attention that caused the accountant to believe that the specified data should be adjusted.

4) An owner or operator of a new facility must submit the items specified in subsection (f)(3) ~~of this Section~~ to the Agency at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal.

5) After the initial submission of items specified in subsection (f)(3) ~~of this Section~~, the owner of operator must send updated information to the Agency within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in subsection (f)(3) ~~of this Section~~.

6) If the owner or operator no longer meets the requirements of subsection (f)(1) ~~of this Section~~, the owner or operator must obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in this Section. Evidence of insurance must be submitted to the Agency within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

7) The Agency may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the accountant's report on examination of the owner's or operator's financial statements (see subsection (f)(3)(B) ~~of this Section~~). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Agency must evaluate other qualifications on an individual basis. The owner or operator must provide evidence of insurance for the entire amount of required liability coverage, as specified in this Section, within 30 days after notification of disallowance.

g) Guarantee for Liability Coverage~~liability coverage.~~

1) Subject to subsection (g)(2) ~~of this Section~~, an owner or operator may

meet the requirements of this Section by obtaining a written guarantee, referred to as a "guarantee~~.~~". The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners and operators in subsections (f)(1) through (f)(6) ~~of this Section~~. The wording of the guarantee must be that specified in Section 724.251. A certified copy of the guarantee must accompany the items sent to the Agency, as specified in subsection (f)(3) ~~of this Section~~. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide for the following:

A) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be) arising from the operation of facilities covered by this guarantee, or if the owner or operator fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, that the guarantor will do so up to the limits of coverage.

B) That the guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Agency. The guarantee must not be terminated unless and until the Agency approves alternative liability coverage complying with Section 724.247 or 35 Ill. Adm. Code 725.247.

2) The guarantor must execute the guarantee in Illinois. The guarantee must be accompanied by a letter signed by the guarantor that states as follows:

A) The guarantee was signed in Illinois by an authorized agent of the guarantor;

B) The guarantee is governed by Illinois law; and

C) The name and address of the guarantor's registered agent for service of process.

3) The guarantor must have a registered agent pursuant to Section 5.05 of the Business Corporation Act of 1983 [805 ILCS 5/5.05] or Section 105.05 of the General Not-for-Profit Corporation Act of 1986 [805 ILCS 105/105.05].

h) Letter of Creditcredit for Liability Coverageliability coverage.

1) An owner or operator may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this subsection (h), and submitting a copy of the letter of credit to the Agency.

2) The financial institution issuing the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by the Illinois Commissioner of Banks and Trust Companies.

3) The wording of the letter of credit must be that specified in Section 724.251.

4) An owner or operator who uses a letter of credit to satisfy the requirements of this Section may also establish a trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by the Illinois Commissioner of Banks and Trust Companies, or who complies with the Corporate Fiduciary Act [205 ILCS 620].

5) The wording of the standby trust fund must be identical to that specified in Section 724.251(n).

i) Surety Bondbond for Liability Coverageliability coverage.

1) An owner or operator may satisfy the requirements of this Section by obtaining a surety bond that conforms to the requirements of this subsection (i) and submitting a copy of the bond to the Agency.

2) The surety company issuing the bond must be licensed by the Illinois Department of Insurance.

3) The wording of the surety bond must be that specified in Section 724.251.

j) Trust Fund~~fund~~ for Liability Coverage~~liability coverage.~~

1) An owner or operator may satisfy the requirements of this Section by establishing a trust fund that conforms to the requirements of this subsection (j) and submitting a signed, duplicate original of the trust agreement to the Agency.

2) The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by the Illinois Commissioner of Banks and Trust Companies, or who complies with the Corporate Fiduciary Act [205 ILCS 620].

3) The trust fund for liability coverage must be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this Section. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of liability coverage to be provided, the owner or operator, by the anniversary of the date of establishment of the fund, must either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in this Section to cover the difference. For purposes of this subsection (j), "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and non-sudden accidental occurrences required to be provided by the owner or operator by this Section, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

4) The wording of the trust fund must be that specified in Section 724.251.

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

SUBPART I: USE AND MANAGEMENT OF CONTAINERS

Section 724.270 Applicability

The regulations in this Subpart I apply to the owner or operator of a hazardous waste facility that stores ~~containers of~~ hazardous waste in containers, except as Section 724.101 provides otherwise.

BOARD NOTE: Under Sections 721.107 and 721.133(c), if a hazardous waste is emptied from a container the residue remaining in the container is not considered a hazardous waste if the container is "empty~~,~~", as defined in Section 721.107. In that event, management of the container is exempt from the requirements of this Subpart I.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.274 Inspections

At least weekly, the owner or operator must inspect areas where containers are stored. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors. See Sections 724.115(c) and 724.271 for remedial action required if deterioration or leaks are detected.

~~BOARD NOTE: See Sections 724.115(c) and 724.271 for remedial action required if deterioration or leaks are detected.~~

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.275 Containment

a) Container storage areas must have a containment system that is designed and operated in accordance with subsection (b) ~~of this Section~~, except as otherwise provided by subsection (c) ~~of this Section~~;

b) A containment system must be designed and operated as follows:

1) A base must underlie the containers that is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated

precipitation until the collected material is detected and removed.

2) The base must be sloped or the containment system must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

3) The containment system must have sufficient capacity to contain 10 percent of the volume of containers or the volume of the largest container, whichever is greater. Containers that do not contain free liquids need not be considered in this determination;

4) Run-on into the containment system must be prevented, unless the collection system has sufficient excess capacity in addition to that required in subsection (b)(3) ~~of this Section~~ to contain any run-on that might enter the system; and

5) Spilled or leaked waste and accumulated precipitation must be removed from the sump or collection area in as timely a manner as is necessary to prevent overflow of the collection system.

BOARD NOTE: If the collected material is a hazardous waste, it must be managed as a hazardous waste in accordance with all applicable requirements of 35 Ill. Adm. Code 722 through 728. If the collected material is discharged through a point source to waters of the State, it is subject to the National Pollution Discharge Elimination System (NPDES) permit requirement of Section 12(f) of the Environmental Protection Act ~~[415 ILCS 5/12(f)]~~ and 35 Ill. Adm. Code 309.102.

c) Storage areas that store containers holding only wastes that do not contain free liquids need not have a containment system defined by subsection (b) ~~of this Section~~, except as provided by subsection (d) ~~of this Section~~, or provided as follows:

1) That the storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation, or

2) That the containers are elevated or are otherwise protected from contact with accumulated liquid.

d) Storage areas that store containers holding the wastes listed below that do not contain free liquids must have a containment system defined by subsection (b) ~~of this Section~~: F020, F021, F022, F023, F026, and F027.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.279 Air Emission Standards

The owner or operator must manage all hazardous waste placed in a container in accordance with the requirements of Subparts AA, BB, and CC ~~of this Part~~.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

SUBPART J: TANK SYSTEMS

Section 724.290 Applicability

The requirements of this Subpart J apply to owners and operators of facilities that use tank systems for storing or treating hazardous waste, except as otherwise provided in subsection (a), (b), or (c) ~~of this Section~~ or in Section 724.101.

a) Tank systems that are used to store or treat hazardous waste that contains no free liquids and are situated inside a building with an impermeable floor are exempted from the requirements in Section 724.293. To demonstrate the absence or presence of free liquids in the stored or treated waste, the following test must be used: USEPA Method 9095B (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes Physical/Chemical Methods" USEPA publication number EPA-530/SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111(a).

b) Tank systems, including sumps, are defined in 35 Ill. Adm. Code 720.110, that serve as part of a secondary containment system to collect or contain releases of hazardous wastes are exempted from the requirements in Section 724.293(a).

c) Tanks, sumps, and other such collection devices or systems used in conjunction with drip pads, as defined in 35 Ill. Adm. Code 720.110 and regulated under Subpart W ~~of this Part~~, must meet the requirements of this Subpart J.

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.291 Assessment of Existing Tank System Integrity

a) For each existing tank system that does not have secondary containment meeting the requirements of Section 724.293, the owner or operator must determine either that the tank system is not leaking or that it is fit~~unfit~~ for use. Except as provided in subsection (c) ~~of this Section~~, the owner or operator must~~, by January 12, 1988,~~ obtain and keep on file at the facility a written assessment reviewed and certified by a qualified Professional Engineer, in accordance with 35 Ill. Adm. Code 702.126(d), that attests to the tank system's integrity.

b) This assessment must determine whether the tank system is adequately designed and has sufficient structural strength and compatibility with the wastes to be stored or treated, to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment must consider the following:

1) Design standards, if available, according to which the tank and ancillary equipment were constructed;

2) Hazardous characteristics of the wastes that have been and will be handled;

3) Existing corrosion protection measures;

4) Documented age of the tank system, if available (otherwise an estimate of the age); and

5) Results of a leak test, internal inspection, or other tank integrity examination so that the following is true:

A) For non-enterable underground tanks, the assessment must include a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects, and

B) For other than non-enterable underground tanks and for ancillary equipment, this assessment must include either a leak test, as described above, or other integrity examination that is certified by

a qualified Professional Engineer, in accordance with 35 Ill. Adm. Code 702.126(d), that address cracks, leaks, corrosion, and erosion.

BOARD NOTE: The practices described in the American Petroleum Institute (API) Publication, "Guide for Inspection of Refinery Equipment~~,~~", Chapter XIII, "Atmospheric and Low-Pressure Storage Tanks~~,~~", incorporated by reference in 35 Ill. Adm. Code 720.111(a), may be used, where applicable, as guidelines in conducting other than a leak test.

c) Tank systems that store or treat materials that become hazardous wastes ~~subsequent to July 14, 1986~~, must conduct this assessment within 12 months after the date that the waste becomes a hazardous waste.

d) If, as a result of the assessment conducted in accordance with subsection (a) ~~of this Section~~, a tank system is found to be leaking or unfit for use, the owner or operator must comply with the requirements of Section 724.296.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.292 Design and Installation of New Tank Systems or Components

a) Owners or operators of new tank systems or components must obtain and submit to the Agency, at time of submittal of Part B information, a written assessment, reviewed and certified by a qualified Professional Engineer, in accordance with 35 Ill. Adm. Code 702.126(d), attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. The assessment must show that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the wastes to be stored or treated and corrosion protection to ensure that it will not collapse, rupture, or fail. This assessment, which will be used by the Agency to review and approve or disapprove the acceptability of the tank system design, must include, at a minimum, the following information:

1) Design standards according to which tanks or the ancillary equipment are constructed;

2) Hazardous characteristics of the wastes to be handled;

3) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system will be in contact with the soil or with water, a determination by a corrosion expert of the following:

A) Factors affecting the potential for corrosion, including but not limited to the following:

i) Soil moisture content;

ii) Soil pH;

iii) Soil sulfide level;

iv) Soil resistivity;

v) Structure to soil potential;

vi) Influence of nearby underground metal structures (e.g., piping);

vii) Existence of stray electric current;

viii) Existing corrosion-protection measures (e.g., coating, cathodic protection, etc.); and

B) The type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:

i) Corrosion-resistant materials of construction, such as special alloys, fiberglass reinforced plastic, etc.;

ii) Corrosion-resistant coating, such as epoxy, fiberglass, etc., with cathodic protection (e.g., impressed current or sacrificial anodes); and

iii) Electrical isolation devices, such as insulating joints, flanges, etc.

BOARD NOTE: The practices described in the National Association of Corrosion Engineers (NACE) standard, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems~~,~~", NACE Recommended Practice RP0285, and "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems~~,~~", API Recommended Practice 1632, each incorporated by reference in 35 Ill. Adm. Code 720.111(a), may be used, where applicable, as guidelines in providing corrosion protection for tank systems.

4) For underground tank system components that are likely to be adversely affected by vehicular traffic, a determination of design or operational measures that will protect the tank system against potential damage; and

5) Design considerations to ensure the following:

A) That tank foundations will maintain the load of a full tank;

B) That tank systems will be anchored to prevent flotation or dislodgment where the tank system is placed in a saturated zone, or is located within a seismic fault zone subject to the standards of Section 724.118(a); and

C) That tank systems will withstand the effects of frost heave.

b) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing or placing a new tank system or component in use, an independent qualified installation inspector or a qualified Professional Engineer, either of whom is trained and experienced in the proper installation of tank systems or components, must inspect the system for the presence of any of the following items:

1) Weld breaks;

2) Punctures;

3) Scrapes of protective coatings;

4) Cracks;

5) Corrosion;

6) Other structural damage or inadequate construction or installation. All discrepancies must be remedied before the tank system is covered, enclosed, or placed in use.

c) New tank systems or components that are placed underground and which are backfilled must be provided with a backfill material that is a noncorrosive, porous, and homogeneous substance which is installed so that the backfill is placed completely around the tank and compacted to ensure that the tank and piping are fully and uniformly supported.

d) All new tanks and ancillary equipment must be tested for tightness prior to being covered, enclosed or placed in use. If a tank system is found not to be tight, all repairs necessary to remedy the leaks in the system must be performed prior to the tank system being covered, enclosed, or placed into use.

e) Ancillary equipment must be supported and protected against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.

BOARD NOTE: The piping system installation procedures described in "Installation of Underground Petroleum Storage Systems~~,~~", API Recommended Practice 1615, or "Chemical Plant and Petroleum Refinery Piping~~,~~", ASME/ANSI Standard B31.3-1987, as supplemented by B31.3a-1988 and B31.3b-1988, and "Liquid Petroleum Transportation Piping Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols~~,~~", ASME/ANSI Standard B31.4-1986, as supplemented by B31.4a-1987, each incorporated by reference in 35 Ill. Adm. Code 720.111(a), may be used where applicable, as guidelines for proper installation of piping systems.

f) The owner or operator must provide the type and degree of corrosion protection recommended by an independent corrosion expert, based on the information provided under subsection (a)(3) ~~of this Section~~, or other corrosion protection if

the Agency determines that other corrosion protection is necessary to ensure the integrity of the tank system during use of the tank system. The installation of a corrosion protection system that is field fabricated must be supervised by an independent corrosion expert to ensure proper installation.

g) The owner or operator must obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of subsections (b) through (f) ~~of this Section~~, that attest that the tank system was properly designed and installed and that repairs, pursuant to subsections (b) and (d) ~~of this Section~~, were performed. These written statements must also include the certification statement, as required in 35 Ill. Adm. Code 702.126(d).

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.293 Containment and Detection of Releases

a) In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this Section must be provided (except as provided in subsections (f) and (g) ~~of this Section~~).

1) For a new or existing tank system or component, prior to their being put into service.

2) For a tank system that stores or treats materials that become hazardous wastes within two years after the hazardous waste listing, or when the tank system has reached 15 years of age, whichever comes later.

b) Secondary containment systems must fulfill the following:

1) It must be designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, groundwater, or surface water at any time during the use of the tank system; and

2) It must be capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

c) To meet the requirements of subsection (b) ~~of this Section~~, secondary containment systems must, at a minimum, fulfill the following:

1) It must be constructed of or lined with materials that are compatible with the wastes to be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which it is exposed, climatic conditions, and the stress of daily operation (including stresses from nearby vehicular traffic);

2) It must be placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression or uplift;

3) It must be provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours, or at the earliest practicable time if the owner or operator demonstrates, by way of permit application, to the Agency that existing detection technologies or site conditions will not allow detection of a release within 24 hours; and

4) It must be sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation must be removed from the secondary containment system within 24 hours, or in as timely a manner as is possible to prevent harm to human health and the environment, if the owner or operator demonstrates to the Agency, by way of permit application, that removal of the released waste or accumulated precipitation cannot be accomplished within 24 hours.

BOARD NOTE: If the collected material is a hazardous waste under 35 Ill. Adm. Code 721, it is subject to management as a hazardous waste in accordance with all applicable requirements of 35 Ill. Adm. Code 722 through 728. If the collected material is discharged through a point source to waters of the State, it is subject to the NPDES permit requirement of Section 12(f) of the Environmental Protection Act and 35 Ill. Adm. Code 309. If discharged to a Publicly Owned Treatment Work (POTW), it is subject to the requirements of 35 Ill. Adm. Code 307 and 310. If the

collected material is released to the environment, it may be subject to the reporting requirements of 35 Ill. Adm. Code 750.410 and federal 40 CFR 302.6.

d) Secondary containment for tanks must include one or more of the following devices:

1) A liner (external to the tank);

2) A vault;

3) A double-walled tank; or

4) An equivalent device, as approved by the Board in an adjusted standards proceeding.

e) In addition to the requirements of subsections (b), (c), and (d) ~~of this Section~~, secondary containment systems must satisfy the following requirements:

1) An external liner system must fulfill the following:

A) It must be designed or operated to contain 100 percent of the capacity of the largest tank within its boundary.

B) It must be designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system, unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.

C) It must be free of cracks or gaps.

D) It must be designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if the waste is released from the tanks (i.e., it is capable of preventing lateral as well as vertical migration of the waste).

2) A vault system must fulfill the following:

A) It must be designed or operated to contain 100 percent of the capacity of the largest tank within the vault system's boundary;

B) It must be designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event;

C) It must be constructed with chemical-resistant water stops in place at all joints (if any);

D) It must be provided with an impermeable interior coating or lining that is compatible with the stored waste and that will prevent migration of waste into the concrete;

E) It must be provided with a means to protect against the formation of and ignition of vapors within the vault, if the waste being stored or treated fulfills the following:

i) It meets the definition of ignitable waste under 35 Ill. Adm. Code 721.121; or

ii) It meets the definition of reactive waste under 35 Ill. Adm. Code 721.123, and may form an ignitable or explosive vapor; and

F) It must be provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

3) A double-walled tank must fulfill the following:

A) It must be designed as an integral structure (i.e., an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell;

B) It must be protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer

shell; and

C) It must be provided with a built-in continuous leak detection system capable of detecting a release within 24 hours, or at the earliest practicable time, if the owner or operator demonstrates, by way of permit application, to the Agency that the existing detection technology or site conditions would not allow detection of a release within 24 hours.

BOARD NOTE: The provisions outlined in the Steel Tank Institute document (STI) "Standard for Dual Wall Underground Steel Storage Tanks~~,~~", incorporated by reference in 35 Ill. Adm. Code 720.111(a), may be used as a guideline for aspects of the design of underground steel double-walled tanks.

f) Ancillary equipment must be provided with secondary containment (e.g., trench, jacketing, double-walled piping, etc.) that meets the requirements of subsections (b) and (c)~~ of this Section~~, except as follows:

1) Aboveground piping (exclusive of flanges, joints, valves, and other connections) that are visually inspected for leaks on a daily basis;

2) Welded flanges, welded joints, and welded connections that are visually inspected for leaks on a daily basis;

3) Sealless or magnetic coupling pumps and sealless valves that are visually inspected for leaks on a daily basis; and

4) Pressurized aboveground piping systems with automatic shut-off devices (e.g., excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices, etc.) that are visually inspected for leaks on a daily basis.

g) Pursuant to Section 28.1 of the Environmental Protection Act~~ [415 ILCS 5/28.1]~~, and in accordance with 35 Ill. Adm. Code 101 and 104, an adjusted standard will be granted by the Board regarding alternative design and operating practices only if the Board finds either that the alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous waste or hazardous constituents into the groundwater or surface water at least as

effectively as secondary containment during the active life of the tank system, or that in the event of a release that does migrate to groundwater or surface water, no substantial present or potential hazard will be posed to human health or the environment. New underground tank systems may not receive an adjusted standard from the secondary containment requirements of this Section through a justification in accordance with subsection (g)(2) ~~of this Section~~.

1) When determining whether to grant alternative design and operating practices based on a demonstration of equivalent protection of groundwater and surface water, the Board will consider whether the petitioner has justified an adjusted standard based on the following factors:

   A) The nature and quantity of the wastes;

   B) The proposed alternative design and operation;

   C) The hydrogeologic setting of the facility, including the thickness of soils present between the tank system and groundwater; and

   D) All other factors that would influence the quality and mobility of the hazardous constituents and the potential for them to migrate to groundwater or surface water.

2) When determining whether to grant alternative design and operating practices based on a demonstration of no substantial present or potential hazard, the Board will consider whether the petitioner has justified an adjusted standard based on the following factors:

   A) The potential adverse effects on groundwater, surface water and land quality taking into account, considering the following:

      i) The physical and chemical characteristics of the waste in the tank system, including its potential for migration;

      ii) The hydrogeological characteristics of the facility and surrounding land;

      iii) The potential for health risk caused by human exposure to waste constituents;

iv) The potential for damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

v) The persistence and permanence of the potential adverse effects.

B) The potential adverse effects of a release on groundwater quality, taking into account;

i) The quantity and quality of groundwater and the direction of groundwater flow;

ii) The proximity and withdrawal rates of groundwater users;

iii) The current and future uses of groundwater in the area; and

iv) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality.

C) The potential adverse effects of a release on surface water quality, taking the following into account:

i) The quantity and quality of groundwater and the direction of groundwater flow;

ii) The patterns of rainfall in the region;

iii) The proximity of the tank system to surface waters;

iv) The current and future uses of surface waters in the area and water quality standards established for those surface waters; and

v) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality.

D) The potential adverse effect of a release on the land surrounding the tank system, taking the following into account:

i) The patterns of rainfall in the region; and

ii) The current and future uses of the surrounding land.

3) The owner or operator of a tank system, for which alternative design and operating practices had been granted in accordance with the requirements of subsection (g)(1) ~~of this Section~~, at which a release of hazardous waste has occurred from the primary tank system but which has not migrated beyond the zone of engineering control (as established in the alternative design and operating practices), must do the following:

A) It must comply with the requirements of Section 724.296, except Section 724.296(d); and

B) It must decontaminate or remove contaminated soil to the extent necessary to do the following:

i) Enable the tank system for which the alternative design and operating practices were granted to resume operation with the capability for the detection of releases at least equivalent to the capability it had prior to the release; and

ii) Prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water; and

C) If contaminated soil cannot be removed or decontaminated in accordance with subsection (g)(3)(B) ~~of this Section~~, the owner or operator must comply with the requirement of Section 724.297(b).

4) The owner or operator of a tank system, for which alternative design and operating practices had been granted in accordance with the requirements of subsection (g)(1) ~~of this Section~~, at which a release of hazardous waste has occurred from the primary tank system and which has migrated beyond the zone of engineering control (as established in the alternative design and operating practices), must do the following:

A) Comply with the requirements of Section 724.296(a), (b), (c), and (d); and

B) Prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed, or if groundwater has been contaminated, the owner or operator must comply with the requirements of Section 724.297(b); and

C) If repairing, replacing or reinstalling the tank system, provide secondary containment in accordance with the requirements of subsections (a) through (f) ~~of this Section~~, or make the alternative design and operating practices demonstration to the Board again, and meet the requirements for new tank systems in Section 724.292 if the tank system is replaced. The owner or operator must comply with these requirements even if contaminated soil is decontaminated or removed and groundwater or surface water has not been contaminated.

h) In order to make an alternative design and operating practices, the owner or operator must follow the following procedures in addition to those specified in Section 28.1 of the Act ~~[415 ILCS 5/28.1]~~ and 35 Ill. Adm. Code 101 and 104:

1) The owner or operator must file a petition for approval of alternative design and operating practices according to the following schedule:

A) For existing tank systems, at least 24 months prior to the date that secondary containment must be provided in accordance with subsection (a) ~~of this Section~~.

B) For new tank systems, at least 30 days prior to entering into a contract for installation.

2) As part of the petition, the owner or operator must also submit the following to the Board:

A) A description of the steps necessary to conduct the demonstration

and a timetable for completing each of the steps. The demonstration must address each of the factors listed in subsection (g)(1) or (g)(2) ~~of this Section~~; and

B) The portion of the Part B permit application specified in 35 Ill. Adm. Code 703.202.

3) The owner or operator must complete its showing within 180 days after filing its petition for approval of alternative design and operating practices.

4) The Agency must issue or modify the RCRA permit so as to require the permittee to construct and operate the tank system in the manner that was provided in any Board order approving alternative design and operating practices.

i) All tank systems, until such time as secondary containment that meets the requirements of this Section is provided, must comply with the following:

1) For non-enterable underground tanks, a leak test that meets the requirements of Section 724.291(b)(5) or other tank integrity methods, as approved or required by the Agency, must be conducted at least annually.

2) For other than non-enterable underground tanks, the owner or operator must do either of the following:

A) Conduct a leak test, as in subsection (i)(1) ~~of this Section~~; or

B) Develop a schedule and procedure for an assessment of the overall condition of the tank system by a qualified Professional Engineer. The schedule and procedure must be adequate to detect obvious cracks, leaks, and corrosion or erosion that may lead to cracks and leaks. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed. The frequency of these assessments must be based on the material of construction of the tank and its ancillary equipment, the age of the system, the type of corrosion or erosion protection used, the rate of corrosion or erosion observed during the previous inspection and the characteristics of the waste

being stored or treated.

3) For ancillary equipment, a leak test or other integrity assessment, as approved by the Agency, must be conducted at least annually.

BOARD NOTE: The practices described in the API Publication, "Guide for Inspection of Refinery Equipment~~,~~", Chapter XIII, "Atmospheric and Low-Pressure Storage Tanks~~,~~", incorporated by reference in 35 Ill. Adm. Code 720.111(a), may be used, where applicable, as a guideline for assessing the overall condition of the tank system.

4) The owner or operator must maintain on file at the facility a record of the results of the assessments conducted in accordance with subsections (i)(1) through (i)(3) ~~of this Section~~.

5) If a tank system or component is found to be leaking or unfit for use as a result of the leak test or assessment in subsections (i)(1) through (1)(3) ~~of this Section~~, the owner or operator must comply with the requirements of Section 724.296.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.295 Inspections

a) The owner or operator must develop and follow a schedule and procedure for inspecting overfill controls.

b) The owner or operator must inspect at least once each operating day data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells, etc.) to ensure that the tank system is being operated according to its design.

BOARD NOTE: Section 724.115(c) requires the owner or operator to remedy any deterioration or malfunction the owner or operator finds. Section 724.296 requires the owner or operator to notify the Agency within 24 hours of confirming a leak. Also federal 40 CFR 302.6 may require the owner or operator to notify the National Response Center of a release.

c) In addition, except as noted under subsection (d) ~~of this Section~~, the owner or operator must inspect the following at least once each operating day:

1) Above ground portions of the tank system, if any, to detect corrosion or releases of waste; and

2) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).

d) Owners or operators of tank systems that either use leak detection systems to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly those areas described in subsections (c)(1) and (c)(2) ~~of this Section~~. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.

e) This subsection (e) corresponds with 40 CFR 264.195(e), which USEPA removed and marked "reserved" ~~became obsolete when USEPA terminated the Performance Track Program at 74 Fed. Reg. 22741 (May 14, 2009). USEPA has recognized that program-related rules are no longer effective at 75 Fed. Reg. 12989, 12992, note 1 (Mar. 18, 2010)~~. This statement maintains structural consistency with the corresponding federal requirements.

f) Ancillary equipment that is not provided with secondary containment, as described in Section 724.293(f)(1) through (f)(4), must be inspected at least once each operating day.

g) The owner or operator must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

1) The proper operation of the cathodic protection system must be confirmed within six months after initial installation and annually thereafter; and

2) All sources of impressed current must be inspected or tested, as appropriate, at least bimonthly (i.e., every other month).

BOARD NOTE: The practices described in "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems~~,~~", NACE Recommended Practice RP0285-85 and "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems~~,~~", API Recommended Practice 1632, each incorporated by reference in 35 Ill. Adm. Code 720.111(a), may be used, where applicable, as guidelines in maintaining and inspecting cathodic protection systems.

h) The owner or operator must document in the operating record of the facility an inspection of those items in subsections (a) through (c)~~ of this Section~~.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.296 Response to Leaks or Spills and Disposition of Leaking or Unfit-for-Use Tank Systems

A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, must be removed from service immediately, and the owner or operator must satisfy the following requirements:

a) Cease Using~~using~~; Prevent Flow~~prevent flow~~ or Addition~~addition~~ of Wastes~~wastes~~. The owner or operator must immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

b) Removal of Waste~~waste~~ from Tank System~~tank system~~ or Secondary Containment System~~secondary containment system.~~

1) If the release was from the tank system, the owner or operator must, within 24 hours after detection of the leak or as otherwise provided in the permit, remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

2) If the material released was to a secondary containment system, all released materials must be removed within 24 hours or as otherwise provided in the permit to prevent harm to human health and the environment.

c) Containment of Visible Releases~~visible releases~~ to the Environment~~environment~~. The owner or operator must immediately conduct a visual inspection of the release and, based upon that inspection, do the following:

1) Prevent further migration of the leak or spill to soils or surface water; and

2) Remove and properly dispose of any visible contamination of the soil or surface water.

d) Notifications, Reports~~reports.~~

1) Any release to the environment, except as provided in subsection (d)(2) ~~of this Section~~, must be reported to the Agency within 24 hours of its detection.

2) A leak or spill of hazardous waste is exempted from the requirements of this subsection (d) if the following is true:

A) The spill was less than or equal to a quantity of one pound (0.45 kg); and

B) It was immediately contained and cleaned up.

3) Within 30 days of detection of a release to the environment, a report containing the following information must be submitted to the Agency:

A) Likely route of migration of the release;

B) Characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate, etc.);

C) Results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within 30 days, these data must be submitted to the Agency as soon as they become available.

D) Proximity the downgradient drinking water, surface water, and populated areas; and

E) Description of response actions taken or planned.

e) Provision of Secondary Containment, Repair,~~secondary containment, repair,~~ or Closure~~closure.~~

1) Unless the owner or operator satisfies the requirements of subsections (e)(2) through (e)(4)~~ of this Section~~, the tank system must be closed in accordance with Section 724.297.

2) If the cause of the release was a spill that has not damaged the integrity of the system, the owner or operator may return the system to service as soon as the released waste is removed and repairs, if necessary, are made.

3) If the cause of the release was a leak from the primary tank system into the secondary containment system, the system must be repaired prior to returning the tank system to service.

4) If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the owner or operator must provide the component of the system from which the leak occurred with secondary containment that satisfies the requirements of Section 724.293 before it can be returned to service, unless the source of the leak is an aboveground portion of a tank system that can be inspected visually. If the source is an aboveground component that can be inspected visually, the component must be repaired and may be returned to service without secondary containment, as long as the requirements of subsection (f) ~~of this Section~~ are satisfied. If a component is replaced to comply with the requirements of this subsection (e), that component must satisfy the requirements of new tank systems or components in Sections 724.292 and 724.293. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection (e.g., the bottom of an in-ground or on-ground tank), the entire component must be provided with secondary containment in accordance with Section 724.293 prior to being returned to use.

f) Certification of Major Repairs~~major repairs~~. If the owner or operator has repaired a tank system in accordance with subsection (e)~~ of this Section~~, and the repair has been extensive (e.g., installation of an internal liner, repair, or a ruptured primary

containment or secondary containment vessel), the tank system must not be returned to service unless the owner or operator has obtained a certification by a qualified Professional Engineer, in accordance with 35 Ill. Adm. Code 702.126(d), that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be placed in the operating record and maintained until closure of the facility.

BOARD NOTE: See Section 724.115(c) for the requirements necessary to remedy a failure. Also, federal 40 CFR 302.6 may require the owner or operator to notify the National Response Center of any "reportable quantity~~.~~".

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.297 Closure and Post-Closure Care

a) At closure of a tank system, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils and structures and equipment contaminated with waste, and manage them as hazardous waste, unless 35 Ill. Adm. Code 721.103(d) applies. The closure plan, closure activities, cost estimates for closure and financial responsibility for tank systems must meet all of the requirements specified in Subparts G and H ~~of this Part~~.

b) If the owner or operator demonstrates to the Agency by way of permit application that not all contaminated soils can be practicably removed or decontaminated, as required in subsection (a) ~~of this Section~~, then the owner or operator must close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (Section 724.410). In addition, for the purposes of closure, post-closure and financial responsibility, such a tank system is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in Subparts G and H ~~of this Part~~.

c) If an owner or operator has a tank system that does not have secondary containment which meets the requirements of Section 724.193(b) through (f), and the owner and operator has not been granted alternative design and operating practices for secondary containment requirements in accordance with Section 724.293(g), then the following apply:

1) The closure plan for the tank system must include both a plan for complying with subsection (a) ~~of this Section~~ and a contingent plan for complying with subsection (b) ~~of this Section~~.

2) A contingent post-closure plan for complying with subsection (b) ~~of this Section~~ must be prepared and submitted as part of the permit application.

3) The cost estimates calculated for closure and post-closure care must reflect the costs of complying with the contingent closure plan and the contingent post-closure plan if those costs are greater than the costs of complying with the closure plan prepared for the expected closure under subsection (a) ~~of this Section~~.

4) Financial assurance must be based on the cost estimates in subsection (c)(3) ~~of this Section~~.

5) For the purposes of the contingent closure and post-closure plans, such a tank system is considered to be a landfill, and the contingent plans must meet all of the closure, post-closure, and financial responsibility requirements for landfills under Subparts G and H ~~of this Part~~.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.298 Special Requirements for Ignitable or Reactive Waste

a) Ignitable or reactive waste must not be placed in tank systems unless the following is true:

1) The waste is treated, rendered, or mixed before or immediately after placement in the tank system so that the following is true:

A) The resulting waste, mixture, or dissolved material no longer meets the definition of ignitable or reactive waste under 35 Ill. Adm. Code 721.121 or 721.123; and

B) Section 724.117(b) is complied with; or

2) The waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

3) The tank is used solely for emergencies.

b) The owner or operator of a facility where ignitable or reactive waste is stored or treated in a tank must comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjoining property line that can be built upon, as required in tables 2-1 through 2-6 of "Flammable and Combustible Liquids Code~~,~~", NFPA 30, incorporated by reference in 35 Ill. Adm. Code 720.111(a).

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.300 Air Emission Standards

The owner or operator must manage all hazardous waste placed in a tank in accordance with the requirements of Subparts AA, BB, and CC ~~of this Part~~.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

SUBPART K: SURFACE IMPOUNDMENTS

Section 724.321 Design and Operating Requirements

a) Any surface impoundment that is not covered by subsection (c) ~~of this Section~~ or 35 Ill. Adm. Code 725.321 must have a liner for all portions of the impoundment (except for existing portions of such impoundment). The liner must be designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the impoundment. The liner may be constructed of materials that may allow wastes to migrate into the liner (but not into the adjacent subsurface soil or groundwater or surface water) during the active life of the facility, provided that the impoundment is closed in accordance with Section 724.328(a)(1). For impoundments that will be closed in accordance with Section 724.328(a)(2), the liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility. The liner must be as follows:

1) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure

gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

2) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

3) Installed to cover all surrounding earth likely to be in contact with the waste or leachate.

b) The owner or operator will be exempted from the requirements of subsection (a) ~~of this Section~~ if the Board grants an adjusted standard pursuant to Section 28.1 of the Act ~~[415 ILCS 5/28.1]~~ and 35 Ill. Adm. Code 101 and 104. The level of justification is a demonstration by the owner or operator that alternative design or operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (see Section 724.193) into the groundwater or surface water at any future time. In deciding whether to grant an adjusted standard, the Board will consider the following:

1) The nature and quantity of the wastes;

2) The proposed alternative design and operation;

3) The hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the impoundment and groundwater or surface water; and

4) All other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

c) The owner or operator of each new surface impoundment unit on which construction commences after January 29, 1992, each lateral expansion of a surface impoundment unit on which construction commences after July 29, 1992, and each replacement of an existing surface impoundment unit that is to commence reuse after July 29, 1992, must install two or more liners and a leachate collection and removal system between such liners. "Construction

commences" is as defined in 35 Ill. Adm. Code 720.110, under the definition of "existing facility~~.~~".

1) Liner Requirements~~requirements.~~

A) The liner system must include the following:

i) A top liner designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into such liner during the active life and post-closure care period; and

ii) A composite bottom liner, consisting of at least two components. The upper component must be designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into this component during the active life and post-closure care period. The lower component must be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur. The lower component must be constructed of at least three feet (91 cm) of compacted soil material with a hydraulic conductivity of no more than 1×10^{-7} cm/sec.

B) The liners must comply with subsections (a)(1), (a)(2), and (a)(3) ~~of this Section~~.

2) The leachate collection and removal system between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, is also a leak detection system (LDS). This LDS must be capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and post-closure care period. The requirements for a LDS in this subsection (c) are satisfied by installation of a system that is, at a minimum, as follows:

A) It is constructed with a bottom slope of one percent or more;

B) It is constructed of granular drainage materials with a hydraulic conductivity of 1×10^{-1} cm/sec or more and a thickness of 12 inches (30.5 cm) or more; or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-4} m^2/sec or more;

C) It is constructed of materials that are chemically resistant to the waste managed in the surface impoundment and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes and any waste cover materials or equipment used at the surface impoundment;

D) It is designed and operated to minimize clogging during the active life and post-closure care period; and

E) It is constructed with sumps and liquid removal methods (e.g., pumps) of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit must have its own sumps. The design of each sump and removal system must provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed.

3) The owner or operator must collect and remove pumpable liquids in the sumps to minimize the head on the bottom liner.

4) The owner or operator of a LDS that is not located completely above the seasonal high water table must demonstrate that the operation of the LDS will not be adversely affected by the presence of groundwater.

d) Subsection (c) ~~of this Section~~ will not apply if the owner or operator demonstrates to the Agency, and the Agency finds for such surface impoundment, that alternative design or operating practices, together with location characteristics, will do the following:

1) It will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the liners and leachate collection and removal system specified in subsection (c) ~~of this Section~~; and

2) It will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

e) The double liner requirement set forth in subsection (c) ~~of this Section~~ may be waived by the Agency for any monofill, if the following is true of the unit:

1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents that would render the wastes hazardous for reasons other than the toxicity characteristic in 35 Ill. Adm. Code 721.124; and

2) Design and Location~~location.~~

A) Liner, location, and groundwater monitoring.

i) The monofill has at least one liner for which there is no evidence that such liner is leaking. For the purposes of this subsection (e), the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, groundwater, or surface water at any time during the active life of the facility. In the case of any surface impoundment that has been exempted from the requirements of subsection (c) ~~of this Section~~ on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of such impoundment, the owner or operator must remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment will comply with appropriate post-closure requirements, including but not limited to groundwater monitoring and corrective action;

ii) The monofill is located more than one-quarter mile from an "underground source of drinking water" (as that term is defined in 35 Ill. Adm. Code 702.110); and

iii) The monofill is in compliance with generally applicable groundwater monitoring requirements for facilities with permits; or

B) The owner or operator demonstrates to the Board that the monofill is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into groundwater or surface water at any future time.

f) The owner or operator of any replacement surface impoundment unit is exempt from subsection (c) ~~of this Section~~ if the following is true of the unit:

1) The existing unit was constructed in compliance with the design standards of 35 Ill. Adm. Code 724.321(c), (d), and (e); and

BOARD NOTE: The cited subsections implemented the design standards of sections 3004 (o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act (42 USC 6924(o)(1)(A)(i) and (o)(5)~~6901 et seq.~~).

2) There is no reason to believe that the liner is not functioning as designed.

g) A surface impoundment must be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations; overfilling; wind and wave action; rainfall; run-on; malfunctions of level controllers, alarms, and other equipment; and human error.

h) A surface impoundment must have dikes that are designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. In ensuring structural integrity, it must not be presumed that the liner system will function without leakage during the active life of the unit.

i) The Agency must specify in the permit all design and operating practices that are necessary to ensure that the requirements of this Section are satisfied.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.323 Response Actions

a) The owner or operator of surface impoundment units subject to Section 724.321(c) or (d) must have an approved response action plan before receipt of waste. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in subsection (b) ~~of this Section~~.

b) If the flow rate into the LDS exceeds the action leakage rate for any sump, the owner or operator must do the following:

1) Notify the Agency in writing of the exceedance within seven days after the determination;

2) Submit a preliminary written assessment to the Agency within 14 days after the determination, as to the amount of liquids, likely sources of liquids, possible location, size and cause of any leaks, and short-term actions taken and planned;

3) Determine to the extent practicable the location, size, and cause of any leak;

4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs or controls, and whether or not the unit should be closed;

5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Agency the results of the determinations specified in subsections (b)(3), (b)(4), and (b)(5) ~~of this Section~~, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the LDS exceeds the action leakage rate, the owner or operator must submit to the Agency a report summarizing the results of any remedial actions taken and actions planned.

c) To make the leak or remediation determinations in subsections (b)(3), (b)(4), and

(b)(5) ~~of this Section~~, the owner or operator must do either of the following:

1) Perform the following assessments:

A) Assess the source of liquids and amounts of liquids by source;

B) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the LDS to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

C) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

2) Document why such assessments are not needed.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.327 Emergency Repairs; Contingency Plans

a) A surface impoundment must be removed from service in accordance with subsection (b) ~~of this Section~~ when either of the following occurs:

1) The level of liquids in the impoundment suddenly drops and the drop is not known to be caused by changes in the flows into or out of the impoundment; or

2) The dike leaks.

b) When a surface impoundment must be removed from service as required by subsection (a) ~~of this Section~~, the owner or operator must do the following:

1) Immediately shut off the flow or stop the addition of wastes into the impoundment;

2) Immediately contain any surface leakage that has occurred or is occurring;

3) Immediately stop the leak;

4) Take any other necessary steps to stop or prevent catastrophic failure;

5) If a leak cannot be stopped by any other means, empty the impoundment; and

6) Notify the Agency of the problem in writing within seven days after detecting the problem.

c) As part of the contingency plan required in Subpart D ~~of this Part~~, the owner or operator must specify a procedure for complying with the requirements of subsection (b) ~~of this Section~~.

d) No surface impoundment that has been removed from service in accordance with the requirements of this section may be restored to service unless the portion of the impoundment that was failing is repaired and the following steps are taken:

1) If the impoundment was removed from service as the result of actual or imminent dike failure, the dike's structural integrity must be re-certified in accordance with Section 724.326(c).

2) If the impoundment was removed from service as the result of a sudden drop in the liquid level, then the following apply:

A) For any existing portion of the impoundment, a liner must be installed in compliance with Section 724.321(a) or 724.322; and

B) For any other portion of the impoundment, the repaired liner system must be certified by a qualified engineer as meeting the design specifications approved in the permit.

e) A surface impoundment that has been removed from service in accordance with the requirements of this Section and that is not being repaired must be closed in accordance with the provisions of Section 724.328.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.328 Closure and Post-Closure Care

a) At closure, the owner or operator must do the following:

1) Remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils and structures, and equipment contaminated with waste and leachate, and manage them as hazardous waste, unless 35 Ill. Adm. Code 721.103(d) applies; or

2) Closure in Placeplace.

A) Eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues;

B) Stabilize remaining wastes to a bearing capacity sufficient to support final cover; and

C) Cover the surface impoundment with a final cover designed and constructed to do the following:

i) Provide long-term minimization of the migration of liquids through the closed impoundment;

ii) Function with minimum maintenance;

iii) Promote drainage and minimize erosion or abrasion of the final cover;

iv) Accommodate settling and subsidence so that the cover's integrity is maintained; and

v) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

b) If some waste residues or contaminated materials are left in place at final closure, the owner or operator must comply with all post-closure requirements contained in Sections 724.217 through 724.220, including maintenance and monitoring throughout the post-closure care period (specified in the permit under Section 724.217). The owner or operator must do the following:

1) Maintain the integrity and effectiveness of the final cover, including making repairs to the cap, as necessary to correct the effects of settling,

subsidence, erosion, or other events;

2) Maintain and monitor the LDS in accordance with Sections 724.321(c)(2)(D) and (c)(3) and 724.326(d), and comply with all other applicable LDS requirements of this Part;

3) Maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of Subpart F ~~of this Part~~; and

4) Prevent run-on and run-off from eroding or otherwise damaging the final cover.

c) Contingent Plans~~plans.~~

1) If an owner or operator plans to close a surface impoundment in accordance with subsection (a)(1) ~~of this Section~~, and the impoundment does not comply with the liner requirements of Section 724.321(a) and is not exempt from them in accordance with Section 724.321(b), then the following apply:

A) The closure plan for the impoundment under Section 724.212 must include both a plan for complying with subsection (a)(1) ~~of this Section~~ and a contingent plan for complying with subsection (a)(2) ~~of this Section~~ in case not all contaminated subsoils can be practicably removed at closure; and

B) The owner or operator must prepare a contingent post-closure plan under Section 724.218 for complying with subsection (b) ~~of this Section~~ in case not all contaminated subsoils can be practicably removed at closure.

2) The cost estimates calculated under Sections 724.242 and 724.244 for closure and post-closure care of an impoundment subject to this subsection (c) must include the cost of complying with the contingent closure plan and the contingent post-closure plan, but are not required to include the cost of expected closure under subsection (a)(1) ~~of this Section~~.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

Section 724.332 Air Emission Standards

The owner or operator must manage all hazardous waste placed in a surface impoundment in accordance with the requirements of Subparts BB and CC ~~of this Part~~.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

SUBPART L: WASTE PILES

Section 724.350 Applicability

a) The regulations in this Subpart L apply to owners and operators of facilities that store or treat hazardous waste in piles, except as Section 724.101 provides otherwise.

b) The regulations in this Subpart L do not apply to owners or operators of waste piles that are closed with wastes left in place. Such waste piles are subject to regulation under Subpart N ~~of this Part~~ (Landfills).

c) The owner or operator of any waste pile that is inside or under a structure that provides protection from precipitation so that neither run-off nor leachate is generated is not subject to regulation under Section 724.351 or under Subpart F ~~of this Part~~ (Groundwater Protection), provided that the following is true:

1) Liquids or materials containing free liquids are not placed in the pile;

2) The pile is protected from surface water run-on by the structure or in some other manner;

3) The pile is designed and operated to control dispersal of the waste by wind, where necessary, by means other than wetting; and

4) The pile will not generate leachate through decomposition or other reactions.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.351 Design and Operating Requirements

a) A waste pile (except for an existing portion of a waste pile) must have the following:

1) A liner that is designed, constructed, and installed to prevent any migration of wastes out of the pile into the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the waste pile. The liner may be constructed of materials that may allow waste to migrate into the liner itself (but not into the adjacent subsurface soil or groundwater or surface water) during the active life of the facility. The liner must be as follows:

A) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

B) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

C) Installed to cover all surrounding earth likely to be in contact with the waste or leachate; and

2) A leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the pile. The Agency must specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 cm (one foot). The leachate collection and removal system must be as follows:

A) Constructed of materials that are as follows:

i) Chemically resistant to the waste managed in the pile and the leachate expected to be generated; and

ii) Of sufficient strength and thickness to prevent collapse

under the pressures exerted by overlying wastes, waste cover materials and by any equipment used at the pile; and

B) Designed and operated to function without clogging through the scheduled closure of the waste pile.

b) The owner or operator will be exempted from the requirements of subsection (a) ~~of this Section~~ if the Board grants an adjusted standard pursuant to Section 28.1 of the Act ~~[415 ILCS 5/28.1]~~ and 35 Ill. Adm. Code 101 and 104. The level of justification is a demonstration by the owner or operator that alternative design or operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (see Section 724.193) into the groundwater or surface water at any future time. In deciding whether to grant an adjusted standard, the Board will consider the following:

1) The nature and quantity of the wastes;

2) The proposed alternative design and operation;

3) The hydrogeologic setting of the facility, including attenuative capacity and thickness of the liners and soils present between the pile and groundwater or surface water; and

4) All other factors that influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

c) The owner or operator of each new waste pile unit, each lateral expansion of a waste pile unit, and each replacement of an existing waste pile unit must install two or more liners and a leachate collection and removal system above and between such liners.

1) Liners~~.~~

A) The liner system must include the following:

i) A top liner designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into such liner during the active life and post-

closure care period; and

ii) A composite bottom liner, consisting of at least two components. The upper component must be designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into this component during the active life and post-closure care period. The lower component must be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur. The lower component must be constructed of at least 3 feet (91 cm) of compacted soil material with a hydraulic conductivity of no more than 1 x 10^{-7} cm/sec.

B) The liners must comply with subsections (a)(1)(A), (a)(1)(B), and (a)(1)(C) ~~of this Section~~.

2) The leachate collection and removal system immediately above the top liner must be designed, constructed, operated, and maintained to collect and remove leachate from the waste pile during the active life and post-closure care period. The Agency must specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 cm (one foot). The leachate collection and removal system must comply with subsections (c)(3)(C) and (c)(3)(D) ~~of this Section~~.

3) The leachate collection and removal system between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, is also a leak detection system (LDS). This LDS must be capable of detecting, collecting and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and post-closure care period. The requirements for a LDS in this subsection (c) are satisfied by installation of a system that is, at a minimum, as follows:

A) Constructed with a bottom slope of one percent or more;

B) Constructed of granular drainage materials with a hydraulic

conductivity of $1x10^{-2}$ cm/sec or more and a thickness of 12 inches (30.5 cm) or more; or constructed of synthetic or geonet drainage materials with a transmissivity of $3x10^{-5}$ m^2/sec or more;

C) Constructed of materials that are chemically resistant to the waste managed in the waste pile and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and equipment used at the waste pile;

D) Designed and operated to minimize clogging during the active life and post-closure care period; and

E) Constructed with sumps and liquid removal methods (e.g., pumps) of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit must have its own sumps. The design of each sump and removal system must provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed.

4) The owner or operator must collect and remove pumpable liquids in the LDS sumps to minimize the head on the bottom liner.

5) The owner or operator of a LDS that is not located completely above the seasonal high water table must demonstrate that the operation of the LDS will not be adversely affected by the presence of groundwater.

d) The Agency must approve alternative design or operating practices to those specified in subsection (c) ~~of this Section~~ if the owner or operator demonstrates to the Agency, by way of permit or permit modification application, that such design or operating practices, together with location characteristics, will do the following:

1) Will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as the liners and leachate collection and removal systems specified in subsection (c) ~~of this Section~~; and

2) Will allow detection of leaks of hazardous constituents through the top

liner at least as effectively.

e) Subsection (c) ~~of this Section~~ does not apply to monofills that are granted a waiver by the Agency in accordance with Section 724.321(e).

f) The owner or operator of any replacement waste pile unit is exempt from subsection (c) ~~of this Section~~ if the following are true:

1) The existing unit was constructed in compliance with the design standards of section 3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act (42 USC 6924(o)(1)(A)(i) and (o)(5)~~6901 et seq.~~); and

BOARD NOTE: The cited provisions required the installation of two or more liners and a leachate collection system above (in the case of a landfill) and between such liners, including a top liner designed, operated and constructed of materials to prevent the migration of any constituent into such liner during the period the facility remained in operation (including any post-closure monitoring period), and a lower liner to prevent the migration of any constituent through the liner during such period. The lower liner was deemed to satisfy the requirement if it was constructed of at least a 3-foot thick layer of recompacted clay or other natural material with a permeability of no more than $1x10^{-7}$ cm/sec.

2) There is no reason to believe that the liner is not functioning as designed.

g) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the pile during peak discharge from at least a 25-year storm.

h) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

i) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

j) If the pile contains any particulate matter that may be subject to wind dispersal, the owner or operator must cover or otherwise manage the pile to control wind

dispersal.

k) The Agency must specify in the permit all design and operating practices that are necessary to ensure that the requirements of this Section are satisfied.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.353 Response Action Plan

a) The owner or operator of waste pile units subject to Section 724.351(c) or (d) must have an approved response action plan before receipt of waste. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in subsection (b) ~~of this Section~~.

b) If the flow rate into the LDS exceeds the action leakage rate for any sump, the owner or operator must do the following:

1) Notify the Agency in writing of the exceedance within seven days after the determination;

2) Submit a preliminary written assessment to the Agency within 14 days after the determination, as to the amount of liquids, likely sources of liquids, possible location, size and cause of any leaks, and short-term actions taken and planned;

3) Determine to the extent practicable the location, size, and cause of any leak;

4) Determine whether waste receipt should cease or be curtailed; whether any waste should be removed from the unit for inspection, repairs, or controls; and whether the unit should be closed;

5) Determine any other short-term and long-term actions to be taken to mitigate or stop any leaks; and

6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Agency the results of the determinations specified in subsections (b)(3), (b)(4), and (b)(5) ~~of this Section~~, the results of

actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the LDS exceeds the action leakage rate, the owner or operator must submit to the Agency a report summarizing the results of any remedial actions taken and actions planned.

c) To make the leak or remediation determinations in subsections (b)(3), (b)(4), and (b)(5) ~~of this Section~~, the owner or operator must do either of the following:

1) Perform the following assessments:

A) Assess the source of liquids and amounts of liquids by source;

B) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the LDS to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

C) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

2) Document why such assessments are not needed.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.358 Closure and Post-Closure Care

a) At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc), contaminated subsoils, and structures and equipment contaminated with waste and leachate and manage them as hazardous waste, unless 35 Ill. Adm. 721.103(d) applies.

b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment, as required in subsection (a) ~~of this Section~~, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, it must close the facility and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (Section 724.410).

c) Contingent Closure Plan~~closure plan.~~

1) The owner or operator of a waste pile that does not comply with the liner requirements of Section 724.351(a)(1), and is not exempt from them in accordance with Sections 724.350(c) or 724.351(b), must do the following:

A) Include in the closure plan for the pile under Section 724.212 both a plan for complying with subsection (a) ~~of this Section~~ and a contingent plan for complying with subsection (b) ~~of this Section~~ in case not all contaminated subsoils can be practicably removed at closure; and

B) Prepare a contingent post-closure plan under Section 724.218 for complying with subsection (b) ~~of this Section~~ in case not all contaminated subsoils can be practicably removed at closure.

2) The cost estimates calculated under Sections 724.242 and 724.244 for closure and post-closure care of a pile subject to this subsection (b) must include the cost of complying with the contingent closure plan and the contingent post-closure plan, but are not required to include the cost of expected closure under subsection (a) ~~of this Section~~.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

SUBPART M: LAND TREATMENT

Section 724.372 Treatment Demonstration

a) For each waste that will be applied to the treatment zone, the owner or operator must demonstrate, prior to application of the waste, that the hazardous constituents in the waste can be completely degraded, transformed, or immobilized in the treatment zone.

b) In making this demonstration, the owner or operator may use field tests, laboratory analyses, available data or, in the case of existing units, operating data. If the owner or operator intends to conduct field tests or laboratory analyses in order to make the demonstration required pursuant to subsection (a) ~~of this~~

~~Section~~, it must obtain a treatment or disposal permit pursuant to 35 Ill. Adm. Code 703.230. The Agency must specify in this permit the testing, analytical, design, and operating requirements (including the duration of the tests and analyses and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone, monitoring procedures, closure, and clean-up activities) necessary to meet the requirements in subsection (c) ~~of this Section~~.

c) Any field test or laboratory analysis conducted in order to make a demonstration pursuant to subsection (a) ~~of this Section~~ must meet the following requirements:

1) It must accurately simulate the characteristics and operating conditions for the proposed land treatment unit including the following:

A) The characteristics of the waste (including the presence of constituents of Appendix H to 35 Ill. Adm. Code 721);

B) The climate in the area;

C) The topography of the surrounding area;

D) The characteristics of the soil in the treatment zone (including depth); and

E) The operating practices to be used at the unit;

2) It must be likely to show that hazardous constituents in the waste to be tested will be completely degraded, transformed or immobilized in the treatment zone of the proposed land treatment unit; and

3) It must be conducted in a manner that adequately protects human health and the environment considering the following:

A) The characteristics of the waste to be tested;

B) The operating and monitoring measures taken during the course of the test;

C) The duration of the test;

D) The volume of waste used in the test;

E) In the case of field tests, the potential for migration of hazardous constituents to groundwater or surface water.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.373 Design and Operating Requirements

The Agency must specify in the facility permit how the owner or operator will design, construct, operate, and maintain the land treatment unit in compliance with this Section.

a) The owner or operator must design, construct, operate, and maintain the unit to maximize the degradation, transformation, and immobilization of hazardous constituents in the treatment zone. The owner or operator must design, construct, operate, and maintain the unit in accord with all design and operating conditions that were used in the treatment demonstration under Section 724.372. At a minimum, theThe Agency must specify the following in the facility permit:

1) The rate and method of waste application to the treatment zone;

2) Measures to control soil pH;

3) Measures to enhance microbial or chemical reactions (e.g., fertilization, tilling, etc.); and

4) Measures to control the moisture content of the treatment zone.

b) The owner or operator must design, construct, operate, and maintain the treatment zone to minimize run-off of hazardous constituents during the active life of the land treatment unit.

c) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the treatment zone during peak discharge from at least a 25-year storm.

d) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

e) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain the design capacity of the system.

f) If the treatment zone contains particulate matter that may be subject to wind dispersal, the owner or operator must manage the unit to control wind dispersal.

g) The owner or operator must inspect the unit weekly and after storms to detect evidence of the following:

1) Deterioration, malfunctions, or improper operation of run-on and run-off control systems; and

2) Improper functioning of wind dispersal control measures.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.376 Food-Chain Crops

The Agency may allow the growth of food-chain crops in or on the treatment zone only if the owner or operator satisfies the conditions of this Section. The Agency must specify in the facility permit the specific food-chain crops that may be grown.

a) Food-Chain Crops Grown~~chain crops grown~~ in the Treatment Zone~~treatment zone.~~

1) The owner or operator must demonstrate that there is no substantial risk to human health caused by the growth of such crops in or on the treatment zone by demonstrating, prior to the planting of such crops, that the following is true of hazardous constituents other than cadmium:

A) They will not be transferred to the food or feed portions of the crop by plant uptake or direct contact, and will not otherwise be ingested by food-chain animals (e.g., by grazing); or

B) They will not occur in greater concentrations in or on the food or feed portions of crops grown on the treatment zone than in or on identical portions of the same crops grown on untreated soils under

similar conditions in the same region.

2) The owner or operator must make the demonstration required under this subsection (a) prior to the planting of crops at the facility for all constituents identified in Appendix H to 35 Ill. Adm. Code 721 that are reasonably expected to be in, or derived from, waste placed in or on the treatment zone.

3) In making a demonstration under this subsection (a), the owner or operator may use field tests, greenhouse studies, available data or, in the case of existing units, operating data, and must do the following:

A) Base the demonstration on conditions similar to those present in the treatment zone, including soil characteristics (e.g., pH, cation exchange capacity), specific wastes, application rates, application methods, and crops to be grown; and

B) Describe the procedures used in conducting any tests, including the sample selection criteria, sample size, analytical methods, and statistical procedures.

4) If the owner or operator intends to conduct field tests or greenhouse studies in order to make the demonstration required under this subsection (a), it must obtain a permit for conducting such activities.

b) The owner or operator must comply with the following conditions if cadmium is contained in wastes applied to the treatment zone:

1) Limited Cadmium Application~~cadmium application.~~

A) The pH of the waste and soil mixture must be 6.5 or greater at the time of each waste application, except for waste containing cadmium at concentrations of 2 mg/kg (dry weight) or less;

B) The annual application of cadmium from waste must not exceed 0.5 kg/ha (0.45 lb/acre)~~kilograms per hectare (kg/ha)~~ on land used for production of tobacco, leafy vegetables, or root crops grown for human consumption. For other food-chain crops, the annual cadmium application rate must not exceed 0.5 kg/ha (0.45

lb/acre).~~the following:~~

~~Time period~~	~~Annual cadmium application rate (kg/ha)~~
~~Present to June 30, 1984~~	~~2.0~~
~~July 1, 1984 to December 31, 1986~~	~~1.25~~
~~Beginning January 1, 1987~~	~~0.5~~

C) The cumulative application of cadmium from waste must not exceed 5 kg/ha if the waste and soil mixture has a pH of less than 6.5; and

D) If the waste and soil mixture has a pH of 6.5 or greater or is maintained at a pH of 6.5 or greater during crop growth, the cumulative application of cadmium from waste must not exceed: 5 kg/ha if soil cation exchange capacity (CEC) is less than 50 milliequivalents per kilogram (50 meq/kg); 10 kg/ha if soil CEC is 50 to 150 meq/kg; and 20 kg/ha if soil CEC is greater than 150 meq/kg; or

2) Limited Future Use~~future use~~ of Land~~land~~ and Crops~~crops.~~

A) Animal feed must be the only food-chain crop produced;

B) The pH of the waste and soil mixture must be 6.5 or greater at the time of waste application or at the time the crop is planted, whichever occurs later, and this pH level must be maintained whenever food-chain crops are grown;

C) There must be an operating plan that demonstrates how the animal feed will be distributed to preclude ingestion by humans. The operating plan must describe the measures to be taken to safeguard against possible health hazards from cadmium entering the food chain, which may result from alternative land uses; and

D) Future property owners must be notified by a stipulation in the land record or property deed that states that the property has received waste at high cadmium application rates and that food-

chain crops must not be grown except in compliance with subsection (b)(2) ~~of this Section~~.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.378 Unsaturated Zone Monitoring

An owner or operator subject to this Subpart M must establish an unsaturated zone monitoring program to carry out the following responsibilities:

a) The owner or operator must monitor the soil and soil-pore liquid to determine whether hazardous constituents migrate out of the treatment zone.

1) The Agency must specify the hazardous constituents to be monitored in the facility permit. The hazardous constituents to be monitored are those specified under Section 724.371(b).

2) The Agency may require monitoring for principal hazardous constituents (PHCs) in lieu of the constituents specified under Section 724.371(b). PCHs are hazardous constituents contained in the wastes to be applied at the unit that are the most difficult to treat, considering the combined effects of degradation, transformation, and immobilization. The Agency must establish PHCs if it finds, based on waste analyses, treatment demonstrations, or other data, that effective degradation transformation or immobilization of the PHCs will assure treatment at least equivalent levels for the other hazardous constituents in the wastes.

b) The owner or operator must install an unsaturated zone monitoring system that includes soil monitoring using soil cores and soil-pore liquid monitoring using devices such as lysimeters. The unsaturated zone monitoring system must consist of a sufficient number of sampling points at appropriate locations and depths to yield samples that fulfill the following:

1) Represent the quality of background soil-pore liquid quality and the chemical make-up of soil that has not been affected by leakage from the treatment zone; and

2) Indicate the quality of soil-pore liquid and the chemical make-up of the soil below the treatment zone.

c) The owner or operator must establish a background value for each hazardous constituent to be monitored under subsection (a) ~~of this Section~~. The permit will specify the background values for each constituent or specify the procedures to be used to calculate the background values.

1) Background soil values may be based on a one-time sampling at a background plot having characteristics similar to those of the treatment zone.

2) Background soil-pore liquid values must be based on at least quarterly sampling for one year at a background plot having characteristics similar to those of the treatment zone.

3) The owner or operator must express all background values in a form necessary for the determination of statistically significant increases under subsection (f) ~~of this Section~~.

4) In taking samples used in the determination of all background values, the owner or operator must use an unsaturated zone monitoring system that complies with subsection (b)(1) ~~of this Section~~.

d) The owner or operator must conduct soil monitoring and soil-pore liquid monitoring immediately below the treatment zone. The Agency must specify the frequency and timing of soil and soil-pore liquid monitoring in the facility permit after considering the frequency, timing, and rate of waste application and the soil permeability. The owner or operator must express the results of soil and soil-pore liquid monitoring in a form necessary for the determination of statistically significant increases under subsection (f) ~~of this Section~~.

e) The owner or operator must use consistent sampling and analysis procedures that are designed to ensure sampling results that provide a reliable indication of soil-pore liquid quality and the chemical make-up of the soil below the treatment zone. At a minimum, the owner or operator must implement procedures and techniques for the following:

1) Sample collection;

2) Sample preservation and shipment;

3) Analytical procedures; and

4) Chain of custody control.

f) The owner or operator must determine whether there is a statistically significant change over background values for any hazardous constituent to be monitored under subsection (a) ~~of this Section~~ below the treatment zone each time it conducts soil monitoring and soil-pore liquid monitoring under subsection (d) ~~of this Section~~.

1) In determining whether a statistically significant increase has occurred, the owner or operator must compare the value of each constituent, as determined under subsection (d) ~~of this Section~~, to the background value for that constituent according to the statistical procedure specified in the facility permit under this subsection (f).

2) The owner or operator must determine whether there has been a statistically significant increase below the treatment zone within a reasonable time period after completion of sampling. The Agency must specify that time period in the facility permit after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of soil and soil-pore liquid samples.

3) The owner or operator must determine whether there is a statistically significant increase below the treatment zone using a statistical procedure that provides reasonable confidence that migration from the treatment zone will be identified. The Agency must specify a statistical procedure in the facility permit that it finds fulfills the following:

A) Is appropriate for the distribution of the data used to establish background values; and

B) Provides a reasonable balance between the probability of falsely identifying migration from the treatment zone and the probability of failing to identify real migration from the treatment zone.

g) If the owner or operator determines, pursuant to subsection (f) ~~of this Section~~, that there is a statistically significant increase of hazardous constituents below the

treatment zone, it must do the following:

1) Notify the Agency of this finding in writing within seven days. The notification must indicate what constituents have shown statistically significant increases.

2) Within 90 days, submit to the Agency an application for a permit modification to modify the operating practices at the facility in order to maximize the success of degradation, transformation, or immobilization processes in the treatment zone.

h) If the owner or operator determines, pursuant to subsection (f) ~~of this Section~~, that there is a statistically significant increase of hazardous constituents below the treatment zone, it may demonstrate that a source other than regulated units caused the increase or that the increase resulted from an error in sampling, analysis, or evaluation. While the owner or operator may make a demonstration under this subsection (h) in addition to, or in lieu of, submitting a permit modification application under subsection (g)(2) ~~of this Section~~, it is not relieved of the requirement to submit a permit modification application within the time specified in subsection (g)(2) ~~of this Section~~, unless the demonstration made under this subsection (h) successfully shows that a source other than regulated units caused the increase or that the increase resulted from an error in sampling, analysis, or evaluation. In making a demonstration under this subsection (h), the owner or operator must do the following:

1) Notify the Agency in writing within seven days of determining a statistically significant increase below the treatment zone that the owner or operator intends to make a determination under this subsection (h);

2) Within 90 days, submit a report to the Agency demonstrating that a source other than the regulated units caused the increase or that the increase resulted from error in sampling, analysis, or evaluation;

3) Within 90 days, submit to the Agency an application for a permit modification to make any appropriate changes to the unsaturated zone monitoring program at the facility; and

4) Continue to monitor in accordance with the unsaturated zone monitoring program established under this Section.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.380 Closure and Post-Closure Care

a) During the closure period the owner or operator must do the following:

1) It must continue all operations (including pH control) necessary to maximize degradation, transformation, or immobilization of hazardous constituents within the treatment zone, as required under Section 724.373(a), except to the extent such measures are inconsistent with subsection (a)(8) ~~of this Section~~;

2) It must continue all operations in the treatment zone to minimize run-off of hazardous constituents, as required under Section 724.373(b);

3) It must maintain the run-on control system required under Section 724.373(c);

4) It must maintain the run-off management system required under Section 724.373(d);

5) It must control wind dispersal of hazardous waste if required under Section 724.373(f);

6) It must continue to comply with any prohibitions or conditions concerning growth of food-chain crops under Section 724.376;

7) It must continue unsaturated zone monitoring in compliance with Section 724.378, except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone; and

8) It must establish a vegetative cover on the portion of the facility being closed at such time that the cover will not substantially impede degradation, transformation, or immobilization of hazardous constituents in the treatment zone. The vegetative cover must be capable of maintaining growth without extensive maintenance.

b) For the purpose of complying with Section 724.215, when closure is completed

the owner or operator may submit to the Agency certification by an independent qualified soil scientist, in lieu of a qualified Professional Engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

c) During the post-closure care period the owner or operator must do the following:

1) It must continue all operations (including pH control) necessary to enhance degradation and transformation and sustain immobilization of hazardous constituents in the treatment zone to the extent that such measures are consistent with other post-closure care activities;

2) It must maintain a vegetative cover over closed portions of the facility;

3) It must maintain the run-on control system required under Section 724.373(c);

4) It must maintain the run-off management system required under Section 724.373(d);

5) It must control wind dispersal of hazardous waste if required under Section 724.373(f);

6) It must continue to comply with any prohibitions or conditions concerning growth of food-chain crops under Section 724.376; and

7) It must continue unsaturated zone monitoring in compliance with Section 724.378, except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone.

d) The owner or operator is not subject to regulation under subsections (a)(8) and (c) ~~of this Section~~ if the Agency finds that the level of hazardous constituents in the treatment zone soil does not exceed the background value of those constituents by an amount that is statistically significant when using the test specified in subsection (d)(3) ~~of this Section~~. The owner or operator may submit such a demonstration to the Agency at any time during the closure or post-closure care periods. For the purposes of this subsection (d), the owner or operator must do the following:

1) The owner or operator must establish background soil values and determine whether there is a statistically significant increase over those values for all hazardous constituents specified in the facility permit under Section 724.371.

A) Background soil values may be based on a one-time sampling of a background plot having characteristics similar to those of the treatment zone.

B) The owner or operator must express background values and values for hazardous constituents in the treatment zone in a form necessary for the determination of statistically significant increases under subsection (d)(3) ~~of this Section~~.

2) In taking samples used in the determination of background and treatment zone values, the owner or operator must take samples at a sufficient number of sampling points and at appropriate locations and depths to yield samples that represent the chemical make-up of soil that has not been affected by leakage from the treatment zone and the soil within the treatment zone, respectively.

3) In determining whether a statistically significant increase has occurred, the owner or operator must compare the value of each constituent in the treatment zone to the background value for that constituent using a statistical procedure that provides reasonable confidence that constituent presence in the treatment zone will be identified. The owner or operator must use a statistical procedure that does the following:

A) It is appropriate for the distribution of the data used to establish background values; and

B) It provides a reasonable balance between the probability of falsely identifying hazardous constituent presence in the treatment zone and the probability of failing to identify real presence in the treatment zone.

e) The owner or operator is not subject to regulation under Subpart F ~~of this Part~~ if the Agency finds that the owner or operator satisfies subsection (d) ~~of this Section~~ and if unsaturated zone monitoring under Section 724.378 indicates that

hazardous constituents have not migrated beyond the treatment zone during the active life of the land treatment unit.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.382 Special Requirements for Incompatible Wastes

The owner or operator must not place incompatible wastes, or incompatible wastes and materials (see Appendix E ~~of this Part~~ for examples), in or on the same treatment zone, unless Section 724.117(b) is complied with.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

SUBPART N: LANDFILLS

Section 724.401 Design and Operating Requirements

a) Any landfill that is not covered by subsection (c) ~~of this Section~~ or 35 Ill. Adm. Code 725.401(a) must have a liner system for all portions of the landfill (except for existing portions of such landfill). The liner system must have the following:

1) A liner that is designed, constructed, and installed to prevent any migration of wastes out of the landfill to the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the landfill. The liner must be constructed of materials that prevent wastes from passing into the liner during the active life of the facility. The liner must fulfill the following:

A) It must be constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation and the stress of daily operation;

B) It must be placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

C) It must be installed to cover all surrounding earth likely to be in contact with the waste or leachate; and

2) A leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the landfill. The Agency must specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 cm (one foot). The leachate collection and removal system must fulfill the following:

A) Constructed of materials that fulfill the following:

i) Chemically resistant to the waste managed in the landfill and the leachate expected to be generated; and

ii) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and any equipment used at the landfill; and

B) Designed and operated to function without clogging through the scheduled closure of the landfill.

b) The owner or operator will be exempted from the requirements of subsection (a) ~~of this Section~~ if the Board grants an adjusted standard pursuant to Section 28.1 of the Act ~~[415 ILCS 5/28.1]~~ and 35 Ill. Adm. Code 101 and 104. The level of justification is a demonstration by the owner or operator that alternative design or operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (see Section 724.193) into the groundwater or surface water at any future time. In deciding whether to grant an adjusted standard, the Board will consider the following:

1) The nature and quantity of the wastes;

2) The proposed alternative design and operation;

3) The hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the landfill and groundwater or surface water; and

4) All other factors that influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

c) The owner or operator of each new landfill unit on which construction commences after January 29, 1992, each lateral expansion of a landfill unit on which construction commenced after July 29, 1992, and each replacement of an existing landfill unit that was to commence reuse after July 29, 1992, must install two or more liners and a leachate collection and removal system above and between such liners. "Construction commenced" is as defined in 35 Ill. Adm. Code 720.110 under "existing facility~~.~~".

1) Liner requirements.

A) The liner system must include the following:

i) A top liner designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into such liner during the active life and post-closure care period; and

ii) A composite bottom liner, consisting of at least two components. The upper component must be designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into this component during the active life and post-closure care period. The lower component must be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur. The lower component must be constructed of at least 3 feet (91 cm) of compacted soil material with a hydraulic conductivity of no more than $1x10^{-7}$ cm/sec.

B) The liners must comply with subsections (a)(1)(A), (a)(1)(B), and (a)(1)(C) ~~of this Section~~.

2) The leachate collection and removal system immediately above the top liner must be designed, constructed, operated, and maintained to collect

and remove leachate from the landfill during the active life and post-closure care period. The Agency must specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 cm (one foot). The leachate collection and removal system must comply with subsections (c)(3)(C) and (c)(3)(D) ~~of this Section~~.

3) The leachate collection and removal system between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, is also a leak detection system (LDS). This LDS must be capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and post-closure care period. The requirements for a LDS in this subsection (c) are satisfied by installation of a system that, at a minimum, fulfills the following:

A) It is constructed with a bottom slope of one percent or more;

B) It is constructed of granular drainage materials with a hydraulic conductivity of $1x10^{-2}$ cm/sec or more and a thickness of 12 inches (30.5 cm) or more; or constructed of synthetic or geonet drainage materials with a transmissivity of $3x10^{-5}$ m^2/sec or more;

C) It is constructed of materials that are chemically resistant to the waste managed in the landfill and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and equipment used at the landfill;

D) It is designed and operated to minimize clogging during the active life and post-closure care period; and

E) It is constructed with sumps and liquid removal methods (e.g., pumps) of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit must have its own sumps. The design of each sump and removal system must provide a method for measuring and recording the volume of liquids present in the sump and of liquids

removed.

4) The owner or operator must collect and remove pumpable liquids in the LDS sumps to minimize the head on the bottom liner.

5) The owner or operator of a LDS that is not located completely above the seasonal high water table must demonstrate that the operation of the LDS will not be adversely affected by the presence of ground water.

d) Subsection (c) ~~of this Section~~ will not apply if the owner or operator demonstrates to the Agency, and the Agency finds for such landfill, that alternative design or operating practices, together with location characteristics, will do the following:

1) It will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the liners and leachate collection and removal systems, specified in subsection (c) ~~of this Section~~; and

2) It will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

e) The Agency must not require a double liner as set forth in subsection (c) ~~of this Section~~ for any monofill, if the following is true:

1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents that render the wastes hazardous for reasons other than the toxicity characteristics in 35 Ill. Adm. Code 721.124, with USEPA hazardous waste numbers D004 through D017; and

2) No Migration Demonstration~~migration demonstration.~~

A) Design and Location Requirements~~location requirements.~~

i) The monofill has at least one liner for which there is no evidence that such liner is leaking;

ii) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is

defined in 35 Ill. Adm. Code 702.110; and

iii) The monofill is in compliance with generally applicable groundwater monitoring requirements for facilities with RCRA permits; or

B) The owner or operator demonstrates to the Board that the monofill is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into groundwater or surface water at any future time.

f) The owner or operator of any replacement landfill unit is exempt from subsection (c) ~~of this Section~~ if the following is true:

1) The existing unit was constructed in compliance with the design standards of 35 Ill. Adm. Code 724.401(c), (d), and (e); and

BOARD NOTE: The cited subsections implemented the design standards of sections 3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act (42 USC ~~U.S.C.~~6924(o)(1)(A)(i) and (o)(5) ~~6901 et seq.~~).

2) There is no reason to believe that the liner is not functioning as designed.

g) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 25-year storm.

h) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

i) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

j) If the landfill contains any particulate matter that may be subject to wind dispersal, the owner or operator must cover or otherwise manage the landfill to control wind dispersal.

k) The Agency must specify in the permit all design and operating practices that are necessary to ensure that the requirements of this Section are satisfied.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.404 Response Actions

a) The owner or operator of landfill units subject to Section 724.401(c) or (d) must have an approved response action plan before receipt of waste. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in subsection (b) ~~of this Section~~.

b) If the flow rate into the LDS exceeds the action leakage rate for any sump, the owner or operator must do the following :

1) Notify the Agency in writing of the exceedance within seven days of the determination;

2) Submit a preliminary written assessment to the Agency within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

3) Determine to the extent practicable the location, size, and cause of any leak;

4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether the unit should be closed;

5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Agency the results of the determinations specified in subsections (b)(3), (b)(4), and (b)(5) ~~of this Section~~ , the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the LDS exceeds the action leakage rate, the owner or operator

must submit to the Agency a report summarizing the results of any remedial actions taken and actions planned.

c) To make the leak or remediation determinations in subsections (b)(3), (b)(4), and (b)(5) ~~of this Section~~, the owner or operator must do either of the following:

1) Perform the following assessments:

A) Assess the source of liquids and amounts of liquids by source;

B) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the LDS to identify the source of liquids and possible location of any leaks and the hazard and mobility of the liquid; and

C) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

2) Document why such assessments are not needed.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.410 Closure and Post-Closure Care

a) At final closure of the landfill or upon closure of any cell, the owner or operator must cover the landfill or cell with a final cover designed and constructed to do the following:

1) Provide long-term minimization of migration of liquids through the closed landfill;

2) Function with minimum maintenance;

3) Promote drainage and minimize erosion or abrasion of the cover;

4) Accommodate settling and subsidence so that the cover's integrity is maintained; and

5) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

b) After final closure, the owner or operator must comply with all post-closure requirements contained in Sections 724.217 through 724.220, including maintenance and monitoring throughout the post-closure care period (specified in the permit under Section 724.217). The owner or operator must do the following:

1) Maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;

2) Continue to operate the leachate collection and removal system until leachate is no longer detected;

3) Maintain and monitor the LDS in accordance with Sections 724.401(c)(3)(D) and (c)(4) and 724.403(c), and comply with all other applicable LDS requirements of this Part;

4) Maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of Subpart F ~~of this Part~~;

5) Prevent run-on and run-off from eroding or otherwise damaging the final cover; and

6) Protect and maintain surveyed benchmarks used in complying with Section 724.409.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.412 Special Requirements for Ignitable or Reactive Waste

a) Except as provided in subsection (b) ~~of this Section~~, and in Section 724.416, ignitable or reactive waste must not be placed in a landfill, unless the waste and landfill meet all applicable requirements of 35 Ill. Adm. Code 728, and the waste is treated, rendered, or mixed before or immediately after placement in a landfill so that the following is true:

1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under 35 Ill. Adm. Code 721.121 or 721.123; and

2) Section 724.117(b) is complied with.

b) Except for prohibited wastes that remain subject to treatment standards in Subpart D to 35 Ill. Adm. Code 728, ignitable waste in containers may be landfilled without meeting the requirements of subsection (a), ~~of this Section~~ provided that the wastes are disposed of in such a way that they are protected from any material or conditions that may cause them to ignite. At a minimum, ignitable wastes must be disposed of in non-leaking containers that are carefully handled and placed so as to avoid heat, sparks, rupture, or any other condition that might cause ignition of the wastes; must be covered daily with soil or other non-combustible material to minimize the potential for ignition of the wastes; and must not be disposed of in cells that contain or will contain other wastes that may generate heat sufficient to cause ignition of the waste.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.413 Special Requirements for Incompatible Wastes

Incompatible wastes or incompatible wastes and materials (see Appendix E ~~of this Part~~ for examples) must not be placed in the same landfill cell, unless Section 724.117(b) is complied with.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.414 Special Requirements for Bulk and Containerized Liquids

a) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

b) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095B (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods~~;~~", USEPA publication number EPA-530/SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111(a).

c) Containers holding free liquids must not be placed in a landfill unless the following is true:

1) All free-standing liquid fulfills one of the following:

A) It has been removed by decanting or other methods;

B) It has been mixed with sorbent or solidified so that free-standing liquid is no longer observed; or

C) It has been otherwise eliminated; or

2) The container is very small, such as an ampule; or

3) The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

4) The container is a lab pack, as defined in Section 724.416, and is disposed of in accordance with Section 724.416.

d) Sorbents used to treat free liquids to be disposed of in landfills must be nonbiodegradable. Nonbiodegradable sorbents are the following: materials listed or described in subsection (d)(1); materials that pass one of the tests in subsection (d)(2); or materials that are determined by the Board to be nonbiodegradable through the adjusted standard procedure of 35 Ill. Adm. Code 104.

1) Nonbiodegradable sorbents are the following:

A) Inorganic minerals, other inorganic materials, and elemental carbon (e.g., aluminosilicates (clays, smectites, Fuller's earth, bentonite, calcium bentonite, montmorillonite, calcined montmorillonite, kaolinite, micas (illite), vermiculites, zeolites, etc.), calcium carbonate (organic free limestone), oxides/hydroxides (alumina, lime, silica (sand), diatomaceous earth, etc.), perlite (volcanic glass), expanded volcanic rock, volcanic ash, cement kiln dust, fly ash, rice hull ash, activated charcoal (activated carbon), etc.); or

B) High molecular weight synthetic polymers (e.g., polyethylene, high density polyethylene (HDPE), polypropylene, polystrene, polyurethane, polyacrylate, polynorborene, polyisobutylene,

ground synthetic rubber, cross-linked allylstrene and tertiary butyl copolymers, etc.). This does not include polymers derived from biological material or polymers specifically designed to be degradable; or

C) Mixtures of these nonbiodegradable materials.

2) Tests for nonbiodegradable sorbents are the following:

A) The sorbent material is determined to be nonbiodegradable under ASTM Method G21-70 (1984a) (Standard Practice for Determining Resistance of Synthetic Polymer Materials to Fungi), incorporated by reference in 35 Ill. Adm. Code 720.111(a);

B) The sorbent material is determined to be nonbiodegradable under ASTM Method G22-76 (1984b) (Standard Practice for Determining Resistance of Plastics to Bacteria), incorporated by reference in 35 Ill. Adm. Code 720.111(a); or

C) The sorbent material is determined to be non-biodegradable under OECD Guideline for Testing of Chemicals, Method 301B (CO_2 Evolution (Modified Sturm Test)), incorporated by reference in 35 Ill. Adm. Code 720.111(a).

e) The placement of any liquid that is not a hazardous waste in a hazardous waste landfill is prohibited (35 Ill. Adm. Code 729.311), unless the Board finds that the owner or operator has demonstrated the following in a petition for an adjusted standard pursuant to Section 28.1 of the Act ~~[415 ILCS 5/28.1]~~ and 35 Ill. Adm. Code 101 and 104:

1) The only reasonably available alternative to the placement in a hazardous waste landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, that contains or which may reasonably be anticipated to contain hazardous waste; and

2) Placement in the hazardous waste landfill will not present a risk of contamination of any "underground source of drinking water" (as that term is defined in 35 Ill. Adm. Code 702.110).

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.416 Disposal of Small Containers of Hazardous Waste in Overpacked Drums (Lab Packs)

Small containers of hazardous waste in overpacked drums (lab packs) may be placed in a landfill if the following requirements are met:

a) Hazardous waste must be packaged in non-leaking inside containers. The inside containers must be of a design and constructed of a material that will not react dangerously with, be decomposed by, or be ignited by the contained waste. The inside containers must be tightly and securely sealed. The inside containers must be of the size and type specified in the USDOT hazardous materials regulations (49 CFR 173 (Shippers − General Requirements for Shipments and Packages), 178 (Specifications for Packagings), and 179 (Specifications for Tank Cars), each incorporated by reference in 35 Ill. Adm. Code 720.111(b)), if those regulations specify a particular inside container for the waste.

b) The inside containers must be overpacked in an open head USDOT-specification metal shipping container (49 CFR 178 (Specifications for Packagings) and 179 (Specifications for Tank Cars)) of no more than 416 ℓ~~liter~~ (110 gallon) capacity and surrounded by, at a minimum, a sufficient quantity of sorbent material, determined to be nonbiodegradable in accordance with Section 724.414(d), to completely sorb all of the liquid contents of the inside containers. The metal outer container must be full after packing with inside containers and sorbent material.

c) In accordance with Section 724.117(b), the sorbent material used must not be capable of reacting dangerously with, being decomposed by, or being ignited by the contents of the inside containers, in accordance with Section 724.117(b).

d) Incompatible waste, as defined in 35 Ill. Adm. Code 720.110, must not be placed in the same outside container.

e) Reactive wastes, other than cyanide- or sulfide-bearing waste as defined in 35 Ill. Adm. Code 721.123(a)(5), must be treated or rendered non-reactive prior to packaging in accordance with subsections (a) through (d) ~~of this Section~~. Cyanide- and sulfide-bearing reactive waste may be packed in accordance with subsections (a) through (d) ~~of this Section~~ without first being treated or rendered

non-reactive.

f) Such disposal is in compliance with 35 Ill. Adm. Code 728. Persons who incinerate lab packs according to 35 Ill. Adm. Code 728.142(c)(1) may use fiber drums in place of metal outer containers. Such fiber drums must meet the USDOT specifications in 49 CFR 173.12 (Exceptions for Shipments of Waste Materials), incorporated by reference in 35 Ill. Adm. Code 720.111(b), and be overpacked according to the requirements of subsection (b) ~~of this Section~~.

g) Pursuant to 35 Ill. Adm. Code 729.312, the use of labpacks for disposal of liquid wastes or wastes containing free liquids allowed under this Section is restricted to labwaste and non-periodic waste, as those terms are defined in that Part.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

SUBPART O: INCINERATORS

Section 724.440 Applicability

a) The regulations in this Subpart O apply to owners and operators of hazardous waste incinerators (as defined in 35 Ill. Adm. Code 720.110), except as Section 724.101 provides otherwise.

b) Integration of the MACT Standards~~standards.~~

1) Except as provided by subsections (b)(2) through (b)(4) ~~of this Section~~, the standards of this Part do not apply to a new hazardous waste incineration unit that became subject to RCRA permit requirements after October 12, 2005; or no longer apply when the owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the maximum achievable control technology (MACT) requirements of subpart EEE of 40 CFR 63 (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors), incorporated by reference in 35 Ill. Adm. Code 720.111(b), by conducting a comprehensive performance test and submitting to the Agency a Notification of Compliance, pursuant to 40 CFR 63.1207(j) and63.1210(d), documenting compliance with the requirements of subpart EEE of 40 CFR 63.

2) The MACT standards of subpart EEE of 40 CFR 63 do not replace the closure requirements of Section 724.451 or the applicable requirements of Subparts A through H, BB, and CC ~~of this Part~~.

3) The particulate matter standard of Section 724.443(c) remains in effect for incinerators that elect to comply with the alternative to the particulate matter standard of 40 CFR 63.1206(b)(14) and 63.1219(e) (When and How Must You Comply with the Standards and Operating Requirements?), incorporated by reference in 35 Ill. Adm. Code 720.111(b).

4) The following requirements remain in effect for startup, shutdown, and malfunction events if the owner or operator elects to comply with 35 Ill. Adm. Code 703.320(a)(1)(A) to minimize emissions of toxic compounds from the following events:

A) Section 724.445(a), requiring that an incinerator operate in accordance with operating requirements specified in the permit; and

B) Section 724.445(c), requiring compliance with the emission standards and operating requirements during startup and shutdown if hazardous waste is in the combustion chamber, except for particular hazardous wastes.

BOARD NOTE: Sections 9.1 and 39.5 of the Environmental Protection Act ~~[415 ILCS 5/9.1 and 39.5]~~ make the federal MACT standards directly applicable to entities in Illinois and authorize the Agency to issue permits based on the federal standards. Operating conditions used to determine effective treatment of hazardous waste remain effective after the owner or operator demonstrates compliance with the standards of subpart EEE of 40 CFR 63. In adopting this subsection (b), USEPA stated as follows (at 64 Fed Reg. 52828, 52975 (September 30, 1999)):

> Under this approach . . . , MACT air emissions and related operating requirements are to be included in Title V permits; RCRA permits will continue to be required for all other aspects of the combustion unit and the facility that are governed by RCRA (e.g., corrective action, general facility standards, other combustor-

specific concerns such as materials handling, risk-based emissions limits and operating requirements, as appropriate, and other hazardous waste management units).

c) After consideration of the waste analysis included with Part B of the permit application, the Agency, in establishing the permit conditions, must exempt the applicant from all requirements of this Subpart O, except Section 724.441 (Waste Analysis) and Section 724.451 (Closure):

1) If the Agency finds that the waste to be burned is one of the following:

A) It is listed as a hazardous waste in Subpart D of 35 Ill. Adm. Code 721 solely because it is ignitable (Hazard Code I), corrosive (Hazard Code C), or both;

B) It is listed as a hazardous waste in Subpart D of 35 Ill. Adm. Code 721 solely because it is reactive (Hazard Code R) for characteristics other than those listed in Section 721.123(a)(4) and (5), and will not be burned when other hazardous wastes are present in the combustion zone;

C) It is a hazardous waste solely because it possesses the characteristic of ignitability, as determined by the test for characteristics of hazardous wastes pursuant to Subpart C of 35 Ill. Adm. Code 721; or

D) It is a hazardous waste solely because it possesses any of the reactivity characteristics described by 35 Ill. Adm. Code 721.123(a)(1), (a)(2), (a)(3), (a)(6), (a)(7), and (a)(8) and will not be burned when other hazardous wastes are present in the combustion zone; and

2) If the waste analysis shows that the waste contains none of the hazardous constituents listed in Subpart H of 35 Ill. Adm. Code 721 that would reasonably be expected to be in the waste.

d) If the waste to be burned is one that is described by subsection (b)(1)(A), (b)(1)(B), (b)(1)(C), or (b)(1)(D) ~~of this Section~~ and contains insignificant concentrations of the hazardous constituents listed in Subpart H of 35 Ill. Adm.

Code 721, then the Agency may, in establishing permit conditions, exempt the applicant from all requirements of this Subpart O, except Section 724.441 (Waste Analysis) and Section 724.451 (Closure), after consideration of the waste analysis included with Part B of the permit application, unless the Agency finds that the waste will pose a threat to human health or the environment when burned in an incinerator.

e) The owner or operator of an incinerator may conduct trial burns subject only to the requirements of 35 Ill. Adm. Code 703.222 through 703.225 (short-term and incinerator permits).

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.443 Performance Standards

An incinerator burning hazardous waste must be designed, constructed, and maintained so that, when operated in accordance with operating requirements specified under Section 724.445, it will meet the following performance standards:

a) Destruction and Removal Efficiency~~removal efficiency.~~

1) Except as provided in subsection (a)(2) ~~of this Section~~, an incinerator burning hazardous waste must achieve a destruction and removal efficiency (DRE) of 99.99% for each principal organic hazardous constituent (POHC) designated (under Section 724.442) in its permit for each waste feed. DRE is determined for each POHC from the following equation:

$$DRE = \frac{100 \times (N - O)}{N}$$

Where:

N = Mass feed rate of one principal organic hazardous constituent (POHC) in the waste stream feeding the incinerator
O = Mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere

2) An incinerator burning hazardous wastes F020, F021, F022, F023, F026,

or F027 must achieve a destruction and removal efficiency (DRE) of 99.9999% for each principal organic hazardous constituent (POHC) designated (under Section 724.442) in its permit. This performance must be demonstrated on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. DRE is determined for each POHC from the equation in subsection (a)(1) ~~of this Section~~.

b) An incinerator burning hazardous waste and producing stack emissions of more than 1.8 kg (4 lbs)~~kilograms~~ per hour ~~(4 pounds per hour)~~ of hydrogen chloride (HCl) must control HCl emissions such that the rate of emission is no greater than the larger of either 1.8 kg (4 lbs)~~kilograms~~ per hour or one percent of the HCl in the stack gas prior to entering any pollution control equipment.

c) An incinerator burning hazardous waste must not emit particulate matter in excess of 180 milligrams per dry standard cubic meter (0.08 grains per dry standard cubic foot) when corrected for the amount of oxygen in the stack gas according to the following formula:

$$C = \frac{14 \times M}{21 - Y}$$

1) Where:

C = the corrected concentration of particulate matter
M = the measured concentration of particulate matter
Y = the measured concentration of oxygen in the stack gas, using the Orsat method for oxygen analysis of dry flue gas, presented in Reference Method 3 in appendix A to 40 CFR 60 (Gas Analysis for the Determination of Dry Molecular Weight), incorporated by reference in 35 Ill. Adm. Code 720.111(b)

2) This correction procedure is to be used by all hazardous waste incinerators except those operating under conditions of oxygen enrichment. For these facilities, the Agency must select an appropriate correction procedure, to be specified in the facility permit.

d) For the purposes of permit enforcement, compliance with the operating requirements specified in the permit (under Section 724.445) will be regarded as

compliance with this Section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the performance requirements of this Section may be "information" justifying modification, revocation or reissuance of a permit under 35 Ill. Adm. Code 702.184.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.444 Hazardous Waste Incinerator Permits

a) The owner or operator of a hazardous waste incinerator may burn only wastes specified in its permit and only under operating conditions specified for those wastes under Section 724.445 except the following:

1) In approved trial burns under 35 Ill. Adm. Code 703.222 through 703.225; or

2) Under exemptions created by Section 724.440.

b) Other hazardous wastes may be burned only after operating conditions have been specified in a new permit or a permit modification as applicable. Operating requirements for new wastes may be based on either trial burn results or alternative data included with Part B of a permit application under 35 Ill. Adm. Code 703.205.

c) The permit for a new hazardous waste incinerator must establish appropriate conditions for each of the applicable requirements of this Subpart O, including but not limited to allowable waste feeds and operating conditions necessary to meet the requirements of Section 724.445, sufficient to comply with the following standards:

1) For the period beginning with initial introduction of hazardous waste to the incinerator and ending with initiation of the trial burn, and only for the minimum time required to establish operating conditions required in subsection (c)(2) ~~of this Section~~, not to exceed a duration of 720 hours operating time for treatment of hazardous waste, the operating requirements must be those most likely to ensure compliance with the performance standards of Section 724.443, based on the Agency's engineering judgement. The Agency may extend the duration of this period once for up to 720 additional hours when good cause for the

extension is demonstrated by the applicant

2) For the duration of the trial burn, the operating requirements must be sufficient to demonstrate compliance with the performance standards of Section 724.443 and must be in accordance with the approved trial burn plan;

3) For the period immediately following completion of the trial burn and only for the minimum period sufficient to allow sample analysis, data computation, and submission of the trial burn results by the applicant and review of the trial burn results and modification of the facility permit by the Agency, the operating requirements must be those most likely to ensure compliance with the performance standards of Section 724.443 based on the Agency's engineering judgment.

4) For the remaining duration of the permit, the operating requirements must be those demonstrated, in a trial burn or by alternative data specified in 35 Ill. Adm. Code 703.205(c), as sufficient to ensure compliance with the performance standards of Section 724.443.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.445 Operating Requirements

a) An incinerator must be operated in accordance with operating requirements specified in the permit. These will be specified on a case-by-case basis as those demonstrated (in a trial burn or in alternative data as specified in Section 724.444(b) and included with Part B of the facility's permit application) to be sufficient to comply with the performance standards of Section 724.443.

b) Each set of operating requirements will specify the composition of the waste feed (including acceptable variations in the physical or chemical properties of the waste feed that will not affect compliance with the performance requirement of Section 724.443) to which the operating requirements apply. For each such waste feed, the permit will specify acceptable operating limits, including the following conditions:

1) Carbon monoxide (CO) level in the stack exhaust gas;

2) Waste feed rate;

3) Combustion temperature;

4) An appropriate indicator of combustion gas velocity;

5) Allowable variations in incinerator system design or operating procedures; and

6) Such other operating requirements as are necessary to ensure that the performance standards of Section 724.443 are met.

c) During start-up and shut-down of an incinerator, hazardous waste (except wastes exempted in accordance with Section 724.440) must not be fed into the incinerator unless the incinerator is operating within the conditions of operation (temperature, air feed rate, etc.) specified in the permit.

d) Fugitive emissions from the combustion zone must be controlled by the following:

1) Keeping the combustion zone totally sealed against fugitive emissions;

2) Maintaining a combustion zone pressure lower than atmospheric pressure; or

3) An alternative means of control demonstrated (with Part B of the permit application) to provide fugitive emissions control equivalent to maintenance of combustion zone pressure lower than atmospheric pressure.

e) An incinerator must be operated with a functioning system to automatically cut off waste feed to the incinerator when operating conditions deviate from limits established under subsection (a) ~~of this Section~~.

f) An incinerator must cease operation when changes in waste feed, incinerator design, or operating conditions exceed limits designated in its permit.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

SUBPART S: SPECIAL PROVISIONS FOR CLEANUP

Section 724.650 Applicability of Corrective Action Management Unit Regulations

a) Except as provided in subsection (b) ~~of this Section~~, a CAMU is subject to the requirements of Section 724.652.

b) A CAMU that is approved before April 22, 2002, or for which substantially complete applications (or equivalents) were submitted to the Agency on or before November 20, 2000, is subject to the requirements in Section 724.651 for a grandfathered CAMU. Within a grandfathered CAMU, CAMU waste, activities, and design will not be subject to the standards in Section 724.652, so long as the waste, activities, and design remain within the general scope of the CAMU, as approved.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.651 Grandfathered Corrective Action Management Units

a) To implement remedies pursuant to Section 724.201 or RCRA section 3008(h), or to implement remedies at a permitted facility that is not subject to Section 724.201, the Agency may designate an area at the facility as a corrective action management unit in accordance with the requirements of this Section. "Corrective action management unit" or "CAMU" means an area within a facility that is used only for managing remediation wastes for implementing corrective action or cleanup at that facility. A CAMU must be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the CAMU originated. One or more CAMUs may be designated at a facility.

1) Placement of remediation wastes into or within a CAMU does not constitute land disposal of hazardous wastes.

2) Consolidation or placement of remediation wastes into or within a CAMU does not constitute creation of a unit subject to minimum technology requirements.

b) Designation of a CAMU~~.~~

1) The Agency may designate a regulated unit (as defined in Section 724.190(a)(2)) as a CAMU, or it may incorporate a regulated unit into a CAMU, if the following is true:

A) The regulated unit is closed or closing, meaning it has begun the closure process pursuant to Section 724.213 or 35 Ill. Adm. Code 725.213; and

B) Inclusion of the regulated unit will enhance implementation of effective, protective, and reliable remedial actions for the facility.

2) The requirements of Subparts F, G, and H ~~of this Part~~ and the unit-specific requirements of this Part or the 35 Ill. Adm. Code 725 requirements that applied to that regulated unit will continue to apply to that portion of the CAMU after incorporation into the CAMU.

c) The Agency must designate a CAMU in accordance with the following factors:

1) The CAMU must facilitate the implementation of reliable, effective, protective, and cost-effective remedies;

2) Waste management activities associated with the CAMU must not create unacceptable risks to humans or to the environment resulting from exposure to hazardous wastes or hazardous constituents;

3) The CAMU must include uncontaminated areas of the facility only if including such areas for the purpose of managing remediation waste is more protective than managing such wastes at contaminated areas of the facility;

4) Areas within the CAMU where wastes remain in place after its closure must be managed and contained so as to minimize future releases to the extent practicable;

5) The CAMU must expedite the timing of remedial activity implementation, when appropriate and practicable;

6) The CAMU must enable the use, when appropriate, of treatment technologies (including innovative technologies) to enhance the long-term

effectiveness of remedial actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the CAMU; and

7) The CAMU must, to the extent practicable, minimize the land area of the facility upon which wastes will remain in place after closure of the CAMU.

d) The owner or operator must provide sufficient information to enable the Agency to designate a CAMU in accordance with the standards of this Section.

e) The Agency must specify in the permit the requirements applicable to a CAMU, including the following:

1) The areal configuration of the CAMU.

2) Requirements for remediation waste management, including the specification of applicable design, operation, and closure requirements.

3) Requirements for groundwater monitoring that are sufficient to do the following:

A) Continue to detect and to characterize the nature, extent, concentration, direction, and movement of existing releases of hazardous constituents in groundwater from sources located within the CAMU; and

B) Detect and subsequently characterize releases of hazardous constituents to groundwater that may occur from areas of the CAMU in which wastes will remain in place after closure of the CAMU.

4) Closure and Post-Closure Care Requirements~~post-closure care requirements.~~

A) Closure of a CAMU must do the following:

i) Minimize the need for further maintenance; and

ii) Control, minimize, or eliminate, to the extent necessary to

adequately protect human health and the environment, for areas where wastes remain in place, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere.

B) Requirements for closure of a CAMU must include the following, as appropriate:

i) Requirements for excavation, removal, treatment, or containment of wastes;

ii) For areas in which wastes will remain after closure of the CAMU, requirements for the capping of such areas; and

iii) Requirements for the removal and decontamination of equipment, devices, and structures used in remediation waste management activities within the CAMU.

C) In establishing specific closure requirements for a CAMU pursuant to this subsection (e), the Agency must consider the following factors:

i) The characteristics of the CAMU;

ii) The volume of wastes that remain in place after closure;

iii) The potential for releases from the CAMU;

iv) The physical and chemical characteristics of the waste;

v) The hydrological and other relevant environmental conditions at the facility that may influence the migration of any potential or actual releases; and

vi) The potential for exposure of humans and environmental receptors if releases were to occur from the CAMU.

D) Post-closure care requirements as necessary to adequately protect human health and the environment, including, for areas where wastes will remain in place, monitoring and maintenance activities and the frequency with which such activities must be performed to ensure the integrity of any cap, final cover, or other containment system.

f) The Agency must document the rationale for designating the CAMU and must make such documentation available to the public.

g) Incorporation of a CAMU into an existing permit must be approved by the Agency according to the procedures for Agency-initiated permit modifications pursuant to 35 Ill. Adm. Code 703.270 through 703.273 or according to the permit modification procedures of 35 Ill. Adm. Code 703.283.

h) The designation of a CAMU does not change the Agency's existing authority to address cleanup levels, media-specific points of compliance to be applied to remediation at a facility, or other remedy selection decisions.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.652 Corrective Action Management Units

a) To implement remedies pursuant to Section 724.201 or RCRA section 3008(h), or to implement remedies at a permitted facility that is not subject to Section 724.201, the Agency may designate an area at the facility as a corrective action management unit pursuant to the requirements in this Section. "Corrective action management unit" or "CAMU" means an area within a facility that is used only for managing CAMU-eligible wastes for implementing corrective action or cleanup at that facility. A CAMU must be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the CAMU originated. One or more CAMUs may be designated at a facility.

1) "CAMU-eligible waste" means the following:

A) All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, that are managed for implementing cleanup. As-generated wastes (either hazardous or non-hazardous) from ongoing industrial

operations at a site are not CAMU-eligible wastes.

B) Wastes that would otherwise meet the description in subsection (a)(1)(A) ~~of this Section~~ are not CAMU-eligible waste where the following is true:

i) The wastes are hazardous waste found during cleanup in intact or substantially intact containers, tanks, or other non-land-based units found above ground, unless the wastes are first placed in the tanks, containers, or non-land-based units as part of cleanup, or the containers or tanks are excavated during the course of cleanup; or

ii) The Agency makes the determination in subsection (a)(2) ~~of this Section~~ to prohibit the wastes from management in a CAMU.

C) Notwithstanding subsection (a)(1)(A) ~~of this Section~~, where appropriate, as-generated non-hazardous waste may be placed in a CAMU where such waste is being used to facilitate treatment or the performance of the CAMU.

2) The Agency must prohibit the placement of waste in a CAMU where the Agency determines that the wastes have not been managed in compliance with applicable land disposal treatment standards of 35 Ill. Adm. Code 728, applicable unit design requirements of this Part or 35 Ill. Adm. Code 725, or other applicable requirements of this Subtitle G, and that the non-compliance likely contributed to the release of the waste.

3) Prohibition against placing liquids in a CAMU.

A) The placement of bulk or noncontainerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not sorbents have been added) in any CAMU is prohibited except where placement of such wastes facilitates the remedy selected for the waste.

B) The requirements in Section 724.414(c) for placement of containers holding free liquids in landfills apply to placement in a

CAMU, except where placement facilitates the remedy selected for the waste.

C) The placement of any liquid that is not a hazardous waste in a CAMU is prohibited unless such placement facilitates the remedy selected for the waste or a demonstration is made pursuant to Section 724.414(e).

D) The absence or presence of free liquids in either a containerized or a bulk waste must be determined in accordance with Section 724.414(b). Sorbents used to treat free liquids in a CAMU must meet the requirements of Section 724.414(d).

4) Placement of CAMU-eligible wastes into or within a CAMU does not constitute land disposal of hazardous waste.

5) Consolidation or placement of CAMU-eligible wastes into or within a CAMU does not constitute creation of a unit subject to minimum technology requirements.

b) Establishing a CAMU.

1) The Agency must designate a regulated unit (as defined in Section 724.190(a)(2)) as a CAMU or must incorporate a regulated unit into a CAMU, if it determines that the following is true of a regulated unit:

A) The regulated unit is closed or closing, meaning it has begun the closure process pursuant to Section 724.213 or 35 Ill. Adm. Code 725.213; and

B) Inclusion of the regulated unit will enhance implementation of effective, protective, and reliable remedial actions for the facility.

2) The Subpart F, G, and H requirements and the unit-specific requirements of this Part or 35 Ill. Adm. Code 265 that applied to the regulated unit will continue to apply to that portion of the CAMU after incorporation into the CAMU.

c) The Agency must designate a CAMU that will be used for storage or treatment

only in accordance with subsection (f) ~~of this Section~~. The Agency must designate any other CAMU in accordance with the following requirements:

1) The CAMU must facilitate the implementation of reliable, effective, protective, and cost-effective remedies;

2) Waste management activities associated with the CAMU must not create unacceptable risks to humans or to the environment resulting from exposure to hazardous wastes or hazardous constituents;

3) The CAMU must include uncontaminated areas of the facility, only if including such areas for the purpose of managing CAMU-eligible waste is more protective than management of such wastes at contaminated areas of the facility;

4) Areas within the CAMU, where wastes remain in place after closure of the CAMU, must be managed and contained so as to minimize future releases, to the extent practicable;

5) The CAMU must expedite the timing of remedial activity implementation, when appropriate and practicable;

6) The CAMU must enable the use, when appropriate, of treatment technologies (including innovative technologies) to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the CAMU; and

7) The CAMU must, to the extent practicable, minimize the land area of the facility upon which wastes will remain in place after closure of the CAMU.

d) The owner or operator must provide sufficient information to enable the Agency to designate a CAMU in accordance with the criteria in this Section. This must include, unless not reasonably available, information on the following:

1) The origin of the waste and how it was subsequently managed (including a description of the timing and circumstances surrounding the disposal or release);

2) Whether the waste was listed or identified as hazardous at the time of disposal or release; and

3) Whether the disposal or release of the waste occurred before or after the land disposal requirements of 35 Ill. Adm. Code 728 were in effect for the waste listing or characteristic.

e) The Agency must specify, in the permit or order, requirements for the CAMU to include the following:

1) The areal configuration of the CAMU.

2) Except as provided in subsection (g) ~~of this Section~~, requirements for CAMU-eligible waste management to include the specification of applicable design, operation, treatment, and closure requirements.

3) Minimum Design Requirements: a CAMU, except as provided in subsection (f) ~~of this Section~~, into which wastes are placed must be designed in accordance with the following:

A) Unless the Agency approves alternative requirements pursuant to subsection (e)(3)(B) ~~of this Section~~, a CAMU that consists of new, replacement, or laterally expanded units must include a composite liner and a leachate collection system that is designed and constructed to maintain less than a 30-cm depth of leachate over the liner. For purposes of this Section, "composite liner" means a system consisting of two components; the upper component must consist of a minimum 30-mil flexible membrane liner (FML), and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than $1x10^{-7}$ cm/sec. FML components consisting of high density polyethylene (HDPE) must be at least 60 mil thick. The FML component must be installed in direct and uniform contact with the compacted soil component;

B) Alternative Requirements. The Agency must approve alternative requirements if it determines that either of the following is true:

i) The Agency determines that alternative design and

operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the groundwater or surface water at least as effectively as the liner and leachate collection systems in subsection (e)(3)(A) ~~of this Section~~; or

ii) The CAMU is to be established in an area with existing significant levels of contamination, and the Agency determines that an alternative design, including a design that does not include a liner, would prevent migration from the unit that would exceed long-term remedial goals.

4) Minimum Treatment Requirements.~~treatment requirements:~~ Unless the wastes will be placed in a CAMU for storage or treatment only in accordance with subsection (f) ~~of this Section~~, CAMU-eligible wastes that, absent this Section, would be subject to the treatment requirements of 35 Ill. Adm. Code 728, and that the Agency determines contain principal hazardous constituents must be treated to the standards specified in subsection (e)(4)(C) ~~of this Section~~.

A) Principal hazardous constituents are those constituents that the Agency determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.

i) In general, the Agency must designate as principal hazardous constituents those contaminants specified in subsection (e)(4)(H) ~~of this Section~~.

BOARD NOTE: The Board has codified 40 CFR 264.552(e)(4)(i)(A)(*1*) and (e)(4)(i)(A)(*2*) as subsections (e)(4)(H)(i) and (e)(4)(H)(ii) ~~of this Section~~ in order to comply with Illinois Administrative Code codification requirements.

ii) The Agency must also designate constituents as principal hazardous constituents, where appropriate, when risks to human health and the environment posed by the potential migration of constituents in wastes to groundwater are

substantially higher than cleanup levels or goals at the site. When making such a designation, the Agency must consider such factors as constituent concentrations, and fate and transport characteristics under site conditions.

iii) The Agency must also designate other constituents as principal hazardous constituents that the Agency determines pose a risk to human health and the environment substantially higher than that posed by the cleanup levels or goals at the site.

B) In determining which constituents are "principal hazardous constituents~~,~~", the Agency must consider all constituents that, absent this Section, would be subject to the treatment requirements in 35 Ill. Adm. Code 728.

C) Waste that the Agency determines contains principal hazardous constituents must meet treatment standards determined in accordance with subsection (e)(4)(D) or (e)(4)(E)~~ of this Section~~.

D) Treatment Standards~~standards~~ for Wastes Placed~~wastes placed~~ in a CAMU~~.~~

i) For non-metals, treatment must achieve 90 percent reduction in total principal hazardous constituent concentrations, except as provided by subsection (e)(4)(D)(iii)~~ of this Section~~.

ii) For metals, treatment must achieve 90 percent reduction in principal hazardous constituent concentrations as measured in leachate from the treated waste or media (tested according to the TCLP) or 90 percent reduction in total constituent concentrations (when a metal removal treatment technology is used), except as provided by subsection (e)(4)(D)(iii)~~ of this Section~~.

iii) When treatment of any principal hazardous constituent to a 90 percent reduction standard would result in a concentration less than 10 times the Universal Treatment

Standard for that constituent, treatment to achieve constituent concentrations less than 10 times the Universal Treatment Standard is not required. Universal Treatment Standards are identified in Table U to 35 Ill. Adm. Code 728.

iv) For waste exhibiting the hazardous characteristic of ignitability, corrosivity, or reactivity, the waste must also be treated to eliminate these characteristics.

v) For debris, the debris must be treated in accordance with 35 Ill. Adm. Code 728.145, or by methods or to levels established pursuant to subsections (e)(4)(D)(i) through (e)(4)(D)(iv) or subsection (e)(4)(E) ~~of this Section~~, whichever the Agency determines is appropriate.

vi) Alternatives to TCLP. For metal bearing wastes for which metals removal treatment is not used, the Agency must specify a leaching test other than Method 1311 (Toxicity Characteristic Leaching Procedure), in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods~~;~~", USEPA publication number EPA-530/SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111(a) to measure treatment effectiveness, provided the Agency determines that an alternative leach testing protocol is appropriate for use, and that the alternative more accurately reflects conditions at the site that affect leaching.

E) Adjusted Standards~~standards~~. The Board will grant an adjusted standard pursuant to Section 28.1 of the Act to adjust the treatment level or method in subsection (e)(4)(D) ~~of this Section~~ to a higher or lower level, based on one or more of the following factors, as appropriate, if the owner or operator demonstrates that the adjusted level or method would adequately protect human health and the environment, based on consideration of the following:

i) The technical impracticability of treatment to the levels or by the methods in subsection (e)(4)(D) ~~of this Section~~;

ii) The levels or methods in subsection (e)(4)(D) ~~of this Section~~ would result in concentrations of principal hazardous constituents (PHCs) that are significantly above or below cleanup standards applicable to the site (established either site-specifically, or promulgated pursuant to State or federal law);

iii) The views of the affected local community on the treatment levels or methods in subsection (e)(4)(D) ~~of this Section~~, as applied at the site, and, for treatment levels, the treatment methods necessary to achieve these levels;

iv) The short-term risks presented by the on-site treatment method necessary to achieve the levels or treatment methods in subsection (e)(4)(D) ~~of this Section~~;

v) The long-term protection offered by the engineering design of the CAMU and related engineering controls under the circumstances set forth in subsection (e)(4)(I) ~~of this Section~~.

BOARD NOTE: The Board has codified 40 CFR 264.552(e)(4)(v)(E)(*1*) through (e)(4)(v)(E)(*5*) as subsections (e)(4)(I)(i) through (e)(4)(I)(v) ~~of this Section~~ in order to comply with Illinois Administrative Code codification requirements.

F) The treatment required by the treatment standards must be completed prior to, or within a reasonable time after, placement in the CAMU.

G) For the purpose of determining whether wastes placed in a CAMU have met site-specific treatment standards, the Agency must specify a subset of the principal hazardous constituents in the waste as analytical surrogates for determining whether treatment standards have been met for other principal hazardous constituents if it determines that the specification is appropriate based on the degree of difficulty of treatment and analysis of constituents with similar treatment properties.

H) Principal hazardous constituents that the Agency must designate are the following:

i) Carcinogens that pose a potential direct risk from ingestion or inhalation at the site at or above 10^{-3}; and

ii) Non-carcinogens that pose a potential direct risk from ingestion or inhalation at the site an order of magnitude or greater over their reference dose.

I) Circumstances relating to the long-term protection offered by engineering design of the CAMU and related engineering controls are the following:

i) Where the treatment standards in subsection (e)(4)(D) ~~of this Section~~ are substantially met and the principal hazardous constituents in the waste or residuals are of very low mobility;

ii) Where cost-effective treatment has been used and the CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at Section 724.401(c) and (d);

iii) Where, after review of appropriate treatment technologies, the Board determines that cost-effective treatment is not reasonably available, and the CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at Section 724.401(c) and (d);

iv) Where cost-effective treatment has been used and the principal hazardous constituents in the treated wastes are of very low mobility; or

v) Where, after review of appropriate treatment technologies, the Board determines that cost-effective treatment is not reasonably available, the principal hazardous constituents in the wastes are of very low mobility, and either the

CAMU meets or exceeds the liner standards for new, replacement, or a laterally expanded CAMU in subsections (e)(3)(A) and (e)(3)(B) ~~of this Section~~ or the CAMU provides substantially equivalent or greater protection.

5) Except as provided in subsection (f) ~~of this Section~~, requirements for groundwater monitoring and corrective action that are sufficient to do the following:

A) Continue to detect and to characterize the nature, extent, concentration, direction, and movement of existing releases of hazardous constituents in groundwater from sources located within the CAMU;

B) Detect and subsequently characterize releases of hazardous constituents to groundwater that may occur from areas of the CAMU in which wastes will remain in place after closure of the CAMU; and

C) Require notification to the Agency and corrective action as necessary to adequately protect human health and the environment for releases to groundwater from the CAMU.

6) Except as provided in subsection (f) ~~of this Section~~, closure and post-closure requirements, as follows:

A) Closure of corrective action management units must do the following:

i) It must minimize the need for further maintenance; and

ii) It must control, minimize, or eliminate, to the extent necessary to adequately protect human health and the environment, for areas where wastes remain in place, post-closure escape of hazardous wastes, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere.

B) Requirements for closure of a CAMU must include the following, as appropriate and as deemed necessary by the Agency for a given CAMU:

i) Requirements for excavation, removal, treatment or containment of wastes; and

ii) Requirements for removal and decontamination of equipment, devices, and structures used in CAMU-eligible waste management activities within the CAMU.

C) In establishing specific closure requirements for a CAMU pursuant to this subsection (e), the Agency must consider the following factors:

i) CAMU characteristics;

ii) Volume of wastes that remain in place after closure;

iii) Potential for releases from the CAMU;

iv) Physical and chemical characteristics of the waste;

v) Hydrogeological and other relevant environmental conditions at the facility that may influence the migration of any potential or actual releases; and

vi) Potential for exposure of humans and environmental receptors if releases were to occur from the CAMU.

D) Cap Requirements~~requirements:~~

i) At final closure of the CAMU, for areas in which wastes will remain with constituent concentrations at or above remedial levels or goals applicable to the site after closure of the CAMU, the owner or operator must cover the CAMU with a final cover designed and constructed to meet the performance criteria listed in subsection (e)(6)(F) ~~of this Section~~, except as provided in subsection (e)(6)(D)(ii)

~~of this Section~~:

BOARD NOTE: The Board has codified 40 CFR 264.552(e)(6)(iv)(A)*(1)* through (e)(6)(iv)(A)*(5)* as subsections (e)(6)(F)(i) through (e)(6)(F)(v) ~~of this Section~~ in order to comply with Illinois Administrative Code codification requirements.

ii) The Agency must apply cap requirements that deviate from those prescribed in subsection (e)(6)(D)(i) ~~of this Section~~ if it determines that the modifications are needed to facilitate treatment or the performance of the CAMU (e.g., to promote biodegradation).

E) Post-closure requirements as necessary to adequately protect human health and the environment, to include, for areas where wastes will remain in place, monitoring and maintenance activities, and the frequency with which such activities must be performed to ensure the integrity of any cap, final cover, or other containment system.

F) The final cover design and performance criteria are as follows:

i) The final cover must provide long-term minimization of migration of liquids through the closed unit;

ii) The final cover must function with minimum maintenance;

iii) The final cover must promote drainage and minimize erosion or abrasion of the cover;

iv) The final cover must accommodate settling and subsidence so that the cover's integrity is maintained; and

v) The final cover must have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

f) A CAMU used for storage or treatment only is a CAMU in which wastes will not

remain after closure. Such a CAMU must be designated in accordance with all of the requirements of this Section, except as follows:

1) A CAMU that is used for storage or treatment only and that operates in accordance with the time limits established in the staging pile regulations at Section 724.654(d)(1)(C), (h), and (i) is subject to the requirements for staging piles at Section 724.654(d)(1)(A) and (d)(1)(B), (d)(2), (e), (f), (j), and (k) in lieu of the performance standards and requirements for a CAMU in subsections (c) and (e)(3) through (e)(6) ~~of this Section~~.

2) A CAMU that is used for storage or treatment only and that does not operate in accordance with the time limits established in the staging pile regulations at Section 724.654(d)(1)(C), (h), and (i):

A) The owner or operator must operate in accordance with a time limit, established by the Agency, that is no longer than necessary to achieve a timely remedy selected for the waste and

B) The CAMU is subject to the requirements for staging piles at Section 724.654(d)(1)(A) and (d)(1)(B), (d)(2), (e), (f), (j), and (k) in lieu of the performance standards and requirements for a CAMU in subsections (c), (e)(4), and (e)(6) ~~of this Section~~.

g) A CAMU into which wastes are placed where all wastes have constituent levels at or below remedial levels or goals applicable to the site do not have to comply with the requirements for liners at subsection (e)(3)(A) ~~of this Section~~, caps at subsection (e)(6)(D) ~~of this Section~~, groundwater monitoring requirements at subsection (e)(5) ~~of this Section~~ or, for treatment or storage-only a CAMU, the design standards at subsection (f) ~~of this Section~~.

h) The Agency must provide public notice and a reasonable opportunity for public comment before designating a CAMU. Such notice must include the rationale for any proposed adjustments pursuant to subsection (e)(4)(E) ~~of this Section~~ to the treatment standards in subsection (e)(4)(D) ~~of this Section~~.

i) Notwithstanding any other provision of this Section, the Agency must impose those additional requirements that it determines are necessary to adequately protect human health and the environment.

j) Incorporation of a CAMU into an existing permit must be approved by the Agency according to the procedures for Agency-initiated permit modifications pursuant to 35 Ill. Adm. Code 703.270 through 703.273, or according to the permit modification procedures of 35 Ill. Adm. Code 703.280 through 703.283.

k) The designation of a CAMU does not change the Agency's existing authority to address cleanup levels, media-specific points of compliance to be applied to remediation at a facility, or other remedy selection decisions.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.653 Temporary Units

a) For temporary tanks and container storage areas used to treat or store hazardous remediation wastes during remedial activities required pursuant to Section 724.201 or RCRA section 3008(h), or at a permitted facility that is not subject to Section 724.201, the Agency may designate a unit at the facility as a temporary unit. A temporary unit must be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the temporary unit originated. For temporary units, the Agency may replace the design, operating, or closure standards applicable to these units pursuant to this Part 724 or 35 Ill. Adm. Code 725 with alternative requirements that adequately protect human health and the environment.

b) Any temporary unit to which alternative requirements are applied in accordance with subsection (a) ~~of this Section~~ must be as follows:

1) Located within the facility boundary; and

2) Used only for treatment or storage of remediation wastes.

c) In establishing alternative requirements to be applied to a temporary unit, the Agency must consider the following factors:

1) The length of time such unit will be in operation;

2) The type of unit;

3) The volumes of wastes to be managed;

4) The physical and chemical characteristics of the wastes to be managed in the unit;

5) The potential for releases from the unit;

6) The hydrogeological and other relevant environmental conditions at the facility that may influence the migration of any potential releases; and

7) The potential for exposure of humans and environmental receptors if releases were to occur from the unit.

d) The Agency must specify in the permit the length of time a temporary unit will be allowed to operate, which must be no longer than one year. The Agency must also specify the design, operating, and closure requirements for the unit.

e) The Agency may extend the operational period of a temporary unit once, for no longer than a period of one year beyond that originally specified in the permit, if the Agency determines the following:

1) That continued operation of the unit will not pose a threat to human health and the environment; and

2) That continued operation of the unit is necessary to ensure timely and efficient implementation of remedial actions at the facility.

f) Incorporation of a temporary unit or a time extension for a temporary unit into an existing permit must be as follows:

1) Approved in accordance with the procedures for Agency-initiated permit modifications pursuant to 35 Ill. Adm. Code 703.270 through 703.273; or

2) Requested by the owner or operator as a Class 2 modification according to the procedures pursuant to 35 Ill. Adm. Code 703.283.

g) The Agency must document the rationale for designating a temporary unit and for granting time extensions for temporary units and must make such documentation available to the public.

BOARD NOTE: USEPA promulgated 40 CFR 264.553, from which this Section was derived, pursuant to HSWA provisions of RCRA Subtitle C. Since the federal provision became immediately effective in Illinois, and until USEPA authorizes this Illinois provision, an owner or operator must seek TU authorization from USEPA Region 5, as well as authorization from the Agency pursuant to this Section.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.654 Staging Piles

a) Definition of a Staging Pile~~staging pile~~. A staging pile is an accumulation of solid, non-flowing remediation waste (as defined in 35 Ill. Adm. Code 720.110) that is not a containment building and which is used only during remedial operations for temporary storage at a facility. A staging pile must be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the staging pile originated. Staging piles must be designated by the Agency in accordance with the requirements in this Section.

1) For the purposes of this Section, storage includes mixing, sizing, blending, or other similar physical operations as long as they are intended to prepare the wastes for subsequent management or treatment.

2) This subsection (a)(2) corresponds with 40 CFR 264.554(a)(2), which USEPA has marked as "reserved~~.~~". This statement maintains structural consistency with the federal regulations.

b) Use of a Staging Pile~~staging pile~~. An owner or operator may use a staging pile to store hazardous remediation waste (or remediation waste otherwise subject to land disposal restrictions) only if an owner or operator follows the standards and design criteria the Agency has designated for that staging pile. The Agency must designate the staging pile in a permit or, at an interim status facility, in a closure plan or order (consistent with 35 Ill. Adm. Code 703.155(a)(5) and (b)(5)). The Agency must establish conditions in the permit, closure plan, or order that comply with subsections (d) through (k)~~ of this Section~~.

c) Information That~~that~~ an Owner~~owner~~ or Operator Must Submit~~operator must submit~~ to Gain Designation~~gain designation~~ of a Staging Pile~~staging pile~~. When seeking a staging pile designation, an owner or operator must provide the

following:

1) Sufficient and accurate information to enable the Agency to impose standards and design criteria for the facility's staging pile according to subsections (d) through (k) ~~of this Section~~;

2) Certification by a qualified Professional Engineer of technical data, such as design drawings and specifications, and engineering studies, unless the Agency determines, based on information that an owner or operator provides, that this certification is not necessary to ensure that a staging pile will adequately protect human health and the environment; and

3) Any additional information the Agency determines is necessary to adequately protect human health and the environment.

d) Performance Criteria That~~criteria that~~ a Staging Pile Must Satisfy~~staging pile must satisfy~~. The Agency must establish the standards and design criteria for the staging pile in the permit, closure plan, or order.

1) The standards and design criteria must comply with the following:

A) The staging pile must facilitate a reliable, effective, and protective remedy;

B) The staging pile must be designed so as to prevent or minimize releases of hazardous wastes and hazardous constituents into the environment, and minimize or adequately control cross-media transfer, as necessary to adequately protect human health and the environment (for example, through the use of liners, covers, or runoff and runon controls, as appropriate); and

C) The staging pile must not operate for more than two years, except when the Agency grants an operating term extension pursuant to subsection (i) ~~of this Section~~. An owner or operator must measure the two-year limit or other operating term specified by the Agency in the permit, closure plan, or order from the first time an owner or operator places remediation waste into a staging pile. An owner or operator must maintain a record of the date when it first placed remediation waste into the staging pile for the life of the permit,

closure plan, or order, or for three years, whichever is longer.

2) In setting the standards and design criteria, the Agency must consider the following factors:

A) The length of time the pile will be in operation;

B) The volumes of wastes the owner or operator intends to store in the pile;

C) The physical and chemical characteristics of the wastes to be stored in the unit;

D) The potential for releases from the unit;

E) The hydrogeological and other relevant environmental conditions at the facility that may influence the migration of any potential releases; and

F) The potential for human and environmental exposure to potential releases from the unit.

e) Receipt of Ignitable~~ignitable~~ or Reactive Remediation Waste~~reactive remediation waste~~. An owner or operator must not place ignitable or reactive remediation waste in a staging pile unless the following is true:

1) The owner or operator has treated, rendered, or mixed the remediation waste before it placed the waste in the staging pile so that the following is true of the waste:

A) The remediation waste no longer meets the definition of ignitable or reactive pursuant to 35 Ill. Adm. Code 721.121 or 721.123; and

B) The owner or operator has complied with Section 724.117(b); or

2) The owner or operator manages the remediation waste to protect it from exposure to any material or condition that may cause it to ignite or react.

f) Managing Incompatible Remediation Wastes~~incompatible remediation wastes~~ in a

Staging Pile~~staging pile~~. The term "incompatible waste" is defined in 35 Ill. Adm. Code 720.110. An owner or operator must comply with the following requirements for incompatible wastes in staging piles:

1) The owner or operator must not place incompatible remediation wastes in the same staging pile unless an owner or operator has complied with Section 724.117(b);

2) If remediation waste in a staging pile is incompatible with any waste or material stored nearby in containers, other piles, open tanks, or land disposal units (for example, surface impoundments), an owner or operator must separate the incompatible materials, or protect them from one another by using a dike, berm, wall, or other device; and

3) The owner or operator must not pile remediation waste on the same base where incompatible wastes or materials were previously piled, unless the base has been decontaminated sufficiently to comply with Section 724.117(b).

g) Staging piles are not subject to land disposal restrictions and federal minimum technological requirements. Placing hazardous remediation wastes into a staging pile does not constitute land disposal of hazardous wastes or create a unit that is subject to the federal minimum technological requirements of section 3004(o) of RCRA, 42 USC 6924(o).

h) How Long~~long~~ an Owner~~owner~~ or Operator May Operate~~operator may operate~~ a Staging Pile~~staging pile~~. The Agency may allow a staging pile to operate for up to two years after hazardous remediation waste is first placed into the pile. An owner or operator must use a staging pile no longer than the length of time designated by the Agency in the permit, closure plan, or order (the "operating term"), except as provided in subsection (i)~~ of this Section~~.

i) Receiving an Operating Extension~~operating extension~~ for a Staging Pile~~staging pile.~~

1) The Agency may grant one operating term extension of up to 180 days beyond the operating term limit contained in the permit, closure plan, or order (see subsection (l) ~~of this Section~~ for modification procedures). To justify the need for an extension, an owner or operator must provide

sufficient and accurate information to enable the Agency to determine that the following is true of continued operation of the staging pile:

A) Continued operation will not pose a threat to human health and the environment; and

B) Continued operation is necessary to ensure timely and efficient implementation of remedial actions at the facility.

2) The Agency must, as a condition of the extension, specify further standards and design criteria in the permit, closure plan, or order, as necessary, to ensure adequate protection of human health and the environment.

j) The Closure Requirement~~closure requirement~~ for a Staging Pile Located~~staging pile located~~ in a Previously Contaminated Area~~previously contaminated area.~~

1) Within 180 days after the operating term of the staging pile expires, an owner or operator must close a staging pile located in a previously contaminated area of the site by removing or decontaminating all of the following:

A) Remediation waste;

B) Contaminated containment system components; and

C) Structures and equipment contaminated with waste and leachate.

2) An owner or operator must also decontaminate contaminated subsoils in a manner and according to a schedule that the Agency determines will adequately protect human health and the environment.

3) The Agency must include the above requirements in the permit, closure plan, or order in which the staging pile is designated.

k) The Closure Requirement~~closure requirement~~ for a Staging Pile Located~~staging pile located~~ in a Previously Uncontaminated Area~~previously uncontaminated area.~~

1) Within 180 days after the operating term of the staging pile expires, an

owner or operator must close a staging pile located in an uncontaminated area of the site according to Sections 724.358(a) and 724.211 or according to 35 Ill. Adm. Code 725.358(a) and 725.211.

2) The Agency must include the requirement of this Section stated in subsection (k)(1) in the permit, closure plan, or order in which the staging pile is designated.

l) Modifying an Existing Permit~~existing permit~~ (e.g., a RAP), Closure Plan~~closure plan~~, or Order~~order~~ to Allow~~allow~~ he~~the~~ Use~~use~~ of a Staging Pile~~staging pile.~~

1) To modify a permit, other than a RAP, to incorporate a staging pile or staging pile operating term extension, either of the following must occur:

A) The Agency must approve the modification pursuant to the procedures for Agency-initiated permit modifications in 35 Ill. Adm. Code 703.270 through 703.273; or

B) An owner or operator must request a Class 2 modification pursuant to 35 Ill. Adm. Code 703.280 through 703.283.

2) To modify a RAP to incorporate a staging pile or staging pile operating term extension, an owner or operator must comply with the RAP modification requirements pursuant to 35 Ill. Adm. Code 703.304(a) and (b).

3) To modify a closure plan to incorporate a staging pile or staging pile operating term extension, an owner or operator must follow the applicable requirements pursuant to Section 724.212(c) or 35 Ill. Adm. Code 725.212(c).

4) To modify an order to incorporate a staging pile or staging pile operating term extension, an owner or operator must follow the terms of the order and the applicable provisions of 35 Ill. Adm. Code 703.155(a)(5) or (b)(5).

m) Public Availability~~availability~~ of Information~~information~~ about a Staging Pile~~staging pile~~. The Agency must document the rationale for designating a staging pile or staging pile operating term extension and make this documentation available to the public.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.655 Disposal of CAMU-Eligible Wastes in Permitted Hazardous Waste Landfills

a) The Agency must approve placement of CAMU-eligible wastes in hazardous waste landfills not located at the site from which the waste originated, without the wastes meeting the requirements of 35 Ill. Adm. Code 728, if it determines that the following conditions are met:

1) The waste meets the definition of CAMU-eligible waste in Section 724.652(a)(1) and (a)(2).

2) The Agency identifies principal hazardous constituents in such waste, in accordance with Section 724.652(e)(4)(A) and (e)(4)(B), and requires that such principal hazardous constituents are treated to any of the following standards specified for CAMU-eligible wastes:

A) The treatment standards under Section 724.652(e)(4)(D); or

B) Treatment standards adjusted in accordance with Section 724.652(e)(4)(E)(i), (e)(4)(E)(iii), (e)(4)(E)(iv), or (e)(4)(F)(i); or

C) Treatment standards adjusted in accordance with Section 724.652(e)(4)(I)(ii), where treatment has been used and that treatment significantly reduces the toxicity or mobility of the principal hazardous constituents in the waste, minimizing the short-term and long-term threat posed by the waste, including the threat at the remediation site.

3) The landfill receiving the CAMU-eligible waste must have a RCRA hazardous waste permit, meet the requirements for new landfills in Subpart N ~~of this Part~~, and be authorized to accept CAMU-eligible wastes; for the purposes of this requirement, "permit" does not include interim status.

b) The person seeking approval must provide sufficient information to enable the Agency to approve placement of CAMU-eligible waste in accordance with

subsection (a) ~~of this Section~~. Information required by Section 724.652(d)(1) through (d)(3) for CAMU applications must be provided, unless not reasonably available.

c) The Agency must provide public notice and a reasonable opportunity for public comment before approving CAMU eligible waste for placement in an off-site permitted hazardous waste landfill, consistent with the requirements for CAMU approval at Section 724.652(h). The approval must be specific to a single remediation.

d) Applicable hazardous waste management requirements in this Part, including recordkeeping requirements to demonstrate compliance with treatment standards approved under this Section, for CAMU-eligible waste must be incorporated into the receiving facility permit through permit issuance or a permit modification, providing notice and an opportunity for comment and a hearing. Notwithstanding 35 Ill. Adm. Code 702.181(a), a landfill may not receive hazardous CAMU-eligible waste under this Section unless its permit specifically authorizes receipt of such waste.

e) For each remediation, CAMU-eligible waste may not be placed in an off-site landfill authorized to receive CAMU-eligible waste in accordance with subsection (d) ~~of this Section~~ until the following additional conditions have been met:

1) The landfill owner or operator notifies the Agency and persons on the facility mailing list, maintained in accordance with 35 Ill. Adm. Code 705.163(a), of his or her intent to receive CAMU-eligible waste in accordance with this Section; the notice must identify the source of the remediation waste, the principal hazardous constituents in the waste, and treatment requirements.

2) Persons on the facility mailing list may provide comments, including objections to the receipt of the CAMU-eligible waste, to the Agency within 15 days after notification.

3) The Agency must object to the placement of the CAMU-eligible waste in the landfill within 30 days of notification; the Agency must extend the review period an additional 30 days if it determines that the extension is necessary because of public concerns or insufficient information.

4) CAMU-eligible wastes may not be placed in the landfill until the Agency has notified the facility owner or operator that it does not object to its placement.

5) If the Agency objects to the placement or does not notify the facility owner or operator that it has chosen not to object, the facility may not receive the waste, notwithstanding 35 Ill. Adm. Code 702.181(a), until the objection has been resolved, or the owner/operator obtains a permit modification in accordance with the procedures of 35 Ill. Adm. Code 703.280 through 703.283 specifically authorizing receipt of the waste.

6) The Board will grant an adjusted standard under Section 28.1 of the Act that modifies, reduces, or eliminates the notification requirements of this subsection (e) as they apply to specific categories of CAMU-eligible waste, if the owner or operator demonstrates that this is possible based on miminal risk.

f) Generators of CAMU-eligible wastes sent off-site to a hazardous waste landfill under this Section must comply with the requirements of 35 Ill. Adm. Code 728.107(a)(4). Off-site facilities treating CAMU-eligible wastes to comply with this Section must comply with the requirements of 35 Ill. Adm. Code 728.107(b)(4), except that the certification must be with respect to the treatment requirements of subsection (a)(2) ~~of this Section~~.

g) For the purposes of this Section only, the "design of the CAMU" in Section 724.652(e)(4)(E)(v) means design of the permitted Subtitle C landfill.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

SUBPART W: DRIP PADS

Section 724.670 Applicability

a) The requirements of this Subpart W apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, or surface water run-on to an associated collection system.

1) "Existing drip pads" are the following:

A) Those constructed before December 6, 1990; and

B) Those for which the owner or operator had a design and had entered into binding financial or other agreements for construction prior to December 6, 1990.

2) All other drip pads are "new drip pads~~.~~".

3) The requirements at Section 724.673(b)(3) to install a leak collection system applies only to those drip pads that were constructed after December 24, 1992 except for those constructed after December 24, 1992 for which the owner or operator had a design and has entered into binding financial or other agreements for construction prior to December 24, 1992.

b) The owner or operator of any drip pad that is inside or under a structure that provides protection from precipitation so that neither run-off nor run-on is generated is not subject to regulation under Section 724.673(e) or (f).

c) The requirements of this subsection (c) are not applicable to the management of infrequent and incidental drippage in storage yards provided that the owner or operator maintains and complies with a written contingency plan that describes how the owner or operator will respond immediately to the discharge of infrequent and incidental drippage. At a minimum, the contingency plan must describe how the owner or operator will do the following:

1) Clean up the drippage;

2) Document the clean-up of the drippage;

3) Retain documentation regarding the clean-up for three years; and

4) Manage the contaminated media in a manner consistent with State and federal regulations.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.671 Assessment of Existing Drip Pad Integrity

a) For each existing drip pad, the owner or operator must evaluate the drip pad and

determine whether it meets all of the requirements of this Subpart W, except the requirements for liners and leak detection systems of Section 724.673(b). The~~No later than June 6, 1991, the~~ owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified Professional Engineer that attests to the results of the evaluation. The assessment must be reviewed, updated, and re-certified annually until all upgrades, repairs or modifications necessary to achieve compliance with all the standards of Section 724.673 are complete. The evaluation must document the extent to which the drip pad meets each of the design and operating standards of Section 724.673, except the standards for liners and leak detection systems, specified in Section 724.673(b).

b) The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of Section 724.673(b) and submit the plan to the Agency no later than two years before the date that all repairs, upgrades and modifications will be complete. This written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of Section 724.673. The plan must be reviewed and certified by a qualified Professional Engineer.

c) Upon completion of all upgrades, repairs, and modifications, the owner or operator must submit to the Agency, the as-built drawings for the drip pad, together with a certification by a qualified Professional Engineer attesting that the drip pad conforms to the drawings.

d) If the drip pad is found to be leaking or unfit for use, the owner or operator must comply with the provisions of Section 724.673(m) or close the drip pad in accordance with Section 724.675.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.673 Design and Operating Requirements

a) Drip pads must fulfill the following:

1) Not be constructed of non-earthen materials, wood, or asphalt, unless the asphalt is structurally supported;

2) Be sloped to free-drain to the associated collection system treated wood

drippage, rain, other waters, or solutions of drippage and water or other wastes;

3) Have a curb or berm around the perimeter;

4) In addition, the drip pad must fulfill the following:

A) Have a hydraulic conductivity of less than or equal to $1x10^{-7}$ centimeters per second (cm/sec), e.g., existing concrete drip pads must be sealed, coated, or covered with a surface material with a hydraulic conductivity of less than or equal to $1x10^{-7}$ cm/sec such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system. This surface material must be maintained free of cracks and gaps that could adversely affect its hydraulic conductivity, and the material must be chemically compatible with the preservatives that contact the drip pad. The requirements of this provision apply only to the existing drip pads and those drip pads for which the owner or operator elects to comply with Section 724.672(b) instead of Section 724.672(a).

B) The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified Professional Engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this Section, except for in subsection (b) ~~of this Section~~.

5) Be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of installation, and the stress of daily operations, e.g., variable and moving loads such as vehicle traffic, movement of wood, etc.

BOARD NOTE: In judging the structural integrity requirement of this subsection (c), the Agency should generally consider applicable standards established by professional organizations generally recognized by the industry, including ACI 318 (Building Code Requirements for Reinforced

Concrete), or ASTM C 94-90 (Standard Specification for Ready-Mixed Concrete), each incorporated by reference in 35 Ill. Adm. Code 720.111(a).

b) If an owner or operator elects to comply with Section 724.672(a) instead of Section 724.672(b), the drip pad must have the following:

1) A synthetic liner installed below the drip pad that is designed, constructed, and installed to prevent leakage from the drip pad into the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the drip pad. The liner must be constructed of materials that will prevent waste from being absorbed into the liner and to prevent releases into the adjacent subsurface soil or groundwater or surface water during the active life of the facility. The liner must fulfill the following:

A) It must be constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or drip pad leakage to which they are exposed, climatic conditions, the stress of installation and the stress of daily operation (including stresses from vehicular traffic on the drip pad);

B) It must be placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression or uplift; and

C) It must be installed to cover all surrounding earth that could come in contact with the waste or leakage; and

2) A leakage detection system immediately above the liner that is designed, constructed, maintained, and operated to detect leakage from the drip pad. The leakage detection system must fulfill the following:

A) It must be constructed of materials that are as follows:

i) Chemically resistant to the waste managed in the drip pad

and the leakage that might be generated; and

ii) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying materials and by any equipment used at the drip pad; and

B) It must be designed and operated to function without clogging through the scheduled closure of the drip pad; and

C) It must be designed so that it will detect the failure of the drip pad or the presence of a release of hazardous waste or accumulated liquid at the earliest practicable time.

3) A leaking collection system immediately above the liner that is designed, constructed, maintained, and operated to collect leakage from the drip pad such that it can be removed from below the drip pad. The date, time, and quantity of any leakage collected in this system and removed must be documented in the operating log.

A) The drip pad surface must be cleaned thoroughly in a manner and frequency such that accumulated residues of hazardous waste or other materials are removed, with residues being properly managed as to allow weekly inspections of the entire drip pad surface without interference of hindrance from accumulated residues of hazardous waste or other materials on the drip pad. The owner or operator must document the date and time of each cleaning and cleaning procedure used in the facility's operating log. The owner or operator must determine if the residues are hazardous, as per 35 Ill. Adm. Code 722.111, and, if so, the owner or operator must manage them under 35 Ill. Adm. Code 721 through 728, and section~~Section~~ 3010 of RCRA (42 USC 6930).

B) The federal rules do not contain a 40 CFR 264.573(b)(3)(B). This subsection (b) is added to conform to Illinois Administrative Code rules.

c) Drip pads must be maintained such that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad.

BOARD NOTE: See subsection (m) ~~of this Section~~ for remedial action required if deterioration or leakage is detected.

d) The drip pad and associated collection system must be designed and operated to convey, drain, and collect liquid resulting from drippage or precipitation in order to prevent run-off.

e) Unless the drip pad is protected by a structure, as described in Section 724.670(b), the owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the drip pad during peak discharge from at least a 24-hour, 25-year storm, unless the system has sufficient excess capacity to contain any run-on that might enter the system.

f) Unless the drip pad is protected by a structure or cover, as described in Section 724.670(b), the owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

g) The drip pad must be evaluated to determine that it meets the requirements of subsections (a) through (f) ~~of this Section~~. The owner or operator must obtain a statement from a qualified Professional Engineer certifying that the drip pad design meets the requirements of this Section.

h) Drippage and accumulated precipitation must be removed from the associated collection system as necessary to prevent overflow onto the drip pad.

i) The drip surface must be cleaned thoroughly at least once every seven days such that accumulated residues of hazardous waste or other materials are removed, using an appropriate and effective cleaning technique, including but not limited to, rinsing, washing with detergents or other appropriate solvents, or steam cleaning. The owner or operator must document, in the facility's operating log, the date and time of each cleaning and the cleaning procedure used.

j) Drip pads must be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment.

k) After being removed from the treatment vessel, treated wood from pressure and

non-pressure processes must be held on the drip pad until drippage has ceased. The owner or operator must maintain records sufficient to document that all treated wood is held on the pad, in accordance with this Section, following treatment.

l) Collection and holding units associated with run-on and run-off control systems must be emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system.

m) Throughout the active life of the drip pad and as specified in the permit, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, the condition must be repaired within a reasonably prompt period of time following discovery, in accordance with the following procedures:

1) Upon detection of a condition that may have caused or has caused a release of hazardous waste (e.g., upon detection of leakage in the leak detection system), the owner or operator must do the following:

A) Enter a record of the discovery in the facility operating log;

B) Immediately remove from service the portion of the drip pad affected by the condition;

C) Determine what steps must be taken to repair the drip pad, clean up any leakage from below the drip pad, and establish a schedule for accomplishing the clean up and repairs;

D) Within 24 hours after discovery of the condition, notify the Agency of the condition and, within 10 working days, provide written notice to the Agency with a description of the steps that will be taken to repair the drip pad and clean up any leakage, and the schedule for accomplishing this work.

2) The Agency must do the following: review the information submitted, make a determination regarding whether the pad must be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

3) Upon completing all repairs and clean up, the owner or operator must notify the Agency in writing and provide a certification, signed by an independent, qualified registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with subsection (m)(1)(D) ~~of this Section~~.

n) If a permit is necessary, the Agency must specify in the permit all design and operating practices that are necessary to ensure that the requirements of this Section are satisfied.

o) The owner or operator must maintain, as part of the facility operating log, documentation of past operating and waste handling practices. This must include identification of preservative formulations used in the past, a description of drippage management practices, and a description of treated wood storage and handling practices.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.675 Closure

a) At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (pad, liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leakage, and manage them as hazardous waste.

b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment, as required in subsection (a) ~~of this Section~~, the owner or operator finds that not all contaminated subsoils can be practically removed or decontaminated, the operator must close the unit and perform post-closure care in accordance with closure and post-closure care requirements that apply to landfills (Section 724.410). For permitted units, the requirement to have a permit continues throughout the post-closure period. In addition, for the purposes of closure, post-closure , and financial responsibility, such a drip pad is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in Subparts G and H ~~of this Part~~.

c) Existing Drip Pads~~drip pads~~ without Liners~~liners.~~

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

1) The owner or operator of an existing drip pad that does not comply with the liner requirements of Section 724.673(b)(1) must do the following:

A) Include in the closure plan for the drip pad under Section 724.212 both a plan for complying with subsection (a) ~~of this Section~~ and a contingent plan for complying with subsection (b) ~~of this Section~~ in case not all contaminated subsoils can be practicably removed at closure; and

B) Prepare a contingent post-closure plan under Section 724.218 for complying with subsection (b) ~~of this Section~~ in case not all contaminated subsoils can be practicably removed at closure.

2) The cost estimates calculated under Sections 724.212 and 724.244 for closure and post closure care of a drip pad subject to this subsection (c) must include the cost of complying with the contingent closure plan and the contingent post-closure plan, but are not required to include the cost of expected closure under subsection (a) ~~of this Section~~.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

SUBPART X: MISCELLANEOUS UNITS

Section 724.701 Environmental Performance Standards

A miscellaneous unit must be located, designed, constructed, operated, maintained, and closed in a manner that will ensure adequate protection of human health and the environment. Permits for miscellaneous units are to contain such terms and provisions as are necessary to adequately protect human health and the environment, including, but not limited to, as appropriate, design and operating requirements, detection and monitoring requirements, and requirements for responses to releases of hazardous waste or hazardous constituents from the unit. Permit terms and provisions must include those requirements of Subparts I through O and AA through CC ~~of this Part~~; 35 Ill. Adm. Code 702, 703, and 730; and federal subpart EEE of 40 CFR 63, incorporated by reference in 35 Ill. Adm. Code 720.111(b), that are appropriate for the miscellaneous unit being permitted. Adequate protection of human health and the environment includes, but is not limited to the following:

a) Preventing~~Prevention of~~ any releases that may have adverse effects on human health or the environment due to migration of waste constituents in the

groundwater or subsurface environment, considering the following:

1) The volume and physical and chemical characteristics of the waste in the unit, including its potential for migration through soil, liners, or other containing structures;

2) The hydrologic and geologic characteristics of the unit and the surrounding area;

3) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater;

4) The quantity and direction of groundwater flow;

5) The proximity to and withdrawal rates of current and potential groundwater users;

6) The patterns of land use in the region;

7) The potential for deposition or migration of waste constituents into subsurface physical structures and the root zone of food-chain crops and other vegetation;

8) The potential for health risks caused by human exposure to waste constituents; and

9) The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents.

b) Preventing~~Prevention of~~ any releases that may have adverse effects on human health or the environment due to migration of waste constituents in surface water, in wetlands, or on the soil surface, considering the following:

1) The volume and physical and chemical characteristics of the waste in the unit;

2) The effectiveness and reliability of containing, confining, and collecting systems and structures in preventing migration;

3) The hydrologic characteristics of the unit and surrounding area, including the topography of the land around the unit;

4) The patterns of precipitation in the region;

5) The quantity, quality, and direction of groundwater flow;

6) The proximity of the unit to surface waters;

7) The current and potential uses of the nearby surface waters and any water quality standards in 35 Ill. Adm. Code 302 or 303;

8) The existing quality of surface waters and surface soils, including other sources of contamination and their cumulative impact on surface waters and surface soils;

9) The patterns of land use in the region;

10) The potential for health risks caused by human exposure to waste constituents; and

11) The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents.

c) Preventing~~Prevention of~~ any release that may have adverse effects on human health or the environment due to migration of waste constituents in the air, considering the following:

1) The volume and physical and chemical characteristics of the waste in the unit, including its potential for the emission and dispersal of gases, aerosols, and particulates;

2) The effectiveness and reliability of systems and structures to reduce or prevent emissions of hazardous constituents to the air;

3) The operating characteristics of the unit;

4) The atmospheric, meteorologic, and topographic characteristics of the unit and the surrounding area;

5) The existing quality of the air, including other sources of contamination and their cumulative impact on the air;

6) The potential for health risks caused by human exposure to waste constituents; and

7) The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by waste constituents.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

SUBPART AA: AIR EMISSION STANDARDS FOR PROCESS VENTS

Section 724.930 Applicability

a) This Subpart AA applies to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in Section 724.101).

b) Except for Sections 724.934(d) and (e), this Subpart AA applies to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that manage hazardous wastes with organic concentrations of at least 10 ppmw (parts per million by weight), if these operations are conducted as follows:

1) In units that are subject to the permitting requirements of 35 Ill. Adm. Code 703;

2) In a unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of 35 Ill. Adm. Code 262.117~~722.134(a)~~ (i.e., a hazardous waste recycling unit that is not a 90-day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of 35 Ill. Adm. Code 703; or

3) In a unit that is exempt from permitting under the provisions of 35 Ill. Adm. Code 262.117~~722.134(a)~~ (i.e., a 90-day tank or container) and which is not a recycling unit under the provisions of 35 Ill. Adm. Code 721.106.

c) ~~For the owner and operator of a facility subject to this Subpart AA that received a final permit under 35 Ill. Adm. Code 702, 703, and 705 prior to December 6, 1996, the requirements of this Subpart AA must be incorporated into the permit when the permit is reissued, renewed, or modified in accordance with the requirements of 35 Ill. Adm. Code 703 and 705.~~ Until ~~such date when~~ the owner and operator receives a final permit incorporating the requirements of this Subpart AA, the owner and operator is subject to the requirements of Subpart AA of 35 Ill. Adm. Code 725.

BOARD NOTE: The requirements of Sections 724.932 through 724.936 apply to process vents on hazardous waste recycling units previously exempt under 35 Ill. Adm. Code 721.106(c)(1). Other exemptions under 35 Ill. Adm. Code 721.104 and 724.101(g) are not affected by these requirements.

d) This subsection (d) corresponds with 40 CFR 264.1030(d), which is marked "reserved" by USEPA. This statement maintains structural consistency with USEPA rules.

e) The requirements of this Subpart AA do not apply to the process vents at a facility where the facility owner or operator certifies that all of the process vents that would otherwise be subject to this Subpart AA are equipped with and operating air emission controls in accordance with the process vent requirements of an applicable federal Clean Air Act regulation codified under 40 CFR 60, 61, or 63. The documentation of compliance under regulations at 40 CFR 60, 61, or 63 must be kept with, or made readily available with, the facility operating record.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.931 Definitions

As used in this Subpart AA, all terms not defined in this Subpart AA have the meaning given them in section 1004 of the Resource Conservation and Recovery Act, incorporated by reference in 35 Ill. Adm. Code 720.111, and 35 Ill. Adm. Code 720 through 728, and 738.

"Air stripping operation" means a desorption operation employed to transfer one or more volatile components from a liquid mixture into a gas (air) either with or without the application of heat to the liquid. Packed towers, spray towers and bubble-cap, sieve, or valve-type plate towers are among the process configurations used for contacting the air and a liquid.

"Bottoms receiver" means a container or tank used to receive and collect the heavier bottoms fractions of the distillation feed stream that remain in the liquid phase.

"Btu" means British thermal unit.

"Closed-vent system" means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

"Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

"Connector" means flanged, screwed, welded, or other joined fittings used to connect two pipelines or a pipeline and a piece of equipment. For the purposes of reporting and recordkeeping, "connector" means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

"Continuous recorder" means a data-recording device recording an instantaneous data value at least once every 15 minutes.

"Control device" means an enclosed combustion device, vapor recovery system, or flare. Any device the primary function of which is the recovery or capture of solvents or other organics for use, reuse, or sale (e.g., a primary condenser on a solvent recovery unit) is not a control device.

"Control device shutdown" means the cessation of operation of a control device for any purpose.

"Distillate receiver" means a container or tank used to receive and collect liquid material (condensed) from the overhead condenser of a distillation unit and from which the condensed liquid is pumped to larger storage tanks or other process units.

"Distillation operation" means an operation, either batch or continuous, separating one or more feed streams into two or more exit streams, each exit stream having component concentrations different from those in the feed streams. The separation is achieved by the redistribution of the components between the liquid

and vapor phase as they approach equilibrium within the distillation unit.

"Double block and bleed system" means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

"Equipment" means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, flange or other connector, and any control devices or systems required by this Subpart AA.

"First attempt at repair" means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

"Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

"Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

"Fractionation operation" means a distillation operation or method used to separate a mixture of several volatile components of different boiling points in successive stages, each stage removing from the mixture some proportion of one of the components.

"ft" means foot.

"h" means hour.

"Hazardous waste management unit shutdown" means a work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit for less than 24 hours is not a hazardous waste management unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous waste management unit shutdowns.

"Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

"In gas-vapor service" means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.

"In heavy liquid service" means that the piece of equipment is not in gas-vapor service or in light liquid service.

"In light liquid service" means that the piece of equipment contains or contacts a waste stream where the vapor pressure of one or more of the organic components in the stream is greater than 0.3 kilopascals (kPa) at 20 °C, the total concentration of the pure organic components having a vapor pressure greater than 0.3 kPa at 20 °C is equal to or greater than 20 percent by weight, and the fluid is a liquid at operating conditions.

"In situ sampling systems" means nonextractive samplers or in-line samplers.

"In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

"Kg" means kilogram.

"kPa" means kilopascals.

"lb" means pound.

"m" means meter.

"Mg" means Megagrams, or metric tonnes.

"MJ" means Megajoules, or ten to the sixth Joules.

"MW" means Megawatts.

"Malfunction" means any sudden failure of a control device or a hazardous waste management unit or failure of a hazardous waste management unit to operate in a normal or usual manner, so that organic emissions are increased.

"Open-ended valve or line" means any valve, except a pressure relief valve, that has one side of the valve seat in contact with hazardous waste and one side open to the atmosphere, either directly or through open piping.

"ppmv" means parts per million by volume.

"ppmw" means parts per million by weight.

"Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

"Process heater" means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.

"Process vent" means any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (e.g., distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well) associated with hazardous waste distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations.

"Repaired" means that equipment is adjusted or otherwise altered to eliminate a leak.

"s" means second.

"Sampling connection system" means an assembly of equipment within a process or waste management unit that is used during periods of representative operation to take samples of the process or waste fluid. Equipment that is used to take non-routine grab samples is not considered a sampling connection system.

"scm" means standard cubic meter.

"scft" means standard cubic foot.

"Sensor" means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

"Separator tank" means a device used for separation of two immiscible liquids.

"Solvent extraction operation" means an operation or method of separation in which a solid or solution is contracted with a liquid solvent (the two being

mutually insoluble) to preferentially dissolve and transfer one or more components into the solvent.

"Startup" means the setting in operation of a hazardous waste management unit or control device for any purpose.

"Steam stripping operation" means a distillation operation in which vaporization of the volatile constituents of a liquid mixture takes place by the introduction of steam directly in to the charge.

"Surge control tank" means a large-sized pipe or storage reservoir sufficient to contain the surging liquid discharge of the process tank to which it is connected.

"Thin-film evaporation operation" means a distillation operation that employs a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.

"USDOT" means the United States Department of Transportation.

"Vapor incinerator" means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

"Vented" means discharged through an opening, typically an open-ended pipe or stack, allowing the passage of a stream of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical means, such as compressors or vacuum-producing systems, or by process-related means, such as evaporation produced by heating, and not caused by tank loading and unloading (working losses) or by natural means, such as diurnal temperature changes.

"yr" means year.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.932 Standards: Process Vents

a) The owner or operator of a facility with process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations managing hazardous wastes with organic concentrations of at least 10 ppmw must do either of the following:

1) Reduce total organic emissions from all affected process vents at the facility below 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 tons/yr); or

2) Reduce, by use of a control device, total organic emissions from all affected process vents at the facility by 95 weight percent.

b) If the owner or operator installs a closed-vent system and control device to comply with the provisions of subsection (a) ~~of this Section~~, the closed-vent system and control device must meet the requirements of Section 724.933.

c) Determinations of vent emissions and emission reductions or total organic compound concentrations achieved by add-on control devices must be either based on engineering calculations or performance tests. If performance tests are used to determine vent emissions, emission reductions, or total organic compound concentrations achieved by add-on control devices, the performance tests must conform with the requirements of Section 724.934(c).

d) When an owner or operator and the Agency do not agree on determinations of vent emissions or emission reductions or total organic compound concentrations achieved by add-on control devices based on engineering calculations, the procedures in Section 724.934(c) must be used to resolve the disagreement.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.933 Standards: Closed-Vent Systems and Control Devices

a) Compliance Required~~.~~

1) Owners or operators of closed-vent systems and control devices used to comply with provisions of this Part must comply with the provisions of this Section.

2) Implementation Schedule~~.~~

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

A) The owner or operator of an existing facility that cannot install a closed-vent system and control device to comply with the provisions of this Subpart AA on the effective date that the facility becomes subject to the provisions of this Subpart AA must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this Subpart AA for installation and startup.

B) Any unit beginning~~that began~~ operation that is~~after December 21, 1990 and which was~~ subject to the provisions of this Subpart AA when operation begins~~began~~ must comply with the rules immediately (i.e., must have control devices installed and operating on startup of the affected unit); the 30-month implementation schedule does not apply.

C) The owner or operator of any facility in existence on the effective date of a statutory or regulatory amendment that renders the facility subject to this Subpart AA must comply with all requirements of this Subpart AA as soon as practicable, but no later than 30 months after the effective date of the amendment. When control equipment required by this Subpart AA cannot be installed and begin operation by the effective date of the amendment, the facility owner or operator must prepare an implementation schedule that includes the following information: specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this Subpart AA. The owner or operator must enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.

D) An owner or operator of a facility or unit that becomes newly subject to the requirements of this Subpart AA ~~after December 8, 1997,~~ due to an action other than those described in subsection

(a)(2)(C) ~~of this Section,~~ must comply with all applicable requirements immediately (i.e., the facility or unit must have control devices installed and operating on the date the facility or unit becomes subject to this Subpart AA; the 30-month implementation schedule does not apply).

b) A control device involving vapor recovery (e.g., a condenser or adsorber) must be designed and operated to recover the organic vapors vented to it with an efficiency of 95 weight percent or greater unless the total organic emission limits of Section 724.932(a)(1) for all affected process vents is attained at an efficiency less than 95 weight percent.

c) An enclosed combustion device (e.g., a vapor incinerator, boiler, or process heater) must be designed and operated to reduce the organic emissions vented to it by 95 weight percent or greater; to achieve a total organic compound concentration of 20 ppmv, expressed as the sum of the actual compounds and not in carbon equivalents, on a dry basis, corrected to three percent oxygen; or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760° C. If a boiler or process heater is used as the control device, then the vent stream must be introduced into the flame zone of the boiler or process heater.

d) Flares~~.~~

1) A flare must be designed for and operated with no visible emissions, as determined by the methods specified in subsection (e)(1), except for periods not to exceed a total of five minutes during any two consecutive hours.

2) A flare must be operated with a flame present at all times, as determined by the methods specified in subsection (f)(2)(C).

3) A flare must be used only if the net heating value of the gas being combusted is 11.2 MJ/scm (300 Btu/scf) or greater and the flare is steam-assisted or air-assisted or if the net heating value of the gas being combusted is 7.45 MJ/scm (200 Btu/scf) or greater and the flare is nonassisted. The net heating value of the gas being combusted must be determined by the methods specified in subsection (e)(2).

4) Exit Velocity~~.~~

A) A steam-assisted or nonassisted flare must be designed for and operated with an exit velocity, as determined by the methods specified in subsection (e)(3), less than 18.3 m/s (60 ft/s), except as provided in subsections (d)(4)(B) and (d)(4)(C).

B) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in subsection (e)(3), equal to or greater than 18.3 m/s (60 ft/s) but less than 122 m/s (400 ft/s) is allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf).

C) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in subsection (e)(3), less than the velocity, V, as determined by the method specified in subsection (e)(4), and less than 122 m/s (400 ft/s) is allowed.

5) An air-assisted flare must be designed and operated with an exit velocity less than the velocity, V, as determined by the method specified in subsection (e)(5).

6) A flare used to comply with this Section must be steam-assisted, air-assisted, or nonassisted.

e) Compliance Determination and Equations.

1) Reference Method 22 (Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares) in appendix A to 40 CFR 60 (Test Methods), incorporated by reference in 35 Ill. Adm. Code 720.111(b), must be used to determine the compliance of a flare with the visible emission provisions of this Subpart AA. The observation period is two hours and must be used according to Reference Method 22.

2) The net heating value of the gas being combusted in a flare must be calculated using the following equation:

$$H_T = K \times \sum_{i=1}^{n} C_i \times H_i$$

Where:

H_T = the net heating value of the sample in MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20 °C~~;~~

K = 1.74×-10^{-7} (1/ppm)(g mol/scm)(MJ/kcal) where the standard temperature for (g mol/scm) is 20 °C~~;~~

C_i = the concentration of sample component i in ppm on a wet basis, as measured for organics by Reference Method 18 (Measurement of Gaseous Organic Compound Emissions by Gas Chromatography) in appendix A to 40 CFR 60 (Test Methods), and for carbon monoxide, by ASTM D 1946-90 (Standard Practice for Analysis of Reformed Gas by Gas Chromatography), each incorporated by reference in 35 Ill. Adm. Code 720.111~~; and~~

H_i = the net heat of combustion of sample component i, kcal/gmol at 25 °C and 760 mm Hg. The heats of combustion must be determined using ASTM D 2382-88 (Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High Precision Method)), incorporated by reference in 35 Ill. Adm. Code 720.111(a), if published values are not available or cannot be calculated~~.~~

3) The actual exit velocity of a flare must be determined by dividing the volumetric flow rate (in units of standard temperature and pressure), as determined by Reference Methods 2 (Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube)), 2A (Direct Measurement of Gas Volume through Pipes and Small Ducts), 2C (Determination of Gas Velocity and Volumetric Flow Rate in Small Stacks or Ducts (Standard Pitot Tube)), or 2D (Measurement of Gas Volume Flow Rates in Small Pipes and Ducts) in appendix A to 40 CFR 60 (Test Methods), incorporated by reference in 35 Ill. Adm. Code 720.111(b), as appropriate, by the unobstructed (free) cross-sectional area of the flare tip.

4) The maximum allowed velocity in m/s, V_{max}, for a flare complying with subsection (d)(4)(C) must be determined by the following equation:

$$\log_{10}(V_{max}) = \frac{H_T + 28.8}{31.7}$$

Where:

H_T = the net heating value as determined in subsection (e)(2).

5) The maximum allowed velocity in m/s, V_{max}, for an air-assisted flare must be determined by the following equation:

$$V_{max} = 8.706 + 0.7084\ H_T$$

Where:

H_T = the net heating value as determined in subsection (e)(2).

f) The owner or operator must monitor and inspect each control device required to comply with this Section to ensure proper operation and maintenance of the control device by implementing the following requirements:

1) Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that provides a record of stream flow from each affected process vent to the control device at least once every hour. The flow indicator sensor must be installed in the vent stream at the nearest feasible point to the control device inlet but before the point at which the vent streams are combined.

2) Install, calibrate, maintain, and operate according to the manufacturer's specifications a device to continuously monitor control device operation, as follows:

A) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device must have accuracy of ±1 percent of the temperature being monitored in °C or ±0.5°C, whichever is greater. The temperature sensor must be installed at a location in the combustion chamber downstream of

the combustion zone.

B) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device must be capable of monitoring temperature at two locations and have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5° C, whichever is greater. One temperature sensor must be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor must be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

C) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

D) For a boiler or process heater having a design heat input capacity less than 44 MW, a temperature monitoring device equipped with a continuous recorder. The device must have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5° C, whichever is greater. The temperature sensor must be installed at a location in the furnace downstream of the combustion zone.

E) For a boiler or process heater having a design heat input capacity greater than or equal to 44 MW, a monitoring device equipped with a continuous recorder to measure parameters that indicate good combustion operating practices are being used.

F) For a condenser, either of the following:

i) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the condenser; or

ii) A temperature monitoring device equipped with a continuous recorder. The device must be capable of monitoring temperature with an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5° C, whichever is greater. The temperature sensor must be

installed at a location in the exhaust vent stream from the condenser exit (i.e., product side).

G) For a carbon adsorption system that regenerates the carbon bed directly in the control device such as a fixed-bed carbon adsorber, either of the following:

i) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the carbon bed, or

ii) A monitoring device equipped with a continuous recorder to measure a parameter that indicates the carbon bed is regenerated on a regular, predetermined time cycle.

3) Inspect the readings from each monitoring device required by subsections (f)(1) and (f)(2) at least once each operating day to check control device operation and, if necessary, immediately implement the corrective measures necessary to ensure the control device operates in compliance with the requirements of this Section.

g) An owner or operator using a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device must replace the existing carbon in the control device with fresh carbon at a regular, predetermined time interval that is no longer than the carbon service life established as a requirement of Section 724.935(b)(4)(C)(vi).

h) An owner or operator using a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device must replace the existing carbon in the control device with fresh carbon on a regular basis by using one of the following procedures:

1) Monitor the concentration level of the organic compounds in the exhaust vent stream from the carbon adsorption system on a regular schedule, and replace the existing carbon with fresh carbon immediately when carbon breakthrough is indicated. The monitoring frequency must be daily or at an interval no greater than 20 percent of the time required to consume the total carbon working capacity established as a requirement of Section

724.935(b)(4)(C)(vii), whichever is longer.

2) Replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of Section 724.935(b)(4)(C)(vii).

i) An alternative operational or process parameter may be monitored if the operator demonstrates that the parameter will ensure that the control device is operated in conformance with these standards and the control device's design specifications.

j) An owner or operator of an affected facility seeking to comply with the provisions of this Part by using a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system is required to develop documentation including sufficient information to describe the control device operation and identify the process parameter or parameters that indicate proper operation and maintenance of the control device.

k) A closed-vent system must meet either of the following design requirements:

1) A closed-vent system must be designed to operate with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background, as determined by the methods specified at Section 724.934(b), and by visual inspections; or

2) A closed-vent system must be designed to operate at a pressure below atmospheric pressure. The system must be equipped with at least one pressure gauge or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the control device is operating.

l) The owner or operator must monitor and inspect each closed-vent system required to comply with this Section to ensure proper operation and maintenance of the closed-vent system by implementing the following requirements:

1) Each closed-vent system that is used to comply with subsection (k)(1) must be inspected and monitored in accordance with the following requirements:

A) An initial leak detection monitoring of the closed-vent system must be conducted by the owner or operator on or before the date that the system becomes subject to this Section. The owner or operator must monitor the closed-vent system components and connections using the procedures specified in Section 724.934(b) to demonstrate that the closed-vent system operates with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background.

B) After initial leak detection monitoring required in subsection (l)(1)(A), the owner or operator must inspect and monitor the closed-vent system as follows:

i) Closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (e.g., a welded joint between two sections of hard piping or a bolted and gasketed ducting flange) must be visually inspected at least once per year to check for defects that could result in air pollutant emissions. The owner or operator must monitor a component or connection using the procedures specified in Section 724.934(b) to demonstrate that it operates with no detectable emissions following any time the component is repaired or replaced (e.g., a section of damaged hard piping is replaced with new hard piping) or the connection is unsealed (e.g., a flange is unbolted).

ii) Closed-vent system components or connections other than those specified in subsection (l)(1)(B)(i) must be monitored annually and at other times as requested by the Regional Administrator, except as provided for in subsection (o), using the procedures specified in Section 724.934(b) to demonstrate that the components or connections operate with no detectable emissions.

C) In the event that a defect or leak is detected, the owner or operator must repair the defect or leak in accordance with the requirements of subsection (l)(3).

D) The owner or operator must maintain a record of the inspection

and monitoring in accordance with the requirements specified in Section 724.935.

2) Each closed-vent system that is used to comply with subsection (k)(2) must be inspected and monitored in accordance with the following requirements:

A) The closed-vent system must be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork or piping or loose connections.

B) The owner or operator must perform an initial inspection of the closed-vent system on or before the date that the system becomes subject to this Section. Thereafter, the owner or operator must perform the inspections at least once every year.

C) In the event that a defect or leak is detected, the owner or operator must repair the defect in accordance with the requirements of subsection (l)(3).

D) The owner or operator must maintain a record of the inspection and monitoring in accordance with the requirements specified in Section 724.935.

3) The owner or operator must repair all detected defects as follows:

A) Detectable emissions, as indicated by visual inspection or by an instrument reading greater than 500 ppmv above background, must be controlled as soon as practicable, but not later than 15 calendar days after the emission is detected, except as provided for in subsection (l)(3)(C).

B) A first attempt at repair must be made no later than five calendar days after the emission is detected.

C) Delay of repair of a closed-vent system for which leaks have been detected is allowed if the repair is technically infeasible without a process unit shutdown, or if the owner or operator determines that

emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment must be completed by the end of the next process unit shutdown.

D) The owner or operator must maintain a record of the defect repair in accordance with the requirements specified in Section 724.935.

m) A closed-vent system or control device used to comply with provisions of this Subpart AA must be operated at all times when emissions may be vented to it.

n) The owner or operator using a carbon adsorption system to control air pollutant emissions must document that all carbon removed that is a hazardous waste and that is removed from the control device is managed in one of the following manners, regardless of the volatile organic concentration of the carbon:

1) It is regenerated or reactivated in a thermal treatment unit that meets one of the following:

A) The owner or operator of the unit has been issued a final permit under 35 Ill. Adm. Code 702, 703, and 705 that implements the requirements of Subpart X ~~of this Part~~; or

B) The unit is equipped with and operating air emission controls in accordance with the applicable requirements of Subparts AA and CC ~~of this Part~~ or Subparts AA and CC of 35 Ill. Adm. Code 725; or

C) The unit is equipped with and operating air emission controls in accordance with a national emission standard for hazardous air pollutants under 40 CFR 61 (National Emission Standards for Hazardous Air Pollutants) or 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories), each incorporated by reference in 35 Ill. Adm. Code 720.111(b).

2) It is incinerated in a hazardous waste incinerator for which the owner or operator has done either of the following:

A) The owner or operator has been issued a final permit under 35 Ill.

Adm. Code 702, 703, and 705 that implements the requirements of Subpart O ~~of this Part~~; or

B) The owner or operator has certified compliance in accordance with the interim status requirements of Subpart O of 35 Ill. Adm. Code 725.

3) It is burned in a boiler or industrial furnace for which the owner or operator has done either of the following:

A) The owner or operator has been issued a final permit under 35 Ill. Adm. Code 702, 703, and 705 that implements the requirements of Subpart H of 35 Ill. Adm. Code 726; or

B) The owner or operator has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of Subpart H of 35 Ill. Adm. Code 726.

o) Any components of a closed-vent system that are designated, as described in Section 724.935(c)(9), as unsafe to monitor are exempt from the requirements of subsection (l)(1)(B)(ii) if both of the following conditions are fulfilled:

1) The owner or operator of the closed-vent system has determined that the components of the closed-vent system are unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with subsection (l)(1)(B)(ii); and

2) The owner or operator of the closed-vent system adheres to a written plan that requires monitoring the closed-vent system components using the procedure specified in subsection (l)(1)(B)(ii) as frequently as practicable during safe-to-monitor times.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.934 Test Methods and Procedures

a) Each owner or operator subject to the provisions of this Subpart AA must comply with the test methods and procedures requirements provided in this Section.

b) When a closed-vent system is tested for compliance with no detectable emissions, as required in Section 724.933(l), the test must comply with the following requirements:

1) Monitoring must comply with Reference Method 21 (Determination of Volatile Organic Compound Leaks) in appendix A to 40 CFR 60 (Test Methods), incorporated by reference in 35 Ill. Adm. Code 720.111(b).

2) The detection instrument must meet the performance criteria of Reference Method 21.

3) The instrument must be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

4) Calibration gases must be as follows:

A) Zero air (less than 10 ppm of hydrocarbon in air); and

B) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

5) The background level must be determined as set forth in Reference Method 21.

6) The instrument probe must be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

7) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

c) Performance tests to determine compliance with Section 724.932(a) and with the total organic compound concentration limit of Section 724.933(c) must comply with the following:

1) Performance tests to determine total organic compound concentrations and mass flow rates entering and exiting control devices must be conducted and data reduced in accordance with the following reference methods and calculation procedures:

A) Reference Method 2 (Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube)) in appendix A to 40 CFR 60 (Test Methods), incorporated by reference in 35 Ill. Adm. Code 720.111(b), for velocity and volumetric flow rate.

B) Reference Method 18 (Measurement of Gaseous Organic Compound Emissions by Gas Chromatography) or Reference Method 25A (Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer) in appendix A to 40 CFR 60 (Test Methods), incorporated by reference in 35 Ill. Adm. Code 720.111(b), for organic content. If Reference Method 25A is used, the organic HAP used as the calibration gas must be the single organic HAP representing the largest percent by volume of the emissions. The use of Reference Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

C) Each performance test must consist of three separate runs, each run conducted for at least one hour under the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. For the purpose of determining total organic compound concentrations and mass flow rates, the average of results of all runs applies. The average must be computed on a time-weighted~~time-weighed~~ basis.

D) Total organic mass flow rates must be determined by the following equation:

i) For a source using Reference Method 18:

$$E_h = Q_{2sd} \times \left(\sum_{i=1}^{n} C_i \times MW_i \right) \times 0.0416 \times 10^{-6}$$

Where:

E_h = The total organic mass flow rate, kg/h~~;~~

Q_{2sd} = The volumetric flow rate of gases entering or exiting control device, dscm/h, as determined by Reference Method 2~~;~~

n = The number of organic compounds in the vent gas~~;~~

C_i = The organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Reference Method 18~~;~~

MW_i = The molecular weight of organic compound i in the vent gas, kg/kg-mol~~;~~

0.0416 = The conversion factor for molar volume, kg-mol/m^3, at 293 K and 760 mm Hg~~; and~~

10^{-6} = The conversion factor from ppm~~.~~

ii) For a source using Reference Method 25A:

$$E_h = Q \times C \times MW \times 0.0416 \times 10^{-6}$$

Where:

E_h = The total organic mass flow rate, kg/h~~;~~

Q = The volumetric flow rate of gases entering or exiting control device, dscm/h, as determined by Reference Method 2~~;~~

C = The organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Reference Method 25A~~;~~

MW = The molecular weight of propane, 44 kg/kg-mol~~;~~

0.0416 = The conversion factor for molar volume, kg-mol/m^3, at 293 K and 760 mm Hg~~; and~~

10^{-6} = The conversion factor from ppm~~.~~

E) The annual total organic emission rate must be determined by the following equation:

$$A = F \times H$$

Where:

A = total organic emission rate, kg/y~~;~~
F = the total organic mass flow rate, kg/h, as calculated in subsection (c)(1)(D)~~; and~~
H = the total annual hours of operation for the affected unit, h/y~~.~~

F) Total organic emissions from all affected process vents at the facility must be determined by summing the hourly total organic mass emissions rates (F as determined in subsection (c)(1)(D)) and by summing the annual total organic mass emission rates (A as determined in subsection (c)(1)(E)) for all affected process vents at the facility.

2) The owner or operator must record such process information as is necessary to determine the conditions of the performance tests. Operations during periods of startup, shutdown, and malfunction do not constitute representative conditions for the purpose of a performance test.

3) The owner or operator of an affected facility must provide, or cause to be provided, performance testing facilities as follows:

A) Sampling ports adequate for the test methods specified in subsection (c)(1).

B) Safe sampling platforms.

C) Safe access to sampling platforms.

D) Utilities for sampling and testing equipment.

4) For the purpose of making compliance determinations, the time-weighted average of the results of the three runs must apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the Agency's approval, be determined using the average of the results of the two other runs.

d) To show that a process vent associated with a hazardous waste distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation is not subject to the requirements of this Subpart AA, the owner or operator must make an initial determination that the time-weighted, annual average total organic concentration of the waste managed by the waste management unit is less than 10 ppmw using one of the following two methods:

1) Direct measurement of the organic concentration of the waste using the following procedures:

A) The owner or operator must take a minimum of four grab samples of waste for each wastestream managed in the affected unit under process conditions expected to cause the maximum waste organic concentration.

B) For waste generated onsite, the grab samples must be collected at a point before the waste is exposed to the atmosphere, such as in an enclosed pipe or other closed system that is used to transfer the waste after generation to the first affected distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation. For waste generated offsite, the grab samples must be collected at the inlet to the first waste management unit that receives the waste provided the waste has been transferred to the facility in a closed system such as a tank truck and the waste is not diluted or mixed with other waste.

C) Each sample must be analyzed and the total organic concentration of the sample must be computed using Method 9060A (Total Organic Carbon) of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," USEPA publication number EPA-530/SW-846, incorporated by reference under 35 Ill. Adm. Code 720.111(a), or analyzed for its individual constituents.

D) The arithmetic mean of the results of the analyses of the four samples apply for each wastestream managed in the unit in determining the time-weighted, annual average total organic concentration of the waste. The time-weighted average is to be calculated using the annual quantity of each wastestream processed

and the mean organic concentration of each wastestream managed in the unit.

2) Using knowledge of the waste to determine that its total organic concentration is less than 10 ppmw. Documentation of the waste determination is required. Examples of documentation that must be used to support a determination under this subsection (d)(2) include the following:

A) Production process information documenting that no organic compounds are used;

B) Information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to generate a wastestream having a total organic content less than 10 ppmw; or

C) Prior speciation analysis results on the same wastestream where it is also documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

e) The determination that a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation that manages hazardous wastes that have time-weighted, annual average total organic concentrations less than 10 ppmw must be made as follows:

1) By the effective date that the facility becomes subject to the provisions of this Subpart AA or by the date when the waste is first managed in a waste management unit, whichever is later; and either of the following:

2) For continuously generated waste, annually; or

3) Whenever there is a change in the waste being managed or a change in the process that generates or treats the waste.

f) When an owner or operator and the Agency do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, direct measurement may be used to

resolve the dispute, as specified in subsection (d)(1).

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.935 Recordkeeping Requirements

a) Compliance Required.

1) Each owner or operator subject to the provisions of this Subpart AA must comply with the recordkeeping requirements of this Section.

2) An owner or operator of more than one hazardous waste management unit subject to the provisions of this Subpart AA may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.

b) Owners and operators must record the following information in the facility operating record:

1) For facilities that comply with the provisions of Section 724.933(a)(2), an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The schedule must also include a rationale of why the installation cannot be completed at an earlier date. The implementation schedule must be in the facility operating record by the effective date that the facility becomes subject to the provisions of this Subpart AA.

2) Up-to-date documentation of compliance with the process vent standards in Section 724.932, including the following:

A) Information and data identifying all affected process vents, annual throughput, and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (i.e., the total emissions for all affected vents at the facility), and the approximate location within the facility of each affected unit (e.g., identify the hazardous waste management units on a facility plot plan).

B) Information and data supporting determination of vent emissions and emission reductions achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, determinations of vent emissions and emission reductions must be made using operating parameter values (e.g., temperatures, flow rates, or vent stream organic compounds and concentrations) that represent the conditions that result in maximum organic emissions, such as when the waste management unit is operating at the highest load or capacity level reasonably expected to occur. If the owner or operator takes any action (e.g., managing a waste of different composition or increasing operating hours of affected waste management units) that would result in an increase in total organic emissions from affected process vents at the facility, then a new determination is required.

3) Where an owner or operator chooses to use test data to determine the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan. The test plan must include the following:

A) A description of how it is determined that the planned test is going to be conducted when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. This must include the estimated or design flow rate and organic content of each vent stream and define the acceptable operating ranges of key process and control device parameters during the test program.

B) A detailed engineering description of the closed-vent system and control device including the following:

i) Manufacturer's name and model number of control device;

ii) Type of control device;

iii) Dimensions of the control device;

iv) Capacity;and

v) Construction materials.

C) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

4) Documentation of compliance with Section 724.933 must include the following information:

A) A list of all information references and sources used in preparing the documentation.

B) Records, including the dates of each compliance test required by Section 724.933(k).

C) If engineering calculations are used, a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions~~;~~", USEPA publication number EPA-450/2-81-005, incorporated by reference in 35 Ill. Adm. Code 720.111(a), or other engineering texts, approved by the Agency, that present basic control device design information. Documentation provided by the control device manufacturer or vendor that describes the control device design in accordance with subsections (b)(4)(C)(i) through (b)(4)(C)(vii) may be used to comply with this requirement. The design analysis must address the vent stream characteristics and control device operation parameters as specified below.

i) For a thermal vapor incinerator, the design analysis must consider the vent stream composition, constituent concentrations, and flow rate. The design analysis must also establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

ii) For a catalytic vapor incinerator, the design analysis must

consider the vent stream composition, constituent concentrations, and flow rate. The design analysis must also establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

iii) For a boiler or process heater, the design analysis must consider the vent stream composition, constituent concentrations, and flow rate. The design analysis must also establish the design minimum and average flame zone temperatures, combustion zone residence time and description of method and location where the vent stream is introduced into the combustion zone.

iv) For a flare, the design analysis must consider the vent stream composition, constituent concentrations, and flow rate. The design analysis must also consider the requirements specified in Section 724.933(d).

v) For a condenser, the design analysis must consider the vent stream composition, constituent concentrations, flow rate, relative humidity and temperature. The design analysis must also establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream and design average temperatures of the coolant fluid at the condenser inlet and outlet.

vi) For a carbon adsorption system, such as a fixed-bed adsorber that regenerates the carbon bed directly onsite in the control device, the design analysis must consider the vent stream composition, constituent concentrations, flow rate, relative humidity and temperature. The design analysis must also establish the design exhaust vent stream organic compound concentration level, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total steam flow over the period of each complete carbon bed regeneration cycle, duration of the carbon bed steaming and cooling/drying cycles, design carbon bed temperature after

regeneration, design carbon bed regeneration time and design service life of carbon.

vii) For a carbon adsorption system, such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device, the design analysis must consider the vent stream composition, constituent concentrations, flow rate, relative humidity and temperature. The design analysis must also establish the design outlet organic concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

D) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

E) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 percent or greater unless the total organic concentration limit of Section 724.932(a) is achieved at an efficiency less than 95 weight percent or the total organic emission limits of Section 724.932(a) for affected process vents at the facility are attained by a control device involving vapor recovery at an efficiency less than 95 weight percent. A statement provided by the control device manufacturer or vendor certifying that the control equipment meets the design specifications may be used to comply with this requirement.

F) If performance tests are used to demonstrate compliance, all test results.

c) Design documentation and monitoring operating and inspection information for each closed-vent system and control device required to comply with the provisions of this Part must be recorded and kept up-to-date in the facility

operating record. The information must include the following:

1) Description and date of each modification that is made to the closed-vent system or control device design.

2) Identification of operating parameter, description of monitoring device, and diagram of monitoring sensor location or locations used to comply with Section 724.933(f)(1) and (f)(2).

3) Monitoring, operating and inspection information required by Section 724.933(f) through (k).

4) Date, time, and duration of each period that occurs while the control device is operating when any monitored parameter exceeds the value established in the control device design analysis as specified below:

   A) For a thermal vapor incinerator designed to operate with a minimum residence time of 0.50 second at a minimum temperature of 760° C, any period when the combustion temperature is below 760° C.

   B) For a thermal vapor incinerator designed to operate with an organic emission reduction efficiency of 95 weight percent or greater, any period when the combustion zone temperature is more than 28° C below the design average combustion zone temperature established as a requirement of subsection (b)(4)(C)(i).

   C) For a catalytic vapor incinerator, any period when:

      i) Temperature of the vent stream at the catalyst bed inlet is more than 28° C below the average temperature of the inlet vent stream established as a requirement of subsection (b)(4)(C)(ii); or

      ii) Temperature difference across the catalyst bed is less than 80% of the design average temperature difference established as a requirement of subsection (b)(4)(C)(ii).

   D) For a boiler or process heater, any period when either of the

following occurs:

i) Flame zone temperature is more than 28° C below the design average flame zone temperature established as a requirement of subsection (b)(4)(C)(iii); or

ii) Position changes where the vent stream is introduced to the combustion zone from the location established as a requirement of subsection (b)(4)(C)(iii).

E) For a flare, period when the pilot flame is not ignited.

F) For a condenser that complies with Section 724.933(f)(2)(F)(i), any period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the condenser are more than 20 percent greater than the design outlet organic compound concentration level established as a requirement of subsection (b)(4)(C)(v).

G) For a condenser that complies with Section 724.933(f)(2)(F)(ii), any period when the following occurs:

i) Temperature of the exhaust vent stream from the condenser is more than 6° C above the design average exhaust vent stream temperature established as a requirement of subsection (b)(4)(C)(v).

ii) Temperature of the coolant fluid exiting the condenser is more than 6° C above the design average coolant fluid temperature at the condenser outlet established as a requirement of subsection (b)(4)(C)(v).

H) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device and complies with Section 724.933(f)(2)(G)(i), any period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the carbon bed are more than 20 percent greater than the design exhaust vent stream organic compound concentration level established as a

requirement of subsection (b)(4)(C)(vi).

I) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device and complies with Section 724.933(f)(2)(G)(ii), any period when the vent stream continues to flow through the control device beyond the predetermined carbon bed regeneration time established as a requirement of subsection (b)(4)(C)(vi).

5) Explanation for each period recorded under subsection (c)(4) of the cause for control device operating parameter exceeding the design value and the measures implemented to correct the control device operation.

6) For a carbon adsorption system operated subject to requirements specified in Section 724.933(g) or (h)(2), any date when existing carbon in the control device is replaced with fresh carbon.

7) For a carbon adsorption system operated subject to requirements specified in Section 724.933(h)(1), a log that records the following:

A) Date and time when control device is monitored for carbon breakthrough and the monitoring device reading; and

B) Date when existing carbon in the control device is replaced with fresh carbon.

8) Date of each control device startup and shutdown.

9) An owner or operator designating any components of a closed-vent system as unsafe to monitor pursuant to Section 724.933(o) must record in a log that is kept in the facility operating record the identification of closed-vent system components that are designated as unsafe to monitor in accordance with the requirements of Section 724.933(o), an explanation for each closed-vent system component stating why the closed-vent system component is unsafe to monitor, and the plan for monitoring each closed-vent system component.

10) When each leak is detected, as specified in Section 724.933(l), the following information must be recorded:

A) The instrument identification number; the closed-vent system component identification number; and the operator name, initials, or identification number.

B) The date the leak was detected and the date of first attempt to repair the leak.

C) The date of successful repair of the leak.

D) Maximum instrument reading measured by Reference Method 21 (Determination of Volatile Organic Compound Leaks) of appendix A to 40 CFR 60 (Test Methods), incorporated by reference in 35 Ill. Adm. Code 720.111(b), after it is successfully repaired or determined to be nonrepairable.

E) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

i) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

ii) If delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked on-site before depletion and the reason for depletion.

d) Records of the monitoring, operating, and inspection information required by subsections (c)(3) through (c)(10) must be kept at least three years following the date of each occurrence, measurement, corrective action, or record.

e) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the Agency must specify the appropriate recordkeeping requirements.

f) Up-to-date information and data used to determine whether or not a process vent

is subject to the requirements in Section 724.932, including supporting documentation as required by Section 724.934(d)(2), when application of the knowledge of the nature of the hazardous wastestream or the process by which it was produced is used, must be recorded in a log that is kept in the facility operating record.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

SUBPART BB: AIR EMISSION STANDARDS FOR EQUIPMENT LEAKS

Section 724.950 Applicability

a) The regulations in this Subpart BB apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in Section 724.101).

b) Except as provided in Section 724.964(k), this Subpart BB applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in one of the following:

1) A unit that is subject to the RCRA permitting requirements of 35 Ill. Adm. Code 702, 703, and 705;~~,~~

2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of 35 Ill. Adm. Code 722.117~~722.134(a)~~ (i.e., a hazardous waste recycling unit that is not a "90-day" tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of 35 Ill. Adm. Code 702, 703, and 705;~~,~~ or

3) A unit that is exempt from permitting under the provisions of 35 Ill. Adm. Code 722.117~~722.134(a)~~ (i.e., a "90-day" tank or container) and which is not a recycling unit under the provisions of 35 Ill. Adm. Code 721.106.

c) ~~For the owner or operator of a facility subject to this Subpart BB that received a final permit under 35 Ill. Adm. Code 702, 703, and 705 prior to December 6, 1996, the requirements of this Subpart BB must be incorporated into the permit when the permit is reissued, renewed, or modified in accordance with the requirements of 35 Ill. Adm. Code 703 and 705.~~ Until ~~such date when~~ the owner

or operator receives a final permit incorporating the requirements of this Subpart BB, the owner or operator is subject to the requirements of Subpart BB of 35 Ill. Adm. Code 725.

d) Each piece of equipment to which this Subpart BB applies must be marked in such a manner that it can be distinguished readily from other pieces of equipment.

e) Equipment that is in vacuum service is excluded from the requirements of Sections 724.952 to 724.960, if it is identified as required in Section 724.964(g)(5).

f) Equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year is excluded from the requirements of Sections 724.952 through 724.960 if it is identified as required in Section 724.964(g)(6).

g) This subsection (g) corresponds with 40 CFR 264.1050(g), which relates exclusively to a facility outside Illinois. This statement maintains structural consistency with the corresponding federal regulations.

h) Purged coatings and solvents from surface coating operations subject to the federal national emission standards for hazardous air pollutants (NESHAPs) for the surface coating of automobiles and light-duty trucks at subpart IIII of 40 CFR 63 (National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks) are not subject to the requirements of this Subpart BB.

BOARD NOTE: The requirements of Sections 724.952 through 724.965 apply to equipment associated with hazardous waste recycling units previously exempt under 35 Ill. Adm. Code 721.106(c)(1). Other exemptions under 35 Ill. Adm. Code 721.104 and 724.101(g) are not affected by these requirements.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.951 Definitions

As used in this Subpart BB, all terms have the meaning given them in Section 724.931, section 1004 of the Resource Conservation and Recovery Act, incorporated by reference in 35 Ill. Adm. Code 720.111, and 35 Ill. Adm. Code 720 through 728~~,~~ and 738.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.952 Standards: Pumps in Light Liquid Service

a) Monitoring.

1) Each pump in light liquid service must be monitored monthly to detect leaks by the methods specified in Section 724.963(b), except as provided in subsections (d), (e), and (f).

2) Each pump in light liquid service must be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

b) Leaks.

1) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

2) If there are indications of liquids dripping from the pump seal, a leak is detected.

c) Repairs.

1) When a leak is detected, it must be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section 724.959.

2) A first attempt at repair (e.g., tightening the packing gland) must be made no later than five calendar days after each leak is detected.

d) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of subsection (a) ~~of this Section~~, provided the following requirements are met:

1) Each dual mechanical seal system must be as follows:

A) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressures;

B) Equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a control device that complies with the requirements of Section 724.960; or

C) Equipped with a system that purges the barrier fluid into a hazardous wastestream with no detectable emissions to the atmosphere.

2) The barrier fluid system must not be a hazardous waste with organic concentrations 10 percent or greater by weight.

3) Each barrier fluid system must be equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

4) Each pump must be checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seals.

5) Alarms~~.~~

A) Each sensor as described in subsection (d)(3) ~~of this Section~~ must be checked daily or be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly.

B) The owner or operator must determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

6) Leaks~~.~~

A) If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined in subsection (d)(5)(B) ~~of this Section~~, a leak is detected.

B) When a leak is detected, it must be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section 724.959.

C) A first attempt at repair (e.g., relapping the seal) must be made no later than five calendar days after each leak is detected.

e) Any pump that is designated, as described in Section 724.964(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of subsections (a), (c), and (d) ~~of this Section~~, if the pump meets the following requirements:

1) It must have no externally actuated shaft penetrating the pump housing.

2) It must operate with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background, as measured by the methods specified in Section 724.963(c).

3) It must be tested for compliance with subsection (e)(2) ~~of this Section~~ initially upon designation, annually and at other times, as specified in the RCRA permit.

f) If any pump is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of Section 724.960, it is exempt from the requirements of subsections (a) through (e) ~~of this Section~~.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.953 Standards: Compressors

a) Each compressor must be equipped with a seal system that includes a barrier fluid system and that prevents leakage of total organic emissions to the atmosphere, except as provided in subsections (h) and (i) ~~of this Section~~.

b) Each compressor seal system, as required in subsection (a) ~~of this Section~~, must be as follows:

1) Operated with the barrier fluid at a pressure that is at all times greater than the compressor stuffing box pressure; or

2) Equipped with a barrier fluid system that is connected by a closed-vent system to a control device that complies with the requirements of Section

724.960; or

3) Equipped with a system that purges the barrier fluid into a hazardous wastestream with no detectable emissions to atmosphere.

c) The barrier fluid must not be a hazardous waste with organic concentrations 10 percent or greater by weight.

d) Each barrier fluid system, as described in subsections (a) through (c) ~~of this Section~~, must be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

e) Failure Detection~~detection.~~

1) Each sensor as required in subsection (d) ~~of this Section~~ must be checked daily or must be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly, unless the compressor is located within the boundary of an unmanned plant site, in which case the sensor must be checked daily.

2) The owner or operator must determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

f) If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined under subsection (e)(2) ~~of this Section~~, a leak is detected.

g) Repairs~~.~~

1) When a leak is detected, it must be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section 724.959.

2) A first attempt at repair (e.g., tightening the packing gland) must be made no later than five calendar days after each leak is detected.

h) A compressor is exempt from the requirements of subsections (a) and (b) ~~of this Section~~ if it is equipped with a closed-vent system capable of capturing and

transporting any leakage from the seal to a control device that complies with the requirements of Section 724.960, except as provided in subsection (i) ~~of this Section~~.

i) Any compressor that is designated, as described in Section 724.964(g)(2), for no detectable emission as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of subsections (a) through (h) ~~of this Section~~ if the following is true of the compressor:

1) It is determined to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Section 724.963(c).

2) It is tested for compliance with subsection (i)(1) ~~of this Section~~ initially upon designation, annually and other times, as specified in the RCRA permit.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.954 Standards: Pressure Relief Devices in Gas/Vapor Service

a) Except during pressure releases, each pressure relief device in gas-vapor service must be operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Section 724.963(c).

b) Actions Following Pressure Release~~following pressure release.~~

1) After each pressure release, the pressure relief device must be returned to a condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than five calendar days after each pressure release, except as provided in Section 724.959.

2) No later than five calendar days after the pressure release, the pressure relief device must be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Section 724.963(c).

c) Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in Section 724.960 is exempt from the requirements of subsections (a) and (b) ~~of this Section~~.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.955 Standards: Sampling Connecting Systems

a) Each sampling connection system must be equipped with a closed-purge, closed-loop, or closed-vent system. This system must collect the sample purge for return to the process or for routing to the appropriate treatment system. Gases displaced during filling of the sample container are not required to be collected or captured.

b) Each closed-purge, closed-loop, or closed-vent system, as required in subsection (a) ~~of this Section~~, must meet one of the following requirements:

1) It must return the purged process fluid directly to the process line;

2) It must collect and recycle the purged process fluid; or

3) It must be designed and operated to capture and transport all the purged process fluid to a waste management unit that complies with the applicable requirements of Sections 724.984 through 724.986 or a control device that complies with the requirements of Section 724.960.

c) In-situ sampling systems and sampling systems without purges are exempt from the requirements of subsections (a) and (b) ~~of this Section~~.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.956 Standards: Open-Ended Valves or Lines

a) Equipment~~.~~

1) Each open-ended valve or line must be equipped with a cap, blind flange, plug, or a second valve.

2) The cap, blind flange, plug, or second valve must seal the open end at all times except during operations requiring hazardous wastestream flow through the open-ended valve or line.

b) Each open-ended valve or line equipped with a second valve must be operated in a manner such that the valve on the hazardous wastestream end is closed before the second valve is closed.

c) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but must comply with subsection (a) ~~of this Section~~ at all other times.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.957 Standards: Valves in Gas/Vapor or Light Liquid Service

a) Each valve in gas-vapor or light liquid service must be monitored monthly to detect leaks by the methods specified in Section 724.963(b) and must comply with subsections (b) through (e) ~~of this Section~~, except as provided in subsections (f), (g), and (h)~~of this Section~~, and in Sections~~Section~~ 724.961 and 724.962.

b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

c) Monitoring Frequency~~.~~

1) Any valve for which a leak is not detected for two successive months must be monitored the first month of every succeeding quarter, beginning with the next quarter, until a leak is detected.

2) If a leak is detected, the valve must be monitored monthly until a leak is not detected for two successive months.

d) Leak Repair~~repair.~~

1) When a leak is detected, it must be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in Section 724.959.

2) A first attempt at repair must be made no later than five calendar days

after each leak is detected.

e) First attempts at repair include, but are not limited to the following best practices where practicable:

1) Tightening ~~of~~ bonnet bolts.

2) Replacing~~Replacement of~~ bonnet bolts.

3) Tightening ~~of~~ packing gland nuts.

4) Injecting~~Injection of~~ lubricant into lubricated packing.

f) Any valve that is designated, as described in Section 724.964(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of subsection (a) ~~of this Section~~ if the following is true of the valve:

1) It has no external actuating mechanism in contact with the hazardous wastestream.

2) It is operated with emissions less than 500 ppm above background as determined by the method specified in Section 724.963(c).

3) It is tested for compliance with subsection (f)(2) ~~of this Section~~ initially upon designation, annually, and at other times as specified in the RCRA permit.

g) Any valve that is designated, as described in Section 724.964(h)(1), as an unsafe-to-monitor valve is exempt from the requirements of subsection (a) ~~of this Section~~, if the following occurs:

1) The owner or operator of the valve determines that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with subsection (a) ~~of this Section~~.

2) The owner or operator of the valve adheres to a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times.

h) Any valve that is designated, as described in Section 724.964(h)(2), as a difficult-to-monitor valve is exempt from the requirements of subsection (a) ~~of this Section~~, if the following occurs:

1) The owner or operator of the valve determines that the valve cannot be monitored without elevating the monitoring personnel more than two meters above a support surface;

2) The hazardous waste management unit within which the valve is located was in operation before June 21, 1990; and

3) The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.958 Standards: Pumps, Valves, Pressure Relief Devices, and Other Connectors

a) Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service and flanges and other connectors must be monitored within five days by the method specified in Section 724.963(b), if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.

b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

c) Repairs~~.~~

1) When a leak is detected, it must be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section 724.959.

2) The first attempt at repair must be made no later than five calendar days after each leak is detected.

d) First attempts at repair include, but are not limited to, the best practices described under Section 724.957(e).

e) Any connector that is inaccessible or is ceramic or ceramic-lined (e.g., porcelain, glass, or glass-lined) is exempt from the monitoring requirements of subsection (a) ~~of this Section~~ and from the recordkeeping requirements of Section 724.964.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.960 Standards: Closed-Vent Systems and Control Devices

a) An owner or operator of a closed-vent system or control device subject to this Subpart BB must comply with the provisions of Section 724.933.

b) Implementation Schedule~~.~~

1) The owner or operator of an existing facility that cannot install a closed-vent system and control device to comply with the provisions of this Subpart BB on the effective date that the facility becomes subject to the provisions of this Subpart BB must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this Subpart BB for installation and startup.

2) Any unit that ~~begins operation after December 21, 1990, and which~~ is subject to the provisions of this Subpart BB when operation begins, must comply with the rules immediately (i.e., the unit must have control devices installed and operating on startup of the affected unit); the 30-month implementation schedule does not apply.

3) The owner or operator of any facility in existence on the effective date of a statutory or regulatory amendment that renders the facility subject to this Subpart BB must comply with all requirements of this Subpart BB as soon as practicable but no later than 30 months after the effective date of the amendment. When control equipment required by this Subpart BB cannot be installed and begin operation by the effective date of the amendment, the facility owner or operator must prepare an implementation schedule that includes the following information: specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of

the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this Subpart BB. The owner or operator must enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.

4) An owner or operator of a facility or unit that becomes newly subject to the requirements of this Subpart BB due to an action other than those described in subsection (b)(3) ~~of this Section~~ must comply with all applicable requirements immediately (i.e., the facility or unit must have control devices installed and operating on the date the facility or unit becomes subject to this Subpart BB; the 30-month implementation schedule does not apply).

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.961 Alternative Percentage Standard for Valves

a) An owner or operator subject to the requirements of Section 724.957 may elect to have all valves within a hazardous waste management unit comply with an alternative standard that allows no greater than two percent of the valves to leak.

b) The following requirements must be met if an owner or operator decides to comply with the alternative standard of allowing two percent of valves to leak:

1) A performance test as specified in subsection (c) ~~of this Section~~ must be conducted initially upon designation, annually and other times specified in the RCRA permit.

2) If a valve leak is detected it must be repaired in accordance with Section 724.957(d) and (e).

c) Performance tests must be conducted in the following manner:

1) All valves subject to the requirements in Section 724.957 within the hazardous waste management unit must be monitored within one week by the methods specified in Section 724.963(b).

2) If an instrument reading of 10,000 ppm or greater is measured, a leak is

detected.

3) The leak percentage must be determined by dividing the number of valves subject to the requirements in Section 724.957 for which leaks are detected by the total number of valves subject to the requirements in Section 724.957 within the hazardous waste management unit.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.962 Skip Period Alternative for Valves

a) An owner or operator subject to the requirements of Section 724.957 may elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in subsections (b)(2) and (b)(3) ~~of this Section~~.

b) Reduced Monitoring~~.~~

1) An owner or operator must comply with the requirements for valves, as described in Section 724.957, except as described in subsections (b)(2) and (b)(3).

2) After two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two percent, an owner or operator may begin to skip one of the quarterly leak detection periods (i.e., the owner or operator may monitor for leaks once every six months) for the valves subject to the requirements in Section 724.957.

3) After five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two percent, an owner or operator may begin to skip three of the quarterly leak detection periods (i.e., the owner or operator may monitor for leaks once every year) for the valves subject to the requirements in Section 724.957.

4) If the percentage of valves leaking is greater than 2 percent, the owner or operator must monitor monthly in compliance with the requirements in Section 724.957, but may again elect to use this Section after meeting the requirements of Section 724.957(c)(1).

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.963 Test Methods and Procedures

a) Each owner or operator subject to the provisions of this Subpart BB must comply with the test methods and procedures requirements provided in this Section.

b) Leak detection monitoring, as required in Sections 724.952 through 724.962, must comply with the following requirements:

1) Monitoring must comply with Reference Method 21 (Determination of Volatile Organic Compound Leaks) in appendix A to 40 CFR 60 (Test Methods), incorporated by reference in 35 Ill. Adm. Code 720.111(b).

2) The detection instrument must meet the performance criteria of Reference Method 21.

3) The instrument must be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

4) Calibration gases must be as follows:

A) Zero air (less than 10 ppm of hydrocarbon in air); and

B) A mixture of methane or n-hexane and air at a concentration of approximately, but less than 10,000 ppm methane or n-hexane.

5) The instrument probe must be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

c) When equipment is tested for compliance with no detectable emissions, as required in Sections 724.952(e), 724.953(i), 724.954, and 724.957(f), the test must comply with the following requirements:

1) The requirements of subsections (b)(1) through (b)(4) ~~of this Section~~ apply.

2) The background level must be determined as set forth in Reference Method 21.

3) The instrument probe must be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

4) This arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

d) In accordance with the waste analysis plan required by Section 724.113(b), an owner or operator of a facility must determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds 10 percent by weight using the following:

1) Methods described in ASTM Methods D 2267-88 (Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography), E 168-88 (Standard Practices for General Techniques of Infrared Quantitative Analysis), E 169-87 (Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis), or E 260-85 (Standard Practice for Packed Column Gas Chromatography), each incorporated by reference in 35 Ill. Adm. Code 720.111(a);

2) Method 9060A (Total Organic Carbon) of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", USEPA publication number EPA-530/SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111(a), for computing total organic concentration of the sample, or analyzed for its individual constituents; or

3) Application of the knowledge of the nature of the hazardous wastestream or the process by which it was produced. Documentation of a waste determination by knowledge is required. Examples of documentation that must be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to have a total organic content less than 10 percent, or prior speciation analysis results on the same wastestream where it is also documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

e) If an owner or operator determines that a piece of equipment contains or contacts a hazardous waste with organic concentrations at least 10 percent by weight, the determination can be revised only after following the procedures in subsection (d)(1) or (d)(2) ~~of this Section~~.

f) When an owner or operator and the Agency do not agree on whether a piece of equipment contains or contacts a hazardous waste with organic concentrations at least 10 percent by weight, the procedures in subsection (d)(1) or (d)(2) ~~of this Section~~ must be used to resolve the dispute.

g) Samples used in determining the percent organic content must be representative of the highest total organic content hazardous waste that is expected to be contained in or contact the equipment.

h) To determine if pumps or valves are in light liquid service, the vapor pressures of constituents must either be obtained from standard reference texts or be determined by ASTM D 2879-92 (Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope), incorporated by reference in 35 Ill. Adm. Code 720.111(a).

i) Performance tests to determine if a control device achieves 95 weight percent organic emission reduction must comply with the procedures of Section 724.934(c)(1) through (c)(4).

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.964 Recordkeeping Requirements

a) Lumping Units~~.~~

1) Each owner or operator subject to the provisions of this Subpart BB must comply with the recordkeeping requirements of this Section.

2) An owner or operator of more than one hazardous waste management unit subject to the provisions of this Subpart BB may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.

b) Owners and operators must record the following information in the facility operating record:

1) For each piece of equipment to which this Subpart BB applies, the following:

A) Equipment identification number and hazardous waste management unit identification.

B) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan).

C) Type of equipment (e.g., a pump or pipeline valve).

D) Percent-by-weight total organics in the hazardous wastestream at the equipment.

E) Hazardous waste state at the equipment (e.g., gas-vapor or liquid).

F) Method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals").

2) For facilities that comply with the provisions of Section 724.933(a)(2), an implementation schedule, as specified in that Section.

3) Where an owner or operator chooses to use test data to demonstrate the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan, as specified in Section 724.935(b)(3).

4) Documentation of compliance with Section 724.960, including the detailed design documentation or performance test results specified in Section 724.935(b)(4).

c) When each leak is detected as specified in Sections 724.952, 724.953, 724.957, or 724.958, the following requirements apply:

1) A weatherproof and readily visible identification, marked with the

equipment identification number, the date evidence of a potential leak was found in accordance with Section 724.958(a), and the date the leak was detected, must be attached to the leaking equipment.

2) The identification on equipment except on a valve, may be removed after it has been repaired.

3) The identification on a valve may be removed after it has been monitored for two successive months as specified in Section 724.957(c) and no leak has been detected during those two months.

d) When each leak is detected as specified in Section 724.952, 724.953, 724.957, or 724.958, the following information must be recorded in an inspection log and must be kept in the facility operating record:

1) The instrument and operator identification numbers and the equipment identification number.

2) The date evidence of a potential leak was found in accordance with Section 724.958(a).

3) The date the leak was detected and the dates of each attempt to repair the leak.

4) Repair methods applied in each attempt to repair the leak.

5) "Above 10,000~~,~~", if the maximum instrument reading measured by the methods specified in Section 724.963(b) after each repair attempt is equal to or greater than 10,000 ppm.

6) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

7) Documentation supporting the delay of repair of a valve in compliance with Section 724.959(c).

8) The signature of the owner or operator (or designate) whose decision it was that repair could not be effected without a hazardous waste management unit shutdown.

9) The expected date of successful repair of the leak if a leak is not repaired within 15 calendar days.

10) The date of successful repair of the leak.

e) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of Section 724.960 must be recorded and kept up-to-date in the facility operating record, as specified in Section 724.935(c)(1) and (c)(2), and monitoring, operating and inspection information in Section 724.935(c)(3) through (c)(8).

f) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the Agency must specify the appropriate recordkeeping requirements, indicating proper operation and maintenance of the control device, in the RCRA permit.

g) The following information pertaining to all equipment subject to the requirements in Sections 724.952 through 724.960 must be recorded in a log that is kept in the facility operating record:

1) A list of identification numbers for equipment (except welded fittings) subject to the requirements of this Subpart BB.

2) List of Equipment

A) A list of identification numbers for equipment that the owner or operator elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, under the provisions of Sections 724.952(e), 724.953(i), and 724.957(f).

B) The designation of this equipment as subject to the requirements of Section 724.952(e), 724.953(i), or 724.957(f) must be signed by the owner or operator.

3) A list of equipment identification numbers for pressure relief devices required to comply with Section 724.954(a).

4) Compliance Teststests.

A) The dates of each compliance test required in Sections 724.952(e), 724.953(i), 724.954, and 724.957(f).

B) The background level measured during each compliance test.

C) The maximum instrument reading measured at the equipment during each compliance test.

5) A list of identification numbers for equipment in vacuum service.

6) Identification, either by list or location (area or group), of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per year.

h) The following information pertaining to all valves subject to the requirements of Section 724.957(g) and (h) must be recorded in a log that is kept in the facility operating record:

1) A list of identification numbers for valves that are designated as unsafe to monitor, an explanation for each valve stating why the valve is unsafe to monitor, and the plan for monitoring each valve.

2) A list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the planned schedule for monitoring each valve.

i) The following information must be recorded in the facility operating record for valves complying with Section 724.962:

1) A schedule of monitoring.

2) The percent of valves found leaking during each monitoring period.

j) The following information must be recorded in a log that is kept in the facility operating record:

1) Criteria required in Sections 724.952(d)(5)(B) and 724.953(e)(2) and an

explanation of the design criteria.

2) Any changes to these criteria and the reasons for the changes.

k) The following information must be recorded in a log that is kept in the facility operating record for use in determining exemptions, as provided in Section 724.950 and other specific Subparts:

1) An analysis determining the design capacity of the hazardous waste management unit.

2) A statement listing the hazardous waste influent to and effluent from each hazardous waste management unit subject to the requirements in Section 724.960 and an analysis determining whether these hazardous wastes are heavy liquids.

3) An up-to-date analysis and the supporting information and data used to determine whether or not equipment is subject to the requirements in Sections 724.952 through 724.960. The record must include supporting documentation as required by Section 724.963(d)(3) when application of the knowledge of the nature of the hazardous wastestream or the process by which it was produced is used. If the owner or operator takes any action (e.g., changing the process that produced the waste) that could result in an increase in the total organic content of the waste contained in or contacted by equipment determined not to be subject to the requirements in Sections 724.952 through 724.960, then a new determination is required.

l) Records of the equipment leak information required by subsection (d) ~~of this Section~~ and the operating information required by subsection (e) ~~of this Section~~ need be kept only three years.

m) The owner or operator of any facility with equipment that is subject to this Subpart BB and to regulations at federal 40 CFR 60 (Standards of Performance for New Stationary Sources), 61 (National Emission Standards for Hazardous Air Pollutants), or 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories), may elect to determine compliance with this Subpart BB by documentation of compliance either pursuant to Section 724.964 or by documentation of compliance with the regulations at 40 CFR 60, 61, or 63,

pursuant to the relevant provisions of 40 CFR 60, 61, or 63, each incorporated by reference in 35 Ill. Adm. Code 720.111(b). The documentation of compliance under the regulation at 40 CFR 60, 61, or 63 must be kept with or made readily available with the facility operating record.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

SUBPART CC: AIR EMISSION STANDARDS FOR TANKS, SURFACE IMPOUNDMENTS, AND CONTAINERS

Section 724.980 Applicability

a) The requirements of this Subpart CC apply to owners and operators of all facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments, or containers subject to Subpart I, J, or K ~~of this Part~~, except as Section 724.101 and subsection (b) ~~of this Section~~ provide otherwise.

b) The requirements of this Subpart CC do not apply to the following waste management units at the facility:

1) A waste management unit that holds hazardous waste placed in the unit before December 6, 1996, and in which no hazardous waste is added to the unit on or after December 6, 1996.

2) A container that has a design capacity less than or equal to 0.1 m^3 (3.5 ft^3 or 26.4 gal).

3) A tank in which an owner or operator has stopped adding hazardous waste and the owner or operator has begun implementing or completed closure pursuant to an approved closure plan.

4) A surface impoundment in which an owner or operator has stopped adding hazardous waste (except to implement an approved closure plan) and the owner or operator has begun implementing or completed closure pursuant to an approved closure plan.

5) A waste management unit that is used solely for on-site treatment or storage of hazardous waste that is placed in the unit as a result of implementing remedial activities required pursuant to the Act or Board

regulations or under the corrective action authorities of RCRA section 3004(u), 3004(v), or 3008(h); CERCLA authorities; or similar federal or State authorities.

6) A waste management unit that is used solely for the management of radioactive mixed waste in accordance with all applicable regulations under the authority of the Atomic Energy Act of 1954 (42 USC 2011 et seq.) and the Nuclear Waste Policy Act of 1982 (42 USC 10101 et seq.).

7) A hazardous waste management unit that the owner or operator certifies is equipped with and operating air emission controls in accordance with the requirements of an applicable federal Clean Air Act regulation codified under 40 CFR 60 (Standards of Performance for New Stationary Sources), 61 (National Emission Standards for Hazardous Air Pollutants), or 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories), each incorporated by reference in 35 Ill. Adm. Code 720.111(b). For the purpose of complying with this subsection (b)(7), a tank for which the air emission control includes an enclosure, as opposed to a cover, must be in compliance with the enclosure and control device requirements of Section 724.984(i), except as provided in Section 724.982(c)(5).

8) A tank that has a process vent, as defined in 35 Ill. Adm. Code 724.931.

c) ~~For the owner and operator of a facility subject to this Subpart CC and that received a final RCRA permit prior to December 6, 1996, the requirements of this Subpart CC must be incorporated into the permit when the permit is reissued, renewed, or modified in accordance with the requirements of 35 Ill. Adm. Code 703 and 705.~~ Until ~~the date when~~ the owner and operator receives a final permit incorporating the requirements of this Subpart CC, the owner and operator are subject to the requirements of Subpart CC of 35 Ill. Adm. Code 725.

d) The requirements of this Subpart CC, except for the recordkeeping requirements specified in Section 724.989(i), are stayed for a tank or container used for the management of hazardous waste generated by organic peroxide manufacturing and its associated laboratory operations, when the owner or operator of the unit meets all of the following conditions:

1) The owner or operator identifies that the tank or container receives

hazardous waste generated by an organic peroxide manufacturing process producing more than one functional family of organic peroxides or multiple organic peroxides within one functional family, that one or more of these organic peroxides could potentially undergo self-accelerating thermal decomposition at or below ambient temperatures, and that organic peroxides are the predominant products manufactured by the process. For the purposes of this subsection (d), "organic peroxide" means an organic compound that contains the bivalent -O-O- structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

2) The owner or operator prepares documentation, in accordance with Section 724.989(i), explaining why an undue safety hazard would be created if air emission controls specified in Sections 724.984 through 724.987 are installed and operated on the tanks and containers used at the facility to manage the hazardous waste generated by the organic peroxide manufacturing process or processes meeting the conditions of subsection (d)(1) ~~of this Section~~.

3) The owner or operator notifies the Agency in writing that hazardous waste generated by an organic peroxide manufacturing process or processes meeting the conditions of subsection (d)(1) ~~of this Section~~ are managed at the facility in tanks or containers meeting the conditions of subsection (d)(2) ~~of this Section~~. The notification must state the name and address of the facility and be signed and dated by an authorized representative of the facility owner or operator.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.983 Waste Determination Procedures

a) Waste Determination Procedure~~determination procedure~~ for Average Volatile Organic~~average volatile organic~~ (VO) Concentration~~concentration~~ of a Hazardous Waste~~hazardous waste~~ at the Point~~point~~ of Waste Origination~~waste origination.~~

1) An owner or operator must determine the average VO concentration at the point of waste origination for each hazardous waste placed in a waste management unit exempted under the provisions of Section 724.982(c)(1) from using air emission controls in accordance with standards specified in

Section 724.984 through Section 724.987, as applicable to the waste management unit.

A) An owner or operator must make an initial determination of the average VO concentration of the waste stream before the first time any portion of the material in the hazardous waste stream is placed in a waste management unit exempted under the provisions of Section 724.982(c)(1) from using air emission controls. Thereafter, an owner or operator must make an initial determination of the average VO concentration of the waste stream for each averaging period that a hazardous waste is managed in the unit.

B) An owner or operator must perform a new waste determination whenever changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the applicable VO concentration limits specified in Section 724.982.

2) For a waste determination that is required by subsection (a)(1) ~~of this Section~~, the average VO concentration of a hazardous waste at the point of waste origination must be determined in accordance with the procedures specified in 35 Ill. Adm. Code 725.984(a)(2) through (a)(4).

b) Waste Determination Procedures~~determination procedures~~ for Treated Hazardous Waste~~treated hazardous waste.~~

1) An owner or operator must perform the applicable waste determination for each treated hazardous waste placed in a waste management unit exempted under the provisions of Section 724.982(c)(2)(A) through (c)(2)(F) from using air emission controls in accordance with standards specified in Sections 724.984 through 724.987, as applicable to the waste management unit.

A) An owner or operator must make an initial determination of the average VO concentration of the waste stream before the first time any portion of the material in the treated waste stream is placed in the exempt waste management unit. Thereafter, an owner or

operator must update the information used for the waste determination at least once every 12 months following the date of the initial waste determination.

B) An owner or operator must perform a new waste determination whenever changes to the process generating or treating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to such a level that the applicable treatment conditions specified in Section 724.982(c)(2) are not achieved.

2) The waste determination for a treated hazardous waste must be performed in accordance with the procedures specified in 35 Ill. Adm. Code 725.984(b)(2) through (b)(9), as applicable to the treated hazardous waste.

c) Procedure to Determine~~determine~~ the Maximum Organic Vapor Pressure~~maximum organic vapor pressure~~ of a Hazardous Waste~~hazardous waste~~ in a Tank~~tank.~~

1) An owner or operator must determine the maximum organic vapor pressure for each hazardous waste placed in a tank using Tank Level 1 controls in accordance with standards specified in Section 724.984(c).

2) The maximum organic vapor pressure of the hazardous waste may be determined in accordance with the procedures specified in 35 Ill. Adm. Code 725.984(c)(2) through (c)(4).

d) The procedure for determining no detectable organic emissions for the purpose of complying with this Subpart CC must be conducted in accordance with the procedures specified in 35 Ill. Adm. Code 725.984(d).

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.984 Standards: Tanks

a) The provisions of this Section apply to the control of air pollutant emissions from tanks for which Section 724.982(b) references the use of this Section for such air emission control.

b) The owner or operator must control air pollutant emissions from each tank subject to this Section in accordance with the following requirements, as applicable:

1) For a tank that manages hazardous waste that meets all of the conditions specified in subsections (b)(1)(A) through (b)(1)(C) ~~of this Section~~, the owner or operator must control air pollutant emissions from the tank in accordance with the Tank Level 1 controls specified in subsection (c) ~~of this Section~~ or the Tank Level 2 controls specified in subsection (d) ~~of this Section~~.

A) The hazardous waste in the tank has a maximum organic vapor pressure that is less than the maximum organic vapor pressure limit for the tank's design capacity category, as follows:

i) For a tank design capacity equal to or greater than 151 m^3 (39,900 gal), the maximum organic vapor pressure limit for the tank is 5.2 kPa (0.75 psig).

ii) For a tank design capacity equal to or greater than 75 m^3 (19,800 gal) but less than 151 m^3 (39,900 gal), the maximum organic vapor pressure limit for the tank is 27.6 kPa (4.00 psig).

iii) For a tank design capacity less than 75 m^3 (19,800 gal), the maximum organic vapor pressure limit for the tank is 76.6 kPa (11.1 psig).

B) The hazardous waste in the tank is not heated by the owner or operator to a temperature that is greater than the temperature at which the maximum organic vapor pressure of the hazardous waste is determined for the purpose of complying with subsection (b)(1)(A) ~~of this Section~~.

C) The owner or operator does not treat the hazardous waste in the tank using a waste stabilization process, as defined in 35 Ill. Adm. Code 725.981.

2) For a tank that manages hazardous waste that does not meet all of the conditions specified in subsections (b)(1)(A) through (b)(1)(C) ~~of this~~

~~Section~~, the owner or operator must control air pollutant emissions from the tank by using Tank Level 2 controls in accordance with the requirements of subsection (d) ~~of this Section~~. Examples of tanks required to use Tank Level 2 controls include a tank used for a waste stabilization process and a tank for which the hazardous waste in the tank has a maximum organic vapor pressure that is equal to or greater than the maximum organic vapor pressure limit for the tank's design capacity category, as specified in subsection (b)(1)(A) ~~of this Section~~.

c) Owners and operators controlling air pollutant emissions from a tank using Tank Level 1 controls must meet the requirements specified in subsections (c)(1) through (c)(4) ~~of this Section~~:

1) The owner or operator must determine the maximum organic vapor pressure for a hazardous waste to be managed in the tank using Tank Level 1 controls before the first time the hazardous waste is placed in the tank. The maximum organic vapor pressure must be determined using the procedures specified in Section 724.983(c). Thereafter, the owner or operator must perform a new determination whenever changes to the hazardous waste managed in the tank could potentially cause the maximum organic vapor pressure to increase to a level that is equal to or greater than the maximum organic vapor pressure limit for the tank design capacity category specified in subsection (b)(1)(A) ~~of this Section~~, as applicable to the tank.

2) The tank must be equipped with a fixed roof designed to meet the following specifications:

A) The fixed roof and its closure devices must be designed to form a continuous barrier over the entire surface area of the hazardous waste in the tank. The fixed roof may be a separate cover installed on the tank (e.g., a removable cover mounted on an open-top tank) or may be an integral part of the tank structural design (e.g., a horizontal cylindrical tank equipped with a hatch).

B) The fixed roof must be installed in such a manner that there are no visible cracks, holes, gaps, or other open spaces between roof section joints or between the interface of the roof edge and the tank wall.

C) Either of the following must be true of each opening in the fixed roof and of any manifold system associated with the fixed roof:

i) The opening or manifold system is equipped with a closure device designed to operate so that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device; or

ii) The opening or manifold system is connected by a closed-vent system that is vented to a control device. The control device must remove or destroy organics in the vent stream, and it must be operating whenever hazardous waste is managed in the tank, except as provided for in subsection (c)(2)(E) ~~of this Section~~.

D) The fixed roof and its closure devices must be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices must include the following: the organic vapor permeability; the effects of any contact with the hazardous waste or its vapors managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

E) The control device operated pursuant to subsection (c)(2)(C) ~~of this Section~~ needs not remove or destroy organics in the vent stream under the following conditions:

i) During periods when it is necessary to provide access to the tank for performing the activities of subsection (c)(2)(E)(ii) ~~of this Section~~, venting of the vapor headspace underneath the fixed roof to the control device is not required, opening of closure devices is allowed, and removal of the fixed roof

is allowed. Following completion of the activity, the owner or operator must promptly secure the closure device in the closed position or reinstall the cover, as applicable, and resume operation of the control device; and

ii) During periods of routine inspection, maintenance, or other activities needed for normal operations, and for removal of accumulated sludge or other residues from the bottom of the tank.

BOARD NOTE: Subsections (c)(2)(E)(i) and (c)(2)(E)(ii) ~~of this Section~~ are derived from 40 CFR 264.1084(c)(2)(iii)(B)(*1*) and (c)(2)(iii)(B)(*2*), which the Board has codified here to comport with Illinois Administrative Code format requirements.

3) Whenever a hazardous waste is in the tank, the fixed roof must be installed with each closure device secured in the closed position, except as follows:

A) Opening of closure devices or removal of the fixed roof is allowed at the following times:

i) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator must promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

ii) To remove accumulated sludge or other residues from the bottom of the tank.

B) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device that vents to the atmosphere is allowed during normal operations for the purpose of maintaining the tank internal pressure in accordance with the tank design specifications. The device must be designed

to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens must be established so that the device remains in the closed position whenever the tank internal pressure is within the internal pressure operating range determined by the owner or operator based on the tank manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the tank internal pressure exceeds the internal pressure operating range for the tank as a result of loading operations or diurnal ambient temperature fluctuations.

C) Opening of a safety device, as defined in 35 Ill. Adm. Code 725.981, is allowed at any time conditions require doing so to avoid an unsafe condition.

4) The owner or operator must inspect the air emission control equipment in accordance with the following requirements.

A) The fixed roof and its closure devices must be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

B) The owner or operator must perform an initial inspection of the fixed roof and its closure devices on or before the date that the tank becomes subject to this Section. Thereafter, the owner or operator must perform the inspections at least once every year except under the special conditions provided for in subsection (l) ~~of this Section~~.

C) In the event that a defect is detected, the owner or operator must repair the defect in accordance with the requirements of subsection (k) ~~of this Section~~.

D) The owner or operator must maintain a record of the inspection in accordance with the requirements specified in Section 724.989(b).

d) Owners and operators controlling air pollutant emissions from a tank using Tank Level 2 controls must use one of the following tanks:

1) A fixed-roof tank equipped with an internal floating roof in accordance with the requirements specified in subsection (e) ~~of this Section~~;

2) A tank equipped with an external floating roof in accordance with the requirements specified in subsection (f) ~~of this Section~~;

3) A tank vented through a closed-vent system to a control device in accordance with the requirements specified in subsection (g) ~~of this Section~~;

4) A pressure tank designed and operated in accordance with the requirements specified in subsection (h) ~~of this Section~~; or

5) A tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device in accordance with the requirements specified in subsection (i) ~~of this Section~~.

e) The owner or operator that controls air pollutant emissions from a tank using a fixed roof with an internal floating roof must meet the requirements specified in subsections (e)(1) through (e)(3) ~~of this Section~~.

1) The tank must be equipped with a fixed roof and an internal floating roof in accordance with the following requirements:

A) The internal floating roof must be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

B) The internal floating roof must be equipped with a continuous seal between the wall of the tank and the floating roof edge that meets either of the following requirements:

i) A single continuous seal that is either a liquid-mounted seal or a metallic shoe seal, as defined in 35 Ill. Adm. Code 725.981; or

ii) Two continuous seals mounted one above the other. The lower seal may be a vapor-mounted seal.

C) The internal floating roof must meet the following specifications:

i) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the liquid surface.

ii) Each opening in the internal floating roof must be equipped with a gasketed cover or a gasketed lid except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains.

iii) Each penetration of the internal floating roof for the purpose of sampling must have a slit fabric cover that covers at least 90 percent of the opening.

iv) Each automatic bleeder vent and rim space vent must be gasketed.

v) Each penetration of the internal floating roof that allows for passage of a ladder must have a gasketed sliding cover.

vi) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof must have a flexible fabric sleeve seal or a gasketed sliding cover.

2) The owner or operator must operate the tank in accordance with the following requirements:

A) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling must be continuous and must be completed as soon as practical.

B) Automatic bleeder vents are to be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

C) Prior to filling the tank, each cover, access hatch, gauge float well or lid on any opening in the internal floating roof must be bolted or fastened closed (i.e., no visible gaps). Rim space vents must be set to open only when the internal floating roof is not floating or when the pressure beneath the rim exceeds the manufacturer's recommended setting.

3) The owner or operator must inspect the internal floating roof in accordance with the procedures specified as follows:

A) The floating roof and its closure devices must be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, any of the following: when the internal floating roof is not floating on the surface of the liquid inside the tank; when liquid has accumulated on top of the internal floating roof; when any portion of the roof seals have detached from the roof rim; when holes, tears, or other openings are visible in the seal fabric; when the gaskets no longer close off the hazardous waste surface from the atmosphere; or when the slotted membrane has more than 10 percent open area.

B) The owner or operator must inspect the internal floating roof components as follows, except as provided in subsection (e)(3)(C) ~~of this Section~~:

i) Visually inspect the internal floating roof components through openings on the fixed-roof (e.g., manholes and roof hatches) at least once every 12 months after initial fill, and

ii) Visually inspect the internal floating roof, primary seal, secondary seal (if one is in service), gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least once every 10 years.

C) As an alternative to performing the inspections specified in subsection (e)(3)(B) ~~of this Section~~ for an internal floating roof equipped with two continuous seals mounted one above the other, the owner or operator may visually inspect the internal floating roof, primary and secondary seals, gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every five years.

D) Prior to each inspection required by subsection (e)(3)(B) or (e)(3)(C) ~~of this Section~~, the owner or operator must notify the Agency in advance of each inspection to provide the Agency with the opportunity to have an observer present during the inspection. The owner or operator must notify the Agency of the date and location of the inspection, as follows:

i) Prior to each visual inspection of an internal floating roof in a tank that has been emptied and degassed, written notification must be prepared and sent by the owner or operator so that it is received by the Agency at least 30 calendar days before refilling the tank, except when an inspection is not planned, as provided for in subsection (e)(3)(D)(ii) ~~of this Section~~.

ii) When a visual inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator must notify the Agency as soon as possible, but no later than seven calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Agency at least seven calendar days before refilling the tank.

E) In the event that a defect is detected, the owner or operator must repair the defect in accordance with the requirements of subsection (k) ~~of this Section~~.

F) The owner or operator must maintain a record of the inspection in accordance with the requirements specified in Section 724.989(b).

4) Safety devices, as defined in 35 Ill. Adm. Code 725.981, may be installed and operated as necessary on any tank complying with the requirements of this subsection (e).

f) The owner or operator that controls air pollutant emissions from a tank using an external floating roof must meet the requirements specified in subsections (f)(1) through (f)(3) ~~of this Section~~.

1) The owner or operator must design the external floating roof in accordance with the following requirements:

A) The external floating roof must be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

B) The floating roof must be equipped with two continuous seals, one above the other, between the wall of the tank and the roof edge. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

i) The primary seal must be a liquid-mounted seal or a metallic shoe seal, as defined in 35 Ill. Adm. Code 725.981. The total area of the gaps between the tank wall and the primary seal must not exceed 212 square centimeters (cm^2) per meter (10.0 square inches (in^2) per foot) of tank diameter, and the width of any portion of these gaps must not exceed 3.8 centimeters (cm) (1.5 in). If a metallic shoe seal is used for the primary seal, the metallic shoe seal must be designed so that one end extends into the liquid in the tank and the other end extends a vertical distance of at least 61 cm (24 in) above the liquid surface.

ii) The secondary seal must be mounted above the primary seal and cover the annular space between the floating roof and the wall of the tank. The total area of the gaps between

the tank wall and the secondary seal must not exceed 21.2 cm^2 per meter (1.00 in^2 per foot) of tank diameter, and the width of any portion of these gaps must not exceed 1.3 cm (0.51 in).

C) The external floating roof must meet the following specifications:

i) Except for automatic bleeder vents (vacuum breaker vents) and rim space vents, each opening in a noncontact external floating roof must provide a projection below the liquid surface.

ii) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof must be equipped with a gasketed cover, seal, or lid.

iii) Each access hatch and each gauge float well must be equipped with a cover designed to be bolted or fastened when the cover is secured in the closed position.

iv) Each automatic bleeder vent and each rim space vent must be equipped with a gasket.

v) Each roof drain that empties into the liquid managed in the tank must be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

vi) Each unslotted and slotted guide pole well must be equipped with a gasketed sliding cover or a flexible fabric sleeve seal.

vii) Each unslotted guide pole must be equipped with a gasketed cap on the end of the pole.

viii) Each slotted guide pole must be equipped with a gasketed float or other device that closes off the liquid surface from the atmosphere.

ix) Each gauge hatch and each sample well must be equipped with a gasketed cover.

2) The owner or operator must operate the tank in accordance with the following requirements:

A) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling must be continuous and must be completed as soon as practical.

B) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof must be secured and maintained in a closed position at all times except when the closure device must be open for access.

C) Covers on each access hatch and each gauge float well must be bolted or fastened when secured in the closed position.

D) Automatic bleeder vents must be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

E) Rim space vents must be set to open only at those times that the roof is being floated off the roof leg supports or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

F) The cap on the end of each unslotted guide pole must be secured in the closed position at all times except when measuring the level or collecting samples of the liquid in the tank.

G) The cover on each gauge hatch or sample well must be secured in the closed position at all times except when the hatch or well must be opened for access.

H) Both the primary seal and the secondary seal must completely cover the annular space between the external floating roof and the wall of the tank in a continuous fashion except during inspections.

3) The owner or operator must inspect the external floating roof in accordance with the procedures specified as follows:

A) The owner or operator must measure the external floating roof seal gaps in accordance with the following requirements:

i) The owner or operator must perform measurements of gaps between the tank wall and the primary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every five years.

ii) The owner or operator must perform measurements of gaps between the tank wall and the secondary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every year.

iii) If a tank ceases to hold hazardous waste for a period of one year or more, subsequent introduction of hazardous waste into the tank must be considered an initial operation for the purposes of subsections (f)(3)(A)(i) and (f)(3)(A)(ii) ~~of this Section~~.

iv) The owner or operator must determine the total surface area of gaps in the primary seal and in the secondary seal individually using the procedure of subsection (f)(3)(D) ~~of this Section~~.

v) In the event that the seal gap measurements do not conform to the specifications in subsection (f)(1)(B) ~~of this Section~~, the owner or operator must repair the defect in accordance with the requirements of subsection (k) ~~of this Section~~.

vi) The owner or operator must maintain a record of the inspection in accordance with the requirements specified in Section 724.989(b).

B) The owner or operator must visually inspect the external floating

roof in accordance with the following requirements:

i) The floating roof and its closure devices must be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, any of the following conditions: holes, tears, or other openings in the rim seal or seal fabric of the floating roof; a rim seal detached from the floating roof; all or a portion of the floating roof deck being submerged below the surface of the liquid in the tank; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

ii) The owner or operator must perform an initial inspection of the external floating roof and its closure devices on or before the date that the tank becomes subject to this Section. Thereafter, the owner or operator must perform the inspections at least once every year except for the special conditions provided for in subsection (l) ~~of this Section~~.

iii) In the event that a defect is detected, the owner or operator must repair the defect in accordance with the requirements of subsection (k) ~~of this Section~~.

iv) The owner or operator must maintain a record of the inspection in accordance with the requirements specified in Section 724.989(b).

C) Prior to each inspection required by subsection (f)(3)(A) or (f)(3)(B) ~~of this Section~~, the owner or operator must notify the Agency in advance of each inspection to provide the Agency with the opportunity to have an observer present during the inspection. The owner or operator must notify the Agency of the date and location of the inspection, as follows:

i) Prior to each inspection to measure external floating roof seal gaps as required under subsection (f)(3)(A) ~~of this~~

~~Section~~, written notification must be prepared and sent by the owner or operator so that it is received by the Agency at least 30 calendar days before the date the measurements are scheduled to be performed.

ii) Prior to each visual inspection of an external floating roof in a tank that has been emptied and degassed, written notification must be prepared and sent by the owner or operator so that it is received by the Agency at least 30 calendar days before refilling the tank, except when an inspection is not planned as provided for in subsection (f)(3)(C)(iii) ~~of this Section~~.

iii) When a visual inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator must notify the Agency as soon as possible, but no later than seven calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Agency at least seven calendar days before refilling the tank.

D) Procedure for determining the total surface area of gaps in the primary seal and the secondary seal:

i) The seal gap measurements must be performed at one or more floating roof levels when the roof is floating off the roof supports.

ii) Seal gaps, if any, must be measured around the entire perimeter of the floating roof in each place where a 0.32 cm (0.125 in) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the tank and measure the circumferential distance of each such location.

iii) For a seal gap measured under subsection (f)(3) ~~of this Section~~, the gap surface area must be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.

iv) The total gap area must be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal diameter of the tank. These total gap areas for the primary seal and secondary seal are then compared to the respective standards for the seal type, as specified in subsection (f)(1)(B) ~~of this Section~~.

BOARD NOTE: Subsections (f)(3)(D)(i) through (f)(3)(D)(iv) ~~of this Section~~ are derived from 40 CFR 264.1084(f)(3)(i)(D)(*1*) through (f)(3)(i)(D)(*4*), which the Board has codified here to comport with Illinois Administrative Code format requirements.

4) Safety devices, as defined in 35 Ill. Adm. Code 725.981, may be installed and operated as necessary on any tank complying with the requirements of subsection (f) ~~of this Section~~.

g) The owner or operator that controls air pollutant emissions from a tank by venting the tank to a control device must meet the requirements specified in subsections (g)(1) through (g)(3) ~~of this Section~~.

1) The tank must be covered by a fixed roof and vented directly through a closed-vent system to a control device in accordance with the following requirements:

A) The fixed roof and its closure devices must be designed to form a continuous barrier over the entire surface area of the liquid in the tank.

B) Each opening in the fixed roof not vented to the control device must be equipped with a closure device. If the pressure in the vapor headspace underneath the fixed roof is less than atmospheric

pressure when the control device is operating, the closure device must be designed to operate so that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the fixed roof is equal to or greater than atmospheric pressure when the control device is operating, the closure device must be designed to operate with no detectable organic emissions.

C) The fixed roof and its closure devices must be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices must include the following: organic vapor permeability; the effects of any contact with the liquid and its vapor managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

D) The closed-vent system and control device must be designed and operated in accordance with the requirements of Section 724.987.

2) Whenever a hazardous waste is in the tank, the fixed roof must be installed with each closure device secured in the closed position and the vapor headspace underneath the fixed roof vented to the control device, except as follows:

A) Venting to the control device is not required, and opening of closure devices or removal of the fixed roof is allowed at the following times:

i) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the tank, or when a worker needs to open a hatch

to maintain or repair equipment. Following completion of the activity, the owner or operator must promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

ii) To remove accumulated sludge or other residues from the bottom of a tank.

B) Opening of a safety device, as defined in 35 Ill. Adm. Code 725.981, is allowed at any time conditions require doing so to avoid an unsafe condition.

3) The owner or operator must inspect and monitor the air emission control equipment in accordance with the following procedures:

A) The fixed roof and its closure devices must be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, any of the following: visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

B) The closed-vent system and control device must be inspected and monitored by the owner or operator in accordance with the procedures specified in Section 724.987.

C) The owner or operator must perform an initial inspection of the air emission control equipment on or before the date that the tank becomes subject to this Section. Thereafter, the owner or operator must perform the inspections at least once every year except for the special conditions provided for in subsection (l) ~~of this Section~~.

D) In the event that a defect is detected, the owner or operator must repair the defect in accordance with the requirements of subsection (k) ~~of this Section~~.

E) The owner or operator must maintain a record of the inspection in accordance with the requirements specified in Section 724.989(b).

h) The owner or operator that controls air pollutant emissions by using a pressure tank must meet the following requirements:

1) The tank must be designed not to vent to the atmosphere as a result of compression of the vapor headspace in the tank during filling of the tank to its design capacity.

2) All tank openings must be equipped with closure devices designed to operate with no detectable organic emissions, as determined using the procedure specified in Section 724.983(d).

3) Whenever a hazardous waste is in the tank, the tank must be operated as a closed-vent system that does not vent to the atmosphere, except under either of the following two conditions:

A) The tank does not need to be operated as a closed-vent system at those times when the opening of a safety device, as defined in 35 Ill. Adm. Code 725.981, is required to avoid an unsafe condition.

B) The tank does not need to be operated as a closed-vent system at those times when the purging of inerts from the tank is required and the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the requirements of Section 724.987.

i) The owner or operator that controls air pollutant emissions by using an enclosure vented through a closed-vent system to an enclosed combustion control device must meet the requirements specified in subsections (i)(1) through (i)(4) ~~of this Section~~.

1) The tank must be located inside an enclosure. The enclosure must be designed and operated in accordance with the criteria for a permanent total enclosure, as specified in "Procedure T – Criteria for and Verification of a Permanent or Temporary Total Enclosure" under appendix B to 40 CFR 52.741 (VOM Measurement Techniques for Capture Efficiency), incorporated by reference in 35 Ill. Adm. Code 720.111(b). The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or

other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator must perform the verification procedure for the enclosure, as specified in Section 5.0 to "Procedure T – Criteria for and Verification of a Permanent or Temporary Total Enclosure~~,~~", initially when the enclosure is first installed and, thereafter, annually.

2) The enclosure must be vented through a closed-vent system to an enclosed combustion control device that is designed and operated in accordance with the standards for either a vapor incinerator, boiler, or process heater specified in Section 724.987.

3) Safety devices, as defined in 35 Ill. Adm. Code 725.981, may be installed and operated as necessary on any enclosure, closed-vent system, or control device used to comply with the requirements of subsections (i)(1) and (i)(2)~~ of this Section~~.

4) The owner or operator must inspect and monitor the closed-vent system and control device, as specified in Section 724.987.

j) The owner or operator must transfer hazardous waste to a tank subject to this Section in accordance with the following requirements:

1) Transfer of hazardous waste, except as provided in subsection (j)(2)~~ of this Section~~, to the tank from another tank subject to this Section or from a surface impoundment subject to Section 724.985 must be conducted using continuous hard-piping or another closed system that does not allow exposure of the hazardous waste to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of subpart RR of 40 CFR 63 (National Emission Standards for Individual Drain Systems), incorporated by reference in 35 Ill. Adm. Code 720.111(b).

2) The requirements of subsection (j)(1) ~~of this Section~~ do not apply when transferring a hazardous waste to the tank under any of the following conditions:

A) The hazardous waste meets the average VO concentration conditions specified in Section 724.982(c)(1) at the point of waste

origination.

B) The hazardous waste has been treated by an organic destruction or removal process to meet the requirements in Section 724.982(c)(2).

C) The hazardous waste meets the requirements of Section 724.982(c)(4).

k) The owner or operator must repair each defect detected during an inspection performed in accordance with the requirements of subsection (c)(4), (e)(3), (f)(3), or (g)(3) ~~of this Section~~, as follows:

1) The owner or operator must make first efforts at repair of the defect no later than five calendar days after detection, and repair must be completed as soon as possible but no later than 45 calendar days after detection except as provided in subsection (k)(2) ~~of this Section~~.

2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the tank and no alternative tank capacity is available at the site to accept the hazardous waste normally managed in the tank. In this case, the owner or operator must repair the defect the next time the process or unit that is generating the hazardous waste managed in the tank stops operation. Repair of the defect must be completed before the process or unit resumes operation.

l) Following the initial inspection and monitoring of the cover, as required by the applicable provisions of this Subpart CC, subsequent inspection and monitoring may be performed at intervals longer than one year under the following special conditions:

1) In the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions, then the owner or operator may designate a cover as an "unsafe to inspect and monitor cover" and comply with all of the following requirements:

A) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.

B) Develop and implement a written plan and schedule to inspect and monitor the cover, using the procedures specified in the applicable Section of this Subpart CC, as frequently as practicable during those times when a worker can safely access the cover.

2) In the case when a tank is buried partially or entirely underground, an owner or operator is required to inspect and monitor, as required by the applicable provisions of this Section, only those portions of the tank cover and those connections to the tank (e.g., fill ports, access hatches, gauge wells, etc.) that are located on or above the ground surface.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.985 Standards: Surface Impoundments

a) The provisions of this Section apply to the control of air pollutant emissions from surface impoundments for which Section 724.982(b) references the use of this Section for such air emission control.

b) The owner or operator must control air pollutant emissions from the surface impoundment by installing and operating either of the following:

1) A floating membrane cover in accordance with the provisions specified in subsection (c) ~~of this Section~~; or

2) A cover that is vented through a closed-vent system to a control device in accordance with the provisions specified in subsection (d) ~~of this Section~~.

c) The owner or operator that controls air pollutant emissions from a surface impoundment using a floating membrane cover must meet the requirements specified in subsections (c)(1) through (c)(3) ~~of this Section~~.

1) The surface impoundment must be equipped with a floating membrane cover designed to meet the following specifications:

A) The floating membrane cover must be designed to float on the liquid surface during normal operations and form a continuous barrier over the entire surface area of the liquid.

B) The cover must be fabricated from a synthetic membrane material that is either of the following:

i) High density polyethylene (HDPE) with a thickness no less than 2.5 millimeters (mm) (0.098 in); or

ii) A material or a composite of different materials determined to have both organic permeability properties that are equivalent to those of the material listed in subsection (c)(1)(B)(i) ~~of this Section~~ and chemical and physical properties that maintain the material integrity for the intended service life of the material.

C) The cover must be installed in such a manner that there are no visible cracks, holes, gaps, or other open spaces between cover section seams or between the interface of the cover edge and its foundation mountings.

D) Except as provided for in subsection (c)(1)(E) ~~of this Section~~, each opening in the floating membrane cover must be equipped with a closure device so designed as to operate that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device.

E) The floating membrane cover may be equipped with one or more emergency cover drains for removal of stormwater. Each emergency cover drain must be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening or a flexible fabric sleeve seal.

F) The closure devices must be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the closure devices throughout their intended service life. Factors to be considered when selecting the materials of construction and designing the cover and closure devices must include the following: the organic vapor permeability; the effects of any contact with the liquid and its vapor managed in the surface

impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the floating membrane cover is installed.

2) Whenever a hazardous waste is in the surface impoundment, the floating membrane cover must float on the liquid and each closure device must be secured in the closed position, except as follows:

A) Opening of closure devices or removal of the cover is allowed at the following times:

i) To provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the surface impoundment, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator must promptly replace the cover and secure the closure device in the closed position, as applicable.

ii) To remove accumulated sludge or other residues from the bottom of surface impoundment.

B) Opening of a safety device, as defined in 35 Ill. Adm. Code 725.981, is allowed at any time conditions require doing so to avoid an unsafe condition.

3) The owner or operator must inspect the floating membrane cover in accordance with the following procedures:

A) The floating membrane cover and its closure devices must be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover section seams or between the interface of the cover edge and its foundation mountings; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers,

caps, or other closure devices.

B) The owner or operator must perform an initial inspection of the floating membrane cover and its closure devices on or before the date that the surface impoundment becomes subject to this Section. Thereafter, the owner or operator must perform the inspections at least once every year except for the special conditions provided for in subsection (g) ~~of this Section~~.

C) In the event that a defect is detected, the owner or operator must repair the defect in accordance with the requirements of subsection (f) ~~of this Section~~.

D) The owner or operator must maintain a record of the inspection in accordance with the requirements specified in Section 724.989(c).

d) The owner or operator that controls air pollutant emissions from a surface impoundment using a cover vented to a control device must meet the requirements specified in subsections (d)(1) through (d)(3) ~~of this Section~~.

1) The surface impoundment must be covered by a cover and vented directly through a closed-vent system to a control device in accordance with the following requirements:

A) The cover and its closure devices must be designed to form a continuous barrier over the entire surface area of the liquid in the surface impoundment.

B) Each opening in the cover not vented to the control device must be equipped with a closure device. If the pressure in the vapor headspace underneath the cover is less than atmospheric pressure when the control device is operating, the closure devices must be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the cover is equal to or greater than atmospheric pressure when the control device is operating, the closure device must be designed to operate with no detectable

organic emissions using the procedure specified in Section 724.983(d).

C) The cover and its closure devices must be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere to the extent practical and which will maintain the integrity of the cover and closure devices throughout their intended service life. Factors to be considered when selecting the materials of construction and designing the cover and closure devices must include the following: the organic vapor permeability; the effects of any contact with the liquid or its vapors managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the cover is installed.

D) The closed-vent system and control device must be designed and operated in accordance with the requirements of Section 724.987.

2) Whenever a hazardous waste is in the surface impoundment, the cover must be installed with each closure device secured in the closed position and the vapor headspace underneath the cover vented to the control device, except as follows:

A) Venting to the control device is not required, and opening of closure devices or removal of the cover is allowed at the following times:

i) To provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the surface impoundment, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator must promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the surface impoundment.

ii) To remove accumulated sludge or other residues from the

bottom of the surface impoundment.

B) Opening of a safety device, as defined in 35 Ill. Adm. Code 725.981, is allowed at any time conditions require doing so to avoid an unsafe condition.

3) The owner or operator must inspect and monitor the air emission control equipment in accordance with the following procedures:

A) The surface impoundment cover and its closure devices must be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover section seams or between the interface of the cover edge and its foundation mountings; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

B) The closed-vent system and control device must be inspected and monitored by the owner or operator in accordance with the procedures specified in Section 724.987.

C) The owner or operator must perform an initial inspection of the air emission control equipment on or before the date that the surface impoundment becomes subject to this Section. Thereafter, the owner or operator must perform the inspections at least once every year except for the special conditions provided for in subsection (g) ~~of this Section~~.

D) In the event that a defect is detected, the owner or operator must repair the defect in accordance with the requirements of subsection (f) ~~of this Section~~.

E) The owner or operator must maintain a record of the inspection in accordance with the requirements specified in Section 724.989(c).

e) The owner or operator must transfer hazardous waste to a surface impoundment subject to this Section in accordance with the following requirements:

1) Transfer of hazardous waste, except as provided in subsection (e)(2) ~~of this Section~~, to the surface impoundment from another surface impoundment subject to this Section or from a tank subject to Section 724.984 must be conducted using continuous hard-piping or another closed system that does not allow exposure of the waste to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of subpart RR of 40 CFR 63 (National Emission Standards for Individual Drain Systems), incorporated by reference in 35 Ill. Adm. Code 720.111(b).

2) The requirements of subsection (e)(1) ~~of this Section~~ do not apply when transferring a hazardous waste to the surface impoundment under any of the following conditions:

A) The hazardous waste meets the average VO concentration conditions specified in Section 724.982(c)(1) at the point of waste origination.

B) The hazardous waste has been treated by an organic destruction or removal process to meet the requirements in Section 724.982(c)(2).

C) The hazardous waste meets the requirements of Section 724.982(c)(4).

f) The owner or operator must repair each defect detected during an inspection performed in accordance with the requirements of subsection (c)(3) or (d)(3) ~~of this Section~~ as follows:

1) The owner or operator must make first efforts at repair of the defect no later than five calendar days after detection and repair must be completed as soon as possible but no later than 45 calendar days after detection except as provided in subsection (f)(2) ~~of this Section~~.

2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the surface impoundment and no alternative capacity is available at the site to accept the hazardous waste normally managed in the surface impoundment. In this case, the owner or

operator must repair the defect the next time the process or unit that is generating the hazardous waste managed in the surface impoundment stops operation. Repair of the defect must be completed before the process or unit resumes operation.

g) Following the initial inspection and monitoring of the cover, as required by the applicable provisions of this Subpart CC, subsequent inspection and monitoring may be performed at intervals longer than one year in the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions. In this case, the owner or operator may designate the cover as an "unsafe to inspect and monitor cover" and comply with all of the following requirements:

1) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.

2) Develop and implement a written plan and schedule to inspect and monitor the cover using the procedures specified in the applicable Section of this Subpart CC as frequently as practicable during those times when a worker can safely access the cover.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.986 Standards: Containers

a) The provisions of this Section apply to the control of air pollutant emissions from containers for which Section 724.982(b) references the use of this Section for such air emission control.

b) General Requirements.

1) The owner or operator must control air pollutant emissions from each container subject to this Section in accordance with the following requirements, as applicable to the container, except when the special provisions for waste stabilization processes specified in subsection (b)(2) apply to the container.

A) For a container having a design capacity greater than 0.1 m^3 (26 gal) and less than or equal to 0.46 m^3 (120 gal), the owner or

operator must control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in subsection (c).

B) For a container having a design capacity greater than 0.46 m^3 (120 gal) that is not in light material service, the owner or operator must control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in subsection (c).

C) For a container having a design capacity greater than 0.46 m^3 (120 gal) that is in light material service, the owner or operator must control air pollutant emissions from the container in accordance with the Container Level 2 standards specified in subsection (d).

2) When a container having a design capacity greater than 0.1 m^3 (26 gal) is used for treatment of a hazardous waste by a waste stabilization process, the owner or operator must control air pollutant emissions from the container in accordance with the Container Level 3 standards specified in subsection (e) ~~of this Section~~ at those times during the waste stabilization process when the hazardous waste in the container is exposed to the atmosphere.

c) Container Level 1 Standards~~.~~

1) A container using Container Level 1 controls is one of the following:

A) A container that meets the applicable USDOT regulations on packaging hazardous materials for transportation, as specified in subsection (f).

B) A container equipped with a cover and closure devices that form a continuous barrier over the container openings so that when the cover and closure devices are secured in the closed position there are no visible holes, gaps, or other open spaces into the interior of the container. The cover may be a separate cover installed on the container (e.g., a lid on a drum or a suitably secured tarp on a roll-off box) or may be an integral part of the container structural design (e.g., a "portable tank" or bulk cargo container equipped with a screw-type cap).

C) An open-top container in which an organic-vapor suppressing barrier is placed on or over the hazardous waste in the container so that no hazardous waste is exposed to the atmosphere. One example of such a barrier is application of a suitable organic-vapor suppressing foam.

2) A container used to meet the requirements of subsection (c)(1)(B) or (c)(1)(C) must be equipped with covers and closure devices, as applicable to the container, that are composed of suitable materials to minimize exposure of the hazardous waste to the atmosphere and to maintain the equipment integrity for as long as it is in service. Factors to be considered in selecting the materials of construction and designing the cover and closure devices must include the following: the organic vapor permeability; the effects of contact with the hazardous waste or its vapor managed in the container; the effects of outdoor exposure of the closure device or cover material to wind, moisture, and sunlight; and the operating practices for which the container is intended to be used.

3) Whenever a hazardous waste is in a container using Container Level 1 controls, the owner or operator must install all covers and closure devices for the container, as applicable to the container, and secure and maintain each closure device in the closed position, except as follows:

A) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container, as follows:

i) If the container is filled to the intended final level in one continuous operation, the owner or operator must promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

ii) If discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator must promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the

intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

B) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container, as follows:

i) For the purpose of meeting the requirements of this Section, an empty container, as defined in 35 Ill. Adm. Code 721.107(b), may be open to the atmosphere at any time (i.e., covers and closure devices are not required to be secured in the closed position on an empty container).

ii) If discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container, as defined in 35 Ill. Adm. Code 721.107(b), the owner or operator must promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

C) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator must promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

D) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device that vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device must be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens must be established so that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

E) Opening of a safety device, as defined in 35 Ill. Adm. Code 725.981, is allowed at any time conditions require doing so to avoid an unsafe condition.

4) The owner or operator of containers using Container Level 1 controls must inspect the containers and their covers and closure devices, as follows:

A) If a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., it does not meet the conditions for an empty container, as specified in 35 Ill. Adm. Code 721.107(b)), the owner or operator must visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection must be conducted on or before the date on which the container is accepted

at the facility (i.e., the date when the container becomes subject to the Subpart CC container standards). For the purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest, as set forth in the appendix to 40 CFR 262 (Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and Their Instructions)), incorporated by reference in 35 Ill. Adm. Code 720.111(b) (USEPA Forms 8700-22 and 8700-22A), as required under Section 724.171. If a defect is detected, the owner or operator must repair the defect in accordance with the requirements of subsection (c)(4)(C).

B) If a container used for managing hazardous waste remains at the facility for a period of one year or more, the owner or operator must visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator must repair the defect in accordance with the requirements of subsection (c)(4)(C).

C) When a defect is detected for the container, cover, or closure devices, the owner or operator must make first efforts at repair of the defect no later than 24 hours after detection and repair must be completed as soon as possible but no later than five calendar days after detection. If repair of a defect cannot be completed within five calendar days, then the hazardous waste must be removed from the container and the container must not be used to manage hazardous waste until the defect is repaired.

5) The owner or operator must maintain at the facility a copy of the procedure used to determine that containers with capacity of 0.46 m^3 (120 gal) or greater that do not meet applicable USDOT regulations, as specified in subsection (f), are not managing hazardous waste in light material service.

d) Container Level 2 Standards.

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

1) A container using Container Level 2 controls is one of the following:

   A) A container that meets the applicable USDOT regulations on packaging hazardous materials for transportation, as specified in subsection (f).

   B) A container that operates with no detectable organic emissions, as defined in 35 Ill. Adm. Code 725.981, and determined in accordance with the procedure specified in subsection (g).

   C) A container that has been demonstrated within the preceding 12 months to be vapor-tight by using Reference Method 27 (Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test) in appendix A to 40 CFR 60 (Test Methods), incorporated by reference in 35 Ill. Adm. Code 720.111(b), in accordance with the procedure specified in subsection (h).

2) Transfer of hazardous waste in or out of a container using Container Level 2 controls must be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the USEPA considers to meet the requirements of this subsection (d)(2) include using any one of the following: a submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

3) Whenever a hazardous waste is in a container using Container Level 2 controls, the owner or operator must install all covers and closure devices for the container, and secure and maintain each closure device in the closed position, except as follows:

A) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container, as follows:

i) If the container is filled to the intended final level in one continuous operation, the owner or operator must promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

ii) If discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator must promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon whichever of the following conditions occurs first: the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container.

B) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container, as follows:

i) For the purpose of meeting the requirements of this Section, an empty container, as defined in 35 Ill. Adm. Code 721.107(b), may be open to the atmosphere at any time (i.e., covers and closure devices are not required to be secured in the closed position on an empty container).

ii) If discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container, as defined in 35 Ill. Adm. Code 721.107(b), the owner or operator must promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional

material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

C) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator must promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

D) Opening of a spring-loaded, pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device that vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device must be designed to operate with no detectable organic emission when the device is secured in the closed position. The settings at which the device opens must be established so that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

E) Opening of a safety device, as defined in 35 Ill. Adm. Code 725.981, is allowed at any time conditions require doing so to avoid an unsafe condition.

4) The owner or operator of containers using Container Level 2 controls must inspect the containers and their covers and closure devices, as follows:

A) If a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., it does not meet the conditions for an empty container as specified in 35 Ill. Adm. Code 721.107(b)), the owner or operator must visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection must be conducted on or before the date on which the container is accepted at the facility (i.e., the date when the container becomes subject to the Subpart CC container standards). For the purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest, in the appendix to 40 CFR 262 (Uniform Hazardous Waste Manifest and Instructions (USEPA Forms 8700-22 and 8700-22A and Their Instructions)), as required under Section 724.171. If a defect is detected, the owner or operator must repair the defect in accordance with the requirements of subsection (d)(4)(C).

B) If a container used for managing hazardous waste remains at the facility for a period of one year or more, the owner or operator must visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator must repair the defect in accordance with the requirements of subsection (d)(4)(C).

C) When a defect is detected for the container, cover, or closure devices, the owner or operator must make first efforts at repair of the defect no later than 24 hours after detection, and repair must be

completed as soon as possible but no later than five calendar days after detection. If repair of a defect cannot be completed within five calendar days, then the hazardous waste must be removed from the container and the container must not be used to manage hazardous waste until the defect is repaired.

e) Container Level 3 Standards~~.~~

1) A container using Container Level 3 controls is one of the following:

A) A container that is vented directly through a closed-vent system to a control device in accordance with the requirements of subsection (e)(2)(B).

B) A container that is vented inside an enclosure that is exhausted through a closed-vent system to a control device in accordance with the requirements of subsections (e)(2)(A) and (e)(2)(B).

2) The owner or operator must meet the following requirements, as applicable to the type of air emission control equipment selected by the owner or operator:

A) The container enclosure must be designed and operated in accordance with the criteria for a permanent total enclosure, as specified in "Procedure T – Criteria for and Verification of a Permanent or Temporary Total Enclosure" under appendix B to 40 CFR 52.741 (VOM Measurement Techniques for Capture Efficiency), incorporated by reference in 35 Ill. Adm. Code 720.111(b). The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator must perform the verification procedure for the enclosure, as specified in Section 5.0 of~~to~~ "Procedure T – Criteria for and Verification of a Permanent or Temporary Total Enclosure~~,~~", initially when the enclosure is first installed and, thereafter, annually.

B) The closed-vent system and control device must be designed and

operated in accordance with the requirements of Section 724.987.

3) Safety devices, as defined in 35 Ill. Adm. Code 725.981, may be installed and operated as necessary on any container, enclosure, closed-vent system, or control device used to comply with the requirements of subsection (e)(1).

4) Owners and operators using Container Level 3 controls in accordance with the provisions of this Subpart CC must inspect and monitor the closed-vent systems and control devices, as specified in Section 724.987.

5) Owners and operators that use Container Level 3 controls in accordance with the provisions of this Subpart CC must prepare and maintain the records specified in Section 724.989(d).

6) The transfer of hazardous waste into or out of a container using Container Level 3 controls must be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that USEPA considers to meet the requirements of this subsection (e)(6) include using any one of the following: the use of a submerged-fill pipe or other submerged-fill method to load liquids into the container; the use of a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or the use of a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

f) For the purpose of compliance with subsection (c)(1)(A) or (d)(1)(A), containers must be used that meet the applicable USDOT regulations on packaging hazardous materials for transportation, as follows:

1) The container meets the applicable requirements specified by USDOT in 49 CFR 178 (Specifications for Packaging), or 49 CFR 179 (Specifications for Tank Cars), each incorporated by reference in 35 Ill. Adm. Code 720.111(b).

2) Hazardous waste is managed in the container in accordance with the applicable requirements specified by USDOT in subpart B of 49 CFR 107 (Exemptions), 49 CFR 172 (Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements), 49 CFR 173 (Shippers – General Requirements for Shipments and Packages), and 49 CFR 180 (Continuing Qualification and Maintenance of Packagings), each incorporated by reference in 35 Ill. Adm. Code 720.111(b).

3) For the purpose of complying with this Subpart CC, no exceptions to the 49 CFR 178 or 179 regulations are allowed, except as provided for in subsection (f)(4).

4) For a lab pack that is managed in accordance with the USDOT requirements of 49 CFR 178 (Specifications for Packagings), for the purpose of complying with this Subpart CC, an owner or operator may comply with the exceptions for combination packagings specified by USDOT in 49 CFR 173.12(b) (Exceptions for Shipments of Waste Materials), incorporated by reference in 35 Ill. Adm. Code 720.111(b).

g) To determine compliance with the no detectable organic emissions requirement of subsection (d)(1)(B), the procedure specified in Section 724.983(d) must be used.

1) Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the container, its cover, and associated closure devices, as applicable to the container, must be checked. Potential leak interfaces that are associated with containers include, but are not limited to, the following: the interface of the cover rim and the container wall; the periphery of any opening on the container or container cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

2) The test must be performed when the container is filled with a material having a volatile organic concentration representative of the range of volatile organic concentrations for the hazardous wastes expected to be managed in this type of container. During the test, the container cover and closure devices must be secured in the closed position.

h) Procedure for Determining~~determining~~ a Container~~container~~ to be Vapor-Tight

Using~~vapor-tight using~~ Reference Method 27 for the Purpose~~purpose~~ of Complying~~complying~~ with Subsection~~subsection~~ (d)(1)(C)~~.~~

1) The test must be performed in accordance with Reference Method 27.

2) A pressure measurement device must be used that has a precision of ± 2.5 mm (0.098 in) water and that is capable of measuring above the pressure at which the container is to be tested for vapor tightness.

3) If the test results determined by Reference Method 27 indicate that the container sustains a pressure change less than or equal to 0.75 kPa (0.11 psig) within five minutes after it is pressurized to a minimum of 4.5 kPa (0.65 psig), then the container is determined to be vapor-tight.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.987 Standards: Closed-Vent Systems and Control Devices

a) This Section applies to each closed-vent system and control device installed and operated by the owner or operator to control air emissions in accordance with standards of this Subpart CC.

b) The closed-vent system must meet the following requirements:

1) The closed-vent system must route the gases, vapors, and fumes emitted from the hazardous waste in the waste management unit to a control device that meets the requirements specified in subsection (c) ~~of this Section~~.

2) The closed-vent system must be designed and operated in accordance with the requirements specified in Section 724.933(k).

3) When the closed-vent system includes bypass devices that could be used to divert the gas or vapor stream to the atmosphere before entering the control device, each bypass device must be equipped with either a flow indicator, as specified in subsection (b)(3)(A) ~~of this Section~~, or a seal or locking device, as specified in subsection (b)(3)(B) ~~of this Section~~. For the purpose of complying with this subsection (b), low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, spring-loaded

pressure-relief valves, and other fittings used for safety purposes are not considered to be bypass devices.

A) If a flow indicator is used to comply with this subsection (b)(3), the indicator must be installed at the inlet to the bypass line used to divert gases and vapors from the closed-vent system to the atmosphere at a point upstream of the control device inlet. For the purposes of this subsection (b), a flow indicator means a device that indicates the presence of either gas or vapor flow in the bypass line.

B) If a seal or locking device is used to comply with subsection (b)(3) ~~of this Section~~, the device must be placed on the mechanism by which the bypass device position is controlled (e.g., valve handle or damper lever) when the bypass device is in the closed position such that the bypass device cannot be opened without breaking the seal or removing the lock. Examples of such devices include, but are not limited to, a car-seal or a lock-and-key configuration valve. The owner or operator must visually inspect the seal or closure mechanism at least once every month to verify that the bypass mechanism is maintained in the closed position.

4) The closed-vent system must be inspected and monitored by the owner or operator in accordance with the procedure specified in Section 724.933(l).

c) The control device must meet the following requirements:

1) The control device must be one of the following devices:

A) A control device designed and operated to reduce the total organic content of the inlet vapor stream vented to the control device by at least 95 percent by weight;

B) An enclosed combustion device designed and operated in accordance with the requirements of Section 724.933(c); or

C) A flare designed and operated in accordance with the requirements of Section 724.933(d).

2) The owner or operator that elects to use a closed-vent system and control device to comply with the requirements of this Section must comply with the requirements specified in subsections (c)(2)(A) through (c)(2)(F) ~~of this Section~~.

A) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of subsection~~subsections~~ (c)(1)(A), (c)(1)(B), or (c)(1)(C) ~~of this Section~~, as applicable, must not exceed 240 hours per year.

B) The specifications and requirements in subsections (c)(1)(A), (c)(1)(B), and (c)(1)(C) ~~of this Section~~ for control devices do not apply during periods of planned routine maintenance.

C) The specifications and requirements in subsections (c)(1)(A), (c)(1)(B), and (c)(1)(C) ~~of this Section~~ for control devices do not apply during a control device system malfunction.

D) The owner or operator must demonstrate compliance with the requirements of subsection (c)(2)(A) ~~of this Section~~ (i.e., planned routine maintenance of a control device, during which the control device does not meet the specifications of subsection~~subsections~~ (c)(1)(A), (c)(1)(B), or (c)(1)(C) ~~of this Section~~, as applicable, must not exceed 240 hours per year) by recording the information specified in Section 724.989(e)(1)(E).

E) The owner or operator must correct control device system malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of air pollutants.

F) The owner or operator must operate the closed-vent system so that gases, vapors, or fumes are not actively vented to the control device during periods of planned maintenance or control device system malfunction (i.e., periods when the control device is not operating or not operating normally), except in cases when it is necessary to vent the gases, vapors, or fumes to avoid an unsafe condition or to implement malfunction corrective actions or planned maintenance actions.

3) The owner or operator using a carbon adsorption system to comply with subsection (c)(1) ~~of this Section~~ must operate and maintain the control device in accordance with the following requirements:

A) Following the initial startup of the control device, all activated carbon in the control device must be replaced with fresh carbon on a regular basis, in accordance with the requirements of Section 724.933(g) or Section 724.933(h).

B) All carbon that is a hazardous waste and that is removed from the control device must be managed in accordance with the requirements of Section 724.933(n), regardless of the average volatile organic concentration of the carbon.

4) An owner or operator using a control device other than a thermal vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with subsection (c)(1) ~~of this Section~~ must operate and maintain the control device in accordance with the requirements of Section 724.933(j).

5) The owner or operator must demonstrate that a control device achieves the performance requirements of subsection (c)(1) ~~of this Section~~, as follows:

A) An owner or operator must demonstrate using either a performance test, as specified in subsection (c)(5)(C) ~~of this Section~~, or a design analysis, as specified in subsection (c)(5)(D) ~~of this Section~~, the performance of each control device, except for the following:

i) A flare;

ii) A boiler or process heater with a design heat input capacity of 44 megawatts or greater;

iii) A boiler or process heater into which the vent stream is introduced with the primary fuel;

iv) A boiler or industrial furnace burning hazardous waste for which the owner or operator has been issued a final permit under 35 Ill. Adm. Code 702, 703, and 705 and has

designed and operates the unit in accordance with the interim status requirements of Subpart H of 35 Ill. Adm. Code 726; or

v) A boiler or industrial furnace burning hazardous waste that the owner or operator has designed and operates in accordance with the interim status requirements of Subpart H of 35 Ill. Adm. Code 726.

B) An owner or operator must demonstrate the performance of each flare in accordance with the requirements specified in Section 724.933(e).

C) For a performance test conducted to meet the requirements of subsection (c)(5)(A) ~~of this Section~~, the owner or operator must use the test methods and procedures specified in Section 724.934(c)(1) through (c)(4).

D) For a design analysis conducted to meet the requirements of subsection (c)(5)(A) ~~of this Section~~, the design analysis must meet the requirements specified in Section 724.935(b)(4)(C).

E) The owner or operator must demonstrate that a carbon adsorption system achieves the performance requirements of subsection (c)(1) ~~of this Section~~ based on the total quantity of organics vented to the atmosphere from all carbon adsorption system equipment that is used for organic adsorption, organic desorption or carbon regeneration, organic recovery, and carbon disposal.

6) If the owner or operator and the Agency do not agree on a demonstration of control device performance using a design analysis then the disagreement must be resolved using the results of a performance test performed by the owner or operator in accordance with the requirements of subsection (c)(5)(C) ~~of this Section~~. The Agency may choose to have an authorized representative observe the performance test.

7) The closed-vent system and control device must be inspected and monitored by the owner or operator in accordance with the procedures specified in Section 724.933(f)(2) and (l). The readings from each

monitoring device required by Section 724.933(f)(2) must be inspected at least once each operating day to check control device operation. Any necessary corrective measures must be immediately implemented to ensure the control device is operated in compliance with the requirements of this Section.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.988 Inspection and Monitoring Requirements

a) The owner or operator must inspect and monitor air emission control equipment used to comply with this Subpart CC in accordance with the applicable requirements specified in Section 724.984 through Section 724.987.

b) The owner or operator must develop and implement a written plan and schedule to perform the inspections and monitoring required by subsection (a) ~~of this Section~~. The owner or operator must incorporate this plan and schedule into the facility inspection plan required under 35 Ill. Adm. Code 724.115.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.989 Recordkeeping Requirements

a) Each owner or operator of a facility subject to the requirements of this Subpart CC must record and maintain the information specified in subsections (b) through (j) ~~of this Section~~, as applicable to the facility. Except for air emission control equipment design documentation and information required by subsections (i) and (j) ~~of this Section~~, records required by this Section must be maintained in the operating record for a minimum of three years. Air emission control equipment design documentation must be maintained in the operating record until the air emission control equipment is replaced or is otherwise no longer in service. Information required by subsections (i) and (j) ~~of this Section~~ must be maintained in the operating record for as long as the waste management unit is not using air emission controls specified in Sections 724.984 through 724.987, in accordance with the conditions specified in Section 724.980(d) or (b)(7), respectively.

b) The owner or operator of a tank using air emission controls in accordance with the requirements of Section 724.984 must prepare and maintain records for the tank that include the following information:

1) For each tank using air emission controls in accordance with the requirements of Section 724.984, the owner or operator must record the following:

   A) A tank identification number (or other unique identification description, as selected by the owner or operator).

   B) A record for each inspection required by Section 724.984 that includes the following information:

      i) Date inspection was conducted.

      ii) For each defect detected during the inspection: the location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the requirements of Section 724.984, the owner or operator must also record the reason for the delay and the date that completion of repair of the defect is expected.

2) In addition to the information required by subsection (b)(1) ~~of this Section~~, the owner or operator must record the following information, as applicable to the tank:

   A) The owner or operator using a fixed roof to comply with the Tank Level 1 control requirements specified in Section 724.984(c) must prepare and maintain records for each determination for the maximum organic vapor pressure of the hazardous waste in the tank performed in accordance with the requirements of Section 724.984(c). The records must include the date and time the samples were collected, the analysis method used, and the analysis results.

   B) The owner or operator using an internal floating roof to comply with the Tank Level 2 control requirements specified in Section 724.984(e) must prepare and maintain documentation describing the floating roof design.

C) Owners and operators using an external floating roof to comply with the Tank Level 2 control requirements specified in Section 724.984(f) must prepare and maintain the following records:

i) Documentation describing the floating roof design and the dimensions of the tank.

ii) Records for each seal gap inspection required by Section 724.984(f)(3) describing the results of the seal gap measurements. The records must include the date that the measurements were performed, the raw data obtained for the measurements, and the calculations of the total gap surface area. In the event that the seal gap measurements do not conform to the specifications in Section 724.984(f)(1), the records must include a description of the repairs that were made, the date the repairs were made, and the date the tank was emptied, if necessary.

D) Each owner or operator using an enclosure to comply with the Tank Level 2 control requirements specified in Section 724.984(i) must prepare and maintain the following records:

i) Records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T − Criteria for and Verification of a Permanent or Temporary Total Enclosure" under appendix B to 40 CFR 52.741 (VOM Measurement Techniques for Capture Efficiency), incorporated by reference in 35 Ill. Adm. Code 720.111(b).

ii) Records required for the closed-vent system and control device in accordance with the requirements of subsection (e) ~~of this Section~~.

c) The owner or operator of a surface impoundment using air emission controls in accordance with the requirements of Section 724.985 must prepare and maintain records for the surface impoundment that include the following information:

1) A surface impoundment identification number (or other unique identification description as selected by the owner or operator).

2) Documentation describing the floating membrane cover or cover design, as applicable to the surface impoundment, that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in Section 724.985(c).

3) A record for each inspection required by Section 724.985 that includes the following information:

A) Date inspection was conducted.

B) For each defect detected during the inspection the following information: the location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of Section 724.985(f), the owner or operator must also record the reason for the delay and the date that completion of repair of the defect is expected.

4) For a surface impoundment equipped with a cover and vented through a closed-vent system to a control device, the owner or operator must prepare and maintain the records specified in subsection (e) ~~of this Section~~.

d) The owner or operator of containers using Container Level 3 air emission controls in accordance with the requirements of Section 724.986 must prepare and maintain records that include the following information:

1) Records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T − Criteria for and Verification of a Permanent or Temporary Total Enclosure" under appendix B to 40 CFR 52.741 (VOM Measurement Techniques for Capture Efficiency), incorporated by reference in 35 Ill. Adm. Code 720.111(b).

2) Records required for the closed-vent system and control device in accordance with the requirements of subsection (e) ~~of this Section~~.

e) The owner or operator using a closed-vent system and control device in accordance with the requirements of Section 724.987 must prepare and maintain records that include the following information:

1) Documentation for the closed-vent system and control device that includes the following:

A) Certification that is signed and dated by the owner or operator stating that the control device is designed to operate at the performance level documented by a design analysis as specified in subsection (e)(1)(B) ~~of this Section~~ or by performance tests as specified in subsection (e)(1)(C) ~~of this Section~~ when the tank, surface impoundment, or container is or would be operating at capacity or the highest level reasonably expected to occur.

B) If a design analysis is used, then design documentation, as specified in Section 724.935(b)(4). The documentation must include information prepared by the owner or operator or provided by the control device manufacturer or vendor that describes the control device design in accordance with Section 724.935(b)(4)(C) and certification by the owner or operator that the control equipment meets the applicable specifications.

C) If performance tests are used, then a performance test plan as specified in Section 724.935(b)(3) and all test results.

D) Information as required by Section 724.935(c)(1) and Section 724.935(c)(2), as applicable.

E) An owner or operator must record, on a semiannual basis, the information specified in subsections (e)(1)(E)(i) and (e)(1)(E)(ii) ~~of this Section~~ for those planned routine maintenance operations that would require the control device not to meet the requirements of Section 724.987(c)(1)(A), (c)(1)(B), or (c)(1)(C) ~~of this Section~~, as applicable.

i) A description of the planned routine maintenance that is anticipated to be performed for the control device during the next six-month period. This description must include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

ii) A description of the planned routine maintenance that was performed for the control device during the previous six-month period. This description must include the type of maintenance performed and the total number of hours during those six months that the control device did not meet the requirements of Section 724.987(c)(1)(A), (c)(1)(B), or (c)(1)(C), as applicable, due to planned routine maintenance.

F) An owner or operator must record the information specified in subsections (e)(1)(F)(i) through (e)(1)(F)(iii) ~~of this Section~~ for those unexpected control device system malfunctions that would require the control device not to meet the requirements of Section 724.987 (c)(1)(A), (c)(1)(B), or (c)(1)(C) ~~of this Section~~, as applicable.

i) The occurrence and duration of each malfunction of the control device system.

ii) The duration of each period during a malfunction when gases, vapors, or fumes are vented from the waste management unit through the closed-vent system to the control device while the control device is not properly functioning.

iii) Actions taken during periods of malfunction to restore a malfunctioning control device to its normal or usual manner of operation.

G) Records of the management of carbon removed from a carbon adsorption system conducted in accordance with Section 724.987(c)(3)(B).

f) The owner or operator of a tank, surface impoundment, or container exempted from standards in accordance with the provisions of Section 724.982(c) must prepare and maintain the following records, as applicable:

1) For tanks, surface impoundments, or containers exempted under the hazardous waste organic concentration conditions specified in Section 724.982(c)(1) or (c)(2)(A) through (c)(2)(F), the owner or operator must record the information used for each waste determination (e.g., test results, measurements, calculations, and other documentation) in the facility operating log. If analysis results for waste samples are used for the waste determination, then the owner or operator must record the date, time, and location that each waste sample is collected in accordance with the applicable requirements of Section 724.983.

2) For tanks, surface impoundments, or containers exempted under the provisions of Section 724.982(c)(2)(G) or (c)(2)(H), the owner or operator must record the identification number for the incinerator, boiler, or industrial furnace in which the hazardous waste is treated.

g) An owner or operator designating a cover as "unsafe to inspect and monitor" pursuant to Section 724.984(l) or Section 724.985(g) must record in a log that is kept in the facility operating record the following information: the identification numbers for waste management units with covers that are designated as "unsafe to inspect and monitor;", the explanation for each cover stating why the cover is unsafe to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

h) The owner or operator of a facility that is subject to this Subpart CC and to the control device standards in federal subpart VV of 40 CFR 60 (Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry) or subpart V of 40 CFR 61 (National Emission Standard for Equipment Leaks (Fugitive Emission Sources)), each incorporated by reference in 35 Ill. Adm. Code 720.111(b), may elect to demonstrate compliance with the applicable Sections of this Subpart CC by documentation either pursuant to this Subpart CC, or pursuant to the provisions of subpart VV of 40 CFR 60 or subpart V of 40 CFR 61, to the extent that the documentation required by 40 CFR 60 or 61 duplicates the documentation required by this Section.

i) For each tank or container not using air emission controls specified in Sections 724.984 through 724.987 in accordance with the conditions specified in Section 724.980(d), the owner or operator must record and maintain the following information:

1) A list of the individual organic peroxide compounds manufactured at the facility that meet the conditions specified in Section 724.980(d)(1).

2) A description of how the hazardous waste containing the organic peroxide compounds identified pursuant to subsection (i)(1) ~~of this Section~~ are managed at the facility in tanks and containers. This description must include the following information:

A) For the tanks used at the facility to manage this hazardous waste, sufficient information must be provided to describe the following for each tank: a facility identification number for the tank, the purpose and placement of this tank in the management train of this hazardous waste, and the procedures used to ultimately dispose of the hazardous waste managed in the tanks.

B) For containers used at the facility to manage this hazardous waste, sufficient information must be provided to describe each container: a facility identification number for the container or group of containers, the purpose and placement of this container or group of containers in the management train of this hazardous waste, and the procedures used to ultimately dispose of the hazardous waste managed in the containers.

3) An explanation of why managing the hazardous waste containing the organic peroxide compounds identified pursuant to subsection (i)(1) ~~of this Section~~ in the tanks or containers identified pursuant to subsection (i)(2) ~~of this Section~~ would create an undue safety hazard if the air emission controls specified in Sections 724.984 through 724.987 were installed and operated on these waste management units. This explanation must include the following information:

A) For tanks used at the facility to manage this hazardous waste, sufficient information must be provided to explain the following: how use of the required air emission controls on the tanks would

affect the tank design features and facility operating procedures currently used to prevent an undue safety hazard during management of this hazardous waste in the tanks; and why installation of safety devices on the required air emission controls, as allowed under this Subpart CC, would not address those situations in which evacuation of tanks equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.

B) For containers used at the facility to manage this hazardous waste, sufficient information must be provided to explain the following: how use of the required air emission controls on the containers would affect the container design features and handling procedures currently used to prevent an undue safety hazard during management of this hazardous waste in the containers; and why installation of safety devices on the required air emission controls, as allowed under this Subpart CC, would not address those situations in which evacuation of containers equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.

j) For each hazardous waste management unit not using air emission controls specified in Sections 724.984 through 724.987 in accordance with the requirements of Section 724.980(b)(7), the owner and operator must record and maintain the following information:

1) The certification that the waste management unit is equipped with and operating air emission controls in accordance with the requirements of an applicable federal Clean Air Act regulation codified under 40 CFR 60, 61, or 63.

2) An identification of the specific federal requirements codified under 40 CFR 60, 61, or 63 with which the waste management unit is in compliance.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.990 Reporting Requirements

a) Each owner or operator managing hazardous waste in a tank, surface impoundment, or container exempted from using air emission controls under the provisions of Section 724.982(c) must report to the Agency each occurrence when hazardous waste is placed in the waste management unit in noncompliance with the conditions specified in Section 724.982(c)(1) or (c)(2), as applicable. Examples of such occurrences include placing in the waste management unit a hazardous waste having an average VO concentration equal to or greater than 500 ppmw at the point of waste origination or placing in the waste management unit a treated hazardous waste that fails to meet the applicable conditions specified in Section 724.982(c)(2)(A) through (c)(2)(F). The owner or operator must submit a written report within 15 calendar days of the time that the owner or operator becomes aware of the occurrence. The written report must contain the USEPA identification number, the facility name and address, a description of the noncompliance event and the cause, the dates of the noncompliance, and the actions taken to correct the noncompliance and prevent recurrence of the noncompliance. The report must be signed and dated by an authorized representative of the owner or operator.

b) Each owner or operator using air emission controls on a tank in accordance with the requirements of Section 724.984(c) must report to the Agency each occurrence when hazardous waste is managed in the tank in noncompliance with the conditions specified in Section 724.984(b). The owner or operator must submit a written report within 15 calendar days of the time that the owner or operator becomes aware of the occurrence. The written report must contain the USEPA identification number, the facility name and address, a description of the noncompliance event and the cause, the dates of the noncompliance, and the actions taken to correct the noncompliance and prevent recurrence of the noncompliance. The report must be signed and dated by an authorized representative of the owner or operator.

c) Each owner or operator using a control device in accordance with the requirements of Section 724.987 must submit a semiannual written report to the Agency, except as provided for in subsection (d) ~~of this Section~~. The report must describe each occurrence during the previous six-month period when either of the two following events occurs: a control device is operated continuously for 24 hours or longer in noncompliance with the applicable operating values defined in Section 724.935(c)(4) or a flare is operated with visible emissions for five minutes or longer in a two-hour period, as defined in Section 724.933(d). The written report must include the USEPA identification number, the facility name

and address, and an explanation why the control device could not be returned to compliance within 24 hours, and actions taken to correct the noncompliance. The report must be signed and dated by an authorized representative of the owner or operator.

d) A report to the Agency in accordance with the requirements of subsection (c) ~~of this Section~~ is not required for a six-month period during which all control devices subject to this Subpart CC are operated by the owner or operator so that both of the following conditions result: during no period of 24 hours or longer did a control device operate continuously in noncompliance with the applicable operating values defined in Section 724.935(c)(4) and no flare was operated with visible emissions for five minutes or longer in a two-hour period, as defined in Section 724.933(d).

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

SUBPART DD: CONTAINMENT BUILDINGS

Section 724.1101 Design and Operating Standards

a) All containment buildings must comply with the following design and operating standards:

1) The containment building must be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements (e.g., precipitation, wind, run on) and to assure containment of managed wastes.

2) The floor and containment walls of the unit, including the secondary containment system if required under subsection (b), must be designed and constructed of materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls. The unit must be designed so that it has sufficient structural strength to prevent collapse or other failure. All surfaces to be in contact with hazardous wastes must be chemically compatible with those wastes. The

containment building must meet the structural integrity requirements established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM). If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that meet the following criteria:

A) They provide an effective barrier against fugitive dust emissions under subsection (c)(1)(D)~~(c)(1)(C)~~; and

B) The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.

3) Incompatible hazardous wastes or treatment reagents must not be placed in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

4) A containment building must have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

b) For a containment building used to manage hazardous wastes containing free liquids or treated with free liquids (the presence of which is determined by the paint filter test, a visual examination, or other appropriate means), the owner or operator must include the following design features:

1) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (e.g., a geomembrane covered by a concrete wear surface).

2) A liquid collection and removal system to minimize the accumulation of liquid on the primary barrier of the containment building, as follows:

A) The primary barrier must be sloped to drain liquids to the associated collection system; and

B) Liquids and waste must be collected and removed to minimize

hydraulic head on the containment system at the earliest practicable time.

3) A secondary containment system including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system that is capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practicable time.

A) The requirements of the leak detection component of the secondary containment system are satisfied by installation of a system that is, at a minimum, as follows:

i) It is constructed with a bottom slope of 1 percent or more; and

ii) It is constructed of a granular drainage material with a hydraulic conductivity of 1×10^{-2} cm/sec or more and a thickness of 12 inches (30.5 cm) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-5} m^2/sec or more.

B) If treatment is to be conducted in the building, an area in which such treatment will be conducted must be designed to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.

C) The secondary containment system must be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building. (Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building can serve as an external liner system for a tank, provided it meets the requirements of Section 724.293(e)(1)~~724.193(e)(1)~~. In addition, the containment building must meet the requirements of Section 724.293(b), ~~724.193(b) and Sections 724.193~~(c)(1) and (c)(2) to be

an acceptable secondary containment system for a tank.)

4) This subsection (b)(4) corresponds with 40 CFR 264.1101(b)(4), which is now obsolete and without effect. This statement maintains structural consistency with the federal rules.~~For existing units other than 90-day generator units, USEPA may delay the secondary containment requirement for up to two years, based on a demonstration by the owner or operator that the unit substantially meets the standards of this Subpart DD. In making this demonstration, the owner or operator must have done the following:~~

~~A)~~ ~~Provided written notice to USEPA of their request by November 16, 1992. This notification must have described the unit and its operating practices with specific reference to the performance of existing systems, and specific plans for retrofitting the unit with secondary containment;~~

~~B)~~ ~~Responded to any comments from USEPA on these plans within 30 days; and~~

~~C)~~ ~~Fulfilled the terms of the revised plans, if such plans are approved by USEPA.~~

c) An owner or operator of a containment building must do each of the following:

1) It must use controls and practice to ensure containment of the hazardous waste within the unit, and at a minimum do each of the following:

A) It must maintain~~Maintain~~ the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released~~release~~ from the primary barrier;

B) It must maintain~~Maintain~~ the level of the stored or treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded;

C) It must take~~Take~~ measures to prevent the tracking of hazardous waste out of the unit by personnel or by equipment used in

handling the waste. An area must be designated to decontaminate equipment and any rinsate must be collected and properly managed; and

D) It must take~~Take~~ measures to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions (see Reference Method 22 (Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares) in appendix A to 40 CFR 60 (Test Methods)~~)~~, incorporated by reference in 35 Ill. Adm. Code 720.111(b)). In addition, all associated particulate collection devices (e.g., fabric filter, electrostatic precipitator, etc.) must be operated and maintained with sound air pollution control practices (see 40 CFR 60 for guidance). This state of no visible emissions must be maintained effectively at all times during routine operating and maintenance conditions, including when vehicles and personnel are entering and exiting the unit.

BOARD NOTE: At 40 CFR 264.1101(c)(1)(iv) (2005), USEPA cites "40 CFR part 60, subpart 292~~.~~". At 57 Fed. Reg. 37217 (Aug. 18, 1992), USEPA repeats this citation in the preamble discussion of adoption of the rules. No such provision exists in the Code of Federal Regulations. While 40 CFR 60.292 of the federal regulations pertains to control of fugitive dust emissions, that provision is limited in its application to glass melting furnaces. The Board has chosen to use the general citation: "40 CFR 60~~.~~".

2) It must obtain and keep on site a certification by a qualified Professional Engineer that the containment building design meets the requirements of subsections (a) through (c).

3) Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, it must repair the condition promptly, in accordance with the following procedures:

A) Upon detection of a condition that has led to a release of hazardous wastes (e.g., upon detection of leakage from the primary barrier) the owner or operator must do the following:

i) Enter a record of the discovery in the facility operating record;

ii) Immediately remove the portion of the containment building affected by the condition from service;

iii) Determine what steps must be taken to repair the containment building, remove any leakage from the secondary collection system, and establish a schedule for accomplishing the cleanup and repairs; and

iv) Within seven days after the discovery of the condition, notify the Agency in writing of the condition, and within 14 working days, provide a written notice to the Agency with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

B) The Agency must review the information submitted, make a determination in accordance with Section 34 of the Act, regarding whether the containment building must be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

C) Upon completing all repairs and cleanup the owner and operator must notify the Agency in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with subsection (c)(3)(A)(iv).

4) It must inspect and record in the facility's operating record~~, at least once every seven days,~~ data gathered from monitoring and leak detection equipment, as well as the containment building and the area immediately surrounding the containment building, to detect signs of releases of hazardous waste at least once every seven days.

d) For a containment building that contains ~~both~~ areas both with and without secondary containment, the owner or operator must do the following:

1) Design and operate each area in accordance with the requirements enumerated in subsections (a) through (c);

2) Take measures to prevent the release of liquids or wet materials into areas without secondary containment; and

3) Maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

e) Notwithstanding any other provision of this Subpart DD, the Agency must, in writing, allow the use of alternatives to the requirements for secondary containment for a permitted containment building where the Agency has determined that the facility owner or operator has adequately demonstrated that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and where containment of managed wastes and liquids can be assured without a secondary containment system.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.1102 Closure and Post-Closure Care

a) At closure of a containment building, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate and manage them as hazardous waste, unless 35 Ill. Adm. Code 721.103(e) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings must meet all of the requirements specified in Subparts G and H ~~of of this Part~~.

b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in subsection (a), the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (Section 724.410). In addition, for the purposes of closure, post-closure, and

financial responsibility, such a containment building is then considered to be a landfill, and the owner or operator must meet all the requirements for landfills specified in Subparts G and H ~~of this Part~~.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

SUBPART EE: HAZARDOUS WASTE MUNITIONS AND EXPLOSIVES STORAGE

Section 724.1201 Design and Operating Standards

a) An owner or operator of a hazardous waste munitions and explosives storage unit must design and operate the unit with containment systems, controls, and monitoring that fulfill each of the following requirements:

1) The owner or operator minimizes the potential for detonation or other means of release of hazardous waste, hazardous constituents, hazardous decomposition products, or contaminated run-off to the soil, groundwater , surface water, and atmosphere;

2) The owner or operator provides a primary barrier, which may be a container (including a shell) or tank, designed to contain the hazardous waste;

3) For wastes stored outdoors, the owner or operator provides that the waste and containers will not be in standing precipitation;

4) For liquid wastes, the owner or operator provides a secondary containment system that assures that any released liquids are contained and promptly detected and removed from the waste area or a vapor detection system that assures that any released liquids or vapors are promptly detected and an appropriate response taken (e.g., additional containment, such as overpacking or removal from the waste area); and

5) The owner or operator provides monitoring and inspection procedures that assure the controls and containment systems are working as designed and that releases that may adversely impact human health or the environment are not escaping from the unit.

b) Hazardous waste munitions and explosives stored under this Subpart EE may be

stored in one of the following:

1) Earth-covered magazines. The owner or operator of an earth-covered magazine must fulfill each of the following requirements:

A) The magazine is constructed of waterproofed, reinforced concrete or structural steel arches, with steel doors that are kept closed when not being accessed;

B) The magazine is so designed and constructed that it fulfills each of the following requirements:

i) The magazine is of sufficient strength and thickness to support the weight of any explosives or munitions stored and any equipment used in the unit;

ii) The magazine provides working space for personnel and equipment in the unit; and

iii) The magazine can withstand movement activities that occur in the unit; and

C) The magazine is located and designed, with walls and earthen covers that direct an explosion in the unit in a safe direction, so as to minimize the propagation of an explosion to adjacent units and to minimize other effects of any explosion.

2) Above-Ground Magazines~~ground magazines~~. Above-ground magazines must be located and designed so as to minimize the propagation of an explosion to adjacent units and to minimize other effects of any explosion.

3) Outdoor or Open Storage Areas~~open storage areas~~. Outdoor or open storage areas must be located and designed so as to minimize the propagation of an explosion to adjacent units and to minimize other effects of any explosion.

c) An owner or operator must store hazardous waste munitions and explosives in accordance with a standard operating procedure that specifies procedures that ensure safety, security, and environmental protection. If these procedures serve

the same purpose as the security and inspection requirements of Section 724.114, the preparedness and prevention procedures of Subpart C ~~of this Part~~, and the contingency plan and emergency procedures requirements of Subpart D ~~of this Part~~, then the standard operating procedure may be used to fulfill those requirements.

d) An owner or operator must package hazardous waste munitions and explosives to ensure safety in handling and storage.

e) An owner or operator must inventory hazardous waste munitions and explosives at least annually.

f) An owner or operator must inspect and monitor hazardous waste munitions and explosives and their storage units as necessary to ensure explosives safety and to ensure that there is no migration of contaminants out of the unit.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.1202 Closure and Post-Closure Care

a) At closure of a magazine or unit that stored hazardous waste under this Subpart EE, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components, contaminated subsoils, and structures and equipment contaminated with waste and manage them as hazardous waste unless 35 Ill. Adm. Code 721.103(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for magazines or units must meet all of the requirements specified in Subparts G and H ~~of this Part~~, except that the owner or operator may defer closure of the unit as long as it remains in service as a munitions or explosives magazine or storage unit.

b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in subsection (a) ~~of this Section~~, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, the owner or operator must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (see Section 724.410).

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.APPENDIX I Groundwater Monitoring List

a) Common names are those widely used in government regulations, scientific publications and commerce; synonyms exist for many chemicals.

b) "CAS RN" means "Chemical Abstracts Service Registry Number". Where "total" is entered, all species in the groundwater that contain this element are included.

c) CAS index names are those used in the 9th Cumulative index.

d) PCBs (CAS RN 1336-36-3). This category contains congener chemicals, including constituents Aroclor-1016 (CAS RN 12674-11-2), Aroclor-1221 (CAS RN 11104-28-2), Aroclor-1232 (CAS RN 11141-16-5), Aroclor-1242 (CAS RN 53469-21-9), Aroclor-1248 (CAS RN 12672-29-6), Aroclor-1254 (CAS RN 11097-69-1) and Aroclor-1260 (CAS RN 11096-82-5).

e) PCDDs. This category includes congener chemicals, including tetrachlorodibenzo-p-dioxins (see also 2,3,7,8-TCDD), pentachlorodibenzo-p-dioxins and hexachlorodibenzo-p-dioxins.

f) PCDFs. This category contains congener chemicals, including tetrachlorodibenzofurans, pentachlorodibenzofurans, and hexachlorodibenzofurans.

Common Name	CAS RN	Chemical Abstracts Service Index Name
Acenaphthene	83-32-9	Acenaphthylene, 1,2-dihydro-
Acenaphthylene	208-96-8	Acenaphthylene
Acetone	67-64-1	2-Propanone
Acetophenone	98-86-2	Ethanone, 1-phenyl-
Acetonitrile; Methyl cyanide	75-05-8	Acetonitrile
2-Acetylaminofluorene; 2-AAF	53-96-3	Acetamide, N-9H-fluoren-2-yl-
Acrolein	107-02-8	2-Propenal
Acrylonitrile	107-13-1	2-Propenenitrile
Aldrin	309-00-2	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-(1α,4α,4aβ,5α,8α,8aβ)-

Allyl chloride	107-05-1	1-Propene, 3-chloro-
4-Aminobiphenyl	92-67-1	(1,1'-Biphenyl)-4-amine
Aniline	62-53-3	Benzenamine
Anthracene	120-12-7	Anthracene
Antimony	(Total)	Antimony
Aramite	140-57-8	Sulfurous acid, 2-chloroethyl 2-(4-(1,1-dimethylethyl)phenoxy)-1-methylethyl ester
Arsenic	(Total)	Arsenic
Barium	(Total)	Barium
Benzene	71-43-2	Benzene
Benzo(a)anthracene; Benzanthracene	56-55-3	Benz(a)anthracene
Benzo(b)fluoranthene	205-99-2	Benz(e)acephenanthrylene
Benzo(k)fluoranthene	207-08-9	Benzo(k)fluoranthene
Benzo(ghi)perylene	191-24-2	Benzo(ghi)perylene
Benzo(a)pyrene	50-32-8	Benzo(a)pyrene
Benzyl alcohol	100-51-6	Benzenemethanol
Beryllium	(Total)	Beryllium
α-BHC	319-84-6	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3β,4α,5β,6β)-
β-BHC	319-85-7	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2β,3α,4β,5α,6β)-
δ-BHC	319-86-8	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3α,4β,5α,6β)-
γ-BHC; Lindane	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3β,4α,5α,6β)-
Bis(2-chloroethoxy)methane	111-91-1	Ethane, 1,1'-(methylenebis(oxy))bis(2-chloro-
Bis(2-chloroethyl) ether	111-44-4	Ethane, 1,1'-oxybis(2-chloro-
Bis(2-chloro-1-methylethyl) ether; 2,2'-Dichlorodiisopropyl ether	108-60-1	Propane, 2,2'-oxybis(1-chloro-
Bis(2-ethylhexyl) phthalate	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester
Bromodichloromethane	75-27-4	Methane, bromodichloro-
Bromoform; Tribromomethane	75-25-2	Methane, tribromo-
4-Bromophenyl phenyl ether	101-55-3	Benzene, 1-bromo-4-phenoxy-

Butyl benzyl phthalate; Benzyl butyl phthalate	85-68-7	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester
Cadmium	Total	Cadmium
Carbon disulfide	75-15-0	Carbon disulfide
Carbon tetrachloride	56-23-5	Methane, tetrachloro-
Chlordane	57-74-9	4,7-Methano-1H-indene,1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-
p-Chloroaniline	106-47-8	Benzeneamine, 4-chloro-
Chlorobenzene	108-90-7	Benzene, chloro-
Chlorobenzilate	510-15-6	Benzeneacetic acid, 4-chloro-α-(4-chlorophenyl)-α-hydroxy-, ethyl ester
p-Chloro-m-cresol	59-50-7	Phenol, 4-chloro-3-methyl-
Chloroethane; Ethyl chloride	75-00-3	Ethane, chloro-
Chloroform	67-66-3	Methane, trichloro-
2-Chloronapthalene	91-58-7	Naphthalene, 2-chloro-
2-Chlorophenol	95-57-8	Phenol, 2-chloro-
4-Chlorophenyl phenyl ether	7005-72-3	Benzene, 1-chloro-4-phenoxy-
Chloroprene	126-99-8	1,3-Butadiene, 2-chloro-
Chromium	(Total)	Chromium
Chrysene	218-01-9	Chrysene
Cobalt	(Total)	Cobalt
Copper	(Total)	Copper
m-Cresol	108-39-4	Phenol, 3-methyl-
o-Cresol	95-48-7	Phenol, 2-methyl-
p-Cresol	106-44-5	Phenol, 4-methyl-
Cyanide	57-12-5	Cyanide
2,4-D; 2,4-Dichlorophenoxyacetic acid	94-75-7	Acetic acid, (2,4-dichlorophenoxy)-
4,4'-DDD	72-54-8	Benzene, 1,1'-(2,2-dichloroethylidene)bis(4-chloro-
4,4'-DDE	72-55-9	Benzene, 1,1'-(dichloroethylidene)bis(4-chloro-
4,4'-DDT	50-29-3	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis(4-chloro-
Diallate	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester

Dibenz(a,h)anthracene	53-70-3	Dibenz(a,h)anthracene
Dibenzofuran	132-64-9	Dibenzofuran
Dibromochloromethane; Chlorodibromomethane	124-48-1	Methane, dibromochloro-
1,2-Dibromo-3-chloropropane; DBCP	96-12-8	Propane, 1,2-dibromo-3-chloro-
1,2-Dibromoethane; Ethylene dibromide	106-93-4	Ethane, 1,2-dibromo-
Di-n-butyl phthalate	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester
o-Dichlorobenzene	95-50-1	Benzene, 1,2-dichloro-
m-Dichlorobenzene	541-73-1	Benzene, 1,3-dichloro-
p-Dichlorobenzene	106-46-7	Benzene, 1,4-dichloro-
3,3'-Dichlorobenzidine	91-94-1	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dichloro-
trans-1,4-Dichloro-2-butene	110-57-6	2-Butene, 1,4-dichloro-, (E)-
Dichlorodifluoromethane	75-71-8	Methane, dichlorodifluoro-
1,1-Dichloroethane	75-34-3	Ethane, 1,1-dichloro-
1,2-Dichloroethane; Ethylene dichloride	107-06-2	Ethane, 1,2-dichloro-
1,1-Dichloroethylene; Vinylidene chloride	75-35-4	Ethene, 1,1-dichloro-
trans-1,2-Dichloroethylene	156-60-5	Ethene, 1,2-dichloro-, (E)-
2,4-Dichlorophenol	120-83-2	Phenol, 2,4-dichloro-
2,6-Dichlorophenol	87-65-0	Phenol, 2,6-dichloro-
1,2-Dichloropropane	78-87-5	Propane, 1,2-dichloro-
cis-1,3-Dichloropropene	10061-01-5	1-Propene, 1,3-dichloro-, (Z)-
trans-1,3-Dichloropropene	10061-02-6	1-Propene, 1,3-dichloro-, (E)-
Dieldrin	60-57-1	(1aR,2R,2aS,3S,6R,6aR,7,7S,7aS)-rel-3,4,5,6,9,9-Hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-2,7:3,6-dimethanonaphth(2,3-b)oxirene~~2,7:3,6-Dimethanonaphth(2,3-b)oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aα,2β,2aα,3β,6β,6aα,7β,7aα)-~~
Diethyl phthalate	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester

O,O-Diethyl O-2-pyrazinyl phosphorothioate; Thionazin	297-97-2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester
Dimethoate	60-51-5	Phosphorodithioic acid, O,O-dimethyl S-(2-(methylamino)-2-oxoethyl) ester
p-(Dimethylamino)azobenzene	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-
7,12-Dimethylbenz(a)anthracene	57-97-6	Benz(a)anthracene,7,12-dimethyl-
3,3'-Dimethylbenzidine	119-93-7	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethyl-
α,α-Dimethylphenethylamine	122-09-8	Benzeneethanamine, α,α-dimethyl-
2,4-Dimethylphenol	105-67-9	Phenol, 2,4-dimethyl-
Dimethyl phthalate	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester
m-Dinitrobenzene	99-65-0	Benzene, 1,3-dinitro-
4,6-Dinitro-o-cresol	534-52-1	Phenol, 2-methyl-4,6-dinitro-
2,4-Dinitrophenol	51-28-5	Phenol, 2,4-dinitro-
2,4-Dinitrotoluene	121-14-2	Benzene, 1-methyl-2,4-dinitro-
2,6-Dinitrotoluene	606-20-2	Benzene, 2-methyl-1,3-dinitro-
Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-
Di-n-octyl phthalate	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester
1,4-Dioxane	123-91-1	1,4-Dioxane
Diphenylamine	122-39-4	Benzeneamine, N-phenyl-
Disulfoton	298-04-4	Phosphorodithioic acid, O,O-diethyl S-(2-(ethylthio)ethyl) ester
Endosulfan I	959-98-8	6,9-Methano-2,4,3-benzodioxathiepin,6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3α,5aβ,6α,9α,9aβ)-
Endosulfan II	33213-65-9	6,9-Methano-2,4,3-benzodioxathiepin,6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3α,5aα,6β,9β,9aα)-

Endosulfan sulfate	1031-07-8	6,9-Methano-2,4,3-benzodioxathiepin,6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-,3,3-dioxide
Endrin	72-20-8	2,7:3,6-Dimethanonaphth(2,3-b)oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aα,2β,2aβ,3α,6α,6aβ,7β,7aα)-
Endrin aldehyde	7421-93-4	1,2,4-Methanocyclopenta(cd)pentalene-5-carboxaldehyde, 2,2a,3,3,4,7-hexachlorodecahydro-, (1α,2β,2aβ,4β,4aβ,5β,6aβ,6bβ,7R)-
Ethylbenzene	100-41-4	Benzene, ethyl-
Ethyl methacrylate	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester
Ethyl methanesulfonate	62-50-0	Methanesulfonic acid, ethyl ester
Famphur	52-85-7	Phosphorothioic acid, O-(4-((dimethylamino)sulfonyl)phenyl)-O,O-dimethyl ester
Fluoranthene	206-44-0	Fluoranthene
Fluorene	86-73-7	9H-Fluorene
Heptachlor	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-
Heptachlor epoxide	1024-57-3	2,5-Methano-2H-indeno(1,2-b)oxirene, 2,3,4,5,6,7,7-heptachloro-1a,1b,5,5a,6,6a-hexahydro-, (1aα,1bβ,2α,5α,5aβ,6β,6aα)-
Hexachlorobenzene	118-74-1	Benzene, hexachloro-
Hexachlorobutadiene	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
Hexachlorocyclopentadiene	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-
Hexachloroethane	67-72-1	Ethane, hexachloro-
Hexachlorophene	70-30-4	Phenol, 2,2'-methylenebis(3,4,6-trichloro-
Hexachloropropene	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-
2-Hexanone	591-78-6	2-Hexanone

Indeno(1,2,3-cd)pyrene	193-39-5	Indeno(1,2,3-cd)pyrene
Isobutyl alcohol	78-83-1	1-Propanol, 2-methyl-
Isodrin	465-73-6	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-(1α,4α,4aβ,5β,8β,8aβ)-
Isophorone	78-59-1	2-Cyclohexen-1-one, 3,5,5-trimethyl-
Isosafrole	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-
Kepone	143-50-0	1,3,4-Metheno-2H-cyclobuta-(c,d)pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-
Lead	(Total)	Lead
Mercury	(Total)	Mercury
Methacrylonitrile	126-96-7	2-Propenenitrile, 2-methyl-
Methapyrilene	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-
Methoxychlor	72-43-5	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis(4-methoxy-
Methyl bromide; Bromomethane	74-83-9	Methane, bromo-
Methyl chloride; Chloromethane	74-87-3	Methane, chloro-
3-Methylcholanthrene	56-49-5	Benz(j)aceanthrylene, 1,2-dihydro-3-methyl-
Methylene bromide; Dibromomethane	74-95-3	Methane, dibromo-
Methylene chloride; Dichloromethane	75-09-2	Methane, dichloro-
Methyl ethyl ketone; MEK	78-93-3	2-Butanone
Methyl iodide; Iodomethane	74-88-4	Methane, iodo-
Methyl methacrylate	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester
Methyl methanesulfonate	66-27-3	Methanesulfonic acid, methyl ester
2-Methylnaphthalene	91-57-6	Naphthylene, 2-methyl-
Methyl parathion; Parathion methyl	298-00-0	Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl) ester

4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1	2-Pentanone, 4-methyl-
Naphthalene	91-20-3	Naphthalene
1,4-Naphthoquinone	130-15-4	1,4-Naphthalenedione
1-Naphthylamine	134-32-7	1-Naphthalenamine
2-Naphthylamine	91-59-8	2-Naphthalenamine
Nickel	(Total)	Nickel
o-Nitroaniline	88-74-4	Benzenamine, 2-nitro-
m-Nitroaniline	99-09-2	Benzenamine, 3-nitro-
p-Nitroaniline	100-01-6	Benzenamine, 4-nitro-
Nitrobenzene	98-95-3	Benzene, nitro-
o-Nitrophenol	88-75-5	Phenol, 2-nitro-
p-Nitrophenol	100-02-7	Phenol, 4-nitro-
4-Nitroquinoline 1-oxide	56-57-5	Quinoline, 4-nitro-, 1-oxide
N-Nitrosodi-n-butylamine	924-16-3	1-Butanamine, N-butyl-N-nitroso-
N-Nitrosodiethylamine	55-18-5	Ethanamine, N-ethyl-N-nitroso-
N-Nitrosodimethylamine	62-75-9	Methanamine, N-methyl-N-nitroso-
N-Nitrosodiphenylamine	86-30-6	Benzenamine, N-nitroso-N-phenyl-
N-Nitrosodipropylamine; Di-n-propylnitrosamine	621-64-7	1-Propanamine, N-nitroso-N-propyl-
N-Nitrosomethylethylamine	10595-95-6	Ethanamine, N-methyl-N-nitroso-
N-Nitrosomorpholine	59-89-2	Morpholine, 4-nitroso-
N-Nitrosopiperidene	100-75-4	Piperidene, 1-nitroso-
N-Nitrosopyrrolidine	930-55-2	Pyrrolidine, 1-nitroso-
5-Nitro-o-toluidine	99-55-8	Benzenamine, 2-methyl-5-nitro-
Parathion	56-38-2	Phosphorothioic acid, O,O-diethyl-O-(4-nitrophenyl) ester
Polychlorinated biphenyls; PCBs	See (g)	1,1'-Biphenyl, chloro derivatives
Polychlorinated dibenzo-p-dioxins; PCDDs	See (h)	Dibenzo(b,e)(1,4)dioxin, chloro derivatives
Polychlorinated dibenzofurans; PCDFs	See (i)	Bibenzofuran, chloro derivatives
Pentachlorobenzene	608-93-5	Benzene, pentachloro-
Pentachloroethane	76-01-7	Ethane, pentachloro-
Pentachloronitrobenzene	82-68-8	Benzene, pentachloronitro-
Pentachlorophenol	87-86-5	Phenol, pentachloro-
Phenacetin	62-44-2	Acetamide, N-(4-ethoxyphenyl)
Phenanthrene	85-01-8	Phenanthrene

Phenol	108-95-2	Phenol
p-Phenylenediamine	106-50-3	1,4-Benzenediamine
Phorate	298-02-2	Phosphorodithioic acid, O,O-diethyl S-((ethylthio)methyl) ester
2-Picoline	109-06-8	Pyridine, 2-methyl-
Pronamide	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propenyl)-
Propionitrile; Ethyl cyanide	107-12-0	Propanenitrile
Pyrene	129-00-0	Pyrene
Pyridine	110-86-1	Pyridine
Safrole	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-
Selenium	(Total)	Selenium
Silver	(Total)	Silver
Silvex; 2,4,5-TP	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-
Styrene	100-42-5	Benzene, ethenyl-
Sulfide	18496-25-8	Sulfide
2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-
2,3,7,8-TCDD; 2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746-01-8	Dibenzo(b,e)(1,4)dioxin, 2,3,7,8-tetrachloro-
1,2,4,5-Tetrachlorobenzene	95-94-3	Benzene, 1,2,4,5-tetrachloro-
1,1,1,2-Tetrachloroethane	630-20-6	Ethane, 1,1,1,2-tetrachloro-
1,1,2,2,-Tetrachloroethane	79-34-5	Ethane, 1,1,2,2-tetrachloro-
Tetrachloroethylene; Perchloroethylene; Tetrachloroethene	127-18-4	Ethene, tetrachloro-
2,3,4,6-Tetrachlorophenol	58-90-2	Phenol, 2,3,4,6-tetrachloro-
Tetraethyl dithiopyrophosphate; Sulfotepp	3689-24-5	Thiodiphosphoric acid $(((HO)_2P(S))_2O)$, tetraethyl ester
Thallium	(Total)	Thallium
Tin	(Total)	Tin
Toluene	108-88-3	Benzene, methyl-
o-Toluidine	95-53-4	Benzenamine, 2-methyl-
Toxaphene	8001-35-2	Toxaphene
1,2,4-Trichlorobenzene	120-82-1	Benzene, 1,2,4-trichloro-
1,1,1-Trichloroethane; Methyl chloroform	71-55-6	Ethane, 1,1,1-trichloro-
1,1,2-Trichloroethane	79-00-5	Ethane, 1,1,2-trichloro-

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

Trichloroethylene; Trichloroethene	79-01-6	Ethene, trichloro-
Trichlorofluoromethane	75-69-4	Methane, trichlorofluoro-
2,4,5-Trichlorophenol	95-96-4	Phenol, 2,4,5-trichloro-
2,4,6-Trichlorophenol	88-06-2	Phenol, 2,4,6-trichloro-
1,2,3-Trichloropropane	96-18-4	Propane, 1,2,3-trichloro-
O,O,O-Triethyl phosphorothioate	126-68-1	Phosphorothioic acid, O,O,O-triethyl ester
sym-Trinitrobenzene	99-35-4	Benzene, 1,3,5-trinitro-
Vanadium	(Total)	Vanadium
Vinyl acetate	108-05-4	Acetic acid, ethenyl ester
Vinyl chloride	75-01-4	Ethene, chloro-
Xylene (total)	1330-20-7	Benzene, dimethyl-
Zinc	(Total)	Zinc

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Standards for the Management of Specific Hazardous Waste and Specific Types of Hazardous Waste Management Facilities

2) Code Citation: 35 Ill. Adm. Code 726

3)

Section Numbers:	Adopted Actions:
726.120	Amendment
726.170	Amendment
726.180	Amendment
726.200	Amendment
726.201	Amendment
726.202	Amendment
726.203	Amendment
726.204	Amendment
726.205	Amendment
726.206	Amendment
726.207	Amendment
726.208	Amendment
726.209	Amendment
726.211	Amendment
726.212	Amendment
726.219	Amendment
726.302	Amendment
726.303	Amendment
726.305	Amendment
726.310	Amendment
726.330	Amendment
726.345	Amendment
726.355	Amendment
726.360	Amendment
726.450	Amendment
726.460	Amendment
726.Appendix G	Amendment
726.Appendix I	Amendment

4) Statutory Authority: 415 ILCS 5/7.2, 22.4, and 27

5) Effective Date of Rules: November 19, 2018

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

7) Does this rulemaking contain incorporations by reference? No

8) The adopted rulemaking, a copy of the Board's opinion and order adopted October 4, 2018 in consolidated docket R17-14/R17-15/R18-12/R18-31, and all materials incorporated by reference are on file at the Board's principal office and are available for public inspection and copying.

9) Notice of Proposal published in the *Illinois Register*: 42 Ill. Reg. 11016; June 22, 2018

10) Has JCAR issued a Statement of Objection to this rulemaking? No. Section 22.4 of the Environmental Protection Act [415 ILCS 5/22.4] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

11) Differences between Proposal and Final Version: A table in a document entitled "Identical-in-Substance Rulemaking Addendum (Final)" that the Board added to consolidated docket R17-14/R17-15/R18-12/R18-31 summarizes the differences between the amendments adopted in the October 4, 2018 opinion and order and those proposed by the Board on May 24, 2018.

The differences are limited to minor corrections suggested by JCAR staff or resulting from the Board's review of its proposal. The changes are not intended to have substantive effect and intend to clarify the rules without deviating from the substance of the federal amendments on which this proceeding is based.

12) Have all the changes agreed upon by the Board and JCAR been made as indicated in the agreements issued by JCAR? Section 22.4 of the Environmental Protection Act [415 ILCS 5/22.4] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by JCAR.

Since the Notices of Proposed Amendments appeared in the June 22, 2018 issue of the *Illinois Register*, the Board received suggestions for revisions from JCAR. The Board evaluated each suggestion and incorporated some into the adopted rules, as detailed in the

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Identical-in-Substance Rulemaking Addendum (Final) in consolidated docket R17-14/R17-15/R18-12/R18-31, as described in item 11 above. See that Addendum for additional details on JCAR suggestions and the Board actions on each. One table in itemizes changes made in response to various suggestions. Another table indicates suggestions not incorporated into the text, with a brief explanation for each.

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

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

15) Summary and Purpose of Rulemaking: The amendments to Part 726 are a segment larger Board rulemaking. The consolidated docket R17-14/R17-15/R18-11/R18-31 rulemaking also includes amendments to 35 Ill. Adm. Code 702 through 705, 720 through 725, 726, 727, 728, 730, 733, 738, 739, and 810 through 812. Due to the extreme volume of the consolidated docket, each Part is covered by a notice in five separate issues of the Illinois Register. Included in this issue are the third group for publication: 35 Ill. Adm. Code 723, 724, and 726.

Section 22.4(a) of the Environmental Protection Act (Act) [415 ILCS 5/22.4(a)] (2016) requires the Board to adopt hazardous waste rules that are identical-in-substance to United States Environmental Protection Agency's (USEPA's) Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste rules. Section 22.4(a) requires the Board to use the identical-in-substance rulemaking procedure of Section 7.2(b) of the Act [415 ILCS 5/7.2(b)] (2014). The Illinois hazardous waste rules are in 35 Ill. Adm. Code 702, 703, 705, 720 through 728, 733, 738, and 739. The Board reserved docket R17-14 to incorporate USEPA amendments adopted during the period July 1, 2016 through December 31, 2016 into the Illinois hazardous waste rules. Similarly, the Board reserved docket R18-12 for USEPA hazardous waste rules adopted during the period July 1, 2017 through December 31, 2017 and consolidated it with dockets R17-14, R17-15, and R18-12.

To save space, a more detailed description of the subjects and issues involved in the consolidated docket R17-14/R17-15/R18-11/R18-31 rulemaking in this issue of the *Illinois Register* only in the answer to question 5 in the Notice of Adopted Amendments for 35 Ill. Adm. Code 723. A comprehensive description is contained in the Board's opinion and order of October 4, 2018, adopting amendments in consolidated docket R17-14/R17-15/R18-11/R18-31. The opinion and order is available from the address below.

Specifically, the amendments to Part 726 incorporate USEPA's actions of November 28, 2016 adopting hazardous waste export-import revisions and the Generator Improvements Rule.

The consolidated docket R17-14/R17-15/R18-11/R18-31 rulemaking further makes numerous corrections and non-substantive stylistic revisions that the Board found are needed.

Tables appear in the Identical-in-Substance Rulemaking Addendum (Final) in consolidated docket R17-14/R17-15/R18-12/R18-31, as described in item 11 above, that list corrections and amendments. Persons interested in the details of those corrections and amendments should refer to the Addendum.

Section 22.4(a) of the Environmental Protection Act [415 ILCS 5/22.4(a)] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

16) Information and questions regarding these adopted rules shall be directed to: Please reference consolidated docket R17-14/R17-15/R18-12/R18-31 and direct inquiries to the following person:

Michael J. McCambridge
Staff Attorney
Illinois Pollution Control Board
100 W. Randolph Suite 11-500
Chicago IL 60601

312/814-6924
michael.mccambridge@illinois.gov

Request copies of the Board's opinion and order of October 4, 2018 at 312/814-3620. You may also obtain a copy of the Board's opinion and order from the Internet at http://www.ipcb.state.il.us.

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

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: HAZARDOUS WASTE OPERATING REQUIREMENTS

PART 726
STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTE AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

SUBPART A: GENERAL

Section
726.102 Electronic Reporting

SUBPART C: RECYCLABLE MATERIALS USED IN A MANNER CONSTITUTING DISPOSAL

Section
726.120 Applicability
726.121 Standards Applicable to Generators and Transporters of Materials Used in a Manner that Constitutes Disposal
726.122 Standards Applicable to Storers, Who Are Not the Ultimate Users, of Materials that Are To Be Used in a manner that Constitutes Disposal
726.123 Standards Applicable to Users of Materials that Are Used in a Manner that Constitutes Disposal

SUBPART D: HAZARDOUS WASTE BURNED FOR ENERGY RECOVERY

Section
726.130 Applicability (Repealed)
726.131 Prohibitions (Repealed)
726.132 Standards applicable to generators of hazardous waste fuel (Repealed)
726.133 Standards applicable to transporters of hazardous waste fuel (Repealed)
726.134 Standards applicable to marketers of hazardous waste fuel (Repealed)
726.135 Standards applicable to burners of hazardous waste fuel (Repealed)
726.136 Conditional exemption for spent materials and by-products exhibiting a characteristic of hazardous waste (Repealed)

SUBPART E: USED OIL BURNED FOR ENERGY RECOVERY

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SUBPART M: MILITARY MUNITIONS

Section
726.300 Applicability
726.301 Definitions
726.302 Definition of Solid Waste
726.303 Standards Applicable to the Transportation of Solid Waste Military Munitions
726.304 Standards Applicable to Emergency Responses
726.305 Standards Applicable to the Storage of Solid Waste Military Munitions
726.306 Standards Applicable to the Treatment and Disposal of Waste Military Munitions

SUBPART N: CONDITIONAL EXEMPTION FOR LOW-LEVEL MIXED WASTE STORAGE, TREATMENT, TRANSPORTATION AND DISPOSAL

Section
726.310 Definitions
726.320 Storage and Treatment Conditional Exemption
726.325 Wastes Eligible for a Storage and Treatment Conditional Exemption for Low-Level Mixed Waste
726.330 Conditions to Qualify for and Maintain a Storage and Treatment Conditional Exemption
726.335 Treatment Allowed by a Storage and Treatment Conditional Exemption
726.340 Loss of a Storage and Treatment Conditional Exemption and Required Action
726.345 Reclaiming a Lost Storage and Treatment Conditional Exemption
726.350 Recordkeeping for a Storage and Treatment Conditional Exemption
726.355 Waste No Longer Eligible for a Storage and Treatment Conditional Exemption
726.360 Applicability of Closure Requirements to Storage Units
726.405 Transportation and Disposal Conditional Exemption
726.410 Wastes Eligible for a Transportation and Disposal Conditional Exemption
726.415 Conditions to Qualify for and Maintain a Transportation and Disposal Conditional Exemption
726.420 Treatment Standards for Eligible Waste
726.425 Applicability of the Manifest and Transportation Condition
726.430 Effectiveness of a Transportation and Disposal Exemption
726.435 Disposal of Exempted Waste
726.440 Containers Used for Disposal of Exempted Waste
726.445 Notification
726.450 Recordkeeping for a Transportation and Disposal Conditional Exemption
726.455 Loss of a Transportation and Disposal Conditional Exemption and Required Action

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726.460	Reclaiming a Lost Transportation and Disposal Conditional Exemption
726.APPENDIX A	Tier I and Tier II Feed Rate and Emissions Screening Limits for Metals
726.APPENDIX B	Tier I Feed Rate Screening Limits for Total Chlorine
726.APPENDIX C	Tier II Emission Rate Screening Limits for Free Chlorine and Hydrogen Chloride
726.APPENDIX D	Reference Air Concentrations
726.APPENDIX E	Risk-Specific Doses
726.APPENDIX F	Stack Plume Rise
726.APPENDIX G	Health-Based Limits for Exclusion of Waste-Derived Residues
726.APPENDIX H	Potential PICs for Determination of Exclusion of Waste-Derived Residues
726.APPENDIX I	Methods Manual for Compliance with BIF Regulations
726.APPENDIX J	Guideline on Air Quality Models (Repealed)
726.APPENDIX K	Lead-Bearing Materials that May be Processed in Exempt Lead Smelters
726.APPENDIX L	Nickel or Chromium-Bearing Materials that May Be Processed in Exempt Nickel-Chromium Recovery Furnaces
726.APPENDIX M	Mercury-Bearing Wastes that May Be Processed in Exempt Mercury Recovery Units
726.TABLE A	Exempt Quantities for Small Quantity Burner Exemption

AUTHORITY: Implementing Sections 7.2 and 22.4 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/7.2, 22.4 and 27].

SOURCE: Adopted in R85-22 at 10 Ill. Reg. 1162, effective January 2, 1986; amended in R86-1 at 10 Ill. Reg. 14156, effective August 12, 1986; amended in R87-26 at 12 Ill. Reg. 2900, effective January 15, 1988; amended in R89-1 at 13 Ill. Reg. 18606, effective November 13, 1989; amended in R90-2 at 14 Ill. Reg. 14533, effective August 22, 1990; amended in R90-11 at 15 Ill. Reg. 9727, effective June 17, 1991; amended in R91-13 at 16 Ill. Reg. 9858, effective June 9, 1992; amended in R92-10 at 17 Ill. Reg. 5865, effective March 26, 1993; amended in R93-4 at 17 Ill. Reg. 20904, effective November 22, 1993; amended in R94-7 at 18 Ill. Reg. 12500, effective July 29, 1994; amended in R95-4/R95-6 at 19 Ill. Reg. 10006, effective June 27, 1995; amended in R95-20 at 20 Ill. Reg. 11263, effective August 1, 1996; amended in R96-10/R97-3/R97-5 at 22 Ill. Reg. 754, effective December 16, 1997; amended in R97-21/R98-3/R98-5 at 22 Ill. Reg. 18042, effective September 28, 1998; amended in R99-15 at 23 Ill. Reg. 9482, effective July 26, 1999; amended in R00-13 at 24 Ill. Reg. 9853, effective June 20, 2000; amended in R02-1/R02-12/R02-17 at 26 Ill. Reg. 6667, effective April 22, 2002; amended in

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R03-7 at 27 Ill. Reg. 4200, effective February 14, 2003; amended in R03-18 at 27 Ill. Reg. 12916, effective July 17, 2003; amended in R06-5/R06-6/R06-7 at 30 Ill. Reg. 3700, effective February 23, 2006; amended in R06-16/R06-17/R06-18 at 31 Ill. Reg. 1096, effective December 20, 2006; amended in R07-5/R07-14 at 32 Ill. Reg. 12741, effective July 14, 2008; amended in R11-2/R11-16 at 35 Ill. Reg. 18117, effective October 14, 2011; amended in R13-5 at 37 Ill. Reg. 3249, effective March 4, 2013; amended in R13-15 at 37 Ill. Reg. 17888, effective October 24, 2013; amended in R16-7 at 40 Ill. Reg. 11955, effective August 9, 2016; amended in R17-14/R17-15/R18-12/R18-31 at 42 Ill. Reg. 23023, effective November 19, 2018.

SUBPART C: RECYCLABLE MATERIALS USED IN A MANNER CONSTITUTING DISPOSAL

Section 726.120 Applicability

a) The regulations of this Subpart C apply to recyclable materials that are applied to or placed on the land in either of the following ways:

1) Without mixing with any other substances; or

2) After mixing or combination with any other substances. These materials will be referred to throughout this Subpart C as "materials used in a manner that constitutes disposal~~.~~".

b) A product produced for the general public's use that is used in a manner that constitutes disposal and which contains recyclable material is not presently subject to regulation under this Subpart C if the recyclable materials have undergone a chemical reaction in the course of producing the products so as to become inseparable by physical means and if such products meet the applicable treatment standards in Subpart D of 35 Ill. Adm. Code 728 (or applicable prohibition levels in 35 Ill. Adm. Code 728.132 or 728.139, where no treatment standards have been established) for each recyclable material (i.e., hazardous waste) that it contains, and the recycler complies with 35 Ill. Adm. Code 728.107(b)(6).

c) Anti-skid and deicing uses of slags that are generated from high temperature metals recovery (HTMR) processing of hazardous wastes K061, K062, and F006 in a manner constituting disposal are not covered by the exemption in subsection (b)~~ of this Section~~, and such uses of these materials remain subject to regulation.

d) Fertilizers that contain recyclable materials are not subject to regulation provided that the following conditions are fulfilled:

1) They are zinc fertilizers excluded from the definition of solid waste according to 35 Ill. Adm. Code 721.104(a)(21); or

2) They meet the applicable treatment standards in Subpart D of 35 Ill. Adm. Code 728 for each hazardous waste that they contain.

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

SUBPART F: RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY

Section 726.170 Applicability and Requirements

a) The regulations of this Subpart F apply to recyclable materials that are reclaimed to recover economically significant amounts of gold, silver, platinum, palladium, iridium, osmium, rhodium, ruthenium, or any combination of these metals.

b) A person that generates, transports, or stores recyclable materials that are regulated under this Subpart F is subject to the following requirements:

1) Notification requirements under Section 3010 of RCRA (42 USC 6930)~~the Resource Conservation and Recovery Act~~;

2) Subpart B of 35 Ill. Adm. Code 722 (for a generator), 35 Ill. Adm. Code 723.120 and 723.121 (for a transporter), and 35 Ill. Adm. Code 725.171 and 725.172 (for a person that stores); and

3) For precious metals exported to or imported from other~~designated OECD member~~ countries for recovery, Subpart H of 35 Ill. Adm. Code 722 and 725.112~~(a)(2). For precious metals exported to or imported from non-OECD countries for recovery, Subparts E and F of 35 Ill. Adm. Code 722~~.

c) A person that stores recycled materials that are regulated under this Subpart F must keep the following records to document that it is not accumulating these materials speculatively (as defined in 35 Ill. Adm. Code 721.101(c));

1) Records showing the volume of these materials stored at the beginning of the calendar year;

2) The amount of these materials generated or received during the calendar year; and

3) The amount of materials remaining at the end of the calendar year.

d) Recyclable materials that are regulated under this Subpart F that are accumulated speculatively (as defined in 35 Ill. Adm. Code 721.101(c)) are subject to all applicable provisions of 35 Ill. Adm. Code 702, 703, and 722 through 727.

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

SUBPART G: SPENT LEAD-ACID BATTERIES BEING RECLAIMED

Section 726.180 Applicability and Requirements

a) Extent of Exemption~~exemption~~ for Spent Lead-Acid Batteries~~spent lead-acid batteries~~ from Hazardous Waste Management Requirements~~hazardous waste management requirements~~. If an owner or operator generates, collects, transports, stores, or regenerates lead-acid batteries for reclamation purposes, the owner or operator may be exempt from certain hazardous waste management requirements. Subsections (a)(1) though (a)(5)~~ of this Section~~ indicate which requirements apply to the owner or operator. Alternatively, the owner or operator may choose to manage its spent lead-acid batteries under the "Universal Waste" rule in 35 Ill. Adm. Code 733.

1) If the spent lead-acid batteries will be reclaimed through regeneration (such as by electrolyte replacement), the owner or operator is exempt from the requirements of 35 Ill. Adm. Code 702, 703, 722 through 726 (except for 35 Ill. Adm. Code 722.111), and 728 and the notification requirements of section 3010 of RCRA (42 USC 6930), but the owner or operator is subject to the requirements of 35 Ill. Adm. Code 721 and 722.111.

2) If the spent lead-acid batteries will be reclaimed other than through regeneration, and the owner or operator generates, collects, or transports the batteries, the owner or operator is exempt from the requirements of 35 Ill. Adm. Code 702, 703, and 722 through 726 (except for 35 Ill. Adm.

Code 722.111), and the notification requirements of section 3010 of RCRA (42 USC 6930), but the owner or operator is subject to the requirements of 35 Ill. Adm. Code 721 and 722.111 and applicable provisions of 35 Ill. Adm. Code 728.

3) If the spent lead-acid batteries will be reclaimed other than through regeneration, and the owner or operator stores the batteries, but the owner or operator is not the reclaimer, the owner or operator is exempt from the requirements of 35 Ill. Adm. Code 702, 703, and 722 through 726 (except for 35 Ill. Adm. Code 722.111), and the notification requirements of section 3010 of RCRA (42 USC 6930), but the owner or operator is subject to the requirements of 35 Ill. Adm. Code 721 and 722.111 and applicable provisions of 35 Ill. Adm. Code 728.

4) If the spent lead-acid batteries will be reclaimed other than through regeneration, and the owner or operator stores the batteries before the owner or operator reclaims them, the owner or operator must comply with the requirements of Section 726.180(b) and other requirements described in that subsection, and the owner or operator is subject to the requirements of 35 Ill. Adm. Code 721 and 722.111 and applicable provisions of 35 Ill. Adm. Code 728.

5) If the spent lead-acid batteries will be reclaimed other than through regeneration, and the owner or operator does not store the batteries before the owner or operator reclaims them, the owner or operator is exempt from the requirements of 35 Ill. Adm. Code 702, 703, and 722 through 726 (except for 35 Ill. Adm. Code 722.111), and the notification requirements of section 3010 of RCRA (42 USC 6930), and the owner or operator is subject to the requirements of 35 Ill. Adm. Code 721 and 722.111 and applicable provisions of 35 Ill. Adm. Code 728.

6) If the spent lead-acid batteries will be reclaimed through regeneration or any other means, and the batteries are exported ~~the batteries~~ for reclamation in a foreign country, the owner or operator is exempt from 35 Ill. Adm. Code 702, 703, 722 (except for 35 Ill. Adm. Code 722.111, 722.112 and Subpart H of 35 Ill. Adm. Code 722), 723 through 726, and 728, and the notification requirements at section 3010 of RCRA (42 USC 6930). The owner or operator is subject to the requirements of 35 Ill.

Adm. Code 721, 722.111, and 722.112 and Subpart H of 35 Ill. Adm. Code 722.

~~A)~~ ~~The owner or operator is also exempt from the requirements of 35 Ill. Adm. Code 722, except for 35 Ill. Adm. Code 722.111, and except for the applicable requirements set forth in subsections (a)(6)(B) and (a)(6)(C) of this Section.~~

~~B)~~ ~~The owner or operator is subject to the requirements of 35 Ill. Adm. Code 721 and 35 Ill. Adm. Code 722.111.~~

~~C)~~ ~~Where the owner or operator ships spent lead-acid batteries to one of the OECD countries specified in 35 Ill. Adm. Code 722.158(a)(1), the owner or operator must comply with the applicable provisions of Subpart H of 35 Ill. Adm. Code 722.~~

~~D)~~ ~~Where the provisions of Subpart H of 35 Ill. Adm. Code 722 do not apply as described in subsection (a)(6)(C) of this Section, the owner or operator must comply with the following requirements:~~

~~i)~~ ~~The owner or operator must comply with the requirements applicable to a primary exporter in 35 Ill. Adm. Code 722.153, 722.156(a)(1) through (a)(4), (a)(6), and (b) and 722.157;~~

~~ii)~~ ~~The owner or operator must export the spent lead-acid batteries only upon consent of the receiving country and only in conformance with the USEPA Acknowledgement of Consent, as required by Subpart E of 35 Ill. Adm. Code 722; and~~

~~iii)~~ ~~The owner or operator must provide a copy of the USEPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.~~

7) If the spent lead-acid batteries will be reclaimed through regeneration or any other means, the person that transports the batteries in the United States to export them for reclamation in a foreign country (the transporter) is exempt from 35 Ill. Adm. Code 702, 703, 723 through 726, and 728,

and the notification requirements at section 3010 of RCRA (42 USC 6930). The transporter must comply with the applicable requirements in Subpart H of 35 Ill. Adm. Code 722.

~~A)~~ ~~Where the transporter ships spent lead-acid batteries to one of the OECD countries specified in 35 Ill. Adm. Code 722.158(a)(1), the transporter must comply with the applicable requirements in Subpart H of 35 Ill. Adm. Code 722.~~

~~B)~~ ~~Where the provisions of Subpart H of 35 Ill. Adm. Code 722 do not apply as described in subsection (a)(7)(A) of this Section, the transporter must comply with the following requirements:~~

~~i)~~ ~~The transporter must not accept a shipment if the transporter knows that the shipment does not conform to the USEPA Acknowledgment of Consent;~~

~~ii)~~ ~~The transporter must ensure that a copy of the USEPA Acknowledgment of Consent accompanies the shipment; and~~

~~iii)~~ ~~The transporter must ensure that the shipment is delivered to the facility designated by the person initiating the shipment.~~

8) If the spent lead-acid batteries will be reclaimed other than through regeneration, and the person that imports the batteries from a foreign country and stores them but is not the reclaimer, the person is exempt from 35 Ill. Adm. Code 722 (except for 35 Ill. Adm. Code 722.111 and 722.112 and Subpart H of 35 Ill. Adm. Code 722), 702, 703, 723, 724, 725, and 726, and the notification requirements at section 3010 of RCRA (42 USC 6930). The person is subject to 35 Ill. Adm. Code 721, 722.111, 722.112, Subpart H of 35 Ill. Adm. Code 722, and applicable provisions of 35 Ill. Adm. Code 728.

9) If the spent lead-acid batteries will be reclaimed other than through regeneration, and the person that imports the batteries from a foreign country and stores them before reclaiming them, the person must comply with 35 Ill. Adm. Code 726.180(b) and as appropriate other regulatory

provisions described in 35 Ill. Adm. Code 726.180(b). The person is subject to 35 Ill. Adm. Code 721, 722.111, 722.112, Subpart H of 35 Ill. Adm. Code 722, and applicable provisions of 35 Ill. Adm. Code 728.

10) If the spent lead-acid batteries will be reclaimed other than through regeneration, and the person that imports the batteries from a foreign country does not store them before reclaiming them, the person is exempt from 35 Ill. Adm. Code 702, 703, 722 (except for 35 Ill. Adm. Code 722.111 and 722.112 and Subpart H of 35 Ill. Adm. Code 722), 723, 724, 725, and 726 and the notification requirements at section 3010 of RCRA (42 USC 6930). The person is subject to 35 Ill. Adm. Code 721, 722.111, 722.112, Subpart H of 35 Ill. Adm. Code 722, and applicable provisions of 35 Ill. Adm. Code 728.

b) Exemption for Spent Lead-Acid Batteries Stored~~spent lead-acid batteries stored~~ before Reclamation Other Than Through Regeneration~~reclamation other than through regeneration~~. The requirements of this subsection (b) apply to an owner or operator that stores spent lead-acid batteries before it reclaims them, where the owner or operator does not reclaim them through regeneration. The requirements are slightly different depending on the owner's or operator's RCRA permit status.

1) For an interim status facility, the owner or operator must comply with the following requirements:

A) The notification requirements under Section 3010 of ~~the Resource Conservation and Recovery Act (~~RCRA (42 USC 6930);

B) All applicable provisions in Subpart A of 35 Ill. Adm. Code 725;

C) All applicable provisions in Subpart B of 35 Ill. Adm. Code 725, except 35 Ill. Adm. Code 725.113 (waste analysis);

D) All applicable provisions in Subparts C and D of 35 Ill. Adm. Code 725;

E) All applicable provisions in Subpart E of 35 Ill. Adm. Code 725, except 35 Ill. Adm. Code 725.171 and 725.172 (dealing with the use of the manifest and manifest discrepancies);

F) All applicable provisions in Subparts F through L of 35 Ill. Adm. Code 725;

G) All applicable provisions in 35 Ill. Adm. Code 702 and 703; and

H) All applicable provisions in 35 Ill. Adm. Code 727.

2) For a permitted facility, the following requirements:

A) The notification requirements under section 3010 of RCRA (42 USC 6930);

B) All applicable provisions in Subpart A of 35 Ill. Adm. Code 724;

C) All applicable provisions in Subpart B of 35 Ill. Adm. Code 724, except 35 Ill. Adm. Code 724.113 (waste analysis);

D) All applicable provisions in Subparts C and D of 35 Ill. Adm. Code 724;

E) All applicable provisions in Subpart E of 35 Ill. Adm. Code 724, except 35 Ill. Adm. Code 724.171 or 724.172 (dealing with the use of the manifest and manifest discrepancies);

F) All applicable provisions in Subparts F through L of 35 Ill. Adm. Code 724;

G) All applicable provisions in 35 Ill. Adm. Code 702 and 703; and

H) All applicable provisions in 35 Ill. Adm. Code 727.

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

SUBPART H: HAZARDOUS WASTE BURNED IN BOILERS AND INDUSTRIAL FURNACES

Section 726.200 Applicability

a) The regulations of this Subpart H apply to hazardous waste burned or processed

in a boiler or industrial furnace (BIF) (as defined in 35 Ill. Adm. Code 720.110) irrespective of the purpose of burning or processing, except as provided by subsections (b), (c), (d), (g), and (h) ~~of this Section~~. In this Subpart H, the term "burn" means burning for energy recovery or destruction or processing for materials recovery or as an ingredient. The emissions standards of Sections 726.204, 726.205, 726.206, and 726.207 apply to facilities operating under interim status or under a RCRA permit, as specified in Sections 726.202 and 726.203.

b) Integration of the MACT Standards~~standards.~~

1) Except as provided by subsections(b)(2), (b)(3), and (b)(4) ~~of this Section~~, the standards of this Part do not apply to a new hazardous waste boiler or industrial furnace unit that becomes subject to RCRA permit requirements after October 12, 2005; or no longer apply when an owner or operator of an existing hazardous waste boiler or industrial furnace unit demonstrates compliance with the maximum achievable control technology (MACT) requirements of federal subpart EEE of 40 CFR 63 (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors), incorporated by reference in 35 Ill. Adm. Code 720.111(b), by conducting a comprehensive performance test and submitting to the Agency a Notification of Compliance, pursuant to 40 CFR 63.1207(j) (What are the performance testing requirements?) and 63.1210(d) (What are the notification requirements?), documenting compliance with the requirements of federal subpart EEE of 40 CFR 63. Nevertheless, even after this demonstration of compliance with the MACT standards, RCRA permit conditions that were based on the standards of this Part will continue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.

2) The following standards continue to apply:

A) If an owner or operator elects to comply with 35 Ill. Adm. Code 703.320(a)(1)(A) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, Section 726.202(e)(1), requiring operations in accordance with the operating requirements specified in the permit at all times that hazardous waste is in the unit, and Section 726.202(e)(2)(C), requiring compliance with the

emission standards and operating requirements, during startup and shutdown if hazardous waste is in the combustion chamber, except for particular hazardous wastes. These provisions apply only during startup, shutdown, and malfunction events;

B) The closure requirements of Sections 726.202(e)(11) and 726.203(l);

C) The standards for direct transfer of Section 726.211;

D) The standards for regulation of residues of Section 726.212; and

E) The applicable requirements of Subparts A through H, BB, and CC of 35 Ill. Adm. Code 724 and 725.

3) The owner or operator of a boiler or hydrochloric acid production furnace that is an area source under 40 CFR 63.2, incorporated by reference in 35 Ill. Adm. Code 720.111(b) (as 40 CFR 63), that has not elected to comply with the emission standards of 40 CFR 63.1216, 63.1217, and 63.1218, incorporated by reference in 35 Ill. Adm. Code 720.111(b) (as subpart EEE of 40 CFR 63), for particulate matter, semivolatile and low volatile metals, and total chlorine, also remains subject to the following requirements of this Part:

A) Section 726.205 (Standards to Control PM);

B) Section 726.206 (Standards to Control Metals Emissions); and

C) Section 726.207 (Standards to Control HCl and Chlorine Gas Emissions).

4) The particulate matter standard of Section 726.205 remains in effect for a boiler that elects to comply with the alternative to the particulate matter standard under 40 CFR 63.1216(e) and 63.1217(e), each incorporated by reference in 35 Ill. Adm. Code 720.111(b) (as subpart EEE of 40 CFR 63).

BOARD NOTE: Sections 9.1 and 39.5 of the Environmental Protection Act ~~[415 ILCS 5/9.1 and 39.5]~~ make the federal MACT standards directly applicable to entities in Illinois and authorize the Agency to issue permits based on the federal

standards. In adopting this subsection (b), USEPA stated as follows (at 64 Fed Reg. 52828, 52975 (November 30, 1999)):

> Under [the approach adopted by USEPA as a] final rule, MACT air emissions and related operating requirements are to be included in title V permits; RCRA permits will continue to be required for all other aspects of the combustion unit and the facility that are governed by RCRA (e.g., corrective action, general facility standards, other combustor-specific concerns such as materials handling, risk-based emissions limits and operating requirements, as appropriate, and other hazardous waste management units).

c) The following hazardous wastes and facilities are not subject to regulation pursuant to this Subpart H:

1) Used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in Subpart C of 35 Ill. Adm. Code 721. Such used oil is subject to regulation pursuant to 35 Ill. Adm. Code 739, rather than this Subpart H;

2) Gas recovered from hazardous or solid waste landfills, when such gas is burned for energy recovery;

3) Hazardous wastes that are exempt from regulation pursuant to 35 Ill. Adm. Code 721.104 and 721.106(a)(3)(C) and (a)(3)(D) and hazardous wastes that are subject to the special requirements for VSQGs~~conditionally exempt small quantity generators~~ pursuant to 35 Ill. Adm. Code 722.114~~721.105~~; and

4) Coke ovens, if the only hazardous waste burned is USEPA hazardous waste no. K087 decanter tank tar sludge from coking operations.

d) Owners and operators of smelting, melting, and refining furnaces (including pyrometallurgical devices, such as cupolas, sintering machines, roasters, and foundry furnaces, but not including cement kilns, aggregate kilns, or halogen acid furnaces burning hazardous waste) that process hazardous waste solely for metal recovery are conditionally exempt from regulation pursuant to this Subpart H, except for Sections 726.201 and 726.212.

1) To be exempt from Sections 726.202 through 726.211, an owner or operator of a metal recovery furnace or mercury recovery furnace must comply with the following requirements, except that an owner or operator of a lead or a nickel-chromium recovery furnace or a metal recovery furnace that burns baghouse bags used to capture metallic dust emitted by steel manufacturing must comply with the requirements of subsection (d)(3) ~~of this Section~~, and an owner or operator of a lead recovery furnace that is subject to regulation under the Secondary Lead Smelting NESHAP of federal subpart X of 40 CFR 63 (National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting) must comply with the requirements of subsection (h) ~~of this Section~~:

A) Provide a one-time written notice to the Agency indicating the following:

i) The owner or operator claims exemption pursuant to this subsection (d);

ii) The hazardous waste is burned solely for metal recovery consistent with the provisions of subsection (d)(2) ~~of this Section~~;

iii) The hazardous waste contains recoverable levels of metals; and

iv) The owner or operator will comply with the sampling and analysis and recordkeeping requirements of this subsection (d);

B) Sample and analyze the hazardous waste and other feedstocks as necessary to comply with the requirements of this subsection (d) by using appropriate methods; and

C) Maintain at the facility for at least three years records to document compliance with the provisions of this subsection (d), including limits on levels of toxic organic constituents and Btu value of the waste and levels of recoverable metals in the hazardous waste compared to normal non-hazardous waste feedstocks.

2) A hazardous waste meeting either of the following criteria is not processed solely for metal recovery:

A) The hazardous waste has a total concentration of organic compounds listed in Appendix H to 35 Ill. Adm. Code 721 exceeding 500 ppm by weight, as fired, and so is considered to be burned for destruction. The concentration of organic compounds in a waste as-generated may be reduced to the 500 ppm limit by bona fide treatment that removes or destroys organic constituents. Blending for dilution to meet the 500 ppm limit is prohibited, and documentation that the waste has not been impermissibly diluted must be retained in the records required by subsection (d)(1)(C) ~~of this Section~~; or

B) The hazardous waste has a heating value of 5,000 Btu/lb or more, as-fired, and is so considered to be burned as fuel. The heating value of a waste as-generated may be reduced to below the 5,000 Btu/lb limit by bona fide treatment that removes or destroys organic constituents. Blending for dilution to meet the 5,000 Btu/lb limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the records required by subsection (d)(1)(C) ~~of this Section~~.

3) To be exempt from Sections 726.202 through 726.211, an owner or operator of a lead, nickel-chromium, or mercury recovery furnace, except for an owner or operator of a lead recovery furnace that is subject to regulation pursuant to the Secondary Lead Smelting NESHAP of subpart X of 40 CFR 63, or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing must provide a one-time written notice to the Agency identifying each hazardous waste burned and specifying whether the owner or operator claims an exemption for each waste pursuant to this subsection (d)(3) or subsection (d)(1) ~~of this Section~~. The owner or operator must comply with the requirements of subsection (d)(1) ~~of this Section~~ for those wastes claimed to be exempt pursuant to that subsection and must comply with the following requirements for those wastes claimed to be exempt pursuant to this subsection (d)(3):

A) The hazardous wastes listed in Appendices K, L, and M ~~of this Part~~

and baghouse bags used to capture metallic dusts emitted by steel manufacturing are exempt from the requirements of subsection (d)(1) ~~of this Section~~, provided the following are true:

i) A waste listed in Appendix K ~~of this Part~~ must contain recoverable levels of lead, a waste listed in Appendix L ~~of this Part~~ must contain recoverable levels of nickel or chromium, a waste listed in Appendix M ~~of this Part~~ must contain recoverable levels of mercury and contain less than 500 ppm of Appendix H to 35 Ill. Adm. Code 721 organic constituents, and baghouse bags used to capture metallic dusts emitted by steel manufacturing must contain recoverable levels of metal;

ii) The waste does not exhibit the toxicity characteristic of 35 Ill. Adm. Code 721.124 for an organic constituent;

iii) The waste is not a hazardous waste listed in Subpart D of 35 Ill. Adm. Code 721 because it is listed for an organic constituent, as identified in Appendix G of 35 Ill. Adm. Code 721; and

iv) The owner or operator certifies in the one-time notice that hazardous waste is burned pursuant to the provisions of subsection (d)(3) ~~of this Section~~ and that sampling and analysis will be conducted or other information will be obtained as necessary to ensure continued compliance with these requirements. Sampling and analysis must be conducted according to subsection (d)(1)(B) ~~of this Section~~, and records to document compliance with subsection (d)(3) ~~of this Section~~ must be kept for at least three years.

B) The Agency may decide, on a case-by-case basis, that the toxic organic constituents in a material listed in Appendix K, Appendix L, or Appendix M ~~of this Part~~ that contains a total concentration of more than 500 ppm toxic organic compounds listed in Appendix H of~~to~~ 35 Ill. Adm. Code 721 may pose a hazard to human health and the environment when burned in a metal recovery furnace exempt from the requirements of this Subpart H. Under these

circumstances, after adequate notice and opportunity for comment, the metal recovery furnace will become subject to the requirements of this Subpart H when burning that material. In making the hazard determination, the Agency must consider the following factors:

i) The concentration and toxicity of organic constituents in the material;

ii) The level of destruction of toxic organic constituents provided by the furnace; and

iii) Whether the acceptable ambient levels established in Appendix D or E ~~of this Part~~ will be exceeded for any toxic organic compound that may be emitted based on dispersion modeling to predict the maximum annual average off-site ground level concentration.

e) The standards for direct transfer operations pursuant to Section 726.211 apply only to facilities subject to the permit standards of Section 726.202 or the interim status standards of Section 726.203.

f) The management standards for residues pursuant to Section 726.212 apply to any BIF burning hazardous waste.

g) Owners and operators of smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, sintering machines, roasters, and foundry furnaces) that process hazardous waste for recovery of economically significant amounts of the precious metals gold, silver, platinum, palladium, iridium, osmium, rhodium, ruthenium, or any combination of these metals are conditionally exempt from regulation pursuant to this Subpart H, except for Section 726.212. To be exempt from Sections 726.202 through 726.211, an owner or operator must do the following:

1) Provide a one-time written notice to the Agency indicating the following:

A) The owner or operator claims exemption pursuant to this Section,

B) The hazardous waste is burned for legitimate recovery of precious

metal, and

C) The owner or operator will comply with the sampling and analysis and recordkeeping requirements of this Section;

2) Sample and analyze the hazardous waste, as necessary, to document that the waste is burned for recovery of economically significant amounts of the metals and that the treatment recovers economically significant amounts of precious metal; and

3) Maintain, at the facility for at least three years, records to document that all hazardous wastes burned are burned for recovery of economically significant amounts of precious metal.

h) An owner or operator of a lead recovery furnace that processes hazardous waste for recovery of lead and which is subject to regulation pursuant to the Secondary Lead Smelting NESHAP of subpart X of 40 CFR 63, is conditionally exempt from regulation pursuant to this Subpart H, except for Section 726.201. To become exempt, an owner or operator must provide a one-time notice to the Agency identifying each hazardous waste burned and specifying that the owner or operator claims an exemption pursuant to this subsection (h). The notice also must state that the waste burned has a total concentration of non-metal compounds listed in Appendix H of~~to~~ 35 Ill. Adm. Code 721 of less than 500 ppm by weight, as fired and as provided in subsection (d)(2)(A)~~ of this Section~~, or is listed in Appendix K~~ to this Part~~.

i) Abbreviations and Definitions~~definitions~~. The following definitions and abbreviations are used in this Subpart H:

"APCS" means air pollution control system.

"BIF" means boiler or industrial furnace.

"Carcinogenic metals" means arsenic, beryllium, cadmium, and chromium.

"CO" means carbon monoxide.

"Continuous monitor" is a monitor that continuously samples the regulated

parameter without interruption, that evaluates the detector response at least once each 15 seconds, and that computes and records the average value at least every 60 seconds.
BOARD NOTE: Derived from 40 CFR 266.100(e)(6)(i)(B)(*1*)(*i*) and (e)(6)(ii)(B)(*1*).

"DRE" means destruction or removal efficiency.

"cu m" or "m^3" means cubic meters.

"E" means "ten to the power~~.~~". For example, "XE-Y" means "X times ten to the -Y power~~.~~".

"Feed rates" are measured as specified in Section 726.202(e)(6).

"Good engineering practice stack height" is as defined by federal 40 CFR 51.100(ii) (Definitions), incorporated by reference in 35 Ill. Adm. Code 720.111(b).

"HC" means hydrocarbon.

"HCl" means hydrogen chloride gas.

"Hourly rolling average" means the arithmetic mean of the 60 most recent one-minute average values recorded by the continuous monitoring system.
BOARD NOTE: Derived from 40 CFR 266.100(e)(6)(i)(B)(*1*)(*ii*).

"K" means Kelvin.

"kVA" means kilovolt amperes.

"MEI" means maximum exposed individual.

"MEI location" means the point with the maximum annual average off-site (unless on-site is required) ground level concentration.

"Noncarcinogenic metals" means antimony, barium, lead, mercury, thallium, and silver.

"One hour block average" means the arithmetic mean of the one minute averages recorded during the 60-minute period beginning at one minute after the beginning of the preceding clock hour.
BOARD NOTE: Derived from 40 CFR 266.100(e)(6)(ii)(B)(*2*).

"PIC" means product of incomplete combustion.

"PM" means particulate matter.

"POHC" means principal organic hazardous constituent.

"ppmv" means parts per million by volume.

"QA/QC" means quality assurance and quality control.

"Rolling average for the selected averaging period" means the arithmetic mean of one hour block averages for the averaging period.
BOARD NOTE: Derived from 40 CFR 266.100(e)(6)(ii)(B)(*2*).

"RAC" means reference air concentration, the acceptable ambient level for the noncarcinogenic metals for purposes of this Subpart. RACs are specified in Appendix D ~~of this Part~~.

"RSD" means risk-specific dose, the acceptable ambient level for the carcinogenic metals for purposes of this Subpart. RSDs are specified in Appendix E ~~of this Part~~.

"SSU" means "Saybolt Seconds Universal," a unit of viscosity measured by ASTM D 88-87 (Standard Test Method for Saybolt Viscosity) or D 2161-87 (Standard Practice for Conversion of Kinematic Viscosity to Saybolt Universal or to Saybolt Furol Viscosity), each incorporated by reference in 35 Ill. Adm. Code 720.111(a).

"TCLP test" means Method 1311 (Toxicity Characteristic Leaching Procedure) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," USEPA publication number EPA-530/SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111(a), as used for the purposes of 35 Ill. Adm. Code 721.124.

"TESH" means terrain-adjusted effective stack height (in meters).

"Tier I~~.~~". See Section 726.206(b).

"Tier II~~.~~". See Section 726.206(c).

"Tier III~~.~~". See Section 726.206(d).

"Toxicity equivalence" is estimated, pursuant to Section 726.204(e), using section 4.0 (Procedures for Estimating the Toxicity Equivalence of Chlorinated Dibenzo-p-Dioxin and Dibenzofuran Congeners) in appendix IX to 40 CFR 266 (Methods Manual for Compliance with the BIF Regulations), incorporated by reference in 35 Ill. Adm. Code 720.111(b) (see Appendix I ~~of this Part~~).

"µg" means microgram.

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

Section 726.201 Management Prior to Burning

a) Generators. A generator of hazardous waste that is burned in a BIF is subject to 35 Ill. Adm. Code 722.

b) Transporters. A transporter of hazardous waste that is burned in a BIF is subject to 35 Ill. Adm. Code 723.

c) Storage and Treatment Facilities~~treatment facilities.~~

1) An owner or operator of a facility that stores or treats hazardous waste that is burned in a BIF is subject to the applicable provisions of 35 Ill. Adm. Code 702, 703, 724, 725, and 727, except as provided by subsection (c)(2) ~~of this Section~~. These standards apply to storage and treatment by the burner, as well as to any storage or treatment facility operated by an intermediary (a processor, blender, distributor, etc.) between the generator and the burner.

2) An owner or operator of a facility that burns, in an on-site BIF exempt from regulation under the small quantity burner provisions of Section

726.208, hazardous waste that it generates is exempt from regulation under 35 Ill. Adm. Code 702, 703, 724, 725, and 727 that are applicable to storage units for those storage units that store mixtures of hazardous waste and the primary fuel to the BIF in tanks that feed the fuel mixture directly to the burner. Storage of hazardous waste prior to mixing with the primary fuel is subject to regulation, as prescribed in subsection (c)(1) ~~of this Section~~.

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

Section 726.202 Permit Standards for Burners

a) Applicability~~.~~

1) General. An owner or operator of a BIF that burns hazardous waste and which does not operate under interim status must comply with the requirements of this Section and 35 Ill. Adm. Code 703.208 and 703.232, unless exempt pursuant to the small quantity burner exemption of Section 726.208.

2) Applicability of 35 Ill. Adm. Code 724 Standards~~standards~~. An owner or operator of a BIF that burns hazardous waste is subject to the following provisions of 35 Ill. Adm. Code 724, except as provided otherwise by this Subpart H:

A) In Subpart A (General), 35 Ill. Adm. Code 724.104;

B) In Subpart B (General facility standards), 35 Ill. Adm. Code 724.111 through 724.118;

C) In Subpart C (Preparedness and prevention), 35 Ill. Adm. Code 724.131 through 724.137;

D) In Subpart D (Contingency plan and emergency procedures), 35 Ill. Adm. Code 724.151 through 724.156;

E) In Subpart E (Manifest system, recordkeeping and reporting), the applicable provisions of 35 Ill. Adm. Code 724.171 through 724.177;

F) In Subpart F (Releases from Solid Waste Management Units), 35 Ill. Adm. Code 724.190 and 724.201;

G) In Subpart G (Closure and post-closure), 35 Ill. Adm. Code 724.211 through 724.215;

H) In Subpart H (Financial requirements), 35 Ill. Adm. Code 724.241, 724.242, 724.243, and 724.247 through 724.251, except that the State of Illinois and the federal government are exempt from the requirements of Subpart H of 35 Ill. Adm. Code 724; and

I) Subpart BB (Air emission standards for equipment leaks), except 35 Ill. Adm. Code 724.950(a).

b) Hazardous Waste Analysis.

1) The owner or operator must provide an analysis of the hazardous waste that quantifies the concentration of any constituent identified in Appendix H of 35 Ill. Adm. Code 721 that is reasonably expected to be in the waste. Such constituents must be identified and quantified if present, at levels detectable by using appropriate analytical methods. The constituents listed in Appendix H of 35 Ill. Adm. Code 721 that are excluded from this analysis must be identified and the basis for their exclusion explained. This analysis must provide all information required by this Subpart H and 35 Ill. Adm. Code 703.208 and 703.232 and must enable the Agency to prescribe such permit conditions as are necessary to adequately protect human health and the environment. Such analysis must be included as a portion of the Part B permit application, or, for facilities operating under the interim status standards of this Subpart H, as a portion of the trial burn plan that may be submitted before the Part B application pursuant to provisions of 35 Ill. Adm. Code 703.232(g), as well as any other analysis required by the Agency. The owner or operator of a BIF not operating under the interim status standards must provide the information required by 35 Ill. Adm. Code 703.208 and 703.232 in the Part B application to the greatest extent possible.

2) Throughout normal operation, the owner or operator must conduct sampling and analysis as necessary to ensure that the hazardous waste,

other fuels, and industrial furnace feedstocks fired into the BIF are within the physical and chemical composition limits specified in the permit.

c) Emissions Standards. An owner or operator must comply with emissions standards provided by Sections 726.204 through 726.207.

d) Permits.

1) The owner or operator must burn only hazardous wastes specified in the facility permit and only under the operating conditions specified pursuant to subsection (e), except in approved trial burns under the conditions specified in 35 Ill. Adm. Code 703.232.

2) Hazardous wastes not specified in the permit must not be burned until operating conditions have been specified under a new permit or permit modification, as applicable. Operating requirements for new wastes must be based on either trial burn results or alternative data included with Part B of a permit application pursuant to 35 Ill. Adm. Code 703.208.

3) BIFs operating under the interim status standards of Section 726.203 are permitted pursuant to procedures provided by 35 Ill. Adm. Code 703.232(g).

4) A permit for a new BIF (those BIFs not operating under the interim status standards) must establish appropriate conditions for each of the applicable requirements of this Section, including but not limited to allowable hazardous waste firing rates and operating conditions necessary to meet the requirements of subsection (e), in order to comply with the following standards:

A) For the period beginning with initial introduction of hazardous waste and ending with initiation of the trial burn, and only for the minimum time required to bring the device to a point of operational readiness to conduct a trial burn, not to exceed a duration of 720 hours operating time when burning hazardous waste, the operating requirements must be those most likely to ensure compliance with the emission standards of Sections 726.204 through 726.207, based on the Agency's engineering judgment. If the applicant is seeking a waiver from a trial burn to

demonstrate conformance with a particular emission standard, the operating requirements during this initial period of operation must include those specified by the applicable provisions of Section 726.204, Section 726.205, Section 726.206, or Section 726.207. The Agency must extend the duration of this period for up to 720 additional hours when good cause for the extension is demonstrated by the applicant.

B) For the duration of the trial burn, the operating requirements must be sufficient to demonstrate compliance with the emissions standards of Sections 726.204 through 726.207 and must be in accordance with the approved trial burn plan;

C) For the period immediately following completion of the trial burn, and only for the minimum period sufficient to allow sample analysis, data computation, submission of the trial burn results by the applicant, review of the trial burn results, and modification of the facility permit by the Agency to reflect the trial burn results, the operating requirements must be those most likely to ensure compliance with the emission standards Sections 726.204 through 726.207 based on the Agency's engineering judgment.

D) For the remaining duration of the permit, the operating requirements must be those demonstrated in a trial burn or by alternative data specified in 35 Ill. Adm. Code 703.208, as sufficient to ensure compliance with the emissions standards of Sections 726.204 through 726.207.

e) Operating Requirements~~.~~

1) General. A BIF burning hazardous waste must be operated in accordance with the operating requirements specified in the permit at all times when there is hazardous waste in the unit.

2) Requirements to Ensure Compliance~~ensure compliance~~ with the Organic Emissions Standards~~organic emissions standards.~~

A) DRE (destruction or removal efficiency) Standard~~standard~~. Operating conditions must be specified in either of the following

ways: on a case-by-case basis for each hazardous waste burned, which conditions must be demonstrated (in a trial burn or by alternative data, as specified in 35 Ill. Adm. Code 703.208) to be sufficient to comply with the DRE performance standard of Section 726.204(a), or as special operating requirements provided by Section 726.204(a)(4) for the waiver of the DRE trial burn. When the DRE trial burn is not waived pursuant to Section 726.204(a)(4), each set of operating requirements must specify the composition of the hazardous waste (including acceptable variations in the physical and chemical properties of the hazardous waste that will not affect compliance with the DRE performance standard) to which the operating requirements apply. For each such hazardous waste, the permit must specify acceptable operating limits including, but not limited to, the following conditions, as appropriate:

i) Feed rate of hazardous waste and other fuels measured and specified as prescribed in subsection (e)(6);

ii) Minimum and maximum device production rate when producing normal product expressed in appropriate units, measured and specified as prescribed in subsection (e)(6);

iii) Appropriate controls of the hazardous waste firing system;

iv) Allowable variation in BIF system design or operating procedures;

v) Minimum combustion gas temperature measured at a location indicative of combustion chamber temperature, measured, and specified as prescribed in subsection (e)(6);

vi) An appropriate indicator of combustion gas velocity, measured and specified as prescribed in subsection (e)(6), unless documentation is provided pursuant to 35 Ill. Adm. Code 703.232 demonstrating adequate combustion gas residence time; and

vii) Such other operating requirements as are necessary to

ensure that the DRE performance standard of Section 726.204(a) is met.

B) CO and Hydrocarbon (HC) Standards. The permit must incorporate a CO limit and, as appropriate, a HC limit as provided by Section 726.204(b), (c), (d), (e), and (f). The permit limits must be specified as follows:

i) When complying with the CO standard of Section 726.204(b)(1), the permit limit is 100 ppmv;

ii) When complying with the alternative CO standard pursuant to Section 726.204(c), the permit limit for CO is based on the trial burn and is established as the average over all valid runs of the highest hourly rolling average CO level of each run; and, the permit limit for HC is 20 ppmv (as defined in Section 726.204(c)(1)), except as provided in Section 726.204(f); or

iii) When complying with the alternative HC limit for industrial furnaces pursuant to Section 726.204(f), the permit limit for HC and CO is the baseline level when hazardous waste is not burned as specified by that subsection.

C) Start-Up and Shut-Down. During start-up and shut-down of the BIF, hazardous waste (except waste fed solely as an ingredient under the Tier I (or adjusted Tier I) feed rate screening limits for metals and chloride/chlorine, and except low risk waste exempt from the trial burn requirements pursuant to Sections 726.204(a)(5), 726.205, 726.206, and 726.207) must not be fed into the device, unless the device is operating within the conditions of operation specified in the permit.

3) Requirements to Ensure Conformance with the Particulate Matter (PM) Standard.

A) Except as provided in subsections (e)(3)(B) and (e)(3)(C), the permit must specify the following operating requirements to ensure

conformance with the PM standard specified in Section 726.205:

i) Total ash feed rate to the device from hazardous waste, other fuels, and industrial furnace feedstocks, measured and specified as prescribed in subsection (e)(6);

ii) Maximum device production rate when producing normal product expressed in appropriate units, and measured and specified as prescribed in subsection (e)(6);

iii) Appropriate controls on operation and maintenance of the hazardous waste firing system and any air pollution control system (APCS);

iv) Allowable variation in BIF system design including any APCS or operating procedures; and

v) Such other operating requirements as are necessary to ensure that the PM standard in Section 726.205(a) is met.

B) Permit conditions to ensure conformance with the PM standard must not be provided for facilities exempt from the PM standard pursuant to Section 726.205(b);

C) For cement kilns and light-weight aggregate kilns, permit conditions to ensure compliance with the PM standard must not limit the ash content of hazardous waste or other feed materials.

4) Requirements to Ensure Conformance with the Metals Emissions Standard~~.~~

A) For conformance with the Tier I (or adjusted Tier I) metals feed rate screening limits of Section 726.206(b) or (e), the permit must specify the following operating requirements:

i) Total feed rate of each metal in hazardous waste, other fuels and industrial furnace feedstocks measured and specified pursuant to provisions of subsection (e)(6);

ii) Total feed rate of hazardous waste measured and specified as prescribed in subsection (e)(6); and

iii) A sampling and metals analysis program for the hazardous waste, other fuels and industrial furnace feedstocks;

B) For conformance with the Tier II metals emission rate screening limits pursuant to Section 726.206(c) and the Tier III metals controls pursuant to Section 726.206(d), the permit must specify the following operating requirements:

i) Maximum emission rate for each metal specified as the average emission rate during the trial burn;

ii) Feed rate of total hazardous waste and pumpable hazardous waste, each measured and specified as prescribed in subsection (e)(6)(A);

iii) Feed rate of each metal in the following feedstreams, measured and specified as prescribed in subsections (e)(6): total feed streams; total hazardous waste feed; and total pumpable hazardous waste feed;

BOARD NOTE: The Board has combined the text of 40 CFR 266.102(e)(4)(ii)(C)(*1*) and (e)(4)(ii)(C)(*2*) into this subsection (e)(4)(B)(iii) to comport with Illinois Administrative Code codification requirements.

iv) Total feed rate of chlorine and chloride in total feed streams measured and specified as prescribed in subsection (e)(6);

v) Maximum combustion gas temperature measured at a location indicative of combustion chamber temperature, and measured and specified as prescribed in subsection (e)(6);

vi) Maximum flue gas temperature at the inlet to the PM APCS measured and specified as prescribed in subsection (e)(6);

vii) Maximum device production rate when producing normal product expressed in appropriate units and measured and specified as prescribed in subsection (e)(6);

viii) Appropriate controls on operation and maintenance of the hazardous waste firing system and any APCS;

ix) Allowable variation in BIF system design including any APCS or operating procedures; and

x) Such other operating requirements as are necessary to ensure that the metals standards pursuant to Section 726.206(c) or (d) are met.

C) For conformance with an alternative implementation approach approved by the Agency pursuant to Section 726.206(f), the permit must specify the following operating requirements:

i) Maximum emission rate for each metal specified as the average emission rate during the trial burn;

ii) Feed rate of total hazardous waste and pumpable hazardous waste, each measured and specified as prescribed in subsection (e)(6)(A);

iii) Feed rate of each metal in the following feedstreams, measured and specified as prescribed in subsection (e)(6): total hazardous waste feed; and total pumpable hazardous waste feed;

BOARD NOTE: The Board has combined the text of 40 CFR 266.102(e)(4)(iii)(C)(*1*) and (e)(4)(iii)(C)(*2*) into this subsection (e)(4)(C)(iii) to comport with Illinois Administrative Code codification requirements.

iv) Total feed rate of chlorine and chloride in total feed streams measured and specified prescribed in subsection (e)(6);

v) Maximum combustion gas temperature measured at a

location indicative of combustion chamber temperature, and measured and specified as prescribed in subsection (e)(6);

vi) Maximum flue gas temperature at the inlet to the PM APCS measured and specified as prescribed in subsection (e)(6);

vii) Maximum device production rate when producing normal product expressed in appropriate units and measured and specified as prescribed in subsection (e)(6);

viii) Appropriate controls on operation and maintenance of the hazardous waste firing system and any APCS;

ix) Allowable variation in BIF system design including any APCS or operating procedures; and

x) Such other operating requirements as are necessary to ensure that the metals standards pursuant to Section 726.206(c) or (d) are met.

5) Requirements to Ensure Conformance with the HCl and Chlorine Gas Standards.

A) For conformance with the Tier I total chlorine and chloride feed rate screening limits of Section 726.207(b)(1), the permit must specify the following operating requirements:

i) Feed rate of total chlorine and chloride in hazardous waste, other fuels and industrial furnace feedstocks measured and specified as prescribed in subsection (e)(6);

ii) Feed rate of total hazardous waste measured and specified as prescribed in subsection (e)(6); and

iii) A sampling and analysis program for total chlorine and chloride for the hazardous waste, other fuels and industrial furnace feedstocks;

B) For conformance with the Tier II HCl and chlorine gas emission rate screening limits pursuant to Section 726.207(b)(2) and the Tier III HCl and chlorine gas controls pursuant to Section 726.207(c), the permit must specify the following operating requirements:

i) Maximum emission rate for HCl and for chlorine gas specified as the average emission rate during the trial burn;

ii) Feed rate of total hazardous waste measured and specified as prescribed in subsection (e)(6);

iii) Total feed rate of chlorine and chloride in total feed streams, measured and specified as prescribed in subsection (e)(6);

iv) Maximum device production rate when producing normal product expressed in appropriate units, measured and specified as prescribed in subsection (e)(6);

v) Appropriate controls on operation and maintenance of the hazardous waste firing system and any APCS;

vi) Allowable variation in BIF system design including any APCS or operating procedures; and

vii) Such other operating requirements as are necessary to ensure that the HCl and chlorine gas standards pursuant to Section 726.207(b)(2) or (c) are met.

6) Measuring Parameters and Establishing Limits Based on Trial Burn Data.

A) General Requirements. As specified in subsections (e)(2) through (e)(5), each operating parameter must be measured, and permit limits on the parameter must be established, according to either of the following procedures:

i) Instantaneous Limits. A parameter is measured and recorded on an instantaneous basis (i.e., the value that occurs at any time) and the permit limit specified as the

time-weighted average during all valid runs of the trial burn; or

ii) Hourly Rolling Average. The limit for a parameter must be established and continuously monitored on an hourly rolling average basis, as defined in Section 726.200(i). The permit limit for the parameter must be established based on trial burn data as the average over all valid test runs of the highest hourly rolling average value for each run.

BOARD NOTE: The Board has combined the text of 40 CFR 266.102(e)(6)(i)(B)(*1*) and (e)(6)(i)(B)(*2*) into this subsection (e)(6)(A)(ii) and moved the text of 40 CFR 266.102(e)(6)(i)(B)(*1*)(*i*) and (e)(6)(i)(B)(*1*)(*ii*) to appear as definitions of "continuous monitor" and "hourly rolling average", respectively, in Section 726.200(i) to comport with Illinois Administrative Code codification requirements.

B) Rolling Average Limits for Carcinogenic Metals and Lead. Feed rate limits for the carcinogenic metals (as defined in Section 726.200(i)) and lead must be established either on an hourly rolling average basis, as prescribed by subsection (e)(6)(A), or on (up to) a 24 hour rolling average basis. If the owner or operator elects to use an average period from 2 to 24 hours, the following requirements apply:

i) The feed rate of each metal must be limited at any time to ten times the feed rate that would be allowed on an hourly rolling average basis;

ii) The continuous monitor must meet the specifications of "continuous monitor", "rolling average for the selected averaging period", and "one hour block average" as defined in Section 726.200(i); and

BOARD NOTE: The Board has moved the text of 40 CFR 266.102(e)(6)(ii)(B)(*1*) and (e)(6)(ii)(B)(*2*) to appear as

definitions in Section 726.200(i) to comport with Illinois Administrative Code codification requirements.

iii) The permit limit for the feed rate of each metal must be established based on trial burn data as the average over all valid test runs of the highest hourly rolling average feed rate for each run.

C) Feed Rate Limits for Metals, Total Chlorine and Chloride, and Ash. Feed rate limits for metals, total chlorine and chloride, and ash are established and monitored by knowing the concentration of the substance (i.e., metals, chloride/chlorine and ash) in each feedstream and the flow rate of the feedstream. To monitor the feed rate of these substances, the flow rate of each feedstream must be monitored pursuant to the continuous monitoring requirements of subsections (e)(6)(A) and (e)(6)(B).

D) Conduct of Trial Burn Testing.

i) If compliance with all applicable emissions standards of Sections 726.204 through 726.207 is not demonstrated simultaneously during a set of test runs, the operating conditions of additional test runs required to demonstrate compliance with remaining emissions standards must be as close as possible to the original operating conditions.

ii) Prior to obtaining test data for purposes of demonstrating compliance with the emissions standards of Sections 726.204 through 726.207 or establishing limits on operating parameters pursuant to this Section, the unit must operate under trial burn conditions for a sufficient period to reach steady-state operations. However, industrial furnaces that recycle collected PM back into the furnace and that comply with an alternative implementation approach for metals pursuant to Section 726.206(f) need not reach steady state conditions with respect to the flow of metals in the system prior to beginning compliance testing for metals emissions.

iii) Trial burn data on the level of an operating parameter for which a limit must be established in the permit must be obtained during emissions sampling for the pollutants (i.e., metals, PM, HCl/chlorine gas, organic compounds) for which the parameter must be established as specified by this subsection (e).

7) General Requirements.

A) Fugitive Emissions. Fugitive emissions must be controlled in one of the following ways:

i) By keeping the combustion zone totally sealed against fugitive emissions;

ii) By maintaining the combustion zone pressure lower than atmospheric pressure; or

iii) By an alternative means of control demonstrated (with Part B of the permit application) to provide fugitive emissions control equivalent to maintenance of combustion zone pressure lower than atmospheric pressure.

B) Automatic Waste Feed Cutoff. A BIF must be operated with a functioning system that automatically cuts off the hazardous waste feed when operating conditions deviate from those established pursuant to this Section. In addition, the following requirements apply:

i) The permit limit for (the indicator of) minimum combustion chamber temperature must be maintained while hazardous waste or hazardous waste residues remain in the combustion chamber;

ii) Exhaust gases must be ducted to the APCS operated in accordance with the permit requirements while hazardous waste or hazardous waste residues remain in the combustion chamber; and

iii) Operating parameters for which permit limits are established must continue to be monitored during the cutoff, and the hazardous waste feed must not be restarted until the levels of those parameters comply with the permit limits. For parameters that are monitored on an instantaneous basis, the Agency must establish a minimum period of time after a waste feed cutoff during which the parameter must not exceed the permit limit before the hazardous waste feed is restarted.

C) Changes. A BIF must cease burning hazardous waste when combustion properties or feed rates of the hazardous waste, other fuels or industrial furnace feedstocks, or the BIF design or operating conditions deviate from the limits as specified in the permit.

8) Monitoring and Inspections~~.~~

A) The owner or operator must monitor and record the following, at a minimum, while burning hazardous waste:

i) If specified by the permit, feed rates and composition of hazardous waste, other fuels, and industrial furnace feedstocks and feed rates of ash, metals, and total chlorine and chloride;

ii) If specified by the permit, CO, HCs, and oxygen on a continuous basis at a common point in the BIF downstream of the combustion zone and prior to release of stack gases to the atmosphere in accordance with operating requirements specified in subsection (e)(2)(B). CO, HC, and oxygen monitors must be installed, operated, and maintained in accordance with methods specified in Appendix I ~~of this Part~~; and

iii) Upon the request of the Agency, sampling and analysis of the hazardous waste (and other fuels and industrial furnace feedstocks as appropriate), residues, and exhaust emissions must be conducted to verify that the operating requirements

established in the permit achieve the applicable standards of Sections 726.204, 726.205, 726.206, and 726.207.

B) All monitors must record data in units corresponding to the permit limit unless otherwise specified in the permit.

C) The BIF and associated equipment (pumps, valves, pipes, fuel storage tanks, etc.) must be subjected to thorough visual inspection when it contains hazardous waste, at least daily for leaks, spills, fugitive emissions, and signs of tampering.

D) The automatic hazardous waste feed cutoff system and associated alarms must be tested at least once every seven days when hazardous waste is burned to verify operability, unless the applicant demonstrates to the Agency that weekly inspections will unduly restrict or upset operations and that less frequent inspections will be adequate. At a minimum, operational testing must be conducted at least once every 30 days.

E) These monitoring and inspection data must be recorded and the records must be placed in the operating record required by 35 Ill. Adm. Code 724.173.

9) Direct Transfer to the Burner. If hazardous waste is directly transferred from a transport vehicle to a BIF without the use of a storage unit, the owner and operator must comply with Section 726.211.

10) Recordkeeping. The owner or operator must maintain in the operating record of the facility all information and data required by this Section for five years.

11) Closure. At closure, the owner or operator must remove all hazardous waste and hazardous waste residues (including, but not limited to, ash, scrubber waters, and scrubber sludges) from the BIF.

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

Section 726.203 Interim Status Standards for Burners

a) Purpose, Scope, and Applicability.

1) General.

A) The purpose of this Section is to establish minimum national standards for owners and operators of "existing" BIFs that burn hazardous waste where such standards define the acceptable management of hazardous waste during the period of interim status. The standards of this Section apply to owners and operators of existing facilities until either a permit is issued under Section 726.202(d) or until closure responsibilities identified in this Section are fulfilled.

B) "Existing" or "in existence" means a BIF for which the owner or operator filed a certification of precompliance with USEPA pursuant to federal 40 CFR 266.103(b); provided, however, that USEPA has not determined that the certification is invalid.

C) If a BIF is located at a facility that already has a RCRA permit or interim status, then the owner or operator must comply with the applicable regulations dealing with permit modifications in 35 Ill. Adm. Code 703.280 or changes in interim status in 35 Ill. Adm. Code 703.155.

2) Exemptions. The requirements of this Section do not apply to hazardous waste and facilities exempt under Section 726.200(b) or 726.208.

3) Prohibition on Burning Dioxin-Listed Wastes. The following hazardous waste listed for dioxin and hazardous waste derived from any of these wastes must not be burned in a BIF operating under interim status: USEPA hazardous waste numbers F020, F021, F022, F023, F026, and F027.

4) Applicability of 35 Ill. Adm. Code 725 Standards. An owner or operator of a BIF that burns hazardous waste and which is operating under interim status is subject to the following provisions of 35 Ill. Adm. Code 725, except as provided otherwise by this Section:

A) In Subpart A of 35 Ill. Adm. Code 725 (General), 35 Ill. Adm.

Code 725.104;

B) In Subpart B of 35 Ill. Adm. Code 725 (General facility standards), 35 Ill. Adm. Code 725.111 through 725.117;

C) In Subpart C of 35 Ill. Adm. Code 725 (Preparedness and prevention), 35 Ill. Adm. Code 725.131 through 725.137;

D) In Subpart D of 35 Ill. Adm. Code 725 (Contingency plan and emergency procedures), 35 Ill. Adm. Code 725.151 through 725.156;

E) In Subpart E of 35 Ill. Adm. Code 725 (Manifest system, recordkeeping and reporting), 35 Ill. Adm. Code 725.171 through 725.177, except that 35 Ill. Adm. Code 725.171, 725.172 and 725.176 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources;

F) In Subpart G of 35 Ill. Adm. Code 725 (Closure and post-closure), 35 Ill. Adm. Code 725.211 through 725.215;

G) In Subpart H of 35 Ill. Adm. Code 725 (Financial requirements), 35 Ill. Adm. Code 725.241, 725.242, 725.243, and 725.247 through 725.250, except that the State of Illinois and the federal government are exempt from the requirements of Subpart H of 35 Ill. Adm. Code 725; and

H) In Subpart BB of 35 Ill. Adm. Code 725 (Air emission standards for equipment leaks), except 35 Ill. Adm. Code 725.950(a).

5) Special Requirements for Furnaces. The following controls apply during interim status to industrial furnaces (e.g., kilns, cupolas) that feed hazardous waste for a purpose other than solely as an ingredient (see subsection (a)(5)(B)) at any location other than the hot end where products are normally discharged or where fuels are normally fired:

A) Controls.

i) The hazardous waste must be fed at a location where

combustion gas temperature is at least 1800°F;

ii) The owner or operator must determine that adequate oxygen is present in combustion gases to combust organic constituents in the waste and retain documentation of such determination in the facility record;

iii) For cement kiln systems, the hazardous waste must be fed into the kiln; and

iv) The HC controls of Section 726.204(f) or subsection (c)(5) apply upon certification of compliance under subsection (c), irrespective of the CO level achieved during the compliance test.

B) Burning Hazardous Waste Solely as an Ingredient. A hazardous waste is burned for a purpose other than "solely as an ingredient" if it meets either of the following criteria:

i) The hazardous waste has a total concentration of nonmetal compounds listed in Appendix H of 35 Ill. Adm. Code 721, exceeding 500 ppm by weight, as fired and so is considered to be burned for destruction. The concentration of nonmetal compounds in a waste as-generated may be reduced to the 500 ppm limit by bona fide treatment that removes or destroys nonmetal constituents. Blending for dilution to meet the 500 ppm limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the facility record; or

ii) The hazardous waste has a heating value of 5,000 Btu/lb or more, as fired, and so is considered to be burned as fuel. The heating value of a waste as-generated may be reduced to below the 5,000 Btu/lb limit by bona fide treatment that removes or destroys organic constituents. The heating value of a waste as-generated may be reduced to below the 5,000 Btu/lb limit by bona fide treatment that removes or destroys organic constituents. Blending to augment the heating value to meet the 5,000 Btu/lb limit is prohibited

and documentation that the waste has not been impermissibly blended must be retained in the facility record.

6) Restrictions on Burning Hazardous Waste That Is Notthat is not a Fuel. Prior to certification of compliance under subsection (c), an owner or operator must not feed hazardous waste that has a heating value less than 5000 Btu/lb, as generated, (except that the heating value of a waste as-generated may be increased to above the 5,000 Btu/lb limit by bona fide treatment; however blending to augment the heating value to meet the 5,000 Btu/lb limit is prohibited and records must be kept to document that impermissible blending has not occurred) in a BIF, except that the following may occur:

A) Hazardous waste may be burned solely as an ingredient;

B) Hazardous waste may be burned for purposes of compliance testing (or testing prior to compliance testing) for a total period of time not to exceed 720 hours;

C) Such waste may be burned if the Agency has documentation to show that the following was true prior to August 21, 1991:

i) The BIF was operating under the interim status standards for incinerators or thermal treatment units, Subparts O or P of 35 Ill. Adm. Code 725;

ii) The BIF met the interim status eligibility requirements under 35 Ill. Adm. Code 703.153 for Subparts O or P of 35 Ill. Adm. Code 725; and

iii) Hazardous waste with a heating value less than 5,000 Btu/lb was burned prior to that date; or

D) Such waste may be burned in a halogen acid furnace if the waste was burned as an excluded ingredient under 35 Ill. Adm. Code 721.102(e) prior to February 21, 1991, and documentation is kept on file supporting this claim.

7) Direct Transfer to the Burner. If hazardous waste is directly transferred from a transport vehicle to a BIF without the use of a storage unit, the owner or operator must comply with Section 726.211.

b) Certification of Precompliance. This subsection (b) corresponds with 40 CFR 266.103(b), under which USEPA required certain owners and operators to file a certification of precompliance by August 21, 1991. No similar filing with the Agency was required, so the Board did not incorporate the federal filing requirement into the Illinois regulations. This statement maintains structural parity with the federal regulations.

c) Certification of Compliance. The owner or operator must conduct emissions testing to document compliance with the emissions standards of Sections 726.204(b) through (e), 726.205, 726.206, and 726.207 and subsection (a)(5)(A)(iv) under the procedures prescribed by this subsection (c)~~, except under extensions of time provided by subsection (c)(7)~~. Based on the compliance test, the owner or operator must submit to the Agency~~, on or before August 21, 1992,~~ a complete and accurate "certification of compliance" (under subsection (c)(4)) with those emission standards establishing limits on the operating parameters specified in subsection (c)(1).

1) Limits on Operating Conditions. The owner or operator must establish limits on the following parameters based on operations during the compliance test (under procedures prescribed in subsection (c)(4)(D)) or as otherwise specified and include these limits with the certification of compliance. The BIF must be operated in accordance with these operating limits and the applicable emissions standards of Sections 726.204(b) through (e), 726.205, 726.206, and 726.207 and subsection (a)(5)(A)(iv) at all times when there is hazardous waste in the unit.

A) Feed rate of total hazardous waste and (unless complying the Tier I or adjusted Tier I metals feed rate screening limits under Section 726.206(b) or (e)), pumpable hazardous waste;

B) Feed rate of each metal in the following feedstreams:

i) Total feedstreams, except that industrial furnaces which must comply with the alternative metals implementation approach under subsection (c)(3)(B) must specify limits on

the concentration of each metal in collected PM in lieu of feed rate limits for total feedstreams; and facilities that comply with Tier I or Adjusted Tier I metals feed rate screening limits may set their operating limits at the metal feed rate screening limits determined under Section 726.206(b) or (e);

BOARD NOTE: Federal subsections 266.103(c)(1)(ii)(A)(*1*) and (c)(1)(ii)(A)(2) are condensed into subsection (c)(1)(B)(i).

ii) Total hazardous waste feed (unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under Section 726.206(b) or (e)); and

iii) Total pumpable hazardous waste feed (unless complying with Tier I or Adjusted Tier I metals feed rate screening limits under Section 726.206(b) or (e));

C) Total feed rate of total chlorine and chloride in total feed streams, except that facilities that comply with Tier I or Adjusted Tier I feed rate screening limits may set their operating limits at the total chlorine and chloride feed rate screening limits determined under Section 726.207(b)(1) or (e);

D) Total feed rate of ash in total feed streams, except that the ash feed rate for cement kilns and light-weight aggregate kilns is not limited;

E) CO Concentration, and Where Required, HC Concentration in Stack Gas. When complying with the CO controls of Section 726.204(b), the CO limit is 100 ppmv, and when complying with the HC controls of Section 726.204(c), the HC limit is 20 ppmv. When complying with the CO controls of Section 726.204(c), the CO limit is established based on the compliance test;

F) Maximum production rate of the device in appropriate units when producing normal product unless complying with Tier I or Adjusted Tier I feed rate screening limits for chlorine under

Section 726.207(b)(1) or (e) and for all metals under Section 726.206(b) or (e), and the uncontrolled particulate emissions do not exceed the standard under Section 726.205;

G) Maximum combustion chamber temperature where the temperature measurement is as close to the combustion zone as possible and is upstream of any quench water injection, (unless complying with the Tier I adjusted Tier I metals feed rate screening limits under Section 726.206(b) or (e));

H) Maximum flue gas temperature entering a PM control device (unless complying with Tier I or adjusted Tier I metals feed rate screening limits under Section 726.206(b) or (e) and the total chlorine and chloride feed rate screening limits under Section 726.207(b) or (e));

I) For systems using wet scrubbers, including wet ionizing scrubbers (unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under Section 726.206(b) or (e) and the total chlorine and chloride feed rate screening limits under Section 726.207(b)(1) or (e)):

i) Minimum liquid to flue gas ratio;

ii) Minimum scrubber blowdown from the system or maximum suspended solids content of scrubber water; and

iii) Minimum pH level of the scrubber water;

J) For systems using venturi scrubbers, the minimum differential gas pressure across the venturi (unless complying the Tier I or adjusted Tier I metals feed rate screening limits under Section 726.206(b) or (e) and the total chlorine and chloride feed rate screening limits under Section 726.207(b)(1) or (e));

K) For systems using dry scrubbers (unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under Section 726.206(b) or (e) and the total chlorine and chloride feed rate screening limits under Section 726.207(b)(1) or (e)):

i) Minimum caustic feed rate; and

ii) Maximum flue gas flow rate;

L) For systems using wet ionizing scrubbers or electrostatic precipitators (unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under Section 726.206(b) or (e) and the total chlorine and chloride feed rate screening limits under Section 726.207(b)(1) or (e)):

i) Minimum electrical power in kVA to the precipitator plates; and

ii) Maximum flue gas flow rate;

M) For systems using fabric filters (baghouses), the minimum pressure drop (unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under Section 726.206(b) or (e) and the total chlorine and chloride feed rate screening limits under Section 726.207(b)(1) or (e)).

2) Prior Notice of Compliance Testing. At least 30 days prior to the compliance testing required by subsection (c)(3), the owner or operator must notify the Agency and submit the following information:

A) General facility information including:

i) USEPA facility ID number;

ii) Facility name, contact person, telephone number, and address;

iii) Person responsible for conducting compliance test, including company name, address, and telephone number, and a statement of qualifications;

iv) Planned date of the compliance test;

B) Specific information on each device to be tested, including the following:

i) A Description of BIF;

ii) A scaled plot plan showing the entire facility and location of the BIF;

iii) A description of the APCS;

iv) Identification of the continuous emission monitors that are installed, including the following: CO monitor; Oxygen monitor; HC monitor, specifying the minimum temperature of the system, and, if the temperature is less than 150 ºC, an explanation of why a heated system is not used (see subsection (c)(5)) and a brief description of the sample gas conditioning system;

BOARD NOTE: The Board has combined the text of 40 CFR 266.103(c)(2)(ii)(D)(*1*) through (c)(2)(ii)(D)(*3*) into this subsection (c)(2)(B)(iv) to comport with Illinois Administrative Code codification requirements.

v) Indication of whether the stack is shared with another device that will be in operation during the compliance test; and

vi) Other information useful to an understanding of the system design or operation; and

C) Information on the testing planned, including a complete copy of the test protocol and QA/QC plan, and a summary description for each test providing the following information at a minimum:

i) Purpose of the test (e.g., demonstrate compliance with emissions of PM); and

ii) Planned operating conditions, including levels for each pertinent parameter specified in subsection (c)(1).

3) Compliance Testing~~.~~

A) General. Compliance testing must be conducted under conditions for which the owner or operator has submitted a certification of precompliance under subsection (b) and under conditions established in the notification of compliance testing required by subsection (c)(2). The owner or operator may seek approval on a case-by-case basis to use compliance test data from one unit in lieu of testing a similar on-site unit. To support the request, the owner or operator must provide a comparison of the hazardous waste burned and other feedstreams, and the design, operation, and maintenance of both the tested unit and the similar unit. The Agency must provide a written approval to use compliance test data in lieu of testing a similar unit if the Agency finds that the hazardous wastes, devices and the operating conditions are sufficiently similar, and the data from the other compliance test is adequate to meet the requirements of this subsection (c).

B) Special Requirements for Industrial Furnaces that Recycle Collected PM. Owners and operators of industrial furnaces that recycle back into the furnace PM from the APCS must comply with one of the following procedures for testing to determine compliance with the metals standards of Section 726.206(c) or (d):

i) The special testing requirements prescribed in "Alternative Method for Implementing Metals Controls" in Appendix I ~~to this Part~~;

ii) Stack emissions testing for a minimum of six hours each day while hazardous waste is burned during interim status. The testing must be conducted when burning normal hazardous waste for that day at normal feed rates for that day and when the APCS is operated under normal conditions. During interim status, hazardous waste analysis for metals content must be sufficient for the owner or operator to determine if changes in metals content affect the ability of the unit to meet the metals emissions standards established under Section 726.206(c) or (d).

Under this option, operating limits (under subsection (c)(1)) must be established during compliance testing under this subsection (c)(3) only on the following parameters: feed rate of total hazardous waste; total feed rate of total chlorine and chloride in total feed streams; total feed rate of ash in total feed streams, except that the ash feed rate for cement kilns and light-weight aggregate kilns is not limited; CO concentration, and where required, HC concentration in stack gas; and maximum production rate of the device in appropriate units when producing normal product; or

BOARD NOTE: The Board has combined the text of 40 CFR 266.103(c)(3)(ii)(B)(*1*) through (c)(3)(ii)(B)(*5*) into this subsection (c)(3)(B)(ii) to comport with Illinois Administrative Code codification requirements.

iii) Conduct compliance testing to determine compliance with the metals standards to establish limits on the operating parameters of subsection (c)(1) only after the kiln system has been conditioned to enable it to reach equilibrium with respect to metals fed into the system and metals emissions. During conditioning, hazardous waste and raw materials having the same metals content as will be fed during the compliance test must be fed at the feed rates that will be fed during the compliance test.

C) Conduct of Compliance Testing~~.~~

i) If compliance with all applicable emissions standards of Sections 726.204 through 726.207 is not demonstrated simultaneously during a set of test runs, the operating conditions of additional test runs required to demonstrate compliance with remaining emissions standards must be as close as possible to the original operating conditions.

ii) Prior to obtaining test data for purposes of demonstrating compliance with the applicable emissions standards of Sections 726.204 through 726.207 or establishing limits on

operating parameters under this Section, the facility must operate under compliance test conditions for a sufficient period to reach steady-state operations. Industrial furnaces that recycle collected PM back into the furnace and that comply with subsection (c)(3)(B)(i) or (c)(3)(B)(ii), however, need not reach steady state conditions with respect to the flow of metals in the system prior to beginning compliance testing for metals.

iii) Compliance test data on the level of an operating parameter for which a limit must be established in the certification of compliance must be obtained during emissions sampling for the pollutants (i.e., metals, PM, HCl/chlorine gas, organic compounds) for which the parameter must be established as specified by subsection (c)(1).

4) Certification of Compliance. Within 90 days of completing compliance testing, the owner or operator must certify to the Agency compliance with the emissions standards of Sections 726.204(b), (c) and (e); 726.205; 726.206; 726.207; and subsection (a)(5)(A)(iv). The certification of compliance must include the following information:

A) General facility and testing information, including the following:

i) USEPA facility ID number;

ii) Facility name, contact person, telephone number, and address;

iii) Person responsible for conducting compliance testing, including company name, address, and telephone number, and a statement of qualifications;

iv) Dates of each compliance test;

v) Description of BIF tested;

vi) Person responsible for QA/QC, title and telephone number, and statement that procedures prescribed in the QA/QC

plan submitted under Section 726.203(c)(2)(C) have been followed, or a description of any changes and an explanation of why changes were necessary;

vii) Description of any changes in the unit configuration prior to or during testing that would alter any of the information submitted in the prior notice of compliance testing under subsection (c)(2) and an explanation of why the changes were necessary;

viii) Description of any changes in the planned test conditions prior to or during the testing that alter any of the information submitted in the prior notice of compliance testing under subsection (c)(2) and an explanation of why the changes were necessary; and

ix) The complete report on results of emissions testing.

B) Specific information on each test, including the following:

i) Purposes of test (e.g., demonstrate conformance with the emissions limits for PM, metals, HCl, chlorine gas, and CO);

ii) Summary of test results for each run and for each test including the following information: date of run; duration of run; time-weighted average and highest hourly rolling average CO level for each run and for the test; highest hourly rolling average HC level, if HC monitoring is required for each run and for the test; if dioxin and furan testing is required under Section 726.204(e), time-weighted average emissions for each run and for the test of chlorinated dioxin and furan emissions, and the predicted maximum annual average ground level concentration of the toxicity equivalency factor (defined in Section 726.200(i)); time-weighted average PM emissions for each run and for the test; time-weighted average HCl and chlorine gas emissions for each run and for the test; time-weighted average emissions for the metals subject to regulation under

Section 726.206 for each run and for the test; and QA/QC results.

BOARD NOTE: The Board has combined the text of 40 CFR 266.103(c)(4)(ii)(B)(*1*) through (c)(4)(ii)(B)(*9*) into this subsection (c)(4)(B)(ii) to comport with Illinois Administrative Code codification requirements.

C) Comparison of the actual emissions during each test with the emissions limits prescribed by Sections 726.204(b), (c), and (e); 726.205; 726.206; and 726.207 and established for the facility in the certification of precompliance under subsection (b).

D) Determination of operating limits based on all valid runs of the compliance test for each applicable parameter listed in subsection (c)(1) using one of the following procedures:

i) Instantaneous limits. A parameter must be measured and recorded on an instantaneous basis (i.e., the value that occurs at any time) and the operating limit specified as the time-weighted average during all runs of the compliance test.

ii) Hourly rolling average basis. The limit for a parameter must be established and continuously monitored on an hourly rolling average basis, as defined in Section 726.200(i). The operating limit for the parameter must be established based on compliance test data as the average over all test runs of the highest hourly rolling average value for each run.

BOARD NOTE: The Board has combined the text of 40 CFR 266.103(c)(4)(iv)(B)(*1*) and (c)(4)(iv)(B)(*2*) into this subsection (c)(4)(D)(ii) and moved the text of 40 CFR 266.103(c)(4)(iv)(B)(*1*)(*i*) and (c)(4)(iv)(B)(*1*)(*ii*) to appear as definitions in Section 726.200(i) to comport with Illinois Administrative Code codification requirements.

iii) Rolling average limits for carcinogenic metals (as defined

in Section 726.200(i)) and lead. Feed rate limits for the carcinogenic metals and lead must be established either on an hourly rolling average basis as prescribed by subsection (c)(4)(D)(ii) or on (up to) a 24 hour rolling average basis. If the owner or operator elects to use an averaging period from two to 24 hours the following must occur: the feed rate of each metal must be limited at any time to ten times the feed rate that would be allowed on a hourly rolling average basis; the operating limit for the feed rate of each metal must be established based on compliance test data as the average over all test runs of the highest hourly rolling average feed rate for each run; and the continuous monitor and the rolling average for the selected averaging period are as defined in Section 726.200(i).

BOARD NOTE: The Board has combined the text of 40 CFR 266.103(c)(4)(iv)(C)(*1*) through (c)(4)(iv)(C)(*3*) into subsection (c)(4)(D)(iii) and moved the text of 40 CFR 266.103(c)(4)(iv)(C)(*2*)(*i*) and (c)(4)(iv)(C)(*2*)(*ii*) to appear as definitions in Section 726.200(i) to comport with Illinois Administrative Code codification requirements.

iv) Feed rate limits for metals, total chlorine and chloride, and ash. Feed rate limits for metals, total chlorine and chloride, and ash are established and monitored by knowing the concentration of the substance (i.e., metals, chloride/chlorine, and ash) in each feedstream and the flow rate of the feedstream. To monitor the feed rate of these substances, the flow rate of each feedstream must be monitored under the continuous monitoring requirements of subsections (c)(4)(D)(i) through (c)(4)(D)(iii).

E) Certification of Compliance Statement. The following statement must accompany the certification of compliance:

"I certify under penalty of law that this information was prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gathered and evaluated the information and

supporting documentation. Copies of all emissions tests, dispersion modeling results, and other information used to determine conformance with the requirements of 35 Ill. Adm. Code 726.203(c) are available at the facility and can be obtained from the facility contact person listed above. Based on my inquiry of the person or persons who manage the facility, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

I also acknowledge that the operating limits established pursuant to 35 Ill. Adm. Code 726.203(c)(4)(D) are enforceable limits at which the facility can legally operate during interim status until a revised certification of compliance is submitted."

5) Special Requirements for HC Monitoring Systems. When an owner or operator is required to comply with the HC controls provided by Section 726.204(c) or subsection (a)(5)(A)(iv), a conditioned gas monitoring system may be used in conformance with specifications provided in Appendix I ~~to this Part~~ provided that the owner or operator submits a certification of compliance without using extensions of time provided by subsection (c)(7).

6) Special Operating Requirements for Industrial Furnaces that Recycle Collected PM. Owners and operators of industrial furnaces that recycle back into the furnace PM from the APCS must do the following:

A) When complying with the requirements of subsection (c)(3)(B)(i), comply with the operating requirements prescribed in "Alternative Method to Implement the Metals Controls" in Appendix I ~~to this Part~~; and

B) When complying with the requirements of subsection (c)(3)(B)(ii), comply with the operating requirements prescribed by that subsection.

7) An owner or operator that did not submit a complete certification of compliance for all of the applicable emissions standards of Sections 726.204, 726.205, 726.206, and 726.207 by August 21, 1992 must stop burning hazardous waste and begin closure activities under subsection (l) for the hazardous waste portion of the facility.~~Extensions of Time.~~

~~A) If the owner or operator does not submit a complete certification of compliance for all of the applicable emissions standards of Sections 726.204, 726.205, 726.206, and 726.207 by August 21, 1992, the owner or operator must do the following:~~

~~i) Stop burning hazardous waste and begin closure activities under subsection (l) for the hazardous waste portion of the facility;~~

~~ii) Limit hazardous waste burning only for purposes of compliance testing (and pretesting to prepare for compliance testing) a total period of 720 hours for the period of time beginning August 21, 1992, submit a notification to the Agency by August 21, 1992 stating that the facility is operating under restricted interim status and intends to resume burning hazardous waste, and submit a complete certification of compliance by August 23, 1993; or~~

~~iii) Obtain a case-by-case extension of time under subsection (c)(7)(B).~~

~~B) Case-by-Case Extensions of Time. See Section 726.219.~~

~~BOARD NOTE: The Board moved the text of 40 CFR 266.103(c)(7)(ii) to appear as Section 726.219 to comport with Illinois Administrative Code codification requirements.~~

8) Revised Certification of Compliance. The owner or operator may submit at any time a revised certification of compliance (recertification of compliance) under the following procedures:

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A) Prior to submittal of a revised certification of compliance, hazardous waste must not be burned for more than a total of 720 hours under operating conditions that exceed those established under a current certification of compliance, and such burning must be conducted only for purposes of determining whether the facility can operate under revised conditions and continue to meet the applicable emissions standards of Sections 726.204, 726.205, 726.206, and 726.207;

B) At least 30 days prior to first burning hazardous waste under operating conditions that exceed those established under a current certification of compliance, the owner or operator must notify the Agency and submit the following information:

i) USEPA facility ID number, and facility name, contact person, telephone number, and address;

ii) Operating conditions that the owner or operator is seeking to revise and description of the changes in facility design or operation that prompted the need to seek to revise the operating conditions;

iii) A determination that, when operating under the revised operating conditions, the applicable emissions standards of Sections 726.204, 726.205, 726.206, and 726.207 are not likely to be exceeded. To document this determination, the owner or operator must submit the applicable information required under subsection (b)(2); and

iv) Complete emissions testing protocol for any pretesting and for a new compliance test to determine compliance with the applicable emissions standards of Sections 726.204, 726.205, 726.206, and 726.207 when operating under revised operating conditions. The protocol must include a schedule of pre-testing and compliance testing. If the owner or operator revises the scheduled date for the compliance test, the owner or operator must notify the Agency in writing at least 30 days prior to the revised date of the compliance test;

C) Conduct a compliance test under the revised operating conditions and the protocol submitted to the Agency to determine compliance with the applicable emissions standards of Sections 726.204, 726.205, 726.206, and 726.207; and

D) Submit a revised certification of compliance under subsection (c)(4).

d) Periodic Recertifications. The owner or operator must conduct compliance testing and submit to the Agency a recertification of compliance under provisions of subsection (c) within five years from submitting the previous certification or recertification. If the owner or operator seeks to recertify compliance under new operating conditions, the owner or operator must comply with the requirements of subsection (c)(8).

e) Noncompliance with Certification Schedule. If the owner or operator does not comply with the interim status compliance schedule provided by subsections (b), (c), and (d), hazardous waste burning must terminate on the date that the deadline is missed, closure activities must begin under subsection (l), and hazardous waste burning must not resume except under an operating permit issued under 35 Ill. Adm. Code 703.232. For purposes of compliance with the closure provisions of subsection (l) and 35 Ill. Adm. Code 725.212(d)(2) and 725.213, the BIF has received "the known final volume of hazardous waste" on the date the deadline is missed.

f) Start-Up and Shut-Down. Hazardous waste (except waste fed solely as an ingredient under the Tier I (or adjusted Tier I) feed rate screening limits for metals and chloride/chlorine) must not be fed into the device during start-up and shut-down of the BIF, unless the device is operating within the conditions of operation specified in the certification of compliance.

g) Automatic Waste Feed Cutoff. During the compliance test required by subsection (c)(3) and upon certification of compliance under subsection (c), a BIF must be operated with a functioning system that automatically cuts off the hazardous waste feed when the applicable operating conditions specified in subsections (c)(1)(A) and (c)(1)(E) through (c)(1)(M) deviate from those established in the certification of compliance. In addition, the following must occur:

1) To minimize emissions of organic compounds, the minimum combustion chamber temperature (or the indicator of combustion chamber temperature) that occurred during the compliance test must be maintained while hazardous waste or hazardous waste residues remain in the combustion chamber, with the minimum temperature during the compliance test defined as either of the following:

   A) If compliance with the combustion chamber temperature limit is based on an hourly rolling average, the minimum temperature during the compliance test is considered to be the average over all runs of the lowest hourly rolling average for each run; or

   B) If compliance with the combustion chamber temperature limit is based on an instantaneous temperature measurement, the minimum temperature during the compliance test is considered to be the time-weighted average temperature during all runs of the test; and

2) Operating parameters limited by the certification of compliance must continue to be monitored during the cutoff, and the hazardous waste feed must not be restarted until the levels of those parameters comply with the limits established in the certification of compliance.

h) Fugitive Emissions. Fugitive emissions must be controlled as follows:

   1) By keeping the combustion zone totally sealed against fugitive emissions; or

   2) By maintaining the combustion zone pressure lower than atmospheric pressure; or

   3) By an alternative means of control that the owner or operator demonstrates provides fugitive emissions control equivalent to maintenance of combustion zone pressure lower than atmospheric pressure. Support for such demonstration must be included in the operating record.

i) Changes. A BIF must cease burning hazardous waste when combustion properties, or feed rates of the hazardous waste, other fuels or industrial furnace feedstocks, or the BIF design or operating conditions deviate from the limits specified in the certification of compliance.

j) Monitoring and Inspections~~.~~

1) The owner or operator must monitor and record the following, at a minimum, while burning hazardous waste:

A) Feed rates and composition of hazardous waste, other fuels, and industrial furnace feed stocks and feed rates of ash, metals, and total chlorine and chloride as necessary to ensure conformance with the certification of precompliance or certification of compliance;

B) CO, oxygen, and, if applicable, HC on a continuous basis at a common point in the BIF downstream of the combustion zone and prior to release of stack gases to the atmosphere in accordance with the operating limits specified in the certification of compliance. CO, HC, and oxygen monitors must be installed, operated, and maintained in accordance with methods specified in Appendix I ~~to this Part~~; and

C) Upon the request of the Agency, sampling and analysis of the hazardous waste (and other fuels and industrial furnace feed stocks as appropriate) and the stack gas emissions must be conducted to verify that the operating conditions established in the certification of precompliance or certification of compliance achieve the applicable standards of Sections 726.204, 726.205, 726.206, and 726.207.

2) The BIF and associated equipment (pumps, valves, pipes, fuel storage tanks, etc.) must be subjected to thorough visual inspection when they contain hazardous waste, at least daily for leaks, spills, fugitive emissions, and signs of tampering.

3) The automatic hazardous waste feed cutoff system and associated alarms must be tested at least once every seven days when hazardous waste is burned to verify operability, unless the owner or operator can demonstrate that weekly inspections will unduly restrict or upset operations and that less frequent inspections will be adequate. Support for such demonstration must be included in the operating record. At a minimum,

operational testing must be conducted at least once every 30 days.

4) These monitoring and inspection data must be recorded and the records must be placed in the operating log.

k) Recordkeeping. The owner or operator must keep in the operating record of the facility all information and data required by this Section for five years.

l) Closure. At closure, the owner or operator must remove all hazardous waste and hazardous waste residues (including, but not limited to, ash, scrubber waters and scrubber sludges) from the BIF and must comply with 35 Ill. Adm. Code 725.211 through 725.215.

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

Section 726.204 Standards to Control Organic Emissions

a) DRE Standard~~standard.~~

1) General. Except as provided in subsection (a)(3)~~ of this Section~~, a BIF burning hazardous waste must achieve a DRE of 99.99 percent for all organic hazardous constituents in the waste feed. To demonstrate conformance with this requirement, 99.99 percent DRE must be demonstrated during a trial burn for each principal organic hazardous constituent (POHC) designated (under subsection (a)(2)~~ of this Section~~) in its permit for each waste feed. DRE is determined for each POHC from the following equation:

$$DRE = 100\,\frac{(I-O)}{I}$$

Where:

I = Mass feed rate of one POHC in the hazardous waste fired to the BIF~~; and~~

O = Mass emission rate of the same POHC present in stack gas prior to release to the atmosphere~~.~~

2) Designation of POHCs. POHCs are those compounds for which compliance with the DRE requirements of this Section must be demonstrated in a trial burn in conformance with procedures prescribed in 35 Ill. Adm. Code 703.232. One or more POHCs must be designated by the Agency for each waste feed to be burned. POHCs must be designated based on the degree of difficulty of destruction of the organic constituents in the waste and on their concentrations or mass in the waste feed considering the results of waste analyses submitted with Part B of the permit application. POHCs are most likely to be selected from among those compounds listed in Appendix H to 35 Ill. Adm. Code 721 that are also present in the normal waste feed. However, if the applicant demonstrates to the Agency that a compound not listed in Appendix H ofto 35 Ill. Adm. Code 721 or not present in the normal waste feed is a suitable indicator of compliance with the DRE requirements of this Section, that compound must be designated as a POHC. Such POHCs need not be toxic or organic compounds.

3) Dioxin-Listed Wastelisted waste. A BIF burning hazardous waste containing (or derived from) USEPA Hazardous Wastes Nos. F020, F021, F022, F023, F026, or F027 must achieve a destruction and removal efficiency (DRE) of 99.9999 percent for each POHC designated (under subsection (a)(2) of this Section) in its permit. This performance must be demonstrated on POHCs that are more difficult to burn than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. DRE is determined for each POHC from the equation in subsection (a)(1) of this Section. In addition, the owner or operator of the BIF must notify the Agency of intent to burn USEPA hazardous waste numbers F020, F021, F022, F023, F026, or F027.

4) Automatic Waiverwaiver of DRE Trial Burntrial burn. Owners and operators of boilers operated under the special operating requirements provided by Section 726.210 are considered to be in compliance with the DRE standard of subsection (a)(1) of this Section and are exempt from the DRE trial burn.

5) Low risk waste. Owners and operators of BIFs that burn hazardous waste in compliance with the requirements of Section 726.209(a) are considered to be in compliance with the DRE standard of subsection (a)(1) of this Section and are exempt from the DRE trial burn.

b) CO Standard~~standard.~~

1) Except as provided in subsection (c) ~~of this Section~~, the stack gas concentration of CO from a BIF burning hazardous waste cannot exceed 100 ppmv on an hourly rolling average basis (i.e., over any 60 minute period), continuously corrected to seven percent oxygen, dry gas basis.

2) CO and oxygen must be continuously monitored in conformance with "Performance Specifications for Continuous Emission Monitoring of Carbon Monoxide and Oxygen for Incinerators, Boilers, and Industrial Furnaces Burning Hazardous Waste" in Appendix I ~~to this Part~~.

3) Compliance with the 100 ppmv CO limit must be demonstrated during the trial burn (for new facilities or an interim status facility applying for a permit) or the compliance test (for interim status facilities). To demonstrate compliance, the highest hourly rolling average CO level during any valid run of the trial burn or compliance test must not exceed 100 ppmv.

c) Alternative CO Standard~~standard.~~

1) The stack gas concentration of CO from a BIF burning hazardous waste may exceed the 100 ppmv limit provided that stack gas concentrations of HCs do not exceed 20 ppmv, except as provided by subsection (f) ~~of this Section~~ for certain industrial furnaces.

2) HC limits must be established under this Section on an hourly rolling average basis (i.e., over any 60 minute period), reported as propane, and continuously corrected to seven percent oxygen, dry gas basis.

3) HC must be continuously monitored in conformance with "Performance Specifications for Continuous Emission Monitoring of Hydrocarbons for Incinerators, Boilers, and Industrial Furnaces Burning Hazardous Waste" in Appendix I ~~to this Part~~. CO and oxygen must be continuously monitored in conformance with subsection (b)(2) ~~of this Section~~.

4) The alternative CO standard is established based on CO data during the trial burn (for a new facility) and the compliance test (for an interim status

facility). The alternative CO standard is the average over all valid runs of the highest hourly average CO level for each run. The CO limit is implemented on an hourly rolling average basis, and continuously corrected to seven percent oxygen, dry gas basis.

d) Special Requirements~~requirements~~ for Furnaces~~furnaces~~. Owners and operators of industrial furnaces (e.g., kilns, cupolas) that feed hazardous waste for a purpose other than solely as an ingredient (see Section 726.203(a)(5)(B)) at any location other than the end where products are normally discharged and where fuels are normally fired must comply with the HC limits provided by subsection (c) or (f) ~~of this Section~~ irrespective of whether stack gas CO concentrations meet the 100 ppmv limit of subsection (b)~~ of this Section~~.

e) Controls for Dioxins~~dioxins~~ and Furans~~furans~~. Owners and operators of BIFs that are equipped with a dry PM control device that operates within the temperature range of 450 °F through 750 °F, and industrial furnaces operating under an alternative HC limit established under subsection (f)~~ of this Section~~ must conduct a site-specific risk assessment as follows to demonstrate that emissions of chlorinated dibenzo-p-dioxins and dibenzofurans do not result in an increased lifetime cancer risk to the hypothetical maximum exposed individual (MEI) exceeding 1×10^{-5} (1 in 100,000):

1) During the trial burn (for new facilities or an interim status facility applying for a permit) or compliance test (for interim status facilities), determine emission rates of the tetra-octa congeners of chlorinated dibenzo-p-dioxins and dibenzofurans (CDDs/CDFs) using Method 0023A(Sampling Method for Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans Emissions from Stationary Sources) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," USEPA publication number EPA-530/SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111(a);

2) Estimate the 2,3,7,8-TCDD toxicity equivalence of the tetra-octa CDDs/CDFs congeners using section 4.0 (Procedures for Estimating the Toxicity Equivalence of Chlorinated Dibenzo-p-Dioxin and Dibenzofuran Congeners) in appendix IX to 40 CFR 266 (Methods Manual for Compliance with the BIF Regulations), incorporated by reference in 35 Ill. Adm. Code 720.111(b) (see Appendix I~~ to this Part~~). Multiply the emission rates of CDD/CDF congeners with a toxicity equivalence greater

than zero (see the procedure) by the calculated toxicity equivalence factor to estimate the equivalent emission rate of 2,3,7,8-TCDD;

3) Conduct dispersion modeling using methods recommended in appendix W to 40 CFR 51 (Guideline on Air Quality Models), in section 5.0 (Hazardous Waste Combustion Air Quality Screening Procedure) in appendix IX to 40 CFR 266 (Methods Manual for Compliance with the BIF Regulations), or in "Screening Procedures for Estimating Air Quality Impact of Stationary Sources, Revised," USEPA publication number EPA-454/R-92-019, each incorporated by reference in 35 Ill. Adm. Code 720.111, to predict the maximum annual average off-site ground level concentration of 2,3,7,8-TCDD equivalents determined under subsection (e)(2) ~~of this Section~~. The maximum annual average on-site concentration must be used when a person resides on-site; and

4) The ratio of the predicted maximum annual average ground level concentration of 2,3,7,8-TCDD equivalents to the risk-specific dose (RSD) for 2,3,7,8-TCDD provided in Appendix E ~~to this Part~~ (2.2×10^{-7}) must not exceed 1.0.

f) Monitoring CO and HC in the By-Pass Duct~~by-pass duct~~ of a Cement Kiln~~cement kiln~~. Cement kilns may comply with the CO and HC limits provided by subsections (b), (c), and (d) ~~of this Section~~ by monitoring in the by-pass duct provided that the following conditions are fulfilled:

1) Hazardous waste is fired only into the kiln and not at any location downstream from the kiln exit relative to the direction of gas flow; and

2) The by-pass duct diverts a minimum of 10 percent of kiln off-gas into the duct.

g) Use of Emissions Test Data~~emissions test data~~ to Demonstrate Compliance~~demonstrate compliance~~ and Establish Operating Limits~~establish operating limits~~. Compliance with the requirements of this Section must be demonstrated simultaneously by emissions testing or during separate runs under identical operating conditions. Further, data to demonstrate compliance with the CO and HC limits of this Section or to establish alternative CO or HC limits under this Section must be obtained during the time that DRE testing, and where applicable, CDD/CDF testing under subsection (e) ~~of this Section~~ and

comprehensive organic emissions testing under subsection (f) ~~of this Section~~ is conducted.

h) Enforcement. For the purposes of permit enforcement, compliance with the operating requirements specified in the permit (under Section 726.202) will be regarded as compliance with this Section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the requirements of this Section is "information" justifying modification or revocation and re-issuance of a permit under 35 Ill. Adm. Code 703.270 et seq.

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

Section 726.205 Standards to Control PM

a) A BIF burning hazardous waste must not emit PM in excess of 180 mg/dry standard m^3 (0.08 grains/dry standard cubic foot) after correction to a stack gas concentration of seven percent oxygen, using procedures prescribed in the following methods in appendix A to 40 CFR 60 (Test Methods), each incorporated by reference in 35 Ill. Adm. Code 720.111(b) (see Appendix I ~~of this Part~~): Method 1 (Sample and Velocity Traverses for Stationary Sources), Method 2 (Determination of Volatile Organic Compound Leaks), Method 2A (Direct Measurement of Gas Volume through Pipes and Small Ducts), Method 2B (Determination of Exhaust Gas Volume Flow Rate from Gasoline Vapor Incinerators), Method 2C (Determination of Gas Velocity and Volumetric Flow Rate in Small Stacks or Ducts (Standard Pitot Tube)), Method 2D (Measurement of Gas Volume Flow Rates in Small Pipes and Ducts), Method 2E (Determination of Landfill Gas Production Flow Rate), Method 2F (Determination of Stack Gas Velocity and Volumetric Flow Rate with Three-Dimensional Probes), Method 2G (Determination of Stack Gas Velocity and Volumetric Flow Rate with Two-Dimensional Probes), Method 2H (Determination of Stack Gas Velocity Taking into Account Velocity Decay Near the Stack Wall), Method 3 (Gas Analysis for the Determination of Dry Molecular Weight), Method 3A (Determination of Oxygen and Carbon Dioxide Concentrations in Emissions from Stationary Sources (Instrumental Analyzer Procedure)), Method 3B (Gas Analysis for the Determination of Emission Rate Correction Factor or Excess Air), Method 3C (Determination of Carbon Dioxide, Methane, Nitrogen, and Oxygen from Stationary Sources), Method 4 (Determination of Moisture Content in Stack Gases), Method 5 (Determination of Particulate Matter Emissions from Stationary Sources), Method 5A (Determination of Particulate Matter Emissions from the

Asphalt Processing and Asphalt Roofing Industry), Method 5B (Determination of Nonsulfuric Acid Particulate Matter Emissions from Stationary Sources), Method 5D (Determination of Particulate Matter Emissions from Positive Pressure Fabric Filters), Method 5E (Determination of Particulate Matter Emissions from the Wool Fiberglass Insulation Manufacturing Industry), Method 5F (Determination of Nonsulfate Particulate Matter Emissions from Stationary Sources), Method 5G (Determination of Particulate Matter Emissions from Wood Heaters (Dilution Tunnel Sampling Location)), Method 5H (Determination of Particulate Emissions from Wood Heaters from a Stack Location), and Method 5I (Determination of Low Level Particulate Matter Emissions from Stationary Sources).

b) An owner or operator meeting the requirements of Section 726.209(b) for the low risk waste exemption is exempt from the PM standard.

c) Oxygen Correction~~correction.~~

1) Measured pollutant levels must be corrected for the amount of oxygen in the stack gas according to the following formula:

$$P_c = \frac{P_m \times 14}{E - Y}$$

Where:

P_c = the corrected concentration of the pollutant in the stack gas
P_m = the measured concentration of the pollutant in the stack gas
E = the oxygen concentration on a dry basis in the combustion air fed to the device
Y = the measured oxygen concentration on a dry basis in the stack

2) For devices that feed normal combustion air, E will equal 21 percent. For devices that feed oxygen-enriched air for combustion (that is, air with an oxygen concentration exceeding 21 percent), the value of E will be the concentration of oxygen in the enriched air.

3) Compliance with all emission standards provided by this Subpart H must be based on correcting to seven percent oxygen using this procedure.

d) For the purposes of permit enforcement, compliance with the operating requirements specified in the permit (under Section 726.202) will be regarded as compliance with this Section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the requirements of this Section is "information" justifying modification or revocation and re-issuance of a permit under 35 Ill. Adm. Code 703.270 through 703.273.

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

Section 726.206 Standards to Control Metals Emissions

a) General. The owner or operator must comply with the metals standards provided by subsections (b), (c), (d), (e), or (f) ~~of this Section~~ for each metal listed in subsection (b) ~~of this Section~~ that is present in the hazardous waste at detectable levels using appropriate analytical methods.

BOARD NOTE: The federal regulations do not themselves define the phrase "appropriate analytical methods," but USEPA did include a definition in its preamble discussion accompanying the rule. The Board directs attention to the following segment (at 70 Fed. Reg. 34538, 34541 (June 14, 2005)) for the purposes of subsections (b)(1)(C) and (b)(1)(D) ~~of this Section~~:

> [T]wo primary considerations in selecting an appropriate method, which together serve as our general definition of an appropriate method [are the following] . . . :
>
> 1. Appropriate methods are reliable and accepted as such in the scientific community.
>
> 2. Appropriate methods generate effective data.

USEPA went on to further elaborate these two concepts and to specify other documents that might provide guidance.

b) Tier I Feed Rate Screening Limits~~feed rate screening limits~~. Feed rate screening limits for metals are specified in Appendix A ~~to this Part~~ as a function of terrain-adjusted effective stack height (TESH) and terrain and land use in the vicinity of the facility. Criteria for facilities that are not eligible to comply with the screening limits are provided in subsection (b)(7) ~~of this Section~~.

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1) Noncarcinogenic Metals~~metals~~. The feed rates of the noncarcinogenic metals in all feed streams, including hazardous waste, fuels, and industrial furnace feed stocks must not exceed the screening limits specified in Appendix A ~~to this Part~~.

A) The feed rate screening limits for antimony, barium, mercury, thallium, and silver are based on either of the following:

i) An hourly rolling average, as defined in Sections 726.200(g) and 726.202(e)(6)(A)(ii); or

ii) An instantaneous limit not to be exceeded at any time.

B) The feed rate screening limit for lead is based on one of the following:

i) An hourly rolling average, as defined in Sections 726.200(g) and 726.202(e)(6)(A)(ii);

ii) An averaging period of 2 to 24 hours, as defined in Section 726.202(e)(6)(B) with an instantaneous feed rate limit not to exceed 10 times the feed rate that would be allowed on an hourly rolling average basis; or

iii) An instantaneous limit not to be exceeded at any time.

2) Carcinogenic Metals~~metals.~~

A) The feed rates of carcinogenic metals in all feed streams, including hazardous waste, fuels, and industrial furnace feed stocks must not exceed values derived from the screening limits specified in Appendix A ~~to this Part~~. The feed rate of each of these metals is limited to a level such that the sum of the ratios of the actual feed rate to the feed rate screening limit specified in Appendix A ~~to this Part~~ must not exceed 1.0, as provided by the following equation:

$$\sum_{i=1}^{n} \frac{A_i}{F_i} \leq 1.0$$

Where:

$\Sigma A_i/F_i$ = the sum of the values of A/F for each metal "i~~,~~", from i = 1 to n
n = number of carcinogenic metals
A_i = the actual feed rate to the device for metal "i"
F_i = the feed rate screening limit provided by Appendix A ~~to this Part~~ for metal "i"

B) The feed rate screening limits for the carcinogenic metals are based on either:

i) An hourly rolling average; or

ii) An averaging period of two to 24 hours, as defined in Section 726.202(e)(6)(B), with an instantaneous feed rate limit not to exceed 10 times the feed rate that would be allowed on an hourly rolling average basis.

3) TESH (Terrain Adjusted Effective Stack Height~~terrain adjusted effective stack height~~)~~.~~

A) The TESH is determined according to the following equation:

TESH = H + P - T

Where:

H = Actual physical stack height (m)~~.~~
P = Plume rise (in m) as determined from Appendix F ~~to this Part~~ as a function of stack flow rate and stack gas exhaust temperature~~.~~
T = Terrain rise (in m) within five kilometers of the stack

B) The stack height (H) must not exceed good engineering practice stack height, as defined in Section 726.200(i).

C) If the TESH calculated pursuant to subsection (b)(3)(A) ~~of this~~

~~Section~~ is not listed in Appendices~~Appendix~~ A through ~~Appendix~~ C ~~to this Part~~, the values for the nearest lower TESH listed in the table must be used. If the TESH is four meters or less, a value based on four meters must be used.

4) Terrain Type~~type~~. The screening limits are a function of whether the facility is located in noncomplex or complex terrain. A device located where any part of the surrounding terrain within five kilometers of the stack equals or exceeds the elevation of the physical stack height (H) is considered to be in complex terrain and the screening limits for complex terrain apply. Terrain measurements are to be made from U.S. Geological Survey 7.5-minute topographic maps of the area surrounding the facility.

5) Land Use~~use~~. The screening limits are a function of whether the facility is located in an area where the land use is urban or rural. To determine whether land use in the vicinity of the facility is urban or rural, procedures provided in Appendix I or ~~Appendix~~ J ~~to this Part~~ must be used.

6) Multiple Stacks~~stacks~~. An owner or operator of a facility with more than one on-site stack from a BIF, incinerator, or other thermal treatment unit subject to controls of metals emissions under a RCRA permit or interim status controls must comply with the screening limits for all such units assuming all hazardous waste is fed into the device with the worst-case stack based on dispersion characteristics. The stack with the lowest value of K is the worst-case stack. K is determined from the following equation as applied to each stack:

$$K = H \times V \times T$$

Where:

K = a parameter accounting for relative influence of stack height and plume rise
H = physical stack height (meters)
V = stack gas flow rate (m^3/sec (cubic meters per second)
T = exhaust temperature (degrees K)

7) Criteria for Facilities Not Eligible~~facilities not eligible~~ for Screening

Limits~~screening limits~~. If any criteria below are met, the Tier I (and Tier II) screening limits do not apply. Owners and operators of such facilities must comply with either the Tier III standards provided by subsection (d) ~~of this Section~~ or with the adjusted Tier I feed rate screening limits provided by subsection (e) ~~of this Section~~.

A) The device is located in a narrow valley less than one kilometer wide;

B) The device has a stack taller than 20 meters and is located such that the terrain rises to the physical height within one kilometer of the facility;

C) The device has a stack taller than 20 meters and is located within five kilometers of a shoreline of a large body of water such as an ocean or large lake; or

D) The physical stack height of any stack is less than 2.5 times the height of any building within five building heights or five projected building widths of the stack and the distance from the stack to the closest boundary is within five building heights or five projected building widths of the associated building.

8) Implementation. The feed rate of metals in each feedstream must be monitored to ensure that the feed rate screening limits are not exceeded.

c) Tier II Emission Rate Screening Limits~~emission rate screening limits~~. Emission rate screening limits are specified in Appendix A ~~to this Part~~ as a function of TESH and terrain and land use in the vicinity of the facility. Criteria for facilities that are not eligible to comply with the screening limits are provided in subsection (b)(7) ~~of this Section~~.

1) Noncarcinogenic metals. The emission rates of noncarcinogenic metals must not exceed the screening limits specified in Appendix A ~~to this Part~~.

2) Carcinogenic metals. The emission rates of carcinogenic metals must not exceed values derived from the screening limits specified in Appendix A ~~to this Part~~. The emission rate of each of these metals is limited to a level such that the sum of the ratios of the actual emission rate to the emission

rate screening limit specified in Appendix A ~~to this Part~~ must not exceed 1.0, as provided by the following equation:

$$\sum_{i=1}^{n} \frac{A_i}{E_i} \leq 1.0$$

Where:

$\Sigma A_i/E_i$	=	the sum of the values of A/E for each metal "i~~,~~", from i = 1 to n
n	=	number of carcinogenic metals
A_i	=	the actual emission rate to the device for metal "i"
E_i	=	the emission rate screening limit provided by Appendix A ~~to this Part~~ for metal "i"

3) Implementation. The emission rate limits must be implemented by limiting feed rates of the individual metals to levels during the trial burn (for new facilities or an interim status facility applying for a permit) or the compliance test (for interim status facilities). The feed rate averaging periods are the same as provided by subsections (b)(1)(A), (b)(1)(B), and (b)(2)(B) ~~of this Section~~. The feed rate of metals in each feedstream must be monitored to ensure that the feed rate limits for the feedstreams specified under Sections 726.202 or 726.203 are not exceeded.

4) Definitions and limitations. The definitions and limitations provided by subsection (b) ~~of this Section~~ and Section 726.200(g) for the following terms also apply to the Tier II emission rate screening limits provided by this subsection (c): TESH, good engineering practice stack height, terrain type, land use, and criteria for facilities not eligible to use the screening limits.

5) Multiple Stacks~~stacks.~~

A) An owner or operator of a facility with more than one on-site stack from a BIF, incinerator, or other thermal treatment unit subject to controls on metals emissions under a RCRA permit or interim status controls must comply with the emissions screening limits for any such stacks assuming all hazardous waste is fed into the device

with the worst-case stack based on dispersion characteristics.

B) The worst-case stack is determined by procedures provided in subsection (b)(6) ~~of this Section~~.

C) For each metal, the total emissions of the metal from those stacks must not exceed the screening limit for the worst-case stack.

d) Tier III site-specific risk assessment. The requirements of this subsection (d) apply to facilities complying with either the Tier III or Adjusted Tier I except where specified otherwise.

1) General. Conformance with the Tier III metals controls must be demonstrated by emissions testing to determine the emission rate for each metal. In addition, conformance with either Tier III or Adjusted Tier I metals controls must be demonstrated by air dispersion modeling to predict the maximum annual average off-site ground level concentration for each metal and a demonstration that acceptable ambient levels are not exceeded.

2) Acceptable Ambient Levels~~ambient levels~~. Appendices~~Appendix~~ D and ~~Appendix~~ E ~~to this Part~~ list the acceptable ambient levels for purposes of this Subpart H. Reference air concentrations (RACs) are listed for the noncarcinogenic metals and 1 x 10^{-5} RSDs are listed for the carcinogenic metals. The RSD for a metal is the acceptable ambient level for that metal provided that only one of the four carcinogenic metals is emitted. If more than one carcinogenic metal is emitted, the acceptable ambient level for the carcinogenic metals is a fraction of the RSD, as described in subsection (d)(3) ~~of this Section~~.

3) Carcinogenic Metals~~metals~~. For the carcinogenic metals the sum of the ratios of the predicted maximum annual average off-site ground level concentrations (except that on-site concentrations must be considered if a person resides on site) to the RSD for all carcinogenic metals emitted must not exceed 1.0 as determined by the following equation:

$$\sum_{i=1}^{n} \frac{P_i}{R_i} \leq 1.0$$

Where:

$\Sigma P_i/R_i$ = the sum of the values of P/R for each metal "i~~,~~", from i = 1 to n
n = number of carcinogenic metals
P_i = the predicted ambient concentration for metal i
R_i = the RSD for metal i

4) Noncarcinogenic Metals~~metals~~. For the noncarcinogenic metals, the predicted maximum annual average off-site ground level concentration for each metal must not exceed the RAC.

5) Multiple Stacks~~stacks~~. Owners and operators of facilities with more than one on-site stack from a BIF, incinerator, or other thermal treatment unit subject to controls on metals emissions under a RCRA permit or interim status controls must conduct emissions testing (except that facilities complying with Adjusted Tier I controls need not conduct emissions testing) and dispersion modeling to demonstrate that the aggregate emissions from all such on-site stacks do not result in an exceedance of the acceptable ambient levels.

6) Implementation. Under Tier III, the metals controls must be implemented by limiting feed rates of the individual metals to levels during the trial burn (for new facilities or an interim status facility applying for a permit) or the compliance test (for interim status facilities). The feed rate averaging periods are the same as provided by subsections (b)(1)(A), (b)(1)(B), and (b)(2)(B) ~~of this Section~~. The feed rate of metals in each feedstream must be monitored to ensure that the feed rate limits for the feedstreams specified under Sections 726.202 or 726.203 are not exceeded.

e) Adjusted Tier Feed Rate Screening Limits~~I feed rate screening limits~~. The owner or operator may adjust the feed rate screening limits provided by Appendix A ~~to this Part~~ to account for site-specific dispersion modeling. Under this approach, the adjusted feed rate screening limit for a metal is determined by back-calculating from the acceptable ambient levels provided by Appendices~~Appendix~~ D and ~~Appendix~~ E ~~to this Part~~ using dispersion modeling to determine the maximum allowable emission rate. This emission rate becomes the adjusted Tier I feed rate screening limit. The feed rate screening limits for carcinogenic metals

are implemented as prescribed in subsection (b)(2) ~~of this Section~~.

f) Alternative Implementation Approaches~~implementation approaches.~~

1) Pursuant to subsection (f)(2) ~~of this Section~~ the Agency must approve on a case-by-case basis approaches to implement the Tier II or Tier III metals emission limits provided by subsection (c) or (d) ~~of this Section~~ alternative to monitoring the feed rate of metals in each feedstream.

2) The emission limits provided by subsection (d) ~~of this Section~~ must be determined as follows:

A) For each noncarcinogenic metal, by back-calculating from the RAC provided in Appendix D ~~to this Part~~ to determine the allowable emission rate for each metal using the dilution factor for the maximum annual average ground level concentration predicted by dispersion modeling in conformance with subsection (h) ~~of this Section~~; and

B) For each carcinogenic metal by the following methods:

i) By back-calculating from the RSD provided in Appendix E ~~to this Part~~ to determine the allowable emission rate for each metal if that metal were the only carcinogenic metal emitted using the dilution factor for the maximum annual average ground level concentration predicted by dispersion modeling in conformance with subsection (h) ~~of this Section~~; and

ii) If more than one carcinogenic metal is emitted, by selecting an emission limit for each carcinogenic metal not to exceed the emission rate determined by subsection (f)(2)(B)(i) ~~of this Section~~, such that the sum for all carcinogenic metals of the ratios of the selected emission limit to the emission rate determined by that subsection does not exceed 1.0.

g) Emission Testing~~testing.~~

1) General. Emission testing for metals must be conducted using Method

0060 (Determinations of Metals in Stack Emissions) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods~~,~~", USEPA publication number EPA-530/SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111(a).

2) Hexavalent Chromium~~chromium~~. Emissions of chromium are assumed to be hexavalent chromium unless the owner or operator conducts emissions testing to determine hexavalent chromium emissions using procedures prescribed in Method 0061 (Determination of Hexavalent Chromium Emissions from Stationary Sources) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods~~,~~", USEPA publication number EPA-530/SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111(a).

h) Dispersion Modeling~~modeling~~. Dispersion modeling required under this Section must be conducted according to methods recommended in federal appendix W to 40 CFR 51 (Guideline on Air Quality Models), in section 5.0 (Hazardous Waste Combustion Air Quality Screening Procedure) in appendix IX to 40 CFR 266 (Methods Manual for Compliance with the BIF Regulations), or in "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised~~,~~", USEPA publication number EPA-454/R-92-019, each incorporated by reference in 35 Ill. Adm. Code 720.111(b), to predict the maximum annual average off-site ground level concentration. However, on-site concentrations must be considered when a person resides on-site.

i) Enforcement. For the purposes of permit enforcement, compliance with the operating requirements specified in the permit (under Section 726.202) will be regarded as compliance with this Section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the requirements of this Section is "information" justifying modification or revocation and re-issuance of a permit under 35 Ill. Adm. Code 703.270 through 703.273.

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

Section 726.207 Standards to Control HCl and Chlorine Gas Emissions

a) General. The owner or operator must comply with the HCl and chlorine gas controls provided by subsection (b), (c), or (e)~~ of this Section~~.

b) Screening Limits~~limits.~~

1) Tier I Feed Rate Screening Limits~~feed rate screening limits~~. Feed rate screening limits are specified for total chlorine in Appendix B ~~to this Part~~ as a function of TESH and terrain and land use in the vicinity of the facility. The feed rate of total chlorine and chloride, both organic and inorganic, in all feed streams, including hazardous waste, fuels, and industrial furnace feed stocks must not exceed the levels specified.

2) Tier II Emission Rate Screening Limits~~emission rate screening limits~~. Emission rate screening limits for HCl and chlorine gas are specified in Appendix C ~~to this Part~~ as a function of TESH and terrain and land use in the vicinity of the facility. The stack emission rates of HCl and chlorine gas must not exceed the levels specified.

3) Definitions and Limitations~~limitations~~. The definitions and limitations provided by Sections 726.200(i) and 726.206(b) for the following terms also apply to the screening limits provided by this subsection: TESH, good engineering practice stack height, terrain type, land use, and criteria for facilities not eligible to use the screening limits.

4) Multiple Stacks~~stacks~~. Owners and operators of facilities with more than one on-site stack from a BIF, incinerator or other thermal treatment unit subject to controls on HCl or chlorine gas emissions under a RCRA permit or interim status controls must comply with the Tier I and Tier II screening limits for those stacks assuming all hazardous waste is fed into the device with the worst-case stack based on dispersion characteristics.

A) The worst-case stack is determined by procedures provided in Section 726.206(b)(6).

B) Under Tier I, the total feed rate of chlorine and chloride to all subject devices must not exceed the screening limit for the worst-case stack.

C) Under Tier II, the total emissions of HCl and chlorine gas from all subject stacks must not exceed the screening limit for the worst-case stack.

c) Tier III Site-Specific Risk Assessments~~site-specific risk assessments.~~

1) General. Conformance with the Tier III controls must be demonstrated by emissions testing to determine the emission rate for HCl and chlorine gas, air dispersion modeling to predict the maximum annual average off-site ground level concentration for each compound, and a demonstration that acceptable ambient levels are not exceeded.

2) Acceptable Ambiant Levels~~ambient levels~~. Appendix D ~~to this Part~~ lists the RACs for HCl (7 µg/m^3) and chlorine gas (0.4 µg/m^3).

3) Multiple Stacks~~stacks~~. Owners and operators of facilities with more than one on-site stack from a BIF, incinerator, or other thermal treatment unit subject to controls on HCl or chlorine gas emissions under a RCRA permit or interim status controls must conduct emissions testing and dispersion modeling to demonstrate that the aggregate emissions from all such on-site stacks do not result in an exceedance of the acceptable ambient levels for HCl and chlorine gas.

d) Averaging Periods~~periods~~. The HCl and chlorine gas controls are implemented by limiting the feed rate of total chlorine and chloride in all feedstreams, including hazardous waste, fuels, and industrial furnace feed stocks. Under Tier I, the feed rate of total chlorine and chloride is limited to the Tier I Screening Limits. Under Tier II and Tier III, the feed rate of total chlorine and chloride is limited to the feed rates during the trial burn (for new facilities or an interim status facility applying for a permit) or the compliance test (for interim status facilities). The feed rate limits are based on either of the following:

1) An hourly rolling average, as defined in Sections 726.200(i) and 726.202(e)(6); or

2) An instantaneous basis not to be exceeded at any time.

e) Adjusted Tier I Feed Rate Screening Limits~~feed rate screening limits~~. The owner or operator may adjust the feed rate screening limit provided by Appendix B ~~to this Part~~ to account for site-specific dispersion modeling. Under this approach, the adjusted feed rate screening limit is determined by back-calculating from the acceptable ambient level for chlorine gas provided by Appendix D ~~to this Part~~ using dispersion modeling to determine the maximum allowable emission rate. This emission rate becomes the adjusted Tier I feed rate screening limit.

f) Emissions Testing~~testing~~. Emissions testing for HCl and chlorine gas (Cl_2) must be conducted using the procedures described in Method 0050 or 0051, in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods~~,~~", USEPA publication number EPA-530/SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111(a).

g) Dispersion Modeling~~modeling~~. Dispersion modeling must be conducted according to the provisions of Section 726.206(h).

h) Enforcement. For the purposes of permit enforcement, compliance with the operating requirements specified in the permit (under Section 726.202) will be regarded as compliance with this Section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the requirements of this Section is "information" justifying modification or revocation and re-issuance of a permit under 35 Ill. Adm. Code 703.270 through 703.273.

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

Section 726.208 Small Quantity On-Site Burner Exemption

a) Exempt Quantities~~quantities~~. An owner or operator of a facility that burns hazardous waste in an on-site BIF is exempt from the requirements of this Subpart H provided that the following conditions are fulfilled:

1) The quantity of hazardous waste burned in a device for a calendar month does not exceed the limits provided in Table A ~~of this Part~~ based on the TESH, as defined in Sections 726.200(i) and 726.206(b)(3).

2) The maximum hazardous waste firing rate does not exceed at any time one percent of the total fuel requirements for the device (hazardous waste plus other fuel) on a total heat input or mass input basis, whichever results in the lower mass feed rate of hazardous waste;

3) The hazardous waste has a minimum heating value of 5,000 Btu/lb, as generated; and

4) The hazardous waste fuel does not contain (and is not derived from) USEPA hazardous waste numbers F020, F021, F022, F023, F026, or

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NOTICE OF ADOPTED AMENDMENTS

F027.

b) Mixing with Non-Hazardous Fuels~~non-hazardous fuels~~. If hazardous waste fuel is mixed with a non-hazardous fuel, the quantity of hazardous waste before such mixing is used to comply with subsection (a)~~ of this Section~~.

c) Multiple Stacks~~stacks~~. If an owner or operator burns hazardous waste in more than one on-site BIF exempt pursuant to this Section, the quantity limits provided by subsection (a)(1)~~ of this Section~~, are implemented according to the following equation:

$$\sum_{i=1}^{n} \frac{C_i}{L_i} \leq 1.0$$

Where:

$\Sigma (C_i/L_i)$	=	the sum of the values of X for each stack i, from i = 1 to n~~.~~
n	=	the number of stacks~~;~~
C_i	=	Actual Quantity Burned means the waste quantity burned per month in device "i~~.~~"
L_i	=	Allowable Quantity Burned means the maximum allowable exempt quantity for stack "i" from Table A~~.~~

BOARD NOTE: Hazardous wastes that are subject to the special requirements for VSQGs~~small quantity generators~~ pursuant to 35 Ill. Adm. Code 722.114~~721.105~~ may be burned in an off-site device pursuant to the exemption provided by Section 726.208, but must be included in the quantity determination for the exemption.

d) Notification Requirements~~requirements~~. The owner or operator of facilities qualifying for the small quantity burner exemption pursuant to this Section must provide a one-time signed, written notice to the Agency indicating the following:

1) The combustion unit is operating as a small quantity burner of hazardous waste;

2) The owner and operator are in compliance with the requirements of this

Section; and

3) The maximum quantity of hazardous waste that the facility is allowed to burn per month, as provided by Section 726.208(a)(1).

e) Recordkeeping Requirements~~requirements~~. The owner or operator must maintain at the facility for at least three years sufficient records documenting compliance with the hazardous waste quantity, firing rate and heating value limits of this Section. At a minimum, these records must indicate the quantity of hazardous waste and other fuel burned in each unit per calendar month and the heating value of the hazardous waste.

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

Section 726.209 Low Risk Waste Exemption

a) Waiver of DRE Standard~~standard~~. The DRE standard of Section 726.204(a) does not apply if the BIF is operated in conformance with subsection (a)(1) ~~of this Section~~, and the owner or operator demonstrates by procedures prescribed in subsection (a)(2) ~~of this Section~~, that the burning will not result in unacceptable adverse health effects.

1) The device must be operated as follows:

A) A minimum of 50 percent of fuel fired to the device must be fossil fuel, fuels derived from fossil fuel, tall oil, or, if approved by the Agency on a case-by-case basis, other nonhazardous fuel with combustion characteristics comparable to fossil fuel. Such fuels are termed "primary fuel" for purposes of this Section. (Tall oil is a fuel derived from vegetable and rosin fatty acids.) The 50 percent primary fuel firing rate must be determined on a total heat or mass input basis, whichever results in the greater mass feed rate of primary fuel fired;

B) Primary fuels and hazardous waste fuels must have a minimum as-fired heating value of 8,000 Btu/lb;

C) The hazardous waste is fired directly into the primary fuel flame zone of the combustion chamber; and

D) The device operates in conformance with the CO controls provided by Section 726.204(b)(1). Devices subject to the exemption provided by this Section are not eligible for the alternative CO controls provided by Section 726.204(c).

2) Procedures to demonstrate that the hazardous waste burning will not pose unacceptable adverse public health effects are as follows:

A) Identify and quantify those nonmetal compounds listed in Appendix H of ~~to~~ 35 Ill. Adm. Code 721, that could reasonably be expected to be present in the hazardous waste. The constituents excluded from analysis must be identified and the basis for their exclusion explained;

B) Calculate reasonable, worst case emission rates for each constituent identified in subsection (a)(2)(A) ~~of this Section~~, by assuming the device achieves 99.9 percent destruction and removal efficiency. That is, assume that 0.1 percent of the mass weight of each constituent fed to the device is emitted.

C) For each constituent identified in subsection (a)(2)(A) ~~of this Section~~, use emissions dispersion modeling to predict the maximum annual average ground level concentration of the constituent.

i) Dispersion modeling must be conducted using methods specified in Section 726.206(h).

ii) An owner or operator of a facility with more than one on-site stack from a BIF that is exempt under this Section must conduct dispersion modeling of emissions from all stacks exempt under this Section to predict ambient levels prescribed by this subsection (a)(2).

D) Ground level concentrations of constituents predicted under subsection (a)(2)(C) ~~of this Section~~, must not exceed the following levels:

i) For the noncarcinogenic compounds listed in Appendix D, the levels established in Appendix D.

ii) For the carcinogenic compounds listed in Appendix E:

$$\sum_{i=1}^{n} \frac{A_i}{L_i} \leq 1.0$$

Where:

$\Sigma(A_i/L_i)$	=	means the sum of the values of X for each carcinogen i, from i = 1 to n
n		means the number of carcinogenic compounds
A_i	=	Actual ground level concentration of carcinogen "i"
L_i	=	Level established in Appendix E for carcinogen "i"

iii) For constituents not listed in Appendix D or E, 0.1 µg/m³.

b) Waiver of Particulate Matter Standard particulate matter standard. The PM standard of Section 726.205 does not apply if the following occur:

1) The DRE standard is waived under subsection (a) of this Section; and

2) The owner or operator complies with the Tier I, or adjusted Tier I, metals feed rate screening limits provided by Section 726.206(b) or (e).

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

Section 726.211 Standards for Direct Transfer

a) Applicability. The regulations in this Section apply to owners and operators of BIFs subject to Section 726.202 or 726.203 if hazardous waste is directly transferred from a transport vehicle to a BIF without the use of a storage unit.

b) Definitions.

1) When used in this Section, terms have the following meanings:

"Direct transfer equipment" means any device (including but not limited to, such devices as piping, fittings, flanges, valves and pumps) that is used to distribute, meter or control the flow of hazardous waste between a container (i.e., transport vehicle) and a BIF.

"Container" means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and includes transport vehicles that are containers themselves (e.g., tank trucks, tanker-trailers, and rail tank cars) and containers placed on or in a transport vehicle.

2) This Section references several requirements provided in Subparts I and J of 35 Ill. Adm. Code 724 and Subparts I and J of 35 Ill. Adm. Code 725. For purposes of this Section, the term "tank systems" in those referenced requirements means direct transfer equipment, as defined in subsection (b)(1) ~~of this Section~~.

c) General Operating Requirements~~operating requirements.~~

1) No direct transfer of a pumpable hazardous waste must be conducted from an open-top container to a BIF.

2) Direct transfer equipment used for pumpable hazardous waste must always be closed, except when necessary to add or remove the waste, and must not be opened, handled, or stored in a manner that could cause any rupture or leak.

3) The direct transfer of hazardous waste to a BIF must be conducted so that it does not do any of the following:

A) Generate extreme heat or pressure, fire, explosion, or violent reaction;

B) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;

C) Produce uncontrolled flammable fumes or gases in sufficient

quantities to pose a risk of fire or explosions;

D) Damage the structural integrity of the container or direct transfer equipment containing the waste;

E) Adversely affect the capability of the BIF to meet the standards provided by Sections 726.204 through 726.207; or

F) Threaten human health or the environment.

4) Hazardous waste must not be placed in direct transfer equipment, if it could cause the equipment or its secondary containment system to rupture, leak, corrode, or otherwise fail.

5) The owner or operator of the facility must use appropriate controls and practices to prevent spills and overflows from the direct transfer equipment or its secondary containment systems. These include the following at a minimum:

A) Spill prevention controls (e.g., check valves, dry discount couplings, etc.); and

B) Automatic waste feed cutoff to use if a leak or spill occurs from the direct transfer equipment.

d) Areas Where Direct Transfer Vehicles (Containers) Are Located~~where direct transfer vehicles (containers) are located~~. Applying the definition of container pursuant to this Section, owners and operators must comply with the following requirements:

1) The containment requirements of 35 Ill. Adm. Code 724.275;

2) The use and management requirements of Subpart I of 35 Ill. Adm. Code 725, except for Sections 725.270 and 725.274, and except that in lieu of the special requirements of 35 Ill. Adm. Code 725.276 for ignitable or reactive waste, the owner or operator may comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjacent property line that can be built upon, as required in Tables 2-1 through 2-6

of "Flammable and Combustible Liquids Code," NFPA 30, incorporated by reference in 35 Ill. Adm. Code 720.111(a). The owner or operator must obtain and keep on file at the facility a written certification by the local Fire Marshal that the installation meets the subject NFPA Codes; and

3) The closure requirements of 35 Ill. Adm. Code 724.278.

e) Direct Transfer Equipment~~transfer equipment~~. Direct transfer equipment must meet the following requirements:

1) Secondary Containment~~containment~~. For existing direct transfer equipment, an owner or operator~~Owners and operators~~ must comply with the secondary containment requirements of 35 Ill. Adm. Code 725.293, except for Sections 725.293(a), (d), (e), and (i). For all new and direct transfer equipment, an owner or operator must comply with these secondary containment requirements prior to their being put into service;~~, as follows:~~

~~A) For all new direct transfer equipment, prior to their being put into service; and~~

~~B) For existing direct transfer equipment, by August 21, 1993.~~

2) Requirements Prior~~prior~~ to Meeting Secondary Containment Requirements~~meeting secondary containment requirements.~~

A) For existing direct transfer equipment that does not have secondary containment, the owner or operator must determine whether the equipment is leaking or is unfit for use. The owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by a qualified, registered professional engineer in accordance with 35 Ill. Adm. Code 703.126(d) that attests to the equipment's integrity ~~by August 21, 1992~~.

B) This assessment must determine whether the direct transfer equipment is adequately designed and has sufficient structural strength and compatibility with the wastes to be transferred to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment must consider the following:

i) Design standards, if available, according to which the direct transfer equipment was constructed;

ii) Hazardous characteristics of the wastes that have been or will be handled;

iii) Existing corrosion protection measures;

iv) Documented age of the equipment, if available, (otherwise, an estimate of the age); and

v) Results of a leak test or other integrity examination such that the effects of temperature variations, vapor pockets, cracks, leaks, corrosion and erosion are accounted for.

C) If, as a result of the assessment specified above, the direct transfer equipment is found to be leaking or unfit for use, the owner or operator must comply with the requirements of 35 Ill. Adm. Code 725.296(a) and (b).

3) Inspections and Recordkeeping~~recordkeeping.~~

A) The owner or operator must inspect at least once each operating hour when hazardous waste is being transferred from the transport vehicle (container) to the BIF:

i) Overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order;

ii) The above ground portions of the direct transfer equipment to detect corrosion, erosion, or releases of waste (e.g., wet spots, dead vegetation, etc.); and

iii) Data gathered from monitoring equipment and leak-detection equipment, (e.g., pressure and temperature gauges) to ensure that the direct transfer equipment is being operated according to its design.

B) The owner or operator must inspect cathodic protection systems, if used, to ensure that they are functioning properly according to the schedule provided by 35 Ill. Adm. Code 725.295(b).

C) Records of inspections made pursuant to this subsection (e)(3) must be maintained in the operating record at the facility, and available for inspection for at least three years from the date of the inspection.

4) Design and Installation~~installation~~ of New Ancillary Equipment~~new ancillary equipment~~. Owners and operators must comply with the requirements of 35 Ill. Adm. Code 725.292.

5) Response to Leaks~~leaks~~ or Spills~~spills~~. Owners and operators must comply with the requirements of 35 Ill. Adm. Code 725.296.

6) Closure. Owners and operators must comply with the requirements of 35 Ill. Adm. Code 725.297, except for 35 Ill. Adm. Code 725.297(c)(2) through (c)(4).

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

Section 726.212 Regulation of Residues

A residue derived from the burning or processing of hazardous waste in a BIF is not excluded from the definition of a hazardous waste under 35 Ill. Adm. Code 721.104(b)(4), (b)(7), or (b)(8), unless the device and the owner or operator meet the following requirements:

a) The device meets the following criteria:

1) Boilers. Boilers must burn at least 50 percent coal on a total heat input or mass basis, whichever results in the greater mass feed rate of coal;

2) Ore or Mineral Furnaces. Industrial furnaces subject to 35 Ill. Adm. Code 721.104(b)(7) must process at least 50 percent by weight of normal, nonhazardous raw materials;

3) Cement Kilns. Cement kilns must process at least 50 percent by weight of

normal cement-production raw materials;

b) The owner or operator demonstrates that the hazardous waste does not significantly affect the residue by demonstrating conformance with either of the following criteria:

1) Comparison of Waste-Derived Residue with Normal Residue. The waste-derived residue must not contain constituents listed in Appendix H of~~to~~ 35 Ill. Adm. Code 721 (toxic constituents) that could reasonably be attributable to the hazardous waste at concentrations significantly higher than in residue generated without burning or processing of hazardous waste, using the following procedure. Toxic compounds that could reasonably be attributable to burning or processing the hazardous waste (constituents of concern) include toxic constituents in the hazardous waste, and the organic compounds listed in Appendix H to 35 Ill. Adm. Code 721 that may be PICs. For polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans, analyses must be performed to determine specific congeners and homologues, and the results converted to 2,3,7,8-TCDD equivalent values using the procedure specified in section 4.0 of the documents referenced in Appendix I ~~of this Part~~.

A) Normal Residue. Concentrations of toxic constituents of concern in normal residue must be determined based on analyses of a minimum of 10 samples representing a minimum of 10 days of operation. Composite samples may be used to develop a sample for analysis provided that the compositing period does not exceed 24 hours. The upper tolerance limit (at 95 percent confidence with a 95 percent proportion of the sample distribution) of the concentration in the normal residue must be considered the statistically-derived concentration in the normal residue. If changes in raw materials or fuels reduce the statistically-derived concentrations of the toxic constituents of concern in the normal residue, the statistically-derived concentrations must be revised or statistically-derived concentrations of toxic constituents in normal residue must be established for a new mode of operation with the new raw material or fuel. To determine the upper tolerance limit in the normal residue, the owner or operator must use statistical procedures prescribed in section 7.0 (Statistical Methodology for Bevill Residue Determinations) in federal appendix IX to 40 CFR

266 (Methods Manual for Compliance with the BIF Regulations), USEPA publication number EPA-454/R-92-019, incorporated by reference in 35 Ill. Adm. Code 720.111(b) (see Appendix I ~~of this Part~~).

B) Waste-Derived Residue. Waste derived residue must be sampled and analyzed as often as necessary to determine whether the residue generated during each 24-hour period has concentrations of toxic constituents that are higher than the concentrations established for the normal residue under subsection (b)(1)(A). If so, hazardous waste burning has significantly affected the residue and the residue is not excluded from the definition of "hazardous waste~~.~~". Concentrations of toxic constituents in waste-derived residue must be determined based on analysis of one or more samples obtained over a 24-hour period. Multiple samples may be analyzed, and multiple samples may be taken to form a composite sample for analysis provided that the sampling period does not exceed 24 hours. If more than one sample is analyzed to characterize waste-derived residues generated over a 24-hour period, the concentration of each toxic constituent must be the arithmetic mean of the concentrations in the samples. No results can be disregarded; or

2) Comparison of Waste-Derived Residue Concentrations with Health-Based Limits~~.~~

A) Nonmetal Constituents. The concentration of each nonmetal toxic constituent of concern (specified in subsection (b)(1)) in the waste-derived residue must not exceed the health-based level specified in Appendix G ~~of this Part~~, or the level of detection, whichever is higher. If a health-based limit for a constituent of concern is not listed in Appendix G ~~of this Part~~, then a limit of 0.002 µg/kg or the level of detection (using appropriate analytical methods), whichever is higher, must be used. The levels specified in Appendix G ~~of this Part~~ (and the default level of 0.002 µg/kg or the level of detection for constituents, as identified in Note 1 of Appendix G ~~of this Part~~) are administratively stayed under the condition, for those constituents specified in subsection (b)(1), that the owner or operator complies with alternative levels defined as

the land disposal restriction limits specified in 35 Ill. Adm. Code 728.143 and Table T ofB to 35 Ill. Adm. Code 728 for F039 nonwastewaters. In complying with those alternative levels, if an owner or operator is unable to detect a constituent despite documenting use of the best good-faith efforts, as defined by applicable USEPA guidance and standards, the owner or operator is deemed to be in compliance for that constituent. Until USEPA develops new guidance or standards, the owner or operator may demonstrate such good-faith efforts by achieving a detection limit for the constituent that does not exceed an order of magnitude above (ten times) the level provided by 35 Ill. Adm. Code 728.143 and Table T ofB to 35 Ill. Adm. Code 728 for F039 nonwastewater levels for polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans, analyses must be performed for total hexachlorodibenzo-p-dioxins, total hexachlorodibenzofurans, total pentachlorodibenzo-p-dioxins, total pentachlorodibenzofurans, total tetrachlorodibenzo-p-dioxins, and total tetrachlorodibenzofurans;

BOARD NOTE: In a note to corresponding 40 CFR 266.112(b)(2)(i), USEPA stated as follows:

> The administrative stay, under the condition that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in 35 Ill. Adm. Code 728.143 for F039 nonwastewaters, remains in effect until further administrative action is taken and notice is published in the Federal Register and the Code of Federal Regulations.

Under sectionSection 3006(b) and (g) of RCRA, 42 USC 6926(b) and (g), federal amendments do not go into effect in Illinois until the State of Illinois incorporates them into the State program. This applies unless the authority under which USEPA adopted the amendments is the Hazardous and Solid Waste Amendments of 1984 (HSWA), in which case the federal amendments become effective in Illinois on their federal effective date.

The federal regulations do not themselves define the phrase "appropriate analytical methods," but USEPA did include a definition in its preamble discussion accompanying the rule. The Board directs attention to the following segment (at 70 Fed. Reg. 34538, 34541 (June 14, 2005)) for the purposes of subsections (b)(1)(C) and (b)(1)(D):

[T]wo primary considerations in selecting an appropriate method, which together serve as our general definition of an appropriate method [are the following]…:

1. Appropriate methods are reliable and accepted as such in the scientific community.

2. Appropriate methods generate effective data.

USEPA went on to further elaborate these two concepts and to specify other documents that might provide guidance.

B) Metal Constituents. The concentration of metals in an extract obtained using the TCLP test must not exceed the levels specified in Appendix G ~~of this Part~~;

C) Sampling and Analysis. Wastewater-derived residue must be sampled and analyzed as often as necessary to determine whether the residue generated during each 24-hour period has concentrations of toxic constituents that are higher than the health-based levels. Concentrations of concern in the wastewater-derived residue must be determined based on analysis of one or more samples obtained over a 24-hour period. Multiple samples may be analyzed, and multiple samples may be taken to form a composite for analysis provided that the sampling period does not exceed 24 hours. If more than one sample is analyzed to characterize waste-derived residues generated over a 24-hour period, the concentration of each toxic constituent is the arithmetic mean of the concentrations of the samples. No results can be disregarded; and

c) Records sufficient to document compliance with the provisions of this Section

must be retained until closure of the BIF unit. At a minimum, the following must be recorded:

1) Levels of constituents in Appendix H of~~to~~ 35 Ill. Adm. Code 721 that are present in waste-derived residues;

2) If the waste-derived residue is compared with normal residue under subsection (b)(1):

A) The levels of constituents in Appendix H to 35 Ill. Adm. Code 721 that are present in normal residues; and

B) Data and information, including analyses of samples as necessary, obtained to determine if changes in raw materials or fuels would reduce the concentration of toxic constituents of concern in the normal residue.

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

Section 726.219 Extensions of Time

The owner or operator may request a case-by-case extension of time to extend any time limit provided by Section 726.203(c). The operator must file a petition for a RCRA variance pursuant to 35 Ill. Adm. Code 104. The Board will grant the variance if compliance with the time limit is not practicable for reasons beyond the control of the owner or operator.

a) In granting an extension, the Board will apply conditions as the facts warrant to ensure timely compliance with the requirements of Section 726.203 and that the facility operates in a manner that does not pose a hazard to human health and the environment;

b) When an owner and operator requests an extension of time to enable the facility to comply with the alternative hydrocarbon provisions of Section 726.204(f) and obtain a RCRA permit because the facility cannot meet the HC limit of Section 726.204(c):

1) The Board will do the following, in considering whether to grant the extension:

A) Determine whether the owner and operator have submitted in a timely manner a complete Part B permit application that includes information required under 35 Ill. Adm. Code 703.208(b); and

B) Consider whether the owner and operator have made a good faith effort to certify compliance with all other emission controls, including the controls on dioxins and furans of Section 726.204(e) and the controls on PM, metals and HCl/chlorine gas.

2) If an extension is granted, the Board will, as a condition of the extension, require the facility to operate under flue gas concentration limits on CO and HC that, based on available information, including information in the Part B permit application, are baseline CO and HC levels as defined by Section 726.204(f)(1).

BOARD NOTE: Derived from 40 CFR 266.103(c)(7)(ii) (2017)~~(2002)~~.

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

SUBPART M: MILITARY MUNITIONS

Section 726.302 Definition of Solid Waste

a) A military munition is not a solid waste when any of the following situations describes the munition:

1) It is used for its intended purpose, including any of the following uses:

A) Use in training military personnel or explosives and munitions emergency response specialists (including training in proper destruction of unused propellant or other munitions);

B) Use in research, development, testing, and evaluation of military munitions, weapons, or weapon systems; or

C) Recovery, collection, and on-range destruction of unexploded ordnance and munitions fragments during range clearance activities at active or inactive ranges. However, "use for intended purpose" does not include the on-range disposal or burial of

unexploded ordnance and contaminants when the burial is not a result of product use.

2) It is an unused munition, or component thereof, it is being repaired, reused, recycled, reclaimed, disassembled, reconfigured, or otherwise subjected to materials recovery activities, unless such activities involve use constituting disposal, as defined in 35 Ill. Adm. Code 721.102(c)(1), or it is burned for energy recovery, as defined in 35 Ill. Adm. Code 721.102(c)(2).

b) An unused military munition is a solid waste when any of the following occurs:

1) The munition is abandoned by being disposed of, burned, detonated (except during intended use as specified in subsection (a) ~~of this Section~~), incinerated, or treated prior to disposal;

2) The munition is removed from storage in a military magazine or other storage area for the purpose of being disposed of, burned, incinerated, or treated prior to disposal;

3) The munition is deteriorated or damaged (e.g., the integrity of the munition is compromised by cracks, leaks, or other damage) to the point that it cannot be put into serviceable condition, and cannot reasonably be recycled or used for other purposes; or

4) The munition has been declared a solid waste by an authorized military official.

c) A used or fired military munition is a solid waste when either of the following occurs with regard to the munition:

1) The munition is transported off-range or from the site of use (where the site of use is not a range) for the purpose of storage, reclamation, treatment, disposal, or treatment prior to disposal; or

2) The munition is recovered, collected, and then disposed of by burial or landfilling either on or off a range.

d) For purposes of RCRA section 1004(27) (42 USC 6903(27)), a used or fired

military munition is a solid waste, and, therefore, is potentially subject to RCRA corrective action authorities under sections 3004(u) and (v) (42 USC 6924(u) and (v)), and 3008(h) (42 USC 6928(h)) or to imminent and substantial endangerment authorities under section 7003 (42 USC 6963) if the munition lands off-range and is not promptly rendered safe or retrieved. Any imminent and substantial threats associated with any remaining material must be addressed. If remedial action is infeasible, the operator of the range must maintain a record of the event for as long as any threat remains. The record must include the type of munition and its location (to the extent the location is known).

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

Section 726.303 Standards Applicable to the Transportation of Solid Waste Military Munitions

a) Criteria for Hazardous Waste Regulation~~hazardous waste regulation~~ of Waste Non-Chemical Military Munitions~~waste non-chemical military munitions~~ in Transportation~~transportation.~~

1) Waste military munitions that are being transported and which exhibit a hazardous waste characteristic or which are listed as hazardous waste pursuant to 35 Ill. Adm. Code 721 are subject to regulation pursuant to 35 Ill. Adm. Code 702, 703, 705, 720 through 728, and 738, unless the munitions meet all the following conditions:

A) The waste military munitions are not chemical agents or chemical munitions;

B) The waste military munitions are transported in accordance with the Department of Defense shipping controls applicable to the transport of military munitions;

C) The waste military munitions are transported from a military-owned or -operated installation to a military-owned or -operated treatment, storage, or disposal facility; and

D) The transporter of the waste must provide oral notice to the Agency within 24 hours from the time when either the transporter becomes aware of any loss or theft of the waste military munitions

or when any failure to meet a condition of subsection (a)(1) ~~of this Section~~ occurs that may endanger human health or the environment. In addition, a written submission describing the circumstances must be provided within five days from the time when the transporter becomes aware of any loss or theft of the waste military munitions or when any failure to meet a condition of subsection (a)(1) ~~of this Section~~ occurs.

2) If any waste military munitions shipped pursuant to subsection (a)(1) ~~of this Section~~ are not received by the receiving facility within 45 days after the day the waste was shipped, the owner or operator of the receiving facility must report this non-receipt to the Agency within five days.

3) The conditional exemption from regulation as hazardous waste in subsection (a)(1) ~~of this Section~~ must apply only to the transportation of non-chemical waste military munitions. It does not affect the regulatory status of waste military munitions as hazardous wastes with regard to storage, treatment, or disposal.

4) The conditional exemption in subsection (a)(1) ~~of this Section~~ applies only so long as all of the conditions in subsection (a)(1) ~~of this Section~~ are met.

b) Reinstatement of Conditional Exemption~~conditional exemption.~~

1) If any waste military munition loses its conditional exemption pursuant to subsection (a)(1) ~~of this Section~~, the transporter may file with the Agency an application for reinstatement of the conditional exemption from hazardous waste transportation regulation with respect to such munition as soon as the munition is returned to compliance with the conditions of subsection (a)(1) ~~of this Section~~.

2) If the Agency finds that reinstatement of the conditional exemption is appropriate, it must reinstate the conditional exemption of subsection (a)(1) ~~of this Section~~ in writing. The Agency's decision to reinstate or not to reinstate the conditional exemption must be based on the nature of the risks to human health and the environment posed by the waste and either the transporter's provision of a satisfactory explanation of the circumstances of the violation or any demonstration that the violations are not likely to recur. If the Agency denies an application, it must transmit to

the applicant specific, detailed statements in writing as to the reasons it denied the application. In reinstating the conditional exemption pursuant to subsection (a)(1) ~~of this Section~~, the Agency may specify additional conditions as are necessary to ensure and document proper transportation to adequately protect human health and the environment. If the Agency does not take action on the reinstatement application within 60 days after receipt of the application, then reinstatement must be deemed granted, retroactive to the date of the application.

3) The Agency may terminate a conditional exemption reinstated by default pursuant to subsection (b)(2) ~~of this Section~~ in writing if it finds that reinstatement is inappropriate based on its consideration of the factors set forth in subsection (b)(2) ~~of this Section~~. If the Agency terminates a reinstated exemption, it must transmit to the applicant specific, detailed statements in writing as to the reasons it terminated the reinstated exemption.

4) The applicant pursuant to this subsection (b) may appeal the Agency's determination to deny the reinstatement, to grant the reinstatement with conditions, or to terminate a reinstatement before the Board pursuant to Section 40 of the Act ~~[415 ILCS 5/40]~~.

c) Amendments to DOD Shipping Controls~~shipping controls~~. The Department of Defense shipping controls applicable to the transport of military munitions referenced in subsection (a)(1)(B) ~~of this Section~~ are Government Bill of Lading (GBL) (GSA Standard Form 1103, supplemented as necessary with GSA Standard Form 1109), Requisition Tracking Form (DD Form 1348), the Signature and Talley Record (DD Form 1907), DOD Multimodal Dangerous Goods Declaration (DD Form 2890)~~Special Instructions for Motor Vehicle Drivers (DD Form 836)~~, and the Motor Vehicle Inspection Report (DD Form 626) ~~in effect on November 8, 1995~~, each incorporated by reference in 35 Ill. Adm. Code 720.111(a).

BOARD NOTE: Corresponding federal provision 40 CFR 266.203(c), ~~(2005)~~ further provides as follows: "Any amendments to the Department of Defense shipping controls must become effective for purposes of paragraph (a)(1) of this section on the date the Department of Defense publishes notice in the Federal Register that the shipping controls referenced in paragraph (a)(1)(ii) of this section have been amended." (40 CFR 266.203(a)(1)(ii) corresponds with 35 Ill.

Adm. Code 726.303(a)(1)(B).) Section 5-75 of the Illinois Administrative Procedure Act [5 ILCS 100/5-75] prohibits the incorporation of later amendments and editions by reference. For this reason, interested persons or the Agency~~members of the regulated community~~ will need to notify the Board of any amendments of these references before those amendments can become effective under Illinois law.

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

Section 726.305 Standards Applicable to the Storage of Solid Waste Military Munitions

a) Criteria for Hazardous Waste Regulation~~hazardous waste regulation~~ of Waste Non-Chemical Military Munitions~~waste non-chemical military munitions~~ in Storage~~storage.~~

1) Waste military munitions in storage that exhibit a hazardous waste characteristic or are listed as hazardous waste pursuant to 35 Ill. Adm. Code 721 are listed or identified as a hazardous waste (and thus are subject to regulation pursuant to 35 Ill. Adm. Code 702, 703, 705, 720 through 728, 733, 738, and 739), unless all the following conditions are met:

A) The waste military munitions are not chemical agents or chemical munitions;

B) The waste military munitions must be subject to the jurisdiction of the Department of Defense Explosives Safety Board (DDESB);

C) The waste military munitions must be stored in accordance with the DDESB storage standards applicable to waste military munitions;

D) Within 90 days of when a storage unit is first used to store waste military munitions, the owner or operator must notify the Agency of the location of any waste storage unit used to store waste military munitions for which the conditional exemption in subsection (a)(1) ~~of this Section~~ is claimed;

E) The owner or operator must provide oral notice to the Agency

within 24 hours from the time the owner or operator becomes aware of any loss or theft of the waste military munitions, or any failure to meet a condition of subsection (a)(1) ~~of this Section~~ that may endanger health or the environment. In addition, a written submission describing the circumstances must be provided within five days from the time the owner or operator becomes aware of any loss or theft of the waste military munitions or any failure to meet a condition of subsection (a)(1) ~~of this Section~~;

F) The owner or operator must inventory the waste military munitions at least annually, must inspect the waste military munitions at least quarterly for compliance with the conditions of subsection (a)(1) ~~of this Section~~, and must maintain records of the findings of these inventories and inspections for at least three years; and

G) Access to the stored waste military munitions must be limited to appropriately trained and authorized personnel.

2) The conditional exemption in subsection (a)(1) ~~of this Section~~ from regulation as hazardous waste must apply only to the storage of non-chemical waste military munitions. It does not affect the regulatory status of waste military munitions as hazardous wastes with regard to transportation, treatment or disposal.

3) The conditional exemption in subsection (a)(1) ~~of this Section~~ applies only so long as all of the conditions in subsection (a)(1) ~~of this Section~~ are met.

b) Notice of Termination~~termination~~ of Waste Storage~~waste storage~~. The owner or operator must notify the Agency when a storage unit identified in subsection (a)(1)(D) ~~of this Section~~ will no longer be used to store waste military munitions.

c) Reinstatement of Conditional Exemption~~conditional exemption.~~

1) If any waste military munition loses its conditional exemption pursuant to subsection (a)(1) ~~of this Section~~, an application may be filed with the Agency for reinstatement of the conditional exemption from hazardous waste storage regulation with respect to such munition as soon as the munition is returned to compliance with the conditions of subsection (a)(1) ~~of this Section~~.

2) If the Agency finds that reinstatement of the conditional exemption is appropriate, it must reinstate the conditional exemption of subsection (a)(1) ~~of this Section~~ in writing. The Agency's decision to reinstate or not to reinstate the conditional exemption must be based on two considerations: first, the nature of the risks to human health and the environment posed by the waste; and second, either the owner's or operator's provision of a satisfactory explanation of the circumstances of the violation or any demonstration that the violations are not likely to recur. If the Agency denies an application, it must transmit to the applicant specific, detailed statements in writing as to the reasons it denied the application. In reinstating the conditional exemption pursuant to subsection (a)(1) ~~of this Section~~, the Agency may specify additional conditions as are necessary to ensure and document proper storage to adequately protect human health and the environment.

3) The Agency may terminate a conditional exemption reinstated by default pursuant to subsection (c)(2) ~~of this Section~~ in writing if it finds that reinstatement is inappropriate based on its consideration of the factors set forth in subsection (c)(2) ~~of this Section~~. If the Agency terminates a reinstated exemption, it must transmit to the applicant specific, detailed statements in writing as to the reasons it terminated the reinstated exemption.

4) The applicant pursuant to this subsection (c) may appeal the Agency's determination to deny the reinstatement, to grant the reinstatement with conditions, or to terminate a reinstatement before the Board pursuant to Section 40 of the Act ~~[415 ILCS 5/40]~~.

d) Waste Chemical Munitions~~chemical munitions.~~

1) Waste military munitions are subject to the applicable regulatory requirements of RCRA subtitle C if the munitions satisfy two conditions: first, they~~that~~ are chemical agents or chemical munitions; and second, they~~which~~ exhibit a hazardous waste characteristic or ~~which~~ are listed as hazardous waste pursuant to 35 Ill. Adm. Code 721~~, are listed or identified as a hazardous waste and are subject to the applicable regulatory requirements of RCRA subtitle C~~.

2) Waste military munitions that, if the munitions satify two conditions: first, they are chemical agents or chemical munitions; second, they exhibit a hazardous waste characteristic or are listed as hazardous waste pursuant to 35 Ill. Adm. Code 721, ~~are chemical agents or chemical munitions and exhibit a hazardous waste characteristic or are listed as hazardous waste pursuant to 35 Ill. Adm. Code 721,~~ are not subject to the storage prohibition in RCRA section 3004(j), codified at 35 Ill. Adm. Code 728.150.

e) Amendments to DDESB Storage Standards ~~storage standards~~. The DDESB storage standards applicable to waste military munitions, referenced in subsection (a)(1)(C) ~~of this Section~~, are DOD 6055.9-STD ("DOD Ammunition and Explosive Safety Standards"), in effect on November 8, 1995, incorporated by reference in 35 Ill. Adm. Code 720.111.

BOARD NOTE: Corresponding federal provision 40 CFR 266.205(e), as added at 62 Fed. Reg. 6656 (Feb. 12, 1997), further provides as follows: "Any amendments to the DDESB storage standards must become effective for purposes of paragraph (a)(1) of this section on the date the Department of Defense publishes notice in the Federal Register that the DDESB standards referenced in paragraph (a)(1) of this section have been amended." Section 5-75 of the Illinois Administrative Procedure Act [5 ILCS 100/5-75] prohibits the incorporation of later amendments and editions by reference. For this reason, interested members of the regulated community will need to notify the Board of any amendments of these references before those amendments can become effective under Illinois law.

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

SUBPART N: CONDITIONAL EXEMPTION FOR LOW-LEVEL MIXED WASTE STORAGE, TREATMENT, TRANSPORTATION AND DISPOSAL

Section 726.310 Definitions

Terms are defined as follows for the purposes of this Subpart N:

"CERCLA reportable quantity" means that quantity of a particular substance designated by USEPA in federal 40 CFR 302.4 pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC 9601

et seq.) for which notification is required upon a release to the environment.

"Certified delivery" means certified mail with return receipt requested, equivalent courier service, or other means that provides the sender with a receipt confirming delivery.

"Director" is as defined in 35 Ill. Adm. Code 702.110.

"Eligible naturally occurring or accelerator-produced radioactive material" means naturally occurring or accelerator-produced radioactive material (NARM) that is eligible for a transportation and disposal conditional exemption. It is a NARM waste that contains RCRA hazardous waste, meets the waste acceptance criteria of, and is allowed by State NARM regulations to be disposed of at a low-level radioactive waste disposal facility (LLRWDF) licensed in accordance with ~~federal~~ 10 CFR 61, IEMA regulations, or the equivalent regulations of a licensing agency in another state.
BOARD NOTE: The IEMA regulations are codified at 32 Ill. Adm. Code: Chapter II, Subchapters b and d.

"Exempted waste" means a waste that meets the eligibility criteria in Section 726.325 and all of the conditions in Section 726.330 or a waste that meets the eligibility criteria in Section 726.410 and which complies with all the conditions in Section 726.415. Such waste is conditionally exempted from the regulatory definition of hazardous waste in 35 Ill. Adm. Code 721.103.

"Hazardous waste" means hazardous waste as defined in 35 Ill. Adm. Code 721.103.

"IEMA" means the Illinois Emergency Management Agency, the State of Illinois agency charged with regulating source, by-product, and special nuclear material in Illinois in accordance with an agreement between the State and the federal Nuclear Regulatory Commission (NRC) under section 274(b) of the federal Atomic Energy Act of 1954, as amended (42 USC 2021(b)).
BOARD NOTE: In addition to the materials regulated under this Part, IEMA regulates radioactive materials under the Radiation Protection Act of 1990 [420 ILCS 40] that are not licensed by the federal NRC. For the purposes of notices to IEMA required under this Subpart N, the address is as follows:

Illinois Emergency Management Agency

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

2200 South Dirksen Parkway~~1035 Outer Park Drive~~
Springfield, Illinois 6270~~62704~~

"Land disposal restriction treatment standards" or "LDR treatment standards" means treatment standards, under 35 Ill. Adm. Code 728, that a RCRA hazardous waste must meet before it can be disposed of in a RCRA hazardous waste land disposal unit.

"License" means a license issued by the federal NRC or IEMA to a user that manages radionuclides regulated by the federal NRC or IEMA under authority of the Atomic Energy Act of 1954, as amended (42 USC 2014 et seq.) or the Radiation Protection Act of 1990 ~~[420 ILCS 40]~~.

"Low-level mixed waste" or "LLMW" is a waste that contains both low-level radioactive waste and RCRA hazardous waste.

"Low-level radioactive waste" or "LLRW" is a radioactive waste that contains source, by-product, or special nuclear material and which is not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material, as defined in section 11(e)(2) of the Atomic Energy Act of 1954 (42 USC 2014(e)(2)), incorporated by reference in 35 Ill. Adm. Code 720.111(b). (See also the NRC definition of waste at federal 10 CFR 61.2.)
BOARD NOTE: This definition differs from the similar definitions of low-level radioactive waste in the Illinois Low-Level Radioactive Waste Management Act [420 ILCS 20/3(k)], the Central Midwest Interstate Low-Level Radioactive Waste Compact Act [45 ILCS 140/1, Article II(k)], and 32 Ill. Adm. Code 606.20(g) of the IEMA regulations. Those basically define low-level radioactive waste as radioactive waste that is not high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material, as such are defined in section 11 of the federal Atomic Energy Act of 1954 (42 USC 2014), incorporated by reference in 35 Ill. Adm. Code 720.111(b).

"Mixed waste" means a waste that contains both RCRA hazardous waste and source, by-product, or special nuclear material subject to the Atomic Energy Act of 1954, as amended (42 USC 2014 et seq.).
BOARD NOTE: This definition differs from the similar definitions of mixed waste in the Illinois Low-Level Radioactive Waste Management Act ~~[420 ILCS 20/3(1)]~~ and 32 Ill. Adm. Code 606.20(h) of the IEMA regulations. Those basically define mixed waste as containing both RCRA hazardous waste and low-

level radioactive waste, as such is defined under Section 3(k) of the Illinois Low-Level Radioactive Waste Management Act ~~[420 ILCS 20/3(k)]~~.

"Naturally occurring or accelerator-produced radioactive material" or "NARM" means a radioactive material that fulfills one of the following conditions:

It is naturally occurring and it is not a source, by-product, or special nuclear material, as defined in section 11 of the federal Atomic Energy Act of 1954 (42 USC 2014), incorporated by reference in 35 Ill. Adm. Code 720.111(c); or

It is produced by an accelerator.

BOARD NOTE: NARM is regulated by the State, under the Radiation Protection Act of 1990 ~~[420 ILCS 40]~~ and 32 Ill. Adm. Code: Chapter II, Subchapters b and d, or by the federal Department of Energy (DOE), as authorized by the federal Atomic Energy Act (42 USC 2014 et seq.), under DOE regulations and orders.

"NRC" means the United States Nuclear Regulatory Commission.

BOARD NOTE: For the purposes of notices to the NRC required under this Subpart N, the address is as follows:

U.S. Nuclear Regulatory Commission, Region III
2443~~801~~ Warrenville Road, Suite 210
Lisle, Illinois 60532-4352~~4351~~

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

Section 726.330 Conditions to Qualify for and Maintain a Storage and Treatment Conditional Exemption

a) For LLMW to qualify for the exemption, the generator must notify the Agency and the IEMA in writing by certified delivery that it is claiming a storage and treatment conditional exemption for the LLMW stored on the generator's facility. The dated notification must include the generator's name, address, RCRA identification number, federal NRC or IEMA license number, the USEPA hazardous waste numbers~~codes~~ and storage units for which the generator is seeking an exemption, and a statement that the generator meets the conditions of this Subpart N. The generator's notification must be signed by the generator's authorized representative who certifies that the information in the notification is

true, accurate, and complete. The generator must notify the Agency of its claim ~~either before July 21, 2002, or~~ within 90 days after a storage unit is first used to store conditionally exempt LLMW~~, whichever is later~~.

b) To qualify for and maintain an exemption for LLMW, the generator must do each of the following:

1) Store its LLMW waste in tanks or containers in compliance with the requirements of its license that apply to the proper storage of low-level radioactive waste (not including those license requirements that relate solely to recordkeeping);

2) Store its LLMW in tanks or containers in compliance with chemical compatibility requirements of a tank or container in 35 Ill. Adm. Code 724.277 or 724.299 or 35 Ill. Adm. Code 725.277 or 725.299;

3) Certify that facility personnel who manage stored conditionally exempt LLMW are trained in a manner that ensures that the conditionally exempt waste is safely managed and that the training includes training in chemical waste management and hazardous materials incidents response that meets the personnel training standards found in 35 Ill. Adm. Code 725.116(a)(3);

4) Conduct an inventory of its stored conditionally exempt LLMW at least annually and inspect the waste at least quarterly for compliance with this Subpart N; and

5) Maintain an accurate emergency plan and provide it to all local authorities who may have to respond to a fire, explosion, or release of hazardous waste or hazardous constituents. The generator's plan must describe emergency response arrangements with local authorities; describe evacuation plans; list the names, addresses, and telephone numbers of all facility personnel qualified to work with local authorities as emergency coordinators; and list emergency equipment.

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

Section 726.345 Reclaiming a Lost Storage and Treatment Conditional Exemption

a) A generator may reclaim a lost storage and treatment conditional exemption for

its LLMW if the following conditions are fulfilled:

1) The generator again meets the conditions specified in Section 726.330; and

2) The generator sends the Agency a notice by certified delivery that the generator is reclaiming the exemption for its LLMW. The generator's notice must be signed by its authorized representative certifying that the information contained in the generator's notice is true, complete, and accurate. In its notice, the generator must do the following:

A) Explain the circumstances of each failure.

B) Certify that the generator has corrected each failure that caused it to lose the exemption for its LLMW and that the generator again meets all the conditions as of the date that the generator specifies.

C) Describe plans that the generator has implemented, listing specific steps that it has taken, to ensure that the conditions will be met in the future.

D) Include any other information that the generator wants the Agency to consider when it reviews the generator's notice reclaiming the exemption.

b) The Agency may terminate a reclaimed conditional exemption if it determines, in writing, pursuant to Section 39 of the Act ~~[415 ILCS 5/39]~~, that the generator's claim is inappropriate based on factors including, but not limited to, the following: the generator has failed to correct the problem; the generator explained the circumstances of the failure unsatisfactorily; or the generator failed to implement a plan with steps to prevent another failure to meet the conditions of Section 726.330. In reviewing a reclaimed conditional exemption pursuant to this Section, the Agency may add conditions to the exemption to ensure that waste management during storage and treatment of the LLMW will adequately protect human health and the environment. Any Agency determination made pursuant to this subsection (b) is subject to review by the Board pursuant to Section 40 of the Act ~~[415 ILCS 5/40]~~.

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

Section 726.355 Waste No Longer Eligible for a Storage and Treatment Conditional Exemption

a) When a generator's LLMW has met the requirements of its federal NRC or IEMA license for decay-in-storage and can be disposed of as non-radioactive waste, then the conditional exemption for storage no longer applies. On that date the generator's waste is subject to hazardous waste regulation under the relevant provisions of 35 Ill. Adm. Code 702, 703, 720 through 728, and 738, and the time period for accumulation of a hazardous waste, as specified in 35 Ill. Adm. Code 722.116 or 722.117~~722.134~~ begins.

b) When a generator's conditionally exempt LLMW, which has been generated and stored under a single federal NRC or IEMA license number, is removed from storage, it is no longer eligible for the storage and treatment exemption. However, a generator's waste may be eligible for the transportation and disposal conditional exemption at Section 726.405.

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

Section 726.360 Applicability of Closure Requirements to Storage Units

An interim status or~~and~~ permitted storage unit that was~~has been~~ used to store only LLMW prior to April 22, 2002 and which, after that date, stores only LLMW that becomes exempt under this Subpart N, is not subject to the closure requirements of 35 Ill. Adm. Code 724 and 725. A storage unit (or portions of units) that has been used to store both LLMW and non-mixed hazardous waste remains~~prior to April 22, 2002 or which is used to store both after that date remain~~ subject to closure requirements with respect to the non-mixed hazardous waste.

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

Section 726.450 Recordkeeping for a Transportation and Disposal Conditional Exemption

In addition to those records required by a generator's NRC or IEMA license, the generator must keep records as follows:

a) The generator must follow the applicable existing recordkeeping requirements under 35 Ill. Adm. Code 724.173, 725.173, and 728.107 to demonstrate that its waste has met LDR treatment standards prior to the generator claiming the

exemption.

b) The generator must keep a copy of all notifications and return receipts required under Sections 726.455, and 726.460 for three years after the exempted waste is sent for disposal.

c) The generator must keep a copy of all notifications and return receipts required under Section 726.445(a) for three years after the last exempted waste is sent for disposal.

d) The generator must keep a copy of the notification and return receipt required under Section 726.445(b) for three years after the exempted waste is sent for disposal.

e) If the generator is not already subject to federal NRC and IEMA manifest and transportation regulations for the shipment of its waste, the generator must also keep all other documents related to tracking the exempted waste as required under federal 10 CFR 20.2006 (Transfer for Disposal and Manifests), incorporated by reference in 35 Ill. Adm. Code 720.111(b), and IEMA requirements under 32 Ill. Adm. Code 340, including applicable NARM requirements, in addition to the records specified in subsections (a) through (d) ~~of this Section.~~

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

Section 726.460 Reclaiming a Lost Transportation and Disposal Conditional Exemption

a) A generator may reclaim a lost transportation and disposal conditional exemption for a waste after the generator has received a return receipt confirming that the Agency and ~~the~~ IEMA have received the generator's notification of the loss of the exemption specified in Section 726.455(a) and if the following conditions are fulfilled:

1) The generator again meets the conditions specified in Section 726.415 for the waste; and

2) The generator sends a notice, by certified delivery, to the Agency that the generator is reclaiming the exemption for the waste. A generator's notice must be signed by the generator's authorized representative certifying that the information provided is true, accurate, and complete. The notice must

include all of the following:

A) An explanation of the circumstances of each failure;

B) A certification that each failure that caused the generator to lose the exemption for the waste has been corrected and that the generator again meets all conditions for the waste as of the date the generator specifies;

C) A description of plans that the generator has implemented, listing the specific steps that the generator has taken, to ensure that conditions will be met in the future; and

D) Any other information that the generator wants the Agency to consider when the Agency reviews the generator's notice reclaiming the exemption.

b) The Agency may terminate a reclaimed conditional exemption if it determines, in writing, pursuant to Section 39 of the Act ~~[415 ILCS 5/39]~~, that the generator's claim is inappropriate based on factors including, but not limited to, the following: the generator has failed to correct the problem; the generator explained the circumstances of the failure unsatisfactorily; or the generator has failed to implement a plan with steps to prevent another failure to meet the conditions of Section 726.415. In reviewing a reclaimed conditional exemption pursuant to this Section, the Agency may add conditions to the exemption to ensure that transportation and disposal activities will adequately protect human health and the environment. Any Agency determination made pursuant to this subsection (b) is subject to review by the Board pursuant to Section 40 of the Act ~~[415 ILCS 5/40]~~.

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

POLLUTION CONTROL BOARD

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Section 726.APPENDIX G Health-Based Limits for Exclusion of Waste-Derived Residues

NOTE 1: Under Section 726.212(b)(2)(A), the health-based concentration limits for Appendix H to 35 Ill. Adm. Code 721 constituents for which a health-based concentration is not provided below is 2×10^{-6} mg/kg (0.000002 mg/kg or 0.002 µg/kg).

NOTE 2: The levels specified in this Section and the default level of 0.002 µg/kg (0.000002 mg/kg) or the level of detection for constituents, as identified in Note 1, are administratively stayed under the condition, for those constituents specified in Section 726.212(b)(1), that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in 35 Ill. Adm. Code 728.143 and Table B to 35 Ill. Adm. Code 728 for F039 nonwastewaters. See Section 726.212(b)(2)(A).

Metals-TCLP Extract Concentration Limits

Constituent	CAS No.	Concentration limits (mg/ℓ)
Antimony	7440-36-0	1.
Arsenic	7440-38-2	5.
Barium	7440-39-3	100.
Beryllium	7440-41-7	0.007
Cadmium	7440-43-9	1.
Chromium	7440-47-3	5.
Lead	7439-92-1	5.
Mercury	7439-97-6	0.2
Nickel	7440-02-0	70.
Selenium	7782-49-2	1.
Silver	7440-22-4	5.
Thallium	7440-28-0	7.

Nonmetals-Residue Concentration Limits

Constituent	CAS No.	Concentration limits for residues (mg/kg)
Acetonitrile	75-05-8	0.2
Acetophenone	98-86-2	4.
Acrolein	107-02-8	0.5

Acrylamide	79-06-1	0.0002
Acrylonitrile	107-13-1	0.0007
Aldrin	309-00-2	0.00002
Allyl alcohol	107-18-6	0.2
Aluminum phosphide	20859-73-8	0.01
Aniline	62-53-3	0.06
Barium cyanide	542-62-1	1.
Benz(a)anthracene	56-55-3	0.0001
Benzene	71-43-2	0.005
Benzidine	92-87-5	0.000001
Bis(2-chloroethyl) ether	111-44-4	0.0003
Bis(chloromethyl) ether	542-88-1	0.000002
Bis(2-ethylhexyl) phthalate	117-81-7	30.
Bromoform	75-25-2	0.7
Calcium cyanide	592-01-8	0.000001
Carbon disulfide	75-15-0	4.
Carbon tetrachloride	56-23-5	0.005
Chlordane	57-74-9	0.0003
Chlorobenzene	108-90-7	1.
Chloroform	67-66-3	0.06
Copper cyanide	544-92-3	0.2
Cresols (Cresylic acid)	1319-77-3	2.
Cyanogen	460-19-5	1.
DDT	50-29-3	0.001
Dibenz(a,h)anthracene		
~~Dibenz(a, h) anthracene~~	53-70-3	0.000007
1,2-Dibromo-3-chloropropane	96-12-8	0.00002
p-Dichlorobenzene	106-46-7	0.075
Dichlorodifluoromethane	75-71-8	7.
1,1-Dichloroethylene	75-35-4	0.005
2,4-Dichlorophenol	120-83-2	0.1
1,3-Dichloropropene	542-75-6	0.001
Dieldrin	60-57-1	0.00002
Diethyl phthalate	84-66-2	30.
Diethylstilbestrol	56-53-1	0.0000007
Dimethoate	60-51-5	0.03
2,4-Dinitrotoluene	121-14-2	0.0005
Diphenylamine	122-39-4	0.9
1,2-Diphenylhydrazine	122-66-7	0.0005

Endosulfan	115-29-7	0.002
Endrin	72-20-8	0.0002
Epichlorohydrin	106-89-8	0.04
Ethylene dibromide	106-93-4	0.0000004
Ethylene oxide	75-21-8	0.0003
Fluorine	7782-41-4	4.
Formic acid	64-18-6	70.
Heptachlor	76-44-8	0.00008
Heptachlor epoxide	1024-57-3	0.00004
Hexachlorobenzene	118-74-1	0.0002
Hexachlorobutadiene	87-68-3	0.005
Hexachlorocyclopentadiene	77-47-4	0.2
Hexachlorodibenzo-p-dioxins	19408-74-3	0.00000006
Hexachloroethane	67-72-1	0.03
Hydrazine	302-01-1	0.0001
Hydrogen cyanide	74-90-8	0.00007
Hydrogen sulfide	7783-06-4	0.000001
Isobutyl alcohol	78-83-1	10.
Methomyl	16752-77-5	1.
Methoxychlor	72-43-5	0.1
3-Methylcholanthrene	56-49-5	0.00004
4,4'-Methylenebis(2-chloroaniline)		
~~4,4'-Methylenebis (2-chloroaniline)~~	101-14-4	0.002
Methylene chloride	75-09-2	0.05
Methyl ethyl ketone (MEK)	78-93-3	2.
Methyl hydrazine	60-34-4	0.0003
Methyl parathion	298-00-0	0.02
Naphthalene	91-20-3	10.
Nickel cyanide	557-19-7	0.7
Nitric oxide	10102-43-9	4.
Nitrobenzene	98-95-3	0.02
N-Nitrosodi-n-butylamine	924-16-3	0.00006
N-Nitrosodiethylamine	55-18-5	0.000002
N-Nitroso-N-methylurea	684-93-5	0.0000001
N-Nitrosopyrrolidine	930-55-2	0.0002
Pentachlorobenzene	608-93-5	0.03
Pentachloronitrobenzene (PCNB)	82-68-8	0.1
Pentachlorophenol	87-86-5	1.
Phenol	108-95-2	1.

Phenylmercury acetate	62-38-4	0.003
Phosphine	7803-51-2	0.01
Polychlorinated biphenyls, N.O.S	1336-36-3	0.00005
Potassium cyanide	151-50-8	2.
Potassium silver cyanide	506-61-6	7.
Pronamide	23950-58-5	3.
Pyridine	110-86-1	0.04
Reserpine	50-55-5	0.00003
Selenourea	630-10-4	0.2
Silver cyanide	506-64-9	4.
Sodium cyanide	143-33-9	1.
Strychnine	57-24-9	0.01
1,2,4,5-Tetrachlorobenzene	95-94-3	0.01
1,1,2,2-tetrachloroethane	79-34-5	0.002
Tetrachloroethylene	127-18-4	0.7
2,3,4,6-Tetrachlorophenol	58-90-2	0.01
Tetraethyl lead	78-00-2	0.000004
Thiourea	62-56-6	0.0002
Toluene	108-88-3	10.
Toxaphene	8001-35-2	0.005
1,1,2-Trichloroethane	79-00-5	0.006
Trichloroethylene	79-01-6	0.005
Trichloromonofluoromethane	75-69-4	10.
2,4,5-Trichlorophenol	95-95-4	4.
2,4,6-Trichlorophenol	88-06-2	4.
Vanadium pentoxide	1314-62-1	0.7
Vinyl chloride	75-01-4	0.002

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

Section 726.APPENDIX I Methods Manual for Compliance with BIF Regulations

The document entitled, "Methods Manual for Compliance with BIF Regulations: Burning Hazardous Waste in Boilers and Industrial Furnaces~~;~~", December 1990, is available as appendix IX to 40 CFR 266 (Methods Manual for Compliance with the BIF Regulations), incorporated by reference in 35 Ill. Adm. Code 720.111(b). It is also available through NTIS, as described in the incorporation by reference.

(Source: Amended at 42 Ill. Reg. 23023, effective November 19, 2018)

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Use Tax

2) Code Citation: 86 Ill. Adm. Code 150

3)

Section Numbers:	Adopted Actions:
150.311	Repealed
150.340	Repealed

4) Statutory Authority: Use Tax Act [35 ILCS 105]

5) Effective Date of Rules: November 29, 2018

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

7) Does this rulemaking contain incorporations by reference? No

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

9) Notice of Proposal published in the *Illinois Register*: 42 Ill. Reg. 6280; April 6, 2018

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

11) Differences between Proposal and Final Version: The only changes made were the ones agreed upon with JCAR. Only grammatical and technical changes were made. No substantive changes were made.

12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreement letter issued by JCAR? None were made.

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

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

15) Summary and Purpose of Rulemaking: This rulemaking removes obsolete language.

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

Samuel J. Moore

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

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

217/782-2844

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

DEPARTMENT OF REVENUE

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TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 150
USE TAX

SUBPART A: NATURE OF THE TAX

Section

SUBPART B: DEFINITIONS

Section

SUBPART C: KINDS OF USES AND USERS NOT TAXED

Section

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

SUBPART E: RECEIPT FOR THE TAX

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150.1001 General Information

SUBPART J: TRADED-IN PROPERTY

Section
150.1101 General Information

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

Section
150.1201 General Information

SUBPART L: BOOKS AND RECORDS

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

SUBPART M: CLAIMS TO RECOVER ERRONEOUSLY PAID TAX

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

150.TABLE A Tax Collection Brackets

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

SOURCE: Adopted August 1, 1955; amended at 4 Ill. Reg. 24, p. 553, effective June 1, 1980; amended at 5 Ill. Reg. 5351, effective April 30, 1981; amended at 5 Ill. Reg. 11072, effective October 6, 1981; codified at 6 Ill. Reg. 9326; amended at 8 Ill. Reg. 3704, effective March 12,

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

SUBPART C: KINDS OF USES AND USERS NOT TAXED

Section 150.311 Commercial Distribution Fee Sales Tax Exemption (Repealed)

~~a)~~ ~~Qualifications for exemption through June 30, 2004.~~
~~*Beginning on July 1, 2003 through June 30, 2004, sales of certain motor vehicles are not subject to the tax imposed under this Part if they meet all of the following tests:*~~

~~1)~~ ~~*The motor vehicle qualifies as a second division motor vehicle under Section 1-146 of the Illinois Vehicle Code*. First division motor vehicles, such as those motor vehicles that are designed for the carrying of not more than 10 persons, do not qualify for the exemption. (See 625 ILCS 5/1-146.);~~

2) *The motor vehicle has a gross vehicle weight in excess of 8,000 pounds; and*

3) *The motor vehicle is subject to the Commercial Distribution Fee imposed under Section 3-815.1 of the Illinois Vehicle Code.* [35 ILCS 115/2] The motor vehicle must be registered and remain registered in such a manner whereby it is subject to payment of the Commercial Distribution Fee imposed under Section 3-815.1 of the Illinois Vehicle Code [625 ILCS 5/3-815.1] and such fee is actually paid for any period in which the fee is in effect.

b) Qualifications for exemption beginning July 1, 2004.
Beginning on July 1, 2004 through June 30, 2005, sales of certain motor vehicles are not subject to the tax imposed under this Part if they meet all of the following tests:

1) *The motor vehicle is a second division motor vehicle.* First division motor vehicles, such as those motor vehicles that are designed for the carrying of not more than 10 persons, do not qualify for the exemption. (See 625 ILCS 5/1-146.);

2) *The motor vehicle must have a gross vehicle weight rating in excess of 8,000 pounds.* For purposes of this Section, Gross Vehicle Weight Rating means the value specified by the manufacturer or manufacturers as the maximum loaded weight of a single vehicle. (See 625 ILCS 5/1-124.5.);

3) *The motor vehicle is subject to the Commercial Distribution Fee imposed under Section 3-815.1 of the Illinois Vehicle Code.* The motor vehicle must be registered and remain registered in such a manner whereby it is subject to payment of the Commercial Distribution Fee imposed under Section 3-815.1 of the Illinois Vehicle Code [625 ILCS 5/3-815.1] and such fee is actually paid for any period in which the fee is in effect; and

4) *The motor vehicle is used primarily for commercial purposes.* [35 ILCS 115/2] For purposes of this Section, a motor vehicle used for commercial purposes means any motor vehicle used to transport persons or property in the furtherance of any commercial or industrial enterprise, whether for-hire or not-for-hire.

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~~COMMERCIAL PURPOSE EXAMPLE: A motor vehicle that is used for transportation to work, school, or recreational activities would not be used for commercial purposes.~~

~~b) Documentation of exemption. To properly document the exemption, the seller must obtain a written certificate from the purchaser stating the following:~~

~~1) the name, address, and telephone number of purchaser;~~

~~2) the description and Vehicle Identification Number of the motor vehicle or motor vehicles being purchased;~~

~~3) the name and address of seller;~~

~~4) the date of purchase;~~

~~5) a statement that the motor vehicle will be used primarily for commercial purposes and will be registered under Section 3-815(a) or 3-818(a) of the Illinois Vehicle Code or in such other manner whereby the registration of that motor vehicle will require the payment of the Commercial Distribution Fee imposed under Section 3-815.1 of the Illinois Vehicle Code and that such vehicle will remain validly registered in such a manner for subsequent registration years;~~

~~6) the commercial purpose for which the vehicle will be used along with the purchaser's Illinois Business Tax (IBT) number or other business registration number; and~~

~~7) the signature of purchaser.~~

~~c) Liability for tax. If a purchaser claims the exemption provided in this Section and the vehicle is not considered subject to the Commercial Distribution Fee as described in subsection (a)(3) or (b)(3) of this Section or otherwise does not qualify for this exemption, the purchaser will be liable for the tax based upon the purchase price of that vehicle and any applicable penalties and interest from the date of purchase.~~

~~d) Repair and replacement parts. The exemption provided in this Section may not be claimed for any repair part, replacement part, or other item attached or incorporated into the motor vehicle after the purchase of the motor vehicle. Such items may qualify for exemption from sales tax if the motor vehicle or trailer is used in a manner that qualifies for the rolling stock exemption. See 86 Ill. Adm. Code 130.340.~~

~~e) Trailers. For purposes of this Section, a trailer that is subject to the commercial distribution fee imposed under Section 3-815.1 of the Illinois Vehicle Code will qualify as a second division motor vehicle under subsection (a)(1) or (b)(1) of this Section. The term "trailer" includes a trailer as defined in Section 1-209 of the Illinois Vehicle Code, a semitrailer as defined in Section 1-187 of the Illinois Vehicle Code, and a pole trailer as defined in Section 1-161 of the Illinois Vehicle Code.~~

(Source: Repealed at 42 Ill. Reg. 23143, effective November 29, 2018)

Section 150.340 Manufacturing Machinery and Equipment; Production Related Tangible Personal Property; Department Determination of Amount of Exemption (Repealed)

~~a) General. Beginning on July 1, 2007 and ending on June 30, 2008, the manufacturing and assembling machinery and equipment exemption described in 86 Ill. Adm. Code 130.330 includes purchases of production related tangible personal property, subject to the limitations set forth in this Section. For purposes of this Section, terms used, unless defined in this Section, have the meaning ascribed to them in 86 Ill. Adm. Code 130.330.~~

~~b) Limitations. The exemption for production related tangible personal property is subject to the following limitations:~~

~~1) The exemption for production related tangible personal property allowed under this Section shall be awarded to the taxpayer in the form of a credit memorandum issued by the Department as provided in subsection (f). Retailers must collect tax on sales, and purchasers must pay tax on purchases, of production related tangible personal property at the time of the sale.~~

2) ~~Purchases of production related tangible personal property made on or after July 1, 2007 and on or before June 30, 2008 are eligible for a credit memorandum equal to 5% of the purchase price.~~

3) ~~Manufacturer's Purchase Credit (see 86 Ill. Adm. Code 130.331) may not be earned by the purchase of production related tangible personal property for which a credit memorandum is received under this Section and purchases otherwise eligible for the manufacturing and assembling machinery and equipment exemption are not eligible for a credit memorandum under this Section.~~

4) ~~The maximum aggregate amount of credit memorandums for production related tangible personal property awarded under this Section to all taxpayers may not exceed $10,000,000. If the claims for the credit memorandums exceed $10,000,000, then the Department shall reduce the amount of the credit memorandum to each taxpayer on a pro rata basis.~~

5) ~~Example. If a taxpayer submits a report that contains purchases of production related tangible personal property totaling $50,000 for the year, the amount of the credit memorandum, before proration, would be $2,500 (5% of the purchase price). If all of the reports submitted by taxpayers contain aggregate purchases of production related tangible personal property totaling $400,000,000 for the year, the aggregate amount of credit memorandums that would be issued, before proration, is $20,000,000 (5% of $400,000,000). Because $20,000,000 is twice the statutory limit of aggregate exemptions allowed, each exemption amount claimed will be reduced by one-half. So, the $2,500 credit memorandum claimed will be reduced to $1,250.~~

~~e) Production Related Tangible Personal Property.~~

1) ~~"Production related tangible personal property" means all tangible personal property used or consumed in a production related process by a manufacturer in a manufacturing facility in which a manufacturing process described in Section 3-50 of the Use Tax Act takes place.~~

2) ~~"Production related tangible personal property" includes, without limitation, tangible personal property that is purchased for incorporation into real estate within a manufacturing facility and tangible personal~~

property that is used or consumed in activities such as research and development, preproduction material handling, receiving, quality control, inventory control, storage, staging, and packaging for shipping and transportation purposes.

3) "Production related tangible personal property" does not include:

i) tangible personal property that is used, within or without a manufacturing facility, in sales, purchasing, accounting, fiscal management, marketing, personnel recruitment or selection, or landscaping; or

ii) tangible personal property that is required to be titled or registered with a department, agency, or unit of federal, State or local government.

d) By way of illustration and not limitation, the following uses of tangible personal property will be considered production related:

1) Tangible personal property purchased by a manufacturer for incorporation into real estate within a manufacturing facility for use in a production related process.

2) Supplies and consumables used in a manufacturing facility, including fuels, coolants, solvents, oils, lubricants, cleaners and adhesives.

3) Hand tools (not electrically, pneumatically or otherwise powered), protective apparel, and fire and safety equipment used or consumed in a manufacturing facility.

4) Tangible personal property used or consumed in a manufacturing facility for purposes of pre-production and post-production material handling, receiving, quality control, inventory control, storage, staging and packing for shipping or transportation.

5) Fuel used in a ready-mix cement truck to rotate the mixing drum in order to manufacture concrete or cement. However, only the amount of fuel used to rotate the drum will qualify. The amount of fuel used or consumed

in transportation of the truck will not qualify as production related tangible personal property.

e) By way of illustration and not limitation, the following uses of property will not be considered production related:

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

2) Office supplies, computers, desks, copiers and equipment that are used for sales, purchasing, accounting, fiscal management, marketing and personnel recruitment or selection activities, even if that use takes place within a manufacturing facility.

3) Tangible personal property used or consumed for aesthetic or decorative purposes, including landscaping and artwork.

4) Tangible personal property used or consumed outside the manufacturing facility, including tangible personal property listed in subsection (d)(4), with the exception of tangible personal property used or consumed for research and development purposes.

5) Tangible personal property purchased by a construction contractor for incorporation into a manufacturing facility.

6) Tangible personal property transferred to a manufacturer's customer.

7) Tangible personal property used in the process of graphic arts production.

f) Administration of Exemption Claims. In order to meet the $10,000,000 exemption cap set forth in subsection (b), which may require that exemptions be prorated, and in accordance with specific rulemaking authority granted in 35 ILCS 105/3-50(5), the Department shall implement the exemption under this Section through Exemption Reports filed by purchasers only. The exemption report procedure shall be as provided in this subsection (f).

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

~~1)~~ ~~Purchasers must file with the Department an Exemption Report, in the form and manner prescribed by the Department, for tax paid on purchases of production related tangible personal property that is purchased on or after July 1, 2007 and on or before June 30, 2008. The Exemption Report must be filed after the close of the eligibility period on June 30, 2008, but no later than September 1, 2008.~~

~~2)~~ ~~Subject to audit, purchasers must maintain records, as to each purchase of production related tangible personal property for which the purchaser files an Exemption Report, that:~~

~~A)~~ ~~Identify the vendor or supplier (including either the vendor's or supplier's Illinois registration number or Federal Employer Identification Number);~~

~~B)~~ ~~Identify the date of purchase, purchase price and description of the production related tangible personal property; and~~

~~C)~~ ~~Contain a certificate signed by the vendor or supplier (on a form provided by the Department or on the purchaser's own form containing the appropriate information) that:~~

~~i)~~ ~~acknowledges that the purchaser will file an Exemption Report for the production related tangible personal property; and~~

~~ii)~~ ~~certifies that the vendor or supplier will not file a claim against the taxes paid to the Department on that production related tangible personal property.~~

~~3)~~ ~~To claim the exemption for purchases of production related tangible personal property, the purchaser must report to the Department his or her purchases of production related tangible personal property made and for which tax was paid during the period beginning on July 1, 2007 and ending on June 30, 2008. The purchaser must make this report by signing and filing a Production Related Tangible Personal Property Exemption Report with the Department after the close of the eligibility period on June 30, 2008, but no later than September 1, 2008. Original Exemption Reports filed after September 1, 2008 shall be disallowed. The Production~~

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

Related Tangible Personal Property Exemption Report must be filed on forms prescribed or approved by the Department and must state:

A) The total purchase price of all production related tangible personal property purchased from July 1, 2007 through June 30, 2008 (excluding taxes paid);

B) The amount of the exemption claimed, which shall be equal to 5% of the amount in subsection (f)(3)(A); and

C) Such other information as the Department may reasonably require. (See Section 3-50(5) of the Use Tax Act.)

4) In order to efficiently administer this exemption within the statutory limitations, the Department shall proceed as provided in this subsection (f)(4).

A) As soon as possible after the September 1, 2008 deadline for filing Exemption Reports, but no later than November 1, 2008, the Department shall review each Report timely filed.

B) The Department shall first determine all of those Exemption Reports that meet the requirements under this Section for approval in the full amount claimed (before proration) and hold them pending final determination on all Reports filed.

C) If an Exemption Report is timely filed that the Department does not approve in the full amount claimed (before proration), the Department shall notify the taxpayer that it has not approved the exemption in the amount claimed and explain the basis for its decision. The taxpayer shall have 30 days after the date of the notice to submit a corrected Exemption Report or provide evidence that the original Exemption Report is correct.

D) If, within 30 days after the date of the notice in subsection (f)(4)(C), the taxpayer submits a corrected Exemption Report that meets the requirements under this Section for approval, or if the taxpayer submits evidence that the original Exemption Report is correct and the Department agrees with that evidence, then the

exemption amount claimed will be approved and included with the other approved Exemption Reports under this Section.

E) If, within 30 days after the date of the notice in subsection (f)(4)(C), the taxpayer responds to the notice and the Department changes the amount of the exemption approved as a result, but does not approve the full amount claimed in the corrected Exemption Report or based on the evidence provided, the Department shall include this final amount approved with the other approved Exemption Reports under this Section.

F) If, within 30 days after the date of the notice in subsection (f)(4)(C), the taxpayer responds to the notice, but the taxpayer submits a corrected Exemption Report that does not meet the requirements under this Section for approval or the taxpayer submits evidence that the original Exemption Report is correct and the Department does not agree with that evidence, then the Exemption Report shall be approved only in the amount the Department determined to be eligible based on the original Exemption Report filed, which, in some instances will be a denial of all exemption amounts claimed.

G) If the taxpayer does not respond to the notice in subsection (f)(4)(C) within 30 days after the date of the notice, then the Exemption Report shall be approved only in the amount the Department determined to be eligible based on the original Exemption Report filed, which, in some instances will be a denial of all exemption amounts claimed.

5) After making the final determination, as provided in subsection (f)(4), of which Exemption Reports meet the requirements for approval, the Department shall determine the aggregate amount of approved Exemption Reports for purchases of production related tangible personal property. If the aggregate amount of exemptions approved exceeds $10,000,000, the Department shall reduce the exemption amount allowed to each claimant on a pro rata basis. After determining the pro rata amount approved for each Exemption Report, the Department shall notify each purchaser that the Report is approved and the pro rata amount of the exemption claimed

~~that was allowed. This notification shall be made within 30 days after the Department makes the final determination.~~

~~EXAMPLE: Purchaser files an Exemption Report claiming an exemption of $10,000 that the Department approves. The aggregate of all approved exemption claims equals $20,000,000. All exemption claimants will be allowed a prorated exemption equal to one-half the Department-approved amount claimed. The purchaser who claimed a $10,000 exemption will be allowed an exemption of $5,000.~~

~~6)~~ ~~All exemption reports approved by the Department under this Section shall be awarded by the Department in the form of a credit memorandum. The taxpayer in the example in subsection (f)(5) would be awarded a credit memorandum in the amount of $5,000 that he or she may use to satisfy State Use Tax and State and local occupation tax liability on future returns filed with the Department. A credit memorandum that is not used to offset the tax liability of the taxpayer may be assigned or transferred in accordance with 86 Ill. Adm. Code 130.1505. No interest shall be paid on exemption claims allowed under this Section.~~

~~7)~~ ~~A purchaser who is issued a credit memorandum under this Section for tax paid on the purchase of property that is later determined not to qualify as production related tangible personal property may be liable for tax, penalty and interest on the purchase of that property as of the date the credit memorandum is issued.~~

(Source: Repealed at 42 Ill. Reg. 23143, effective November 29, 2018)

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Liquor Control Act

2) Code Citation: 86 Ill. Adm. Code 420

3)

Section Numbers:	Adopted Actions:
420.10	Amendment
420.80	Amendment

4) Statutory Authority: 235 ILCS 5/8-13

5) Effective Date of Rules: November 29, 2018

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

7) Does this rulemaking contain incorporations by reference? No

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

9) Notice of Proposal Published in *Illinois Register*: 42 Ill. Reg. 8755; June 1, 2018

10) Has JCAR issued a Statement of Objection to these rulemakings? 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.

12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreement letter issued by JCAR? None were made.

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

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

15) Summary and Purpose of Rulemaking: Sections 420.10 and 420.80 are amended to remove out-of-date and obsolete language.

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

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

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

217/782-2844

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 420
LIQUOR CONTROL ACT

Section

AUTHORITY: Implementing and authorized by Article VIII of the Liquor Control Act of 1934 [235 ILCS 5/Art. VIII].

SOURCE: Filed and effective June 17, 1958; codified at 8 Ill. Reg. 17910; amended at 14 Ill. Reg. 18083, effective October 18, 1990; amended at 15 Ill. Reg. 3498, effective February 21, 1991; amended at 24 Ill. Reg. 8096, effective May 26, 2000; amended at 24 Ill. Reg. 14763, effective September 25, 2000; amended at 27 Ill. Reg. 830, effective January 3, 2003; amended at 28 Ill. Reg. 11914, effective July 27, 2004; amended at 39 Ill. Reg. 14701, effective October 22, 2015; amended at 42 Ill. Reg. 23160, effective November 29, 2018.

Section 420.10 Gallonage Taxes

a) Measure of Tax

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

1) Tax Imposed

~~A)~~ ~~Until September 1, 2009, a tax is imposed upon the privilege of engaging in business as a manufacturer or as an importing distributor of alcoholic liquor at the rate of 73¢ per gallon for wine containing less than 20% of alcohol by volume other than cider containing less than 7% alcohol by volume; 18.5¢ per gallon on beer; 18.5¢ per gallon for cider containing not less than 0.5% alcohol by volume nor more than 7% alcohol by volume; and $4.50 per gallon on alcoholic liquor having 20% or more of alcohol by volume, manufactured or imported for sale or use by such manufacturer, or as agent for any other person, or purchased tax-free for sale or use by such manufacturer, or as agent for any other person, or imported for sale or use by such importing distributor, or as agent for any other person, or purchased tax-free for sale or use by such importing distributor, or as agent for any other person.~~

AB) A~~Beginning September 1, 2009, a~~ tax is imposed upon the privilege of engaging in business as a manufacturer or as an importing distributor of alcoholic liquor.~~i)~~ The tax shall be at the following rates:

i) $1.39 per gallon for wine containing less than 20% of alcohol by volume other than cider containing less than 7% alcohol by volume;

ii) 23.1¢ per gallon on beer;

iii) 23.1¢ per gallon for cider containing not less than 0.5% alcohol by volume nor more than 7% alcohol by volume; and

iv) $8.55 per gallon on alcoholic liquor containing 20% or more of alcohol by volume.

B~~ii~~) The tax applies to alcoholic liquor:

i) manufactured, imported or purchased tax-free for sale or use by the manufacturer, or as agent for any other person; or

ii) imported or purchased tax-free for sale or use by the importing distributor, or as agent for any other person. (See 235 ILCS 5/8-1.)

2) *For purposes of this Section, "cider" means any alcoholic beverage obtained by the alcohol fermentation of the juice of apples or pears including, but not limited to, flavored, sparkling, or carbonated cider.* [235 ILCS 5/8-1]

b) Persons Liable for Tax

1) Sales of alcoholic liquor by an Illinois licensed foreign importer to an Illinois licensed importing distributor of alcoholic liquor are not taxable even if both licenses are held by the same legal entity.

2) Where one licensed manufacturer or importing distributor sells alcoholic liquor to another licensed manufacturer or importing distributor, the sale may be made tax-free to the extent to which the sale of alcoholic liquor by one Illinois licensed manufacturer or importing distributor to another Illinois licensed manufacturer or importing distributor is authorized by the licensing provisions of Article V of the Act. When the sale is made tax-free, the purchasing manufacturer or importing distributor is responsible for paying the proper tax unless the purchaser sells the alcoholic liquor that he or she has bought tax-free to another licensed manufacturer or importing distributor under circumstances authorized by the licensing provisions of the Act and elects not to pay the tax. This procedure may be continued until a licensed manufacturer or importing distributor sells the alcoholic liquor to someone not licensed as a manufacturer or importing distributor, in which event, if the tax liability has not been assumed previously, the manufacturer or importing distributor who makes the sale to a purchaser not licensed as a manufacturer or importing distributor must pay the proper tax when filing his or her return for the month in which he or she makes the taxable sale unless there is some other basis for claiming tax exemption, such as the fact that the sale is in interstate commerce (see

Section 420.30) or that the sale is made to a non-beverage user (see Sections 420.500 and 420.110(b)).

3) *The application form for a winery shipper's license filed under the Act includes an acknowledgement consenting to the jurisdiction of the Liquor Control Commission, the Department, and the courts of this State concerning the enforcement of the Act and any related laws, rules and regulations, including authorizing the Department and the Liquor Control Commission to conduct audits for the purpose of ensuring compliance with the Act. A winery shipper licensee must pay to the Department the State liquor gallonage tax under Section 8-1 of the Act for all wine that is sold by the licensee and shipped to a person in this State. For the purposes of Section 8-1 of the Act, a winery shipper licensee shall be taxed in the same manner as a manufacturer of wine. A winery shipper licensee who is not otherwise required to register under the Retailers' Occupation Tax Act* [35 ILCS 120] *must register under the Use Tax Act* [35 ILCS 105] *to collect and remit use tax to the Department for all gallons of wine that are sold by the winery shipper licensee and shipped to persons in this State. If a winery shipper licensee fails to remit the tax imposed under the Act in accordance with the provisions of Article VIII of the Act, the winery shipper's license shall be revoked in accordance with the provisions of Article VII of the Act. If a winery shipper licensee fails to properly register and remit tax under the Use Tax Act or the Retailers' Occupation Tax Act for all wine that is sold by the winery shipper licensee and shipped to persons in this State, the winery shipper's license shall be revoked in accordance with the provisions of Article VII of the Act. A winery shipper licensee must collect, maintain and submit to the Liquor Control Commission on a semiannual basis the total number of cases per resident of wine shipped to residents of this State.* [235 ILCS 5/5-1(r)]

4) *If any person received any alcoholic liquors from a manufacturer or importing distributor, with respect to which alcoholic liquors no tax is imposed under Article VIII of the Act, and that alcoholic liquor is thereafter disposed of in such a manner or under such circumstances as may cause that alcoholic liquor to become the base for the tax imposed by Article VIII of the Act, that person shall make the same reports and returns, pay the same taxes and be subject to all other provisions of that Article relating to manufacturers and importing distributors.* [235 ILCS 5/8-1]

c) *The tax imposed under Section 8-1 of the Act shall be in addition to all other occupation or privilege taxes imposed by the State of Illinois or any political subdivision of the State.* [235 ILCS 5/8-1].

(Source: Amended at 42 Ill. Reg. 23160, effective November 29, 2018)

Section 420.80 Monthly Return

a) Requirement for Filing

1) Each manufacturer and importing distributor of alcoholic liquor must file a return on the form approved and provided by the Department between the 1st and 15th day of each calendar month, covering transactions in alcoholic liquors during the preceding calendar month. Payment of the tax in the amount disclosed by the return shall accompany the return.

A) Voluntary Electronic Filing and Payment of Taxes. Beginning January 1, 2003, taxpayers may elect to file returns electronically under 86 Ill. Adm. Code 760. A taxpayer that elects to electronically file a return and accompanying schedules must also make payment through Electronic Funds Transfer as provided in 86 Ill. Adm. Code 750. Taxpayers who both timely pay tax by Electronic Funds Transfer and timely file returns and schedules electronically shall be entitled to a discount of 2% or $2,000 per return, whichever is less.~~as follows:~~

~~i) For original returns due on January 1, 2003 through September 30, 2003, the discount shall be 1.75% or $1,250 per return, whichever is less;~~

~~ii) For original returns due on October 1, 2003 through September 30, 2004, the discount shall be 2% or $3,000 per return, whichever is less; and~~

~~iii) For original returns due on or after October 1, 2004, the discount shall be 2% or $2,000 per return, whichever is less.~~

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

B) Mandatory Electronic Payment of Taxes. ~~Effective January 1, 2003, taxpayers whose annual liability is $200,000 or more for the preceding calendar year are required to make payments of tax by Electronic Funds Transfer.~~ *A ~~Beginning October 1, 2010, a~~ taxpayer who has an annual tax liability of $20,000 or more shall make all payments of that tax to the Department by electronic funds transfer*. [20 ILCS 2505/2505-210]

2) After a first return has been filed by any manufacturer or importing distributor, a return form will be mailed by the Department on or about the first day of each succeeding month to that manufacturer or importing distributor. However, it is the duty of each manufacturer and importing distributor to obtain forms, and failure to receive forms from the Department will not be an excuse for failing to file returns when and as required by the Act.

3) Each manufacturer or importing distributor is required to file a return for each month that his or her license is in full force and effect, irrespective of the fact that he or she may not have any tax liability to pay for that month.

4) In any case in which business is permanently discontinued, or when a stock of alcoholic liquors has been sold in bulk and the taxpayer has gone out of business, the taxpayer should immediately notify the Department of this fact, and upon a proper showing by the taxpayer that his or her license has been canceled by the Illinois Liquor Control Commission, he or she will be permitted to discontinue filing monthly returns.

5) In completing the Liquor Revenue Return form, the amount of liquor manufactured, rectified, blended or bottled during the month must be included on the return by manufacturers of alcohol and spirits and by first and second class winemakers. In the case of manufacturers of alcohol and spirits, this item shall include bottled alcoholic liquor produced by the manufacturer in Illinois and bulk alcoholic liquor for which a deduction is being claimed on any schedule accompanying the return. In the case of first and second class winemaking, this item shall include all wine (whether immediately bottled or not) produced by the winemaker in Illinois. Wineries that are licensed as manufacturers, but not as first or second class winemakers, do not report anything as manufactured, rectified, blended or bottled.

b) Schedules Accompanying Return of Manufacturer or Importing Distributor of Alcoholic Liquor:

1) As part of the monthly return of a manufacturer or importing distributor of alcoholic liquor, and to be completed and filed supplementary to the return in specified instances, the Department requires the completion and filing of the schedules described in subsection (b)(2). The totals of the several columns on each of the schedules must be carried to the corresponding columns and entered on proper lines according to the schedule designation on the monthly tax return.

2) In every instance in which a manufacturer or importing distributor is required, by any particular schedule, to make a report of alcoholic liquors manufactured, imported, stored on hand or held in warehouses, purchased or otherwise acquired, sold or otherwise transferred, used, bottled, blended, fortified or rectified by that person, the person shall, to comply with the provisions of the Act, also include in the appropriate schedule the alcoholic liquors manufactured, imported, stored on hand or held in warehouses, purchased or otherwise acquired, sold or otherwise transferred, used, bottled, blended, fortified or rectified by that person as agent for others.

A) Schedule "A" – Alcoholic Liquor Transactions. This schedule must be completed and filed monthly by each importing distributor who imports alcoholic liquors into this State. This schedule consists of a detailed itemization of the importations, and the importing distributor must include in it all importations of alcoholic liquors, regardless of whether the merchandise is imported in bond or out of bond. The mere fact that a warehouse acting as agent for the importing distributor receives the merchandise and issues a warehouse receipt does not relieve the importing distributor from reporting the transaction. All alcoholic liquors imported and stored in public or bonded warehouses, for the account of an importing distributor, must be reported by the importing distributor in this schedule at the time the alcoholic liquors are imported and receipt of the alcoholic liquors for the account of the importing distributor is acknowledged by the warehouse. This information may not be withheld until withdrawals of the alcoholic liquors from the

warehouse are made. Items of this nature should be reported as importations into Illinois.

B) Schedule "F" – Alcoholic Liquor Transactions. In this schedule, manufacturers of alcohol and spirits report only bottled alcoholic liquors purchased tax-free, including transfers in bond covered by the issuance, transfer or negotiation of warehouse receipts. All other manufacturers and importing distributors, however, must report tax-free purchases of both bottled and bulk alcoholic liquors in this schedule, including transfers in bond covered by the issuance, transfer or negotiation of warehouse receipts. Bottled alcoholic liquors purchased tax-free and stored in public or bonded warehouses for the account of a manufacturer of alcohol and spirits and all alcoholic liquors purchased tax-free and stored in public or bonded warehouses for the account of other manufacturers (such as wineries) and importing distributors, must be reported in this schedule at the time of purchase, and the report may not be withheld until the alcoholic liquors are withdrawn from the warehouse.

C) Schedule "G" – Tax-Paid Inventory. This schedule must be completed by manufacturers and importing distributors who purchase tax-paid alcoholic liquors.

D) Schedule "C" – Tax-Free Alcoholic Liquor Sales in Interstate Commerce and Foreign Trade. This schedule must be filed by manufacturers or importing distributors who claim deductions on the monthly return of gallonage of alcoholic liquors sold by them and shipped tax-free in interstate or foreign commerce, or delivered tax-free to ships for use outside the continental limits of the United States in foreign commerce as provided in Section 420.140. Manufacturers and importing distributors must include in the schedule bulk (as well as all other) alcoholic liquors shipped tax-free in interstate or foreign commerce, or delivered tax-free to ships for use outside the continental limits of the United States in foreign commerce as provided in Section 420.140.

i) Each manufacturer who includes tax exempt sales of bulk alcoholic liquor in this schedule must verify that the

quantity so sold has been included in the Liquor Revenue Return inventory.

ii) A separate Schedule "C" – Tax-Free Alcoholic Liquor Sales in Interstate Commerce and Foreign Trade must be filed covering shipments into each state.

E) Schedule "B" – Tax-Free Sales of Alcoholic Liquors to Other Illinois-Licensed Manufacturers and Importing Distributors. This schedule must be filed by Illinois manufacturers or importing distributors, if the product is manufactured outside of Illinois, who sell alcoholic liquors tax-free to other licensed manufacturers or importing distributors in Illinois. Each manufacturer, who includes in this schedule tax-free sales of bulk alcoholic liquors, must verify that the quantity so sold has been included in the Liquor Revenue Return inventory. Manufacturers and importing distributors must include in this schedule tax-free sales and transfers of alcoholic liquors in bond, including alcoholic liquors covered by original, transferred or negotiated warehouse receipts.

F) Schedule "E" –Tax-Free Alcoholic Liquor Sales for Non-Beverage Purposes. This schedule must be filed by manufacturers and importing distributors who claim deductions on the monthly return for tax-free sales of alcoholic liquors made to holders of non-beverage user's licenses. Original permits or coupons permitting the tax-free purchase of alcoholic liquors for non-beverage purposes must accompany this schedule. This schedule must also be filed by manufacturers and importing distributors who claim deductions on the monthly return for tax-free sales of alcoholic liquors to the United States or to a foreign government, their departments, agencies or instrumentalities, for non-beverage purposes. Each manufacturer, who includes in this schedule sales of bulk alcoholic liquors, must verify that the quantity so sold has been included in the Liquor Revenue Return inventory. Sales of wine for sacramental purposes must be reported as sales for non-beverage purposes. The seller should keep in its books and records certifications covering each delivery, and statements signed by the minister, priest or rabbi, showing the quantity of wine in each delivery together with a

statement that the wine will be used only for sacramental purposes (see Section 420.70 of this Part).

G) Schedule "J" – Report of Alcoholic Liquors Lost, Destroyed, or Damaged During Production and Bottling. Losses incurred during production and bottling alcoholic liquors carried in inventory on the Liquor Revenue Return at the time when the bottling loss occurs must be listed on this schedule. Bottling losses will not be allowed as tax exempt unless accurate records are maintained and the deduction on the return is supported by this schedule.

H) Schedule for "Other Illinois Liquor Tax Deductions". This schedule should be used when manufacturers or importing distributors claim deductions on the monthly return for a gallonage of alcoholic liquors that may not be properly addressed by any of the other schedules supplied by the Department. Deductions claimed should be explained in detail and filed with the monthly return. Claimed exemptions from the tax will not be allowed at the time of audit unless supported by competent documentary evidence. For example, if alcoholic liquors are dumped for the purpose of destroying the alcoholic liquors, claimed exemption from the tax will not be allowed unless supported by an affidavit of a Department representative who witnessed the destruction of the alcoholic liquors. The licensee should retain a copy of the affidavit. Each manufacturer, who includes in this schedule sales of bulk alcoholic liquors, must verify that the quantity so sold has been included in his Liquor Revenue Return inventory.

I) Schedule "D" – Tax-Free Bulk Purchases Used in Rectification, Bottling and Blending. This schedule must be filed by manufacturers of alcohol and spirits, and will consist of a detailed itemization of all purchases of alcoholic liquors in bulk only, to be used in rectification, bottling or blending, or for sale in original containers, with respect to which the Illinois Alcoholic Liquor Tax has not been paid. All purchases of bulk alcoholic liquors must be included in this schedule irrespective of the fact that the alcoholic liquors are purchased in bond or imported in bond. The fact that a warehouse, acting as agent for the manufacturer, may receive the alcoholic liquors and issue a warehouse receipt does not relieve the

manufacturer from reporting the transaction. All bulk alcoholic liquors purchased tax-free in Illinois or imported into Illinois by a manufacturer of alcohol and spirits and stored in a public or bonded warehouse for its account must be reported in this schedule at the time the alcoholic liquors are purchased by the manufacturer and received by the warehouse, and this information may not be withheld until the alcoholic liquors are withdrawn from the warehouse. This is an information schedule only and is not to be entered on the monthly return.

J) Returned Merchandise. Alcoholic liquors returned by Illinois licensees to vendors from whom the alcoholic liquors were purchased, and who are located outside of the State of Illinois, must be reported the same as a sale in interstate commerce on Schedule "C"– Tax-Free Sales in Interstate Commerce and Foreign Trade.

i) Alcoholic liquors returned to Illinois licensees by their customers located outside of the State of Illinois must be reported the same as an importation on Schedule "A" – Alcoholic Liquor Transactions.

ii) When untaxed alcoholic liquors are returned to a manufacturer or an importing distributor, both parties being Illinois licensees, the person returning the liquors will report the transaction on Schedule "B"– Tax-Free Alcoholic Liquor Sales to Licensed Manufacturers and Importing Distributors, and the one receiving the returned liquors will report on Schedule "F"– Alcoholic Liquor Transactions.

iii) Tax-paid alcoholic liquors returned to an Illinois manufacturer or importing distributor by someone in Illinois need not be scheduled by the person returning the liquors, but the person receiving the returned liquors must report the transaction on Schedule "G"– Tax-Paid Inventory, the same as a purchase of tax-paid alcoholic liquor.

c) Statement By Out-of-State Sellers Other Than Illinois Licensed Foreign Importers: Out-of-State sellers, who are not licensed in Illinois as foreign importers, and who sell, to Illinois licensed importing distributors, beer, wine, or alcohol and spirits that are located at some place in the United States outside Illinois, and that are shipped or otherwise delivered into Illinois, are required to file with the Department, within 15 days after the end of each month, on forms prescribed and furnished by the Department, a statement setting forth the names and addresses of the persons in Illinois to whom beer, wine or alcohol and spirits were so sold and shipped or otherwise delivered during the preceding month and the respective quantities so sold and shipped or otherwise delivered.

d) Information Returns From Illinois Licensed Foreign Importers

1) The Department has determined it to be necessary, for the proper performance of its functions and duties under the Act, to require licensed foreign importers who are not also licensed in Illinois as importing distributors of alcoholic liquor to file a monthly information return with the Department. The return must be filed by the 15th day of the month following the month for which the return is filed. The return shall contain such information as the Department may reasonably require.

2) It is not necessary for the special foreign importer information return to be filed by any foreign importer who is also licensed in Illinois as an importing distributor of alcoholic liquor.

(Source: Amended at 42 Ill. Reg. 23160, effective November 29, 2018)

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Cigarette Tax Act

2) Code Citation: 86 Ill. Adm. Code 440

3)

Section Numbers:	Adopted Actions:
440.10	Amendment
440.20	Amendment
440.90	Amendment
440.100	Amendment
440.120	Amendment
440.210	Amendment

4) Statutory Authority: 35 ILCS 130/8; 20 ILCS 2505/2505-795

5) Effective Date of Rules: November 29, 2018

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

7) Does this rulemaking contain incorporations by reference? No

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

9) Notice of Proposal published in *Illinois Register*: 42 Ill. Reg. 8777; June 1, 2018

10) Has JCAR issued a Statement of Objection to these Rulemakings? 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.

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

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

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

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

15) Summary and Purpose of Rulemaking: Section 440.10 is amended to reflect the additional 50 mills per cigarette tax imposed by PA 97-688, to explain the general distribution of tax revenues and to specify that all moneys received from additional tax of 50 mills per cigarette shall be paid each month into the Healthcare Provider Relief Fund. Section 440.20 is amended to remove the reference to packages of cigarettes containing 10 cigarettes. Sections 440.20, 440.90 and 440.100 are amended to remove out-of-date and obsolete language. Section 440.120 is amended to remove references to meter units, which are no longer used. Section 440.210 is amended to reflect the new statutory procedures for the destruction of forfeited packages of cigarettes imposed by PA 95-1053.

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

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

217/782-2844

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 440
CIGARETTE TAX ACT

Section
440.10 Nature and Rate of Tax
440.20 Tax – How Paid
440.30 Tax – Who Liable For
440.40 Design
440.50 Tax Stamps – When and By Whom Affixed: License or Permit Required
440.60 Tax Stamps – How Affixed
440.70 Tax Stamps – Affixed Out of State
440.80 Transporter Permits
440.90 Tax Stamps – Purchase of: Cost: Discount
440.100 Returns Required: When Filed
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440.180 Sales to Governmental Bodies
440.190 Sample Packages of Cigarettes: Stamps or Other Evidence of Tax Payment Affixed
440.200 Credit for Stamps that Are Damaged, Unused, Destroyed or on Packages Returned to the Manufacturer
440.210 Sale of Forfeited Cigarettes and Vending Machines
440.220 Tax-Free Sales of Cigarettes for Use Aboard Ships Operating in Foreign Commerce Outside The Continental Limits of the United States
440.230 Claims for Credit or Refund
440.240 Protest Procedures

AUTHORITY: Implementing and authorized by the Cigarette Tax Act [35 ILCS 130].

SOURCE: Filed and effective June 17, 1958; amended at 6 Ill. Reg. 2831 and 2834, effective March 3, 1982; codified at 8 Ill. Reg. 17912; amended at 13 Ill. Reg. 10678, effective June 16,

1989; amended at 14 Ill. Reg. 6794, effective April 19, 1990; amended at 15 Ill. Reg. 117, effective December 24, 1990; emergency amendment at 23 Ill. Reg. 9541, effective July 29, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 14748, effective December 8, 1999; amended at 24 Ill. Reg. 9903, effective June 23, 2000; emergency amendment at 24 Ill. Reg. 10752, effective July 6, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 17793, effective November 28, 2000; amended at 25 Ill. Reg. 933, effective January 8, 2001; emergency amendment at 26 Ill. Reg. 9021, effective June 10, 2002, for a maximum of 150 days; emergency expired November 5, 2002; amended at 27 Ill. Reg. 1618, effective January 15, 2003; emergency amendment at 27 Ill. Reg. 10524, effective July 1, 2003, for a maximum of 150 days; emergency expired November 27, 2003; amended at 28 Ill. Reg. 3906, effective February 13, 2004; amended at 32 Ill. Reg. 17575, effective October 27, 2008; amended at 39 Ill. Reg. 14719, effective October 22, 2015; amended at 42 Ill. Reg. 23174, effective November 29, 2018.

Section 440.10 Nature and Rate of Tax

a) The cigarette tax is imposed upon any person who exercises the privilege of engaging in business as a retailer of cigarettes in this State, and is at the rate of 5½ mills per cigarette sold or otherwise disposed of in the course of thatsuch business in this State. The proceeds from this tax are paid into the General Revenue Fund of the State Treasury.

b) In addition, the Cigarette Tax Act [35 ILCS 130] (the Act), imposes a tax upon any person engaged in business as a retailer of cigarettes in this State at the rate of ½ mill per cigarette sold or otherwise disposed of in the course of thatsuch business in this State on and after January 1, 1947, and shall be paid into the Service Recognition Bond, Interest and Retirement Fund until that Fund contains sufficient money to retire all bonds payable from that Fund. Thereafter, the proceeds from the ½ mill tax wereare to be paid (until July 1, 2005) into the Fair and Exposition Authority Reconstruction Fund, or as thereafter provided in Section 29 of the Act.

c) *Effective December 1, 1985, in addition to any other taxes imposed by the Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes in this State at a rate of 4 mills per cigarette sold or otherwise disposed of in the course of thatsuch business in this State. Of this additional tax, $9,000,000 of the moneys received under the Act shall be paid each month into the Common School Fund.* (Section 2(a) of the Act)

d) Effective July 2, 1989, *in addition to any other tax imposed by thethis Act, a tax is*

imposed upon any person engaged in business as a retailer of cigarettes at the rate of 5 mills per cigarette sold or otherwise disposed of in the course of such business in this State (Section 2(a) of the Act).

e) Effective July 14, 1993, *in addition to any other tax imposed by the~~this~~ Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes at the rate of 7 mills per cigarette sold or otherwise disposed of in the course of such business in this State* (Section 2(a) of the Act).

f) Effective *December 15, 1997, in addition to any other tax imposed by the~~this~~ Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes at the rate of 7 mills per cigarette sold or otherwise disposed of in the course of such business in this State~~ (Section 2(a) of the Act)*. *All of the monies received from this additional tax shall be paid into the Common School Fund*. (Section 2(a) of the Act)

g) Effective July 1, 2002, *in addition to any other tax imposed by the Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes at the rate of 20 mills per cigarette sold or otherwise disposed of in the course of such business in this State.*

h) The total of these rates is 29 mills per cigarette~~,~~ or 58¢ on a package of 20 cigarettes~~,~~ except that, beginning July 1, 2002, the total of these rates is 49 mills per cigarette or 98¢ on a package of 20 cigarettes through June 23, 2012. *Beginning June 24, 2012, in addition to any other tax imposed by the Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes at the rate of 50 mills per cigarette sold or otherwise disposed of in the course of such business in this State* (Section 2(a) of the Act). Beginning June 24, 2012, the total of these rates is 99 mills per cigarette or $1.98 for a package of 20 cigarettes.

i) The impact of these taxes is declared by the Cigarette Tax Act to be imposed upon the retailer, with the taxes being required to be prepaid or pre-collected by the distributor for the purpose of convenience and facility only, and the amount of the tax shall be added to the price of the cigarettes sold by the~~such~~ distributor. Collection of the tax shall be evidenced by a stamp or stamps affixed to each original package of cigarettes, as provided in the Act and in this Part.

j) It shall be the duty of each distributor to collect the tax from the retailer at or before the time of the sale, to affix the required stamps and to remit the tax

collected from retailers to the Department of Revenue (Department). Any distributor who shall fail to properly collect and pay the tax imposed by the Act shall be liable for the tax.

k) The amount of the cigarette tax imposed by the Act shall be separately stated, apart from the price of the goods, by both distributors and retailers, in all advertisements, bills and sales invoices.

l) The taxes so imposed are in addition to all other occupation or privilege taxes imposed by the State of Illinois, political subdivisions of the State~~thereof~~ or by any municipal corporation.

m) *All moneys received by the Department under the Act and the Cigarette Use Tax Act from the additional tax of 50 mills per cigarette imposed by PA 97-688 shall be paid each month into the Healthcare Provider Relief Fund* (Section 2(a) of the Act).

n) Distributions

1) Cigarettes
Except for the distributions provided for in subsections (b) and (m), *all of the moneys received by the Department pursuant to the Act and the Cigarette Use Tax Act, other than the moneys that are dedicated to the Common School Fund, shall be distributed each month as follows: first, there shall be paid into the General Revenue Fund an amount that, when added to the amount paid into the Common School Fund for that month, equals $29,200,000; then, from the moneys remaining, if any amounts required to be paid into the General Revenue Fund in previous months remain unpaid, those amounts shall be paid into the General Revenue Fund; then from the moneys remaining, $5,000,000 per month shall be paid into the School Infrastructure Fund; then, if any amounts required to be paid into the School Infrastructure Fund in previous months remain unpaid, those amounts shall be paid into the School Infrastructure Fund; then the moneys remaining, if any, shall be paid into the Long-Term Care Provider Fund.*

2) Little Cigars
Moneys collected from the tax imposed on little cigars under Section 10-10 of the Tobacco Products Tax Act of 1995 shall be included with the

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moneys collected under the Cigarette Tax Act and the Cigarette Use Tax Act when making distributions to the Common School Fund, the Healthcare Provider Relief Fund, the General Revenue Fund, the School Infrastructure Fund, and the Long-Term Care Provider Fund under Section 2 of the Cigarette Tax Act. (Section 2(a) of the Act)

(Source: Amended at 42 Ill. Reg. 23174, effective November 29, 2018)

Section 440.20 Tax – How Paid

a) Except as provided in subsection (b) ~~of this Section~~, payment of the tax imposed by the Act shall be evidenced by a stamp or alternative tax indicia affixed to each "original package" of cigarettes., ~~in a face amount equal to 29 mills for each cigarette contained in such package; except that, beginning July 1, 2002, the tax rate is 49 mills per cigarette contained in each package.~~ Stamps are sold only to distributors by the Department at a discount (explained in more detail in Section 440.90 of this Part), when purchased according to law, in denominations evidencing payment of the tax on packages of ~~10,~~ 20 and 25 cigarettes. ~~Beginning June 7, 2002 through June 28, 2002, *persons holding valid licenses as distributors may purchase cigarette tax stamps up to an amount equal to 115% of the distributor's average monthly cigarette tax stamp purchases over the prior 12 calendar months* [35 ILCS 130/3].~~

b) Illinois cigarette manufacturers who place their cigarettes in original packages ~~which are~~ contained inside a sealed transparent wrapper, and similar out-of-state~~State~~ cigarette manufacturers who elect to qualify and are accepted by the Department as distributors under Section 4b of the Act, shall pay the taxes imposed by the Act by remitting the amount of the taxes~~thereof~~, less the discount explained in Section 440.90 ~~of this Part~~, to the Department by the 5th day of each month, covering cigarettes shipped or otherwise delivered in Illinois to purchasers during the preceding calendar month. The manufacturers of cigarettes in original packages ~~that are~~ contained inside a sealed transparent wrapper, before delivering the cigarettes or causing the cigarettes to be delivered in this State to purchasers, shall evidence their obligation to remit the taxes due with respect to the cigarettes by imprinting language to be prescribed by the Department on each original package of cigarettes underneath the sealed transparent outside wrapper of the original package, in a place on the package~~thereon~~ and in such manner as the Department may designate. The imprinted language shall acknowledge the manufacturer's payment of, or liability for, the tax imposed by the Act with

respect to the distribution of thosesuch cigarettes.

c) The Department may refuse to sell cigarette revenue stamps to any person who does not comply with the provisions of the Cigarette Tax Act.

(Source: Amended at 42 Ill. Reg. 23174, effective November 29, 2018)

Section 440.90 Tax Stamps − Purchase of: Cost: Discount

a) Sales of stamps shall be made by the Department, or any person authorized by the Department, to licensed distributors in proper denominations, subject to discounts as explained in subsection (b). The of this Section, which discount shall be allowed at the time of purchase of the stamps, when purchase is required by the Act.

b) The discount allowable to distributors at the time of purchasing stamps during any year commencing July 1 and ending the following June 30 *shall be equal to 1.75% of the amount of the tax payable under the Cigarette Tax Act up to and including the first $3,000,000.00 paid by thesuch distributor to the Department during any such year and 1.5% of the amount of any additional tax paid by thesuch distributor to the Department during any such year*. (Section 2 of the Act)

c) Two or more distributors that use a common means of affixing revenue tax stamps or that are owned or controlled by the same interests shall be treated as a single distributor for the purpose of computing the discount.

d) *On and after December 1, 1985 and until July 1, 2003, the Department shall allow a distributor 30 days in which to make final payment of the amount to be paid for such stamps, by allowing the distributor to make payment for the stamps at the time of purchasing them with a draft which shall be in such form as the Department prescribes* (i.e., a standard bank draft which the distributor may post-date)*, and which shall be payable within 30 days thereafter. Beginning January 1, 2003, such draft shall be payable by means of electronic funds transfers,* as provided in 86 Ill. Adm. Code 750. *A distributor's failure to pay any such draft, when due, shall also make such distributor automatically liable for a penalty equal to 25% of the amount of such draft.* (Section 3 of the Act)

e) *On and after December 1, 1985 and until July 1, 2003, distributors making payment for stamps at the time of purchase by draft as explained in subsection (d)*

~~*shall first file with the Department, and receive the Department's approval of, a bond* (in a form provided for in this subsection)~~, ~~*which is in addition to the bond required under Section 4 of the Act, payable to the Department in an amount equal to 100% of such distributor's average monthly tax liability under the Act during the preceding calendar year or $750,000, whichever is less. The bond shall be joint and several and shall be in the form of a surety company bond or it may be in the form of a bank certificate of deposit or bank letter of credit. The bond shall be conditioned upon the distributor's payment of the amount of any 30-day draft which the Department accepts from that distributor for the delivery of stamps to that distributor under the Act. Prior continuous compliance taxpayers,* as defined in Section 1 of the Act, ~~*are exempt from the bond requirements noted in this subsection.* (Section 3 of the Act) For additional information concerning the exemption for prior continuous compliance taxpayers, see Section 3 of the Act.~~

d~~f~~) ~~Beginning January 1, 2003 and through June 30, 2003, *any taxpayer choosing not to make payment of tax by means of a draft payable within 30 days* as provided in subsection (d) *and who has an annual tax liability of $200,000 or more shall make all payments of that tax by means of electronic funds transfer*, as provided in 86 Ill. Adm. Code 750. [20 ILCS 2505/2505-210] *On and after July 1, 2003, All~~*~~all payment for revenue tax stamps must be made by means of electronic funds transfer*. (Section 3 of the Act)

e~~g~~) *The Department may refuse to sell cigarette tax stamps to any person who does not comply with the provisions of the Cigarette Tax Act.* (Section 3 of the Act)

(Source: Amended at 42 Ill. Reg. 23174, effective November 29, 2018)

Section 440.100 Returns Required: When Filed

a) Filing by Non-manufacturers

1) Every distributor who is required to procure a license under the~~this~~ Act, but who is not a manufacturer of cigarettes in original packages that are contained in a sealed transparent wrapper, shall, on or before the 15th day of each calendar month, file a return with the Department, showing:

A) the quantity of cigarettes manufactured during the preceding calendar month;~~,~~

B) the quantity of cigarettes brought into this State or caused to be brought into this State from outside this State during the preceding calendar month without authorized evidence on the original packages of cigarettes underneath the sealed transparent wrapper that the tax liability imposed by the~~this~~ Act has been assumed by the out-of-state~~State~~ seller of cigarettes;~~,~~

C) the quantity of cigarettes purchased tax-paid during the preceding calendar month either within or outside this State; and

D) the quantity of cigarettes sold or~~of~~ otherwise disposed of during the preceding calendar month.

2) The~~Such~~ return shall be filed on~~upon~~ forms furnished and prescribed by the Department and shall contain other information ~~as~~ the Department may reasonably require.

3) Computer generated returns and schedules or returns and schedules filed on forms that have not been approved by the Department are considered non-processable and may subject the filer to penalties and interest for failure to file a proper return.

b) Illinois manufacturers of cigarettes in original packages that are contained inside a sealed transparent wrapper shall file a return by the 5th day of each month covering the preceding calendar month. Each return shall show the quantity of cigarettes manufactured during the period covered by the return, the quantity of cigarettes sold or otherwise disposed of during the period covered by the return, and other information ~~as~~ the Department may lawfully require. Returns shall be filed on forms prescribed and furnished by the Department. Computer generated returns and schedules or returns and schedules filed on forms that have not been approved by the Department are considered non-processable and may subject the filer to penalties and interest for failure to file a proper return.

c) Each out-of-state~~State~~ manufacturer, who is granted a permit by the Department under Section 4b of the Act, shall file a return with the Department on a form to be prescribed and furnished by the Department and shall disclose the information as the Department may lawfully require. The return shall be filed by the 5th day of the month and shall cover the preceding calendar month. Computer generated

returns and schedules or returns and schedules filed on forms that have not been approved by the Department are considered non-processable and may subject the filer to penalties and interest for failure to file a proper form.

d) TheEffective January 1, 2003, the returns filed by both distributors required to procure a license under the Act who have 30 or more transactions per month, and by Illinois manufacturers having 30 or more transactions per month, *must be accompanied by appropriate computer-generated magnetic media supporting schedule data in the format required by the Department* (Section 9 of the Act). Distributors and manufacturers unable to comply with this requirement by January 1, 2003 may petition the Department for an extension of time to comply with this requirement. Distributors and manufacturers who voluntarily file returns and schedules electronically are not subject to this requirement.

(Source: Amended at 42 Ill. Reg. 23174, effective November 29, 2018)

Section 440.120 Unused Stamps and Meter Units: Sale of: Notice to Department

a) Sales and transfers of Illinois cigarette revenue stamps and Illinois cigarette tax meter units by one licensed cigarette distributor to another licensed cigarette distributor are not permitted unless authorization is given in writing by the Department to make thesuch sale and transfer.

b) Cigarettes sold by licensed distributors to other licensed distributors must not be accompanied by loose stamps.

c) WhenWhere, at the time of terminating his or her business as a licensed distributor in this State, a licensed distributor has on hand unaffixed Illinois cigarette revenue stamps or unused Illinois cigarette tax meter units, he or she may transfer or sell thesaid unaffixed stamps or unused meter units to some other licensed distributor, provided that, prior to thesuch sale or transfer, thesuch licensee shall request and receive from the Department, in writing, authority to so sell or transfer thesaid stamps or meter units. At the time of requesting authority to sell and transfer stamps or meter units to some other distributor licensed under the Illinois Cigarette Tax Act, the distributor making thesuch request must submit the name and address of the distributor to whom he or she intends to sell thesaid stamps or meter units, together with the exact number of stamps in each series or the exact number of meter units to be sold or transferred.

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(Source: Amended at 42 Ill. Reg. 23174, effective November 29, 2018)

Section 440.210 Sale of Forfeited Cigarettes and Vending Machines

When any original packages of cigarettes or any cigarette vending device has been declared forfeited to the State by the Department, as provided in Section 18a of the Act, and when all proceedings for the judicial review of the Department's decision have terminated, the Department shall, to the extent that its decision is sustained on review, destroy or maintain and use that property in an undercover capacity. The Department may, prior to any destruction of cigarettes, permit the true holder of the trademark rights in the cigarette brand to inspect the contraband cigarettes in order to assist the Department in any investigation regarding those cigarettes. [35 ILCS 130/21]

~~a)~~ ~~Under the Cigarette Tax Act, when the Department sells, at any one time, forfeited cigarettes or vending machines having a value of $500.00 or more, the Act provides that such sale shall be made "only to the highest and best bidder on such terms and conditions and on open competitive bidding after public advertisement, in such manner and for such terms as the Department, by rule, may prescribe."~~

~~b)~~ ~~The Department has prescribed no special conditions with respect to the bidding, but has promulgated this rule to clarify the phrase "public advertisement." "Public advertisement" shall mean the posting of notices of the intended sale in at least three public places in the county in which the sale is to take place, or the publication of such notice in a newspaper having general circulation in said county, or both, as the Department may determine to be best in any given case. The notice will state the kind and quantity of the property to be sold and will designate what the final date will be for the receipt of bids by the Department.~~

(Source: Amended at 42 Ill. Reg. 23174, effective November 29, 2018)

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1) Heading of the Part: Cigarette Use Tax Act

2) Code Citation: 86 Ill. Adm. Code 450

3)

Section Numbers:	Adopted Actions:
450.10	Amendment
450.30	Amendment
450.40	Amendment
450.60	Amendment
450.110	Amendment

4) Statutory Authority: 35 ILCS 135/21; 20 ILCS 2505/2505-795

5) Effective Date of Rules: November 29, 2018

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

7) Does this rulemaking contain incorporations by reference? No

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

9) Notice of Proposal published in the *Illinois Register*: 42 Ill. Reg. 8789; June 1, 2018

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

11) Differences between Proposal and Final Version: The only changes made were the ones agreed upon with JCAR. Only grammatical and technical changes were made. No substantive changes were made.

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

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

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

15) Summary and Purpose of Rulemakings: Section 450.10 is amended to reflect that the total tax rate on cigarettes is 99 mills per cigarette after the additional tax of the 50 mills

per cigarette was imposed by PA 97-688. Section 450.10 also is amended to remove out-of-date and obsolete language. Section 450.30 is amended to update the eligibility requirements for distributor manufacturers as a result of changes made by PA 79-387. Section 450.40 is amended to add the new requirement for filing tax payments by electronic funds transfer and to remove out-of-date and obsolete language. Section 450.60 is amended to remove references to meter units, which are no longer used. Section 450.110 is amended to reflect the new statutory procedures for the destruction of forfeited packages of cigarettes as a result of PA 95-1053.

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

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

217/782-2844

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 450
CIGARETTE USE TAX ACT

Section

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

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

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Section 450.10 Nature and Rate of Tax

a) The Cigarette Use Tax is imposed upon the privilege of using cigarettes in this State, and the tax rate is 29 mills per cigarette so used or 58 cents on a package of 20 cigarettes; except that, beginning July 1, 2002, the tax rate is 49 mills per cigarette or 98 cents on a package of 20 cigarettes. Beginning June 24, 2012, the tax rate is 99 mills per cigarette or $1.98 on a package of 20 cigarettes.

b) The tax must be collected by a distributor maintaining a place of business in this State or a distributor authorized by Section 7 of the Act to hold a permit to collect the tax, and the amount of the tax shall be added to the price of the cigarettes sold by the distributor and must be stated on the invoice as a separate item from the selling price of the cigarettes except when the purchaser is a federal~~Federal~~ or foreign government agency or instrumentality (see Section 450.50 ~~of this Part~~).

c) Distributors who are not subject to the Cigarette Tax Act [35 ILCS 130] ~~(the Act)~~, but who are subject to the Cigarette Use Tax Act [35 ILCS 135] (the Act), must remit, to the Department of Revenue (the Department), the amount of Cigarette Use Tax to be collected by them through the purchase and affixation of tax stamps or meter impression units (when~~where~~ the use of meters is authorized by the Department) to any original package of cigarettes before delivering the cigarettes (or causing them to be delivered) in this State to any purchaser, or (in the case of manufacturers of cigarettes in original packages that are contained inside a sealed transparent wrapper) by imprinting the language to be prescribed by the Department on the original package of cigarettes beneath the outside wrapper.

1) No~~*On and after July 22, 1999, no*~~ *stamp or imprint may be affixed to, or made upon, any package of cigarettes unless that package complies with all requirements of the federal Cigarette Labeling and Advertising Act~~,~~ (15 USC 1331 and following), for the placement of labels, warnings, or any other information upon a package of cigarettes that is sold within the United States. Under the authority of Section 6 of the Cigarette Use Tax Act* ~~[35 ILCS 135]~~*, the Department shall revoke the license of any distributor that is determined to have violated this* subsection (c)(1). *A person may not affix a stamp on a package of cigarettes, cigarette papers, wrappers, or tubes if that individual package has been marked for export outside the United States with a label or notice in compliance with 27 CFR 290.185~~Section 290.185 of Title 27 of the Code of Federal~~*

~~*Regulations*~~. *It is not a defense to a proceeding for violation of this* subsection (c)(1) *that the label or notice has been removed, mutilated, obliterated, or altered in any manner.* (Section 3 of the Cigarette Use Tax Act)

2) Packages~~On and after August 15, 1999, packages~~ of cigarettes, cigarette papers, wrappers, or tubes stamped or imprinted in a manner not in accordance with subsection (c)(1) and found in the possession of a distributor create a rebuttable presumption that the packages of cigarettes, cigarette papers, wrappers, or tubes were stamped or imprinted in violation of the ~~Cigarette Use Tax~~ Act.

3) Packages~~On and after September 1, 1999, packages~~ of cigarettes, cigarette papers, wrappers, or tubes stamped or imprinted in a manner not in accordance with subsection (c)(1) and found in the possession of a retailer create a rebuttable presumption that the packages of cigarettes, cigarette papers, wrappers, or tubes were stamped or imprinted by the distributor from whom they were obtained in violation of the ~~Cigarette Use Tax~~ Act.

4) No~~*On and after June 13, 2000, no*~~ *stamp or imprint may be affixed to, or made upon, any package of cigarettes* (Section 3 of the Act) *that:*

A) *bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including but not limited to labels stating "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording;* ~~*or*~~

B) *does not comply with:*

i) *all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including but not limited to the precise warning labels specified in the federal Cigarette Labeling and Advertising Act*~~*,*~~ *(15 USC 1333); and*

ii) *all federal trademark and copyright laws;*

C) *is imported into the United States in violation of 26 USC 5754 or any other federal law or implementing federal regulations;*

D) the person affixing the stamp or imprint otherwise knows or has reason to know *the manufacturer did not intend to be sold, distributed, or used in the United States;*

E) *for which there has not been submitted to the Secretary of the U.S. Department of Health and Human Services the list or lists of the ingredients added to tobacco in the manufacture of the cigarettes required by the federal Cigarette Labeling and Advertising Act~~,~~ (15 USC 1335a); or*

F) *has been altered, prior to sale or distribution to the ultimate consumer, so as to remove, conceal, or obscure:*

i) *any statement, label, stamp, sticker, or notice described in* 86 Ill. Adm. Code 440.50(k)(1)*; or*

ii) *any health warning that is not specified in, or does not conform with the requirements of, the federal Cigarette Labeling and Advertising Act~~, 15 USC 1333~~* (Section 3-10 of the Act)~~.~~

5) Packages~~On and after July 15, 2000, packages~~ of cigarettes, cigarette papers, wrappers, or tubes stamped or imprinted in a manner not in accordance with subsection (c)(4) ~~of this Section~~ and found in the possession of a distributor create a rebuttable presumption that the packages of cigarettes, cigarette papers, wrappers or tubes were stamped or imprinted in violation of the ~~Cigarette Use Tax~~ Act.

6) Packages~~On and after July 31, 2000, packages~~ of cigarettes, cigarette papers, wrappers or tubes stamped or imprinted in a manner not in accordance with subsection (c)(4) ~~of this Section~~ and found in the possession of a retailer create a rebuttable presumption that the packages of cigarettes, cigarette papers, wrappers or tubes were stamped or imprinted by the distributor from whom they were obtained in violation of the ~~Cigarette Use Tax~~ Act.

7) On~~*On and after June 13, 2000, on*~~ *the first business day of each month, each person licensed to affix the State tax stamp to cigarettes shall file with the Department, for all cigarettes imported into the United States to which the person has affixed the tax stamp in the preceding month.*

8) *A copy of:*

A) *the permit issued pursuant to the Internal Revenue Code~~,~~ (26 USC 5713), to the person importing the cigarettes into the United States allowing the person to import the cigarettes; and*

B) *the customs form containing, with respect to the cigarettes, the internal revenue tax information required by the U.S. Bureau of Alcohol, Tobacco, ~~and~~ Firearms and Explosives.*

9) *A statement, signed by the person under penalty of perjury, which shall be treated as confidential by the Department and exempt from disclosure under the Freedom of Information Act* [5 ILCS 140]*, identifying the brand and brand styles of all such cigarettes, the quantity of each brand style of such cigarettes, the supplier of such cigarettes, and the person or persons, if any, to whom such cigarettes have been conveyed for resale.*

10) In addition to the statement required in subsection (c)(9) ~~of this Section~~, *a separate statement, signed by the individual under penalty of perjury, which shall not be treated as confidential or exempt from disclosure, separately identifying the brands and brand styles of such cigarettes.*

11) In addition to the statement required in subsection (c)(9) and (c)(10) ~~of this Section~~, *a separate statement, signed by an officer of the manufacturer or importer under penalty of perjury, certifying that the manufacturer or importer has complied with:*

A) *the package health warning and ingredient reporting requirements of the federal Cigarette Labeling and Advertising Act~~,~~ (15 USC 1333 and 1335a)~~,~~ with respect to such cigarettes; and*

B) *the provisions of Exhibit T of the Master Settlement Agreement entered in the case of People of the State of Illinois v. Philip*

Morris, et al. (Circuit Court of Cook County, No. 96-L13146), including a statement indicating whether the manufacturer is, or is not, a participating tobacco manufacturer within the meaning of Exhibit T. (Section 3-10 of the Act)

12) The Department may revoke or suspend the license or licenses of any distributor, in the manner provided in Section 6 of the Cigarette Use Tax Act, if the Department determines that the distributor knew or had reason to know that the distributor was committing any of the acts prohibited in subsection (c)(4) of this Section or had failed to comply with any of the requirements of subsection (b) of Section 3-10 of the ~~Cigarette Use Tax~~ Act. In addition, the Department may impose on the distributor a civil penalty in an amount not to exceed the greater of 500% of the retail value of the cigarettes involved or $5,000. Cigarettes acquired, held, owned, possessed, transported in, imported into, or sold or distributed in this State in violation of subsection (c)(4) of this Section shall be subject to seizure and forfeiture whether the violation is knowing or otherwise. (See Section 3-10(c)(1) of the Act.)

d) At the time of purchasing stamps from the Department or any person authorized by the Department, when purchase of the stamps is required by the Cigarette Use Tax Act or at the time when the tax that he or she has collected is remitted by a distributor to the Department without the purchase of stamps from the Department or any person authorized by the Department when that method of remitting the tax that has been collected is required or authorized by the Act, the distributor will be allowed a discount during any year commencing July 1 and ending the following June 30. The discount shall be equal to 1.75% of the amount of the tax payable under the Act up to and including the first $3,000,000.00 paid by the distributor to the Department during any year and 1.5% of the amount of any additional tax paid by the distributor to the Department during that year.

e) This discount is to cover the distributor's cost of collecting the tax.

f) Two or more distributors that use a common means of affixing revenue tax stamps or that are owned or controlled by the same interests shall be treated as a single distributor for the purpose of computing the discount.

~~g)~~ ~~*On and after December 1, 1985 and until July 1, 2003, the Department shall allow a distributor 30 days in which to make final payment of the amount to be*~~

~~*paid for such stamps, by allowing the distributor to make payment for the stamps at the time of purchasing them with a draft which shall be in such form as the Department prescribes* (i.e. a standard bank draft which the distributor may post-date)*, and which shall be payable within 30 days thereafter: Beginning January 1, 2003, such draft shall be payable by means of electronic funds transfer,* as provided in 86 Ill. Adm. Code 750*. A distributor's failure to pay any such draft, when due, shall also make such distributor automatically liable for a penalty equal to 25% of the amount of such draft.* (Section 3 of the Act)~~

~~h)~~ ~~*On and after December 1, 1985 and until July 1, 2003, distributors making payment for stamps at the time of purchase by draft as explained in subsection (g) shall first file with the Department, and receive the Department's approval of, a bond* (in a form provided for in this subsection)*, which is in addition to the bond required under Section 4 of the Act, payable to the Department in an amount equal to 100% of such distributor's average monthly tax liability under the Act during the preceding calendar year or $750,000, whichever is less. The bond shall be joint and several and shall be in the form of a surety company bond or it may be in the form of a bank certificate of deposit or bank letter of credit. The bond shall be conditioned upon the distributor's payment of the amount of any 30-day draft which the Department accepts from that distributor for the delivery of stamps to that distributor under the Act. Prior continuous compliance taxpayers,* as defined in Section 1 of the Act*, are exempt from the bond requirements noted in this subsection.* (Section 3 of the Act) For additional information concerning the exemption for prior continuous compliance taxpayers, see Section 3 of the Act.~~

g~~i~~) All~~*Beginning January 1, 2003* and through June 30, 2003*, any taxpayer choosing not to make payment of tax by means of a draft payable within 30 days as provided for in subsection (g) and who has an annual tax liability of $200,000 or more shall make all payments of that tax by means of electronic funds transfer,* as provided in 86 Ill. Adm. Code 750*. On and after July 1, 2003, all*~~ *payment for revenue tax stamps must be made by means of electronic funds transfer*. (Section 3 of the Act)

h~~j~~) The Cigarette Use Tax collected by a distributor who is liable to collect and remit a like amount of tax with respect to the same cigarettes under the Cigarette Tax Act need not be remitted to the Department under the ~~Cigarette Use Tax~~ Act. In other words, the amount that the distributor is liable to collect and remit under the Cigarette Tax Act with respect to particular cigarettes is offset against the amount

collected from the purchaser by the distributor under the ~~Cigarette Use Tax~~ Act with respect to the same cigarettes. Sections 3 and 10 of the ~~Cigarette Use Tax~~ Act permit this offset in order to avoid the double remittance of tax to the State on the same transactions in the case of sales of cigarettes in Illinois.

i~~k~~) In those instances in which a distributor is required to affix tax stamps or meter impressions to original packages of cigarettes under the ~~Cigarette Use Tax~~ Act, rather than under the Cigarette Tax Act, the provisions of the Part relating to the Cigarette Tax Act (86 Ill. Adm. Code 440) shall apply ~~and are incorporated herein by reference~~.

j~~l~~) When~~Where~~ cigarettes are acquired for use in this State without Illinois tax stamps being affixed to the original packages and without authorized tax imprints placed underneath the sealed transparent wrapper of the original packages, the user is required to remit the amount of the Cigarette Use Tax directly to the Department. Before January 1, 2002, the tax shall be remitted to the Department by the user within 3 days after he acquires the cigarettes. On and after January 1, 2002, the tax shall be remitted to the Department by the user within 30 days after he or she acquires the cigarettes.

k~~m~~) *The Department may refuse to sell cigarette stamps to any person who does not comply with the provisions of the ~~Cigarette Use Tax~~ Act.* (Section 3 of the Act)

l~~n~~) Section 1 of~~Beginning August 27, 2007,~~ the ~~Cigarette Use Tax~~ Act provides that the term *"distributor" does not include any person who transfers cigarettes to a not-for-profit research institution that conducts tests concerning the health effects of tobacco products and who does not offer the cigarettes for resale.*

(Source: Amended at 42 Ill. Reg. 23186, effective November 29, 2018)

Section 450.30 Licenses and Permits – Bonds

a) Any distributor maintaining a place of business in this State is required to be licensed as a distributor under the ~~Cigarette Use Tax~~ Act, provided that the distributor need not obtain the license if a distributor is required to procure a license or allowed to obtain a permit as a distributor under the Cigarette Tax Act. ~~The Act defines a~~ *"Distributor maintaining a place of business in this State" means~~ ~~to mean~~ ~~"~~*any distributor having or maintaining within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other*

place of business, or any agent operating within this State under the authority of the distributor or its subsidiary, irrespective of whether the place of business or agent is located here permanently or temporarily, or whether the distributor or subsidiary is licensed to transact business within this State. (Section 1 of the Act)" The distributor must apply for a license on a form prescribed by the Department and must accompany the application with a joint and several bond. The amount of the bond shall be $2,500.

b) Except when the applicant is the manufacturer, no distributor's license shall be issued to an applicant unless he or she presents the Department with satisfactory proof in writing that he or she will be able to buy cigarettes directly from at least 3 major cigarette manufacturers. A separate application for license shall be made, and bond filed, for each place of business at or from which the applicant proposes to act as a distributor under the ~~Cigarette Use Tax~~ Act and for which the applicant is not required to procure a license or allowed to obtain a permit as a distributor under the Cigarette Tax Act. Any license issued shall permit the applicant to engage in business as a distributor at or from the place shown in his or her application. All licenses issued by the Department under the ~~Cigarette Use Tax~~ Act shall be valid for not to exceed one year after issuance unless sooner revoked, canceled or suspended as provided in the Act ~~provided~~.

c) The annual license fee payable to the Department for each distributor's license shall be $250. The purpose of the annual license fee is to defray the cost, to the Department, of serializing cigarette tax stamps. The applicant for license shall pay the fee to the Department at the time of submitting the application for license to the Department.

d) A license shall not be transferable or assignable. Every such license shall be conspicuously displayed at the place of business for which it is issued. Licenses issued under the ~~Cigarette Use Tax~~ Act are subject to suspension, revocation or cancellation under the conditions prescribed in Section 6 of the Act.

e) The Department may, in its discretion, upon application, issue permits authorizing the collection of the tax imposed by those out-of-state cigarette manufacturers who are not required to be licensed as distributors of cigarettes in this State, but who elect to qualify under this Act as distributors of cigarettes in this State, and who, to the satisfaction of the Department, furnish adequate security to insure collection and payment of the tax, provided that any permit shall extend only to cigarettes that the permittee-manufacturer places in original packages that are

contained inside a sealed transparent wrapper, and provided that no permit shall be issued under the ~~Cigarette Use Tax~~ Act to a manufacturer who has obtained the permit provided for in Section 4b of the Cigarette Tax Act. The distributor shall be issued, without charge, a permit to collect the tax in a manner, and subject to reasonable regulations and agreements as the Department shall prescribe. When so authorized, it shall be the duty of the distributor to collect the tax upon all cigarettes ~~which~~ he or she delivers (or causes to be delivered) within this State to purchasers, in the same manner and subject to the same requirements as a distributor maintaining a place of business within this State. The permit shall be in the form ~~as~~ the Department may prescribe and shall not be transferable or assignable. The authority and permit may be suspended, canceled or revoked when, at any time, the Department considers that the security given is inadequate, or that the tax can more effectively be collected from the person using the ~~such~~ cigarettes in this State or through distributors located in this State, or whenever the permittee violates any provision of the ~~Cigarette Use Tax~~ Act or this Part~~any lawful rule or regulation issued by the Department pursuant to that Act~~, or whenever the permittee shall notify the Department in writing of his or her desire to have the permit canceled. The Department shall have the power, in its discretion, to issue a new permit after the suspension, cancellation or revocation.

f) All permits issued by the Department under the ~~Cigarette Use Tax~~ Act shall be valid for not to exceed one year after issuance unless sooner revoked, canceled or suspended, as ~~in the Act~~ provided in the Act.

g) *The following are ineligible to receive a distributor's license or permit under the ~~this~~ Act:*

1) *A person who is not of good character and reputation in the community in which he or she resides;*

2) *a person who has been convicted of a felony under any federal~~Federal~~ or State law, if the Department, after investigation and a hearing, if requested by the applicant, determines that the person has not been sufficiently rehabilitated to warrant the public trust;*

3) *a corporation, if any officer, manager or director thereof, or any stockholder or stockholders owning in the aggregate more than 5% ~~(in the case of distributors) or 1% (in the case of out-of-state cigarette~~*

~~manufacturer permittees)~~ *of the stock of the corporation, would not be eligible to receive a license* under this Part *for any reason.*

4) *a person, or any person who owns more than 15 percent of the ownership interests in a person or a related party who:*

A) *owes, at the time of application, any delinquent cigarette taxes that have been determined by law to be due and unpaid, unless the license applicant has entered into an agreement approved by the Department to pay the amount due;*

B) *had a license under the Act revoked within the past 2 years by the Department for misconduct relating to stolen or contraband cigarettes or has been convicted of a State or federal crime, punishable by imprisonment of one year or more, relating to stolen or contraband cigarettes;*

C) *manufactures cigarettes, whether in this State or out of this State, and who is neither:*

i) *a participating manufacturer as defined in subsection II(jj) of the "Master Settlement Agreement" as defined in Section 10 of the Tobacco Products Manufacturers' Escrow Act* [30 ILCS 168]*; nor*

ii) *in full compliance with the Tobacco Products Manufacturers' Escrow Act and the Tobacco Products Manufacturers' Escrow Enforcement Act of 2003* [30 ILCS 167]*;*

D) *has been found by the Department, after notice and a hearing, to have imported or caused to be imported into the United States for sale or distribution any cigarette in violation of 19 USC 1681a;*

E) *has been found by the Department, after notice and a hearing, to have imported or caused to be imported into the United States for sale or distribution or manufactured for sale or distribution in the United States any cigarette that does not fully comply with the*

Federal Cigarette Labeling and Advertising Act (15 USC 1331); *or*

F) *has been found by the Department, after notice and a hearing, to have made a material false statement in the application or has failed to produce records required to be maintained by the Act.* (Section 4 of the Cigarette Use Tax Act)

(Source: Amended at 42 Ill. Reg. 23186, effective November 29, 2018)

Section 450.40 Reports and Returns

a) When cigarettes are acquired for use in this State by a person (including a distributor as well as any other person), who did not pay the cigarette use tax to a distributor, the person, within 30~~3~~ days after acquiring the cigarettes, shall file a return with the Department and shall transmit with the return to the Department the tax imposed by the ~~Cigarette Use Tax~~ Act. ~~On and after January 1, 2002, the return shall be filed with the Department along with any tax by the user within 30 days after he acquires the cigarettes.~~ Computer generated returns or returns filed on forms that have not been approved by the Department are considered non-processable and may subject the filer to penalties and interest for failure to file a proper return.

b) Every distributor, who is required or authorized to collect tax under the ~~Cigarette Use Tax~~ Act, but who is not a manufacturer of cigarettes in original packages that are contained in a sealed transparent wrapper, shall, on or before the 15th day of each calendar month, file a return with the Department showing the information ~~as~~ the Department may reasonably require. Computer generated returns and schedules or returns and schedules that have not been approved by the Department are considered non-processable and may subject the filer to penalties and interest for failure to file a proper return.

c) Every distributor who is a manufacturer of cigarettes in original packages ~~which are~~ contained inside a sealed transparent wrapper, and who is required or authorized to collect tax under the ~~Cigarette Use Tax~~ Act, shall file a return by the 5th day of each month covering the preceding calendar month. Each return shall be accompanied by the appropriate remittance for tax as provided in Sections 3 and 7 of the ~~Cigarette Use Tax~~ Act. Each ~~such~~ return shall disclose the~~such~~ information ~~as~~ the Department may lawfully require. Computer generated returns

and schedules or returns and schedules filed on forms that have not been approved by the Department are considered to be non-processable and may subject the filer to penalties and interest for failure to file a proper return.

d) No distributor shall be required to return information to the extent to which the reporting of that information would be a duplication of the distributor's reporting of information in any return ~~which~~ he or she is required to file with the Department under the Cigarette Tax Act. Returns shall be filed on forms prescribed by the Department. Computer generated returns and schedules or returns and schedules filed on forms that have not been approved by the Department are considered non-processable and may subject the filer to penalties and interest for failure to file a proper return.

e) The~~Effective January 1, 2003, the~~ returns filed by both distributors required or authorized to collect tax under the Act who have 30 or more transactions per month, and by Illinois manufacturers having 30 or more transactions per month, *must be accompanied by appropriate computer-generated magnetic media supporting schedule data in the format required by the Department*. (Section 11 of the Act) ~~Distributors and manufacturers unable to comply with this requirement by January 1, 2003 may petition the Department for an extension of time to comply with this requirement.~~ Distributors and manufacturers who voluntarily file returns and schedules electronically are not subject to this requirement. *A taxpayer who has an annual tax liability of $20,000 or more shall make all payments of that tax to the Department by electronic funds transfer. Before August 1 of each year, the Department shall notify all taxpayers required to make payments by electronic funds transfer*. [20 ILCS 2502/2505-200].

(Source: Amended at 42 Ill. Reg. 23186, effective November 29, 2018)

Section 450.60 Unused Stamps ~~and Meter Units~~ – Sale of – Notice to Department – Mutilated Stamps – ~~Tax Meter Machine Settings~~

The provisions of 86 Ill. Adm. Code 440.120, 440.130 and 440.140 ~~of the Rules relating to the~~ (Cigarette Tax Act rules) apply~~are incorporated herein by reference for application~~ when the distributor who is involved holds a permit or is licensed under the ~~Cigarette Use Tax~~ Act, as distinguished from being a licensee or permit holder under the Cigarette Tax Act.

(Source: Amended at 42 Ill. Reg. 23186, effective November 29, 2018)

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

Section 450.110 ~~Sale of~~ Forfeited Cigarettes and Vending Machines

When any original packages of cigarettes or an cigarette vending device shall have been declared forfeited to the State by the Department, as provided in Section 25 of the Act, and when all proceedings for the judicial review of the Department's decision have terminated, the Department shall, to the extent that its decision is sustained on review, destroy or maintain and use that property in an undercover capacity. The Department may, prior to any destruction of cigarettes, permit the true holder of the trademark rights in the cigarette brand to inspect the contraband cigarettes, in order to assist the Department in any investigation regarding those cigarettes. (Section 27 of the Cigarette Use Tax Act)~~a)Under the Cigarette Use Tax Act, when the Department sells, at any one time, forfeited cigarettes or vending machines having a value of $500.00 or more, the Act provides that such sale shall be made "only to the highest and best bidder on such terms and conditions and on open competitive bidding after public advertisement, in such manner and for such terms as the Department, by rule, may prescribe".b)The Department has prescribed no special conditions with respect to the bidding, but has promulgated this rule to clarify the phrase "public advertisement". "Public advertisement" shall mean the posting of notices of the intended sale in at least three public places in the county in which the sale is to take place, or the publication of such notice in a newspaper having general circulation in said county, or both, as the Department may determine to be best in any given case. The notice will state the kind and quantity of the property to be sold and will designate what the final date will be for the receipt of bids by the Department.~~

(Source: Amended at 42 Ill. Reg. 23186, effective November 29, 2018)

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF EMERGENCY AMENDMENTS

1) Heading of the Part: Rules for Administration of the Compassionate Use of Medical Cannabis Pilot Program

2) Code Citation: 68 Ill. Adm. Code 1290

3)

Section Numbers:	Emergency Actions:
1290.10	Amendment
1290.30	Amendment
1290.40	Amendment
1290.50	Amendment
1290.70	Amendment
1290.100	Amendment
1290.110	Amendment
1290.120	Amendment
1290.140	Amendment
1290.200	Amendment
1290.210	Amendment
1290.230	Amendment
1290.300	Amendment
1290.320	New Section
1290.400	Amendment
1290.405	Amendment
1290.410	Amendment
1290.415	Amendment
1290.420	Amendment
1290.425	Amendment
1290.430	Amendment
1290.431	New Section
1290.440	Amendment
1290.445	Amendment
1290.450	Amendment
1290.500	Amendment
1290.510	Amendment
1290.540	Repealed
1290.550	Repealed

4) Statutory Authority: Implementing and authorized by the Compassionate Use of Medical Cannabis Pilot Program Act [410 ILCS 130].

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF EMERGENCY AMENDMENTS

5) Effective Date of Rules: December 3, 2018

6) If this emergency amendment is to expire before the end of the 150-day period, please specify the date on which it is to expire: The Department has not set a date for the emergency to expire before the end of the 150-day period.

7) Date Filed with Index Department: December 3, 2018

8) A copy of the emergency amendment, including any material incorporated by reference, is on file in the Division of Financial and Professional Regulation's principal office of the Division of Professional Regulation and is available for public inspection.

9) Reason for Emergency: PA 100-1114 [410 ILCS 130] requires the Department of Financial and Professional Regulation to submit emergency rulemaking to implement the changes made by this amendatory Act of the 100th General Assembly by December 1, 2018.

10) A Complete Description of the Subjects and Issues Involved: PA 100-1114 [410 ILCS 130] created the Opioid Alternative Pilot Program (OAPP) within the existing framework of the Medical Cannabis Pilot Program (MCPP). This is a significant expansion of the program, and these proposed rules allow for the implementation of the new Opioid Alternative Pilot Program (OAPP). Specifically, the proposed rules allow for OAPP participants to enter dispensaries and purchase medical cannabis. PA 100-1114 also involved smaller changes within MCPP, and the proposed rules implement these statutory changes and add clarifications on previous rules. Specifically, the proposed rules add clarification to previous rules regarding ownership structure and who is considered a principal officer.

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

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

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

Department of Financial and Professional Regulation

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF EMERGENCY AMENDMENTS

Attention: Craig Cellini
320 West Washington, 3rd Floor
Springfield IL 62786

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

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

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF EMERGENCY AMENDMENTS

TITLE 68: PROFESSIONS AND OCCUPATIONS
CHAPTER VII: DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION
SUBCHAPTER b: PROFESSIONS AND OCCUPATIONS

PART 1290
RULES FOR ADMINISTRATION OF THE COMPASSIONATE USE OF MEDICAL CANNABIS PILOT PROGRAM

SUBPART A: GENERAL PROVISIONS

Section
1290.10 Definitions
EMERGENCY

SUBPART B: DISPENSING ORGANIZATION DISTRICTS

Section
1290.20 Dispensing Organization Districts

SUBPART C: APPLICATION REQUIREMENTS FOR A MEDICAL CANNABIS DISPENSARY REGISTRATION AUTHORIZATION

Section
1290.30 Dispensing Organization Principal Officers
EMERGENCY
1290.40 Dispensing Organization Authorization Process
EMERGENCY
1290.50 Dispensing Organization − Application Requirements for Authorization
EMERGENCY
1290.60 Selection Process
1290.70 Selection Criteria
EMERGENCY
1290.80 Fees

SUBPART D: DISPENSARY REGISTRATION

Section
1290.100 Dispensing Organization − Registration Process
EMERGENCY
1290.110 Dispensing Organization − Registration Requirements

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF EMERGENCY AMENDMENTS

SUBPART E: REGISTRATION OF DISPENSING ORGANIZATION AGENTS

SUBPART F: DISPENSARY OPERATION

SUBPART G: SECURITY AND RECORDKEEPING

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF EMERGENCY AMENDMENTS

SUBPART H: DISCIPLINE

SUBPART I: GENERAL

Section

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF EMERGENCY AMENDMENTS

AUTHORITY: Implementing and authorized by the Compassionate Use of Medical Cannabis Pilot Program Act [410 ILCS 130].

SOURCE: Adopted at 38 Ill. Reg. 16875, effective July 24, 2014; emergency amendment at 38 Ill. Reg. 17798, effective August 8, 2014, for a maximum of 150 days; amended at 39 Ill. Reg. 695, effective December 29, 2014; emergency amendment at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days.

SUBPART A: GENERAL PROVISIONS

Section 1290.10 Definitions
EMERGENCY

Definitions for this Part can be located in Section 10 of the Compassionate Use of Medical Cannabis Pilot Program Act. The following definitions shall also apply to this Part:

"Act" means the Compassionate Use of Medical Cannabis Pilot Program Act [410 ILCS 130].

"ADA" means the Americans With Disabilities Act of 1990 (42 USC 12101).

"Address of record" means the address recorded by the Division in the applicant's or registrant's application file or the registration file maintained by the Division.

"Administratively complete" means that a dispensary registration application meets all requirements of the Act and this Part.

"Applicant" means any person who is applying with the Department for authorization to register a dispensary under the Act.

"Area zoned for residential use" means an area zoned exclusively for residential use; provided that, in municipalities with a population over 2,000,000, "an area zoned for residential use" means an area zoned as a residential district or a residential planned development.

"Application date" is the date the application for authorization or registration was delivered to and received by the Division, and the applicant received a receipt noting that date.

"Authorization notice" means the notice sent by the Division to the applicant that has been awardedgranted an authorization. The authorization notice will include a registry identification number to be used on all future communication with the Division.

"Batch" means a specific harvest of cannabis or cannabis-infused products that are identifiable by a batch number, every portion or package of which is uniform within recognized tolerances for the factors that were subject to a laboratory test and that appear in the labeling.

"Batch number" means a unique numeric or alphanumeric identifier assigned to a batch by a cultivation center when the batch is first planted.

"Cannabis Control Act" means 720 ILCS 550.

"Cannabis" means *marihuana, hashish and other substances which are identified as including any parts of the plant Cannabis* sativa *and including derivatives or subspecies, such as Indica, of all strains of cannabis, whether growing or not; the seeds thereof, the resin extracted from any part of such plant; and any compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin, including tetrahydrocannabinol (THC) and all other cannabinol derivatives, including its naturally occurring or synthetically produced ingredients, whether produced directly or indirectly by extraction, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.* (Section 3 of the Cannabis Control Act)

"CPA" means certified public accountant.

"Damaged" shall have its common meaning and include medical cannabis that is unusable, unused, expired, spoiled, contaminated, deteriorated, mislabeled,

undesired, excess, adulterated, misbranded, deteriorated or in containers or packaging that was tampered with or opened.

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

"Director" means the Director of the Illinois Department of Financial and Professional Regulation-Division of Professional Regulation or his or her designee.

"Dispensing organization" or "dispensary organization" means a medical cannabis dispensing organization as defined in the Act.

"Dispensary" means the physical premises where medical cannabis is dispensed by a dispensing organization.

"Dispensing organization agent" or "dispensary agent" means a medical cannabis dispensing organization agent as defined in the Act.

"Dispensing organization agent-in-charge" or "dispensary agent-in-charge" means the person who has day to day control and management over the dispensary.

~~"Dispensing organization backer" means any person or entity with a direct or indirect financial interest in the dispensing organization, but does not include a person or entity holding an interest not exceeding one percent of the total ownership or interest rights and the person does not participate directly or indirectly in the control, management or operation of the dispensing organization.~~

"Dispensing Organization District" or "District" means one of the 43 geographically dispersed areas identified in the Act and this Part where one or more dispensing organizations may be located.

"Dispensing organization registration authorization" or "Authorization" is the permission given by the Division to an applicant for a dispensing organization allowing it to file documents to obtain a dispensary registration.

"Dispensing organization registration" or "Registration" authorizes the applicant to open and operate a dispensing organization within the District designated by the Division.

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF EMERGENCY AMENDMENTS

"Division" means the Department of Financial and Professional Regulation-Division of Professional Regulation with the authority delegated by the Secretary.

"DOA" means the Illinois Department of Agriculture.

"DPH" means the Illinois Department of Public Health.

"Excluded offense" means:

a violent crime defined in Section 3 of the Rights of Crime Victims and Witnesses Act or a substantially similar offense that was classified as a felony in the jurisdiction where the person was convicted; or

a violation of a state or federal controlled substance law that was classified as a felony in the jurisdiction where the person was convicted, except that the Department may waive this restriction if the person demonstrates to the Department's satisfaction that his or her conviction was for the possession, cultivation, transfer, or delivery of a reasonable amount of cannabis intended for medical use.

This exception does not apply if the conviction was under state law and involved a violation of an existing medical cannabis law. (Section 10 of the Act)

"Financial interest" means any actual or future right to ownership, investment or compensation arrangement, either directly or indirectly, through business, investment, spouse, parent or child, in the dispensing organization. Financial interest does not include ownership of investment securities in a publicly-held corporation that is traded on a national securities exchange or over-the-counter market in the United States, provided the investment securities held by the person and the person's spouse, parent or child, in the aggregate, do not exceed one percent ownership in the dispensing organization.

"Fingerprint-based criminal history records check" means a fingerprint-based criminal history records check conducted by the ISP in accordance with the Act, 20 Ill. Adm. Code 1265.30 (Electronic Transmission of Fingerprint Requirements) or the Uniform Conviction Information Act (UCIA) [20 ILCS 2635].

"Good standing" means the dispensing organization's registration is not under investigation, is not on probation and is not subject to disciplinary or other restrictions by the Division as defined in the Act or this Part.

"HIPAA" means the Health Insurance Portability and Accountability Act (45 CFR 164).

"Illinois Cannabis Tracking System" means a web-based system established and maintained by the Department of Public Health that is available to the Department of Agriculture, the Department of Financial and Professional Regulation, the Illinois State Police, and registered medical cannabis dispensing organizations on a 24-hour basis to upload written certifications for Opioid Alternative Pilot Program participants, to verify Opioid Alternative Pilot Program participants, to verify Opioid Alternative Pilot Program participants' available cannabis allotment and assigned dispensary, and the tracking of the date of sale, amount, and price of medical cannabis purchased by an Opioid Alternative Pilot Program participant. [Section 10(l-10) of the act].

"ISP" means Illinois Department of State Police.

"Limited access area" means a ~~building,~~ room or rooms~~other area~~ under the control of the dispensing organization and on~~upon~~ the registered dispensary premises with access limited to qualifying patients, provisional registration patients, Opioid Alternative Pilot Program Participants, designated caregivers, ~~dispensary owners and other~~ dispensary agents, ~~or~~ service professionals working on jobs at the dispensary, or persons authorized by the Act and this Part~~conducting business with the dispensing organization~~.

"Livescan" means an inkless electronic system designed to capture an individual's fingerprint images and demographic data in a digitized format that can be transmitted to ISP, for processing. The data is forwarded to the ISP Bureau of Identification (BOI) over a virtual private network (VPN) and then processed by ISP's Automated Fingerprint Identification System (AFIS). Once received at the BOI for processing, the inquiry may then be forwarded to the Federal Bureau of Investigation (FBI) electronically for processing.

"Livescan vendor" means an entity licensed by the Department to provide commercial fingerprinting services under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004 [225 ILCS 447].

"Medical cannabis" means cannabis and its constituent cannabinoids, such as tetrahydrocannabinol (THC) and cannabidiol (CBD), used as an herbal remedy or therapy to treat disease or alleviate symptoms. Medical cannabis can be administered in a variety of ways, including, but not limited to: vaporizing or smoking dried buds; using concentrates; ingesting tinctures or tonics; applying topicals such as ointments, balms; or consuming medical cannabis-infused food products.

"Medical cannabis container" means a sealed, traceable, food compliant, tamper resistant, tamper evident container or package used for the purpose of containment of medical cannabis from a cultivation center to a dispensing organization. [(Section 10(n) of the Act].)

"Medical cannabis-infused products" means food, oils, ointments, or other products containing cannabis that are not smoked (e.g., sodas, teas or capsules) as defined in the Act. [(Section 10(q) of the Act].)

"Monitoring" means continuous and uninterrupted video surveillance of dispensary activities and oversight for potential suspicious actions. Monitoring through video surveillance includes the purpose of summoning a law enforcement officer to the premises during alarm conditions. The Division and law enforcement agencies shall have the ability to access a dispensing organization's monitoring system in real-time via a secure web-based portal.

"Notify" means to send via regular United States mail or email and United States certified mail.

"Opioid" means a narcotic drug or substance that is a Schedule II controlled substance under paragraph (1), (2), (3), or (5) of subsection (b) or under subsection (c) of Section 206 of the Illinois Controlled Substances Act. [Section 10(r-5) of the Act].

"Opioid Alternative Pilot Program participant" (OAPP) means an individual who has received a valid written certification to participate in the Opioid Alternative Pilot Program for a medical condition for which an opioid has been or could be

prescribed by a physician based on generally accepted standards of care. [Section 10(r-10) of the Act].

"Ownership structure" means a description of the business type, structure and identity of each person with ~~an~~ ownership, control or financial interest in the dispensing organization.

"Person" includes, but is not limited to, a natural person, sole proprietorship, partnership, joint venture, limited liability company, corporation, association, agency, business entity, not-for-profit or organization.

"Point of Sale" means a web-based system maintained by the dispensing organization to track cannabis inventory, sales and currency. The dispensary's Point-of-Sale equipment interfaces in real-time with the state's Verification system and Illinois Cannabis Tracking System to record all sales.

"Principal Officer" includes a ~~prospective~~ dispensing organization applicant or registered dispensing organization's~~or dispensing organization~~ board member, owner with more than one percent interest of the total dispensing organization, president, vice president, secretary, treasurer, partner, officer, member, manager member, shareholder or person with a profit sharing, financial interest or revenue sharing arrangement. The definition includes a person with authority to control the dispensing organization, a person who assumes responsibility for the debts of the dispensing organization and who is further defined in this Part.

"Promptly" means as soon as reasonably practicable, but not later than five days.

"Provisional Registration" means a document issued by the Department of Public Health to a qualifying patient who has submitted:

an online application and paid a fee to participate in the Compassionate Use of Medical Cannabis Pilot Program pending approval or denial of the patient's application; or

a completed application for terminal illness. [Section 10(s-5) of the Act].

"Public Access Area" is the dispensary's entrance, vestibule or waiting room area accessible to the public and under the control of the registered dispensing

organization. Persons in the public access area must be present in furtherance of the Act.

"Registered" or "Registration" means a dispensing organization licensed by the Division to operate a medical cannabis dispensary as defined in the Act.

"Restricted access area" means a ~~building,~~ room or rooms, or other contiguous area under control of the dispensing organization and on~~upon~~ the registered premises with access limited to dispensary agents, the Division, ISP, emergency personnel and service professionals as described in this Part ~~only~~, where cannabis is stored, held, packaged, sold or processed for sale.

"Registration packet" is the information and documents submitted by a dispensing organization authorized by the Division to register a dispensing organization.

"Secretary" means the Secretary of the Department.

"Service Professional" means a person who must be present at the dispensary to perform work, including but not limited to those installing or maintaining security devices, delivering cannabis, or providing construction services.

~~"Third party vendor" means an entity providing industry related goods or services, but does not include common utilities, for example, electric, water, phone or gas.~~

"Trust" means a fiduciary relationship in which one party, known as a trustor, gives another party, the trustee, the right to hold title to property or assets for the benefit of a third party, the beneficiary.

"Verification system" means a Web-based system established and maintained by the Department of Public Health that is available to the Department of Agriculture, the Department of Financial and Professional Regulation, law enforcement personnel, and registered medical cannabis dispensing organization agents on a 24-hour basis for the verification of registry identification cards, the tracking of delivery of medical cannabis to medical cannabis dispensing organizations, and the tracking of the date of sale, amount, and price of medical cannabis purchased by a registered qualifying patient. [Section 10(x) of the Act].

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"Veteran" means person who served in one of the five active-duty Armed Services or their respective Guard or Reserve units, and who was discharged or released from service under conditions other than dishonorable.

"Visitor" means a person authorized by the Division and the dispensary to enter a dispensary's limited access area, as defined in this Part, and is not a qualifying patient, designated caregiver, dispensary agent, emergency personnel or service professional.

"Written certification" means a document dated and signed by a physician, stating:

that the qualifying patient has a debilitating medical condition and specifying the debilitating medical condition the qualifying patient has; and

that

the physician is treating or managing treatment of the patient's debilitating medical condition; or

an Opioid Alternative Pilot Program participant has a medical condition for which opioids have been or could be prescribed.

A written certification shall be made only in the course of a bona fide physician-patient relationship, after the physician has completed an assessment of either a qualifying patient's medical history or Opioid Alternative Pilot Program participant, reviewed relevant records related to the patient's debilitating condition, and conducted a physical examination. [Section 10(y) of the Act].

(Source: Amended by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

SUBPART C: APPLICATION REQUIREMENTS FOR A MEDICAL CANNABIS DISPENSARY REGISTRATION AUTHORIZATION

Section 1290.30 Dispensing Organization Principal Officers
EMERGENCY

a) In addition to the individuals identified in the dispensing organization's by-laws as principal officers, the following individuals are considered principal officers:

1) If a corporation, the officers of the corporation;

2) If a partnership, the partners;

3) If a limited liability company, the members and managers of the limited liability company;

4) If an association or cooperative, the members of the association or cooperative;

5) If a joint venture, the individuals who signed the joint venture agreement; and

6) If a business organization other than the types listed in subsections (a)(1) through (5), the members of the business organization.

b) A dispensing organization may not be established as a trust. A trust may not have an ownership interest in a registered dispensing organization.

c) If a dispensing organization parent company, holding company or any other entity exerts management or control over the dispensing organization, that entity is a dispensing organization principal officer, including the officers, board members and the individuals with an ownership interest in it that have more than a one percent ownership interest in the dispensing organization.

(Source: Amended by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

Section 1290.40 Dispensing Organization Authorization Process
EMERGENCY

a) The Division shall review applications and issue authorizations according to the requirements of the Act and this Part.

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1) An applicant shall file an application with the Division for authorization to register a dispensing organization.

2) Applications for authorizations shall be made on forms furnished by the Division. The application shall be signed by all principal officers certifying under penalty of perjury that all information contained in the application is true and accurate.

3) An applicant is limited to one application for authorization per District ~~per application period~~.

4) The instructions on the application will reflect the total maximum number of points available for each required criteria and bonus point category. The instructions and application will also identify the minimum number of points necessary from the required criteria to be eligible for consideration of the bonus point categories. All applications will be reviewed and points awarded based upon the same point system in a fair and unbiased manner.

5) An applicant may submit separate applications for authorization in up to five Districts.

6) Each application requires one application fee (see Section 1290.80). Applications for authorization will be scored in five required categories. Should the applicant meet the minimum percentage in the five required categories, it may be eligible to be scored in the bonus category. The required five categories and the bonus category will be scored based on the following point structure:

   A) The suitability of the proposed dispensary category is 150 points.

   B) The business and operation plan category is 200 points.

   C) The security plan category is 200 points.

   D) The recordkeeping and inventory plan category is 200 points.

   E) The financial disclosure category is 150 points.

   F) The bonus category is 100 points.

7) If submitting an application in more than one District, the applicant shall identify the Districts it has applied in or Districts where it is registered.

8) Each applicant must submit to and qualify through a fingerprint-based criminal history records check as set forth in Section 1290.230.

9) The Division shall review each application to determine whether it meets the minimum criteria and shall determine qualified applicants.

10) The Division may consider the location of a proposed dispensary relevant to other proposed or existing dispensaries, in the same or adjacent Districts, to ensure that dispensaries are geographically dispersed.

11) If the Division determines that the number of qualified applicants exceeds the number of authorizations available, the Division will select the most qualified applicant in that District using the selection process established in Section 1290.60.

12) Qualified applicants chosen through the selection process will receive an authorization issued by the Division.

13) If the Division determines that a District has no qualified applicants or fewer qualified applicants than authorized registrations, the Division shall post a notification on the Division's website detailing the dates of the next open application period.

14) No person or entity shall have a financial interest in~~hold~~ more than five registrations or hold itself out as an owner of more than five registrations. No person shall be a principal officer in more than five registered dispensing organizations. If a qualified applicant has been granted more than five authorizations or registrations by the Division, the applicant shall promptly notify the Division. ~~No person shall be a principal officer in more than five registered dispensing organizations.~~

15) If a dispensing organization's registration is void or invalid for any reason, including but not limited to revocation, suspension or nonrenewal, the Division will post a notification on the Division's website detailing the dates of the next open application period.

b) Upon receipt of the authorization notice, the applicant may submit for registration approval.

(Source: Amended by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

Section 1290.50 Dispensing Organization − Application Requirements for Authorization EMERGENCY

a) Applications must be submitted on Division-provided forms and include the following information:

1) The legal name of the proposed dispensing organization.

2) The name, address, telephone number, date of birth, social security number and e-mail address of the proposed dispensing organization's principal officers. A post office box may not be used.

3) The name of the proposed dispensary.

4) If the entity applying is a sole proprietorship, a copy of creation documents.

5) If the entity applying is a business organization other than a sole proprietorship, the following information for the entity applying:

A) The type of business organization.

B) If a partnership, a copy of any partnership or joint venture documents, and if there is no written agreement, a statement signed by all principal officers affirming there is no agreement.

C) If a limited liability company, a copy of the Articles of Organization, operating agreement, and certificate of good standing issued by the Secretary of State or obtained from the Secretary of State's website dated within seven days prior to the date the application is filed with the Division. Limited liability

company applicants shall include a listing of all affiliated persons or business entities holding an ownership interest in the company.

D) If a corporation, the name of the registered agent, a copy of the Articles of Incorporation, Corporate Resolutions if any, and a certificate of good standing issued by the Secretary of State or obtained from the Secretary of State's website within seven days prior to the date the application is filed with the Division. If using an assumed name, a copy of the assumed name registration issued by the Secretary of State. Corporate applicants shall include a listing of all persons or businesses holding an ownership interest in the corporation.

E) If an unincorporated association, organization or not-for-profit organization, documents or agreements relevant to its creation, ownership, profit sharing and liability. If there are no documents as detailed in this subsection (a)(5)(E), a statement signed by all principal officers stating so.

6) From each principal officer, a statement indicating whether that person:

A) Has held an ownership interest in a dispensing organization, other cannabis-related business, or its equivalent in another state or territory of the United States that had the dispensary registration or license suspended, revoked, placed on probationary status or subjected to other disciplinary action.

B) Is a physician that will be on the dispensing organization's board of directors or an employee, pursuant to Section 35(b)(5) of the Act.

C) Is a registered qualified patient, ~~or a~~ designated caregiver, provisional patient or OAPP patient.

7) Disclosure of whether any principal officer has ever:

A) Filed for bankruptcy; or

~~B) Defaulted on a student loan; or~~

B~~C~~) Defaulted on alimony or child support obligation.

8) A resume for each principal officer, including whether that person has an academic degree, certification or relevant experience with a medical cannabis business or in a related industry.

9) A patient education plan detailing the benefits or drawbacks of cannabis strains or products in connection with the debilitating conditions identified in the Act and an OAPP participant education plan detailing the benefits or drawbacks of cannabis strains or products in connection with medical conditions for which opioids can or are prescribed for, and initiatives to keep product costs reasonable.

10) A description of the training and education that will be provided to dispensary agents.

11) A copy of the proposed operating by-laws.

12) A copy of the proposed business plan that complies with the requirements in this Part, including, at a minimum, the following:

A) A description of products intended to be offered;

B) A description of services to be offered; and

C) A description of the process of dispensing cannabis from a restricted access area to a limited access area.

13) A copy of the proposed security plan that complies with the requirements in this Part, including:

A) A description of the delivery process by which cannabis will be received from a cultivation center, including receipt of manifests and protocols that will be used to avoid diversion, theft or loss at the dispensary acceptance point;

B) The process or controls that will be implemented to monitor the dispensary, secure the premises, agents, patients, opioid

participants and currency, and prevent the diversion, theft or loss of cannabis; and

C) The process to ensure that access to the limited access areas is restricted to qualifying patients, provisional registration patients, Opioid Alternative Pilot Program ("OAPP") participants, designated caregivers, registered agents, service professionals or persons authorized by the Act and this Part~~and security personnel~~.

14) A proposed inventory control plan that complies with this Part.

A) The process for integrating the dispensary's point of sale with the state verification system and Illinois Cannabis Tracking System using a program interface to record sales and patients, provisional patients, designated caregivers and OAPP participants in real time.

B) A description of the medical cannabis order fulfillment process for patients, provisional patients and OAPP participants;

C) A description of the patient, provisional patient and OAPP participant sale process;

D) A description of the process of dispensing cannabis from the restricted access area to the limited access area.

15) A proposed ~~qualifying patient~~ recordkeeping plan and verification system for patients, provisional patients, designated caregivers and OAPP participants that complies with this Part.

16) A copy of the current local zoning ordinance sections relevant to dispensary operations. Documentation, if any, of the approval, the conditional approval or the status of a request for zoning approval from the local zoning office that the proposed dispensary location is in compliance with the local zoning rules and the zoning provisions in Section 130 of the Act.

17) For the building or land to be used as the proposed dispensary:

A) If the property is not owned by the applicant, a written statement from the property owner and landlord, if any, certifying consent that the applicant may operate a dispensary on the premises; or

B) If the property is owned by the applicant, confirmation of ownership.

18) A copy of any proposed marketing or advertising plan or materials.

19) A map of the area surrounding the proposed dispensary, extending a minimum of 1,000 feet from the property line in all directions. The map must clearly demonstrate that the property line of the proposed dispensary is not located within 1,000 feet of the property line of a pre-existing public or private preschool or elementary or secondary school or day care center, day care home, group day care home or part day child care facility. The map must clearly demonstrate that the dispensary is not in an area zoned for residential use and identify the existing adjacent businesses. For purposes of this subsection (a)(19), "pre-existing" means existing as of the date the proposed dispensing organization submitted its application to the Division.

20) A plot plan of the dispensary drawn to scale. The applicant shall submit general specifications of the building exterior and interior layout.

21) A statement that the dispensing organization agrees to respond to the Division's supplemental requests for information.

b) Financial Disclosure
The applicant shall provide a statement disclosing relevant business transactions and financial information connected with the application. Financial disclosures include:

1) A Table of Organization, Ownership and Control including the~~The~~ ownership structure and names of the principal officers of the dispensing organization~~, including percentage ownership of each person or entity~~.

2) A current organization chart that includes position descriptions and the names and resumes of each person holding each position. The resumes shall establish specific skills, education, experience or significant

accomplishments that are relevant to owning or operating a dispensing organization.

3) Depending on business type as applicable, agreements between any two or more principal officers that relate to the assets, liabilities, property, revenue, royalties, profit or future profit of the dispensing organization or comparable documents that establish the legal structure of the applicant, operations, management and control.

4) A copy of compensation agreements among any persons having a financial interest in the dispensing organization.

5) The nature, type, terms, covenants and priorities of all outstanding debts, including but are not limited to bonds, loans, mortgages, trust deeds, lines of credit, notes issued or executed, or to be issued or executed, in connection with the proposed dispensary.

6) Audited financial statements for the previous fiscal year, which shall include, but are not limited to, an income statement, balance sheet, statement of retained earnings or owners' equity, statement of cash flows, and all notes to those statements and related financial schedules, prepared in accordance with generally accepted accounting principles, with the accompanying independent auditor's report. The audit must be compiled by and certified by an auditor or CPA. If the applicant was formed within the year preceding the application, provide certified financial statements for the period of time the applicant has been in existence.

7) Complete copies of all federal, state and foreign (with translation) tax returns filed by the principal officers of the proposed dispensing organization for the last three years, or for the period each principal officer has filed tax returns if less than three years.

~~8) Name of each dispensing organization backer and complete copies of the most recently filed federal, state and foreign (with translation) personal tax returns filed by each dispensing organization backer. If the dispensing organization backer is a business entity, name the principals or board members of the business entity and provide their personal tax returns.~~

8~~9~~) Disclosure of all funding sources used for the proposed dispensing organization, including documentation verifying the source of the funds and copies of closing documents in connection with the purchase of a registered business.

~~10) Projected total expenditures expected before the dispensary is operational.~~

~~11) Projected annual revenue.~~

~~12) Projected annual budget.~~

9~~13~~) The applicant has a continuing duty to promptly disclose material changes in the financial information provided to the Division. If an applicant is issued a registration, this duty of ongoing disclosure shall continue throughout the registered period.

c) Documentation acceptable to the Division that the applicant has at least $400,000 in liquid assets under its control for each application. Documentation acceptable to the Division includes:

1) A signed statement from an Illinois Licensed CPA or financial institution attesting to proof of $400,000 in liquid assets under the control of a principal officer or the entity applying.

2) The signed statement must be dated within 10 calendar days before the application is submitted.

3) Documentation otherwise requested by the Division in writing.

d) An attestation under penalty of perjury signed and dated by each principal officer identified in subsection (a)(2):

1) That the person has not been convicted of an excluded offense;

2) That the information provided to the Division is true and correct;

3) That, if the proposed organization is issued an authorization, the applicant will not operate until the Division approves the applicant's registration

packet, the dispensary is inspected and the applicant obtains a registration from the Division;

4) That the applicant acknowledges receipt and advisement of the notices contained in the application and agrees to and accepts the limitations of liability and the requirement to indemnify, hold harmless and defend the State of Illinois, including:

A) Limitation of Liability − the State of Illinois shall not be liable to the dispensing organization, dispensing organization employees, family members or guests, qualifying patients or caregivers, qualifying patient's or caregiver's employer or employees, family members or guests for any damage, injury, accident, loss, compensation or claim, based on, arising out of or resulting from the registrant's participation in the Compassionate Use of Medical Cannabis Pilot Program, including, but not limited to, the following: arrest, seizure of persons or property, prosecution pursuant to federal laws by federal prosecutors, any fire, robbery, theft, mysterious disappearance or any other casualty; or the actions of any other registrants or persons. This limitation of liability provision shall survive expiration or the early termination of the registration if the registration is granted; and

B) The Division requires each registrant to include a signed statement in the registration packet that, at minimum, certifies that the applicant has actual notice that, notwithstanding any State law:

i) Cannabis is a prohibited Schedule I controlled substance under federal law;

ii) Participation in the Compassionate Use of Medical Cannabis Pilot Program (program) is permitted only to the extent provided by the strict requirements of the Act and this Part;

iii) Any activity not sanctioned by the Act or this Part may be a violation of State law;

iv) Growing, distributing or possessing cannabis in any capacity, except through a federally-approved research program, is a violation of federal law;

v) Use of medical cannabis may affect an individual's ability to receive federal or state licensure in other areas;

vi) Use of medical cannabis, in tandem with other conduct, may be a violation of State or federal law;

vii) Participation in the medical cannabis program does not authorize any person to violate federal law or State law and, other than as set out in Section 25 of the Act, does not provide any immunity from or affirmative defense to arrest or prosecution under federal law or State law; and

viii) Applicants shall indemnify, hold harmless and defend the State of Illinois for any and all civil or criminal penalties resulting from participation in the program.

C) The Division has the authority to include additional certifications in the application that would be sufficient to ensure compliance with the program and all other applicable laws.

e) All proposed principal officers must be natural persons. The Division will communicate with the proposed dispensing organization's principal officers. The Division will not communicate exclusively with a consultant or attorney working on behalf of the proposed dispensing organization.

~~f) The name and resume of the proposed agent-in-charge.~~

fg) The non-refundable application fee (see Section 1290.80).

(Source: Amended by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

Section 1290.70 Selection Criteria
EMERGENCY

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NOTICE OF EMERGENCY AMENDMENTS

a) Applicants must submit all required information, including that required in Section 1290.50. Failure by an applicant to submit all required information may result in the application being disqualified.

b) If the Division receives an application with missing information~~exhibits~~, the Division may issue a deficiency notice to the applicant ~~that its application is incomplete. The notice from the Division will identify the missing exhibits~~. The applicant shall have seven calendar days from the date of the deficiency notice to resubmit the incomplete information~~exhibits~~. Applications that are still incomplete after this ~~one~~ opportunity to cure~~,~~ will not be scored and will be disqualified.

c) The Division will award points to administratively complete applications based on the clarity, organization and quality of the applicant's responses to required information. Applicants will be awarded points according to the following categories:

1) Suitability of the Proposed Dispensary

A) A demonstration that the proposed location is suitable for public access, the layout promotes safe dispensing of medical cannabis, it is sufficient in size, power allocation, lighting, parking, handicapped accessible parking spaces, ADA accessible entry and exits, product handling, and storage.

B) A statement of reasonable assurance that the issuance of a registration will not have a detrimental impact on the community.

2) Security and Recordkeeping

A) The security plan will demonstrate the capability for the prevention of the theft or diversion of medical cannabis. The security plan will demonstrate safety procedures for dispensary employees, patients, provisional patients, OAPP participants and caregivers, and safe delivery and storage of cannabis and currency. It will demonstrate~~evidence~~ compliance with all security requirements in this Part.

B) A plan for recordkeeping, tracking and monitoring inventory, quality control and other policies and procedures that will promote standard recordkeeping and discourage unlawful activity. This plan will include the applicant's strategy to communicate with the Division and ISP on the destruction and disposal of cannabis.

3) Applicant's Business Plan, Financials and Operating Plan

A) The business plan shall describe, at a minimum, how the dispensing organization will be managed on a long-term basis. This shall include a description of the patient verification system, dispensing organization's point of sale system, Illinois Tracking System, purchases and denials of sale, confidentiality, and products and services to be offered.

B) The financial plan shall describe, at a minimum, the source of the $400,000 liquid asset requirement and the amount and source of the organization's equity and debt commitment to ensure financial stability, including a demonstration of the immediate and long-term financial health and resources for the design, development and operation of the dispensary.

C) The operating plan shall include, at a minimum, a timetable that provides an estimated time from authorization through year one of registration and the assumptions used as the basis for those estimates. It will include best practices for day-to-day dispensary operation and staffing.

4) Knowledge and Experience

A) The applicant's principal officers must demonstrate experience and qualifications in business management or experience with the medical cannabis industry. This includes ensuring optimal safety and accuracy in the dispensing and sale of cannabis.

B) The applicant must demonstrate knowledge of various cannabis product strains or varieties, and describe the types and quantities of products planned to be sold. This includes confirmation of

whether the dispensary plans to sell medical cannabis paraphernalia or edibles.

d) The Division will award bonus~~additional~~ points for preferred, but not required, initiatives based on the applicant's ability to meet requirements in the following categories:

1) Labor and Employment Practices: The applicant may describe plans to provide a safe, healthy and economically beneficial working environment for its agents, including, but not limited to, codes of conduct, healthcare benefits, educational benefits, retirement benefits, and living wage standards.

2) Research Plan: The applicant may provide the Division with a detailed proposal to conduct, or facilitate, a scientific study or studies related to the medicinal use of cannabis. The applicant may include in its proposal a detailed description of:

A) The methodology of the study to accurately assess the effects of cannabis;

B) The issues to be studied;

C) The methods that will be used to identify and select study participants;

D) The identity of each person or organization associated with the study, including the role of each;

E) The duration of the study and anticipated peer review; and

F) The intended use of the study results.

3) Community Benefits Plan: The applicant may provide a description of plans the applicant has to support the local community, the class of citizens served, or a plan for reduction in product costs for indigent patients that qualify.

4) Substance Abuse Prevention Plan: The applicant may provide a detailed description of any plans it will take to combat substance abuse in its District, including the extent to which the applicant will partner or work with existing substance abuse programs.

5) Local Community/Neighborhood Report: The applicant may provide comments, concerns or support received regarding the potential impact of the proposed location on the local community and neighborhood.

6) Environmental Plan: The applicant may demonstrate an environmental plan of action to minimize the carbon footprint, environmental impact, and resource needs for the dispensary.

7) Verification of Minority-Owned, Female-Owned, Veteran-Owned or Disabled Person-Owned Business: The minority, female, veteran or disabled applicants must own at least 51% of the entity applying for registration. The percentage totals may include any combination of minority, female, veteran or disabled applicants. The minority, female, veteran or disabled applicant must also share in control of management and day-to-day operations of the dispensary. Documentation must be submitted at the time of application that demonstrates the respective status of the applicant, including, but not limited to, certification under the Business Enterprise for Minorities, Females, and Persons with Disabilities Act [30 ILCS 575] for minority, female or disabled person applicants, or a DD214 for veteran applicants. For purposes of this subsection, minority, female, and disabled shall be defined as found in Section 2 of the Business Enterprise for Minorities, Females, and Persons with Disabilities Act [30 ILCS 575/2].

8) Illinois Based Applicants: Documentation that the applicant's principal place of business is headquartered in Illinois, including the names, addresses and verification of the applicant's proposed agents that reside in Illinois. The applicant may also provide a plan for generating Illinois-based jobs and economic development.

e) The Division may verify information contained in each application and accompanying documentation to assess the applicant's character and fitness to operate a dispensary. In addition to the qualifications required in the Act and this

Part, the Division may not grant an authorization or registration unless it is satisfied that the applicant is:

1) A person of good character, honesty and integrity;

2) A person whose background, including criminal record, reputation, habits and social or business associations, does not discredit or tend to discredit public confidence and trust in the Illinois medical cannabis industry or the State of Illinois, or pose a threat to the public health, security, safety, morals, good order and general welfare of the State of Illinois;

3) A person who does not create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of owning a medical cannabis dispensary;

4) A person who does not present questionable business practices and financial arrangements incidental to the conduct of owning a medical cannabis dispensary or otherwise;

5) A person who, either individually or through employees, demonstrates business ability and experience to establish, operate and maintain a business for the type of license for which application is made; and

6) A person who does not associate with, either socially or in business affairs, or employ, persons of notorious or unsavory reputation or who have extensive police records, or who have failed to cooperate with an officially constituted investigatory or administrative body.

f) The Division may, in its discretion, refuse to issue an authorization to any applicant:

1) Who is unqualified to perform the duties required of the applicant;

2) Who fails to disclose or states falsely any information called for in the application;

3) Who has been found guilty of a violation of the Act, or whose medical cannabis dispensary or cultivation center license was suspended, restricted, revoked or denied for just cause in any other state; or

4) For any other just cause.

g) Should the applicant be awarded an authorization, the information and plans provided in the application become a condition of the authorization. Dispensing organizations have a duty to disclose any material changes to the application. All changes shall be equal to or better than the original information or plans. Failure to comply with the conditions or requirements in the application may subject the dispensing organization to discipline, up to and including suspension or revocation of its authorization by the Division. Revocation of an authorization shall serve as a final administrative decision by the Division.

(Source: Amended by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

SUBPART D: DISPENSARY REGISTRATION

Section 1290.100 Dispensing Organization − Registration Process
EMERGENCY

a) No person may own, operate or act as a dispensing organization or represent that the person or organization is a registered dispensing organization unless first obtaining a registration from the Division.

b) The registration process shall include the following:

1) If the Division issues an authorization to an applicant, the Division will notify the applicant that it may file for a registration with the Division.

2) Only an applicant granted an authorization is permitted to register a dispensing organization.

3) A dispensing organization shall submit to the Division all supporting information and documents in a registration packet. The registration packet shall include all required registration materials in accordance with this Section and this Part. All registration materials shall be submitted together.

4) A dispensing organization must file the registration packet with the Division within 120 days after the date of the authorization notification, unless otherwise authorized by the Division.

5) The Division may identify incomplete or missing information from the registration packet~~.~~, ~~The Division~~ may request additional information from the applicant~~,~~ or ~~the Division may~~ deny the registration packet.

6) If a registration packet is denied by the Division, the dispensing organization may refile it within 10 business days with the information or documents that caused its denial. If the registration packet is denied by the Division more than three times, the Division may withdraw the authorization. A letter withdrawing an authorization shall serve as a final administrative decision by the Division.

c) Once all required information and documents have been submitted, the Division will review the registration packet. The Division may request revisions and retains final approval over dispensary features. Once the registration packet is complete and meets the Division's approval, the Division will conditionally approve the registration. Final approval is contingent on the build-out and Division inspection.

d) Upon completion of the dispensary, the dispensing organization shall request an inspection. The Division will inspect the dispensary to confirm compliance with the registration packet, the Act and this Part.

e) A registration will be issued only after the completion of a successful inspection.

f) Once the Division has issued a registration, the dispensary organization shall notify the Division of the proposed opening date.

g) A dispensing organization is not prohibited from applying for a cultivation center permit in connection with DOA's rules.

(Source: Amended by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

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EMERGENCY

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a) The registration packet will be equal to or better than~~consistent with~~ the information contained in the application, and shall provide additional detail on construction, start-up, ~~and~~ operation, security measures and dispensing procedures.

b) A person granted an authorization shall submit a registration packet to the Division that includes the following registration requirements:

1) The legal name of the dispensing organization;

2) The name of the dispensary ~~facility~~;

3) The registry identification number for the dispensing organization;

4) The proposed physical address of the dispensary facility;

5) The address, telephone number and e-mail address of the applicant's principal place of business, if different from the location where the medical cannabis will be dispensed. A post office box is not permitted;

6) The name, address, date of birth and social security number for each proposed dispensing organization agent;

7) The proposed hours of operation;

8) Any proposed text or graphic materials to be shown on the exterior of the proposed dispensary;

9) The distance from the proposed dispensary's property line to the property line of the closest pre-existing public or private preschool or elementary or secondary school or day care center, day care home, group day care home and part day child care facility. For purposes of this subsection (b)(9), "pre-existing" means existing as of the date the proposed dispensing organization submitted its application to the Division.

10) The anticipated date the dispensing organization will be ready for a Division inspection;

11) An attestation under penalty of perjury that the information provided to the Division for registration is true and correct;

12) Certification issued by the local jurisdiction's zoning office authorizing the use of the proposed plot as a dispensary;

13) A site plan drawn to scale of the proposed dispensary showing streets, traffic direction, sidewalks, trees, alleys, property lines, additional buildings on-site, parking areas and handicapped parking spaces, fences, exterior walled areas, garages, vehicle delivery access doors, hangars, security features and outdoor areas as applicable.

14) A floor plan or blueprint drawn to scale of the dispensary building that shall, at a minimum, show and identify:

A) Layout and square footage of each room;

B) Overall square footage of the dispensary facility;

C) Name and function of each room;

D) Doorways or pathways between rooms;

E) Means of ingress and egress;

F) Location of restricted, ~~and~~ limited and public access areas. All limited and restricted access areas shall be clearly described in the floor plan of the premises, in the form and manner determined by the Division, reflecting walls, partitions, counter heights, and all areas of entry and exit. The floor plan shall show all storage, disposal and retail sales areas;

G) Location of cannabis storage areas while the dispensary is open for business;

H) Location of cannabis storage areas while the dispensary is closed for business;

I) Location of the patient, provisional patient or OAPP participant counseling area~~sink and refrigerator, if any~~;

J) Location of all safes and/or vaults that will be used to store cannabis, cannabis-infused products or currency, identifying day storage and night storage;

K) Location of each computer used to check qualifying patient cards, ~~or~~ designated caregiver registry cards, provisional registrations and verify OAPP participants;

L) Location of each computer and cash register used for point of sale transactions and to access the Division's verification system and Illinois Cannabis Tracking System;

M) Location of bullet-proof glass, if any;

N) Location of drawer, grate or conduit through the bullet-proof glass, if any;

O) Location of bullet-proof walls, if any;

P) Location of fire exits;

Q) Location of each toilet facility;

R) Location of a break room and personal storage lockers, if any;

~~S) Location of patient counseling areas;~~

ST~~S~~) Location of each video camera;

TU~~T~~) Location of each panic button; and

UV~~U~~) Location of natural windows or skylights~~and artificial lighting sources~~.

15) Policies and procedures that comply with the requirements in this Part, outlined in an Operation and Management Practices Plan, including:

A) Inventory control and recordkeeping using the State's verification system and Illinois Cannabis Tracking System;

B) Qualifying patient, ~~and~~ designated caregiver, provisional patients and OAPP participants recordkeeping;

C) Dispensing medical cannabis to patients, designated caregivers, provisional patients, and OAPP participants that comply with the requirements in Section 1290.430 and 1290.435.

D~~C~~) Inventory control and recordkeeping using the dispensary's point~~Point~~ of sale recordkeeping;

E~~D~~) Security;

F~~E~~) Patient care education and support;

G~~F~~) Accessible~~Operations manual, including accessible~~ business hours and safe dispensing; and

H~~G~~) A staffing plan that ensures adequate staffing, training and education.

16) An explanation of related products or services to be offered, if any, other than cannabis.

17) A plan for working with cultivation centers to acquire medical cannabis and ensure the dispensary has a continuous supply for registered qualifying patients, ~~and~~ designated caregivers, provisional patients and OAPP participants.

18) The estimated volume of cannabis it plans to store at the dispensary.

19) A detailed description of air treatment systems that will be installed to reduce odors.

20) A description of the features that will provide accessibility to qualifying patients, ~~and~~ designated caregivers, provisional patients and OAPP participants as required by the ADA.

21) A plan detailing how the dispensing organization will perform a physical daily inventory of all medical cannabis to ensure inventory is balanced in the State's verification, Illinois Cannabis Tracking System and point of sale system~~on a daily basis~~.

22) An attestation that the dispensing organization will have a reinforced vault room~~safes or vaults~~ with dimensions sufficient for storage of cannabis, cash and currency.

23) Documentation that the building meets State and local building and fire codes, and that all local ordinances are met for the proposed location.

24) A reasonable assurance that the issuance of a registration will not have a detrimental impact on the community.

25) A plan to prevent patient, provisional patient, designated caregiver and OAPP participant overflow in waiting rooms and patient care areas.

26) A signed statement by each principal officer or agent that they will not divert medical cannabis.

27) The registration fee (see Section 1290.80).

28) Any additional information requested by the Division.

c) The registration packet shall be signed and dated by each principal officer.

d) Upon Division approval of the registration packet, the information and plans in the registration packet become a condition of the registration. Dispensing organizations have a duty to disclose any material changes to the information contained in the registration packet.

e) Once all registration documentation is complete, reviewed, confirmed and ~~the dispensing organization~~ meets the Division's approval, the Division may~~will~~ issue a conditional approval.

f) After receipt of a conditional approval, and when the dispensing organization is ready to open, it shall contact the Division for an inspection. The dispensary shall not open until it has passed inspection and the Division has issued a registration.

g) Prior to opening, the dispensing organization shall notify the Division of the proposed opening date.

h) The Division may refuse to issue a registration or a~~A~~ registration must be denied pursuant to Section 115(f) of the Act for a violation of this Part, or any of the following reasons:

1) The applicant failed to submit the materials required by the Act and this Part;

2) The applicant selected a location that is not in compliance with local zoning rules and cannot cure the zoning deficiency in a reasonable time;

3) The applicant does not meet the requirements of Section 130 or 140 of the Act;

4) One or more of the principal officers has been convicted of an excluded offense;

5) One or more of the principal officers has served as an owner or officer of a registered medical cannabis dispensing organization that had its registration revoked;

6) One or more of the principal officers is under 21 years of age;~~ or~~

7) One or more of the principal officers is a registered qualifying patient or a designated caregiver.

(Source: Amended by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

Section 1290.120 Dispensing Organization – Financial Responsibility~~Registration Bond~~ EMERGENCY

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Evidence of financial responsibility~~A registration bond~~ is a requirement for the issuance of a registration, maintenance of a registration, or reactivation of a registration. Evidence of financial responsibility~~The bond~~ shall be used to guarantee that the dispensing organization timely and successfully completes dispensary construction, operates in a manner that provides an uninterrupted supply of cannabis, faithfully pays registration renewal fees, keeps accurate books and records, makes regulatorily required reports, complies with State tax requirements, and conducts the dispensary in conformity with the Act and this Part. Evidence of financial responsibility shall be provided by one of the following:

a) Establishing and maintaining an escrow or surety account in a~~an Illinois~~ financial institution in the amount of $50,000, with escrow terms, approved by the Division, that it shall be payable to the Division in the event of circumstances outlined in this Section.

1) A financial institution may not return money in an escrow or surety account to the dispensing organization that established the account or a representative of the organization unless the organization or representative presents a statement issued by the Division indicating that the account may be released.

2) The escrow or surety account shall not be cancelled on less than 30 days' notice in writing to the Division, unless otherwise approved by the Division. If an escrow or surety account is canceled and the registrant fails to secure a new account with the required amount on or before the effective date of cancellation, the registrant's registration may be revoked. The total and aggregate liability of the surety on the bond is limited to the amount specified in the escrow or surety account.

b) Providing a surety bond in the amount of $50,000, naming the dispensing organization as principal of the bond, with terms, approved by the Division, that the bond defaults to the Division in the event of circumstances outlined in this Section. Bond terms shall include:

~~1)~~ ~~The bond must be written by a surety company authorized and licensed through the Illinois Department of Insurance (see 215 ILCS 5/4).~~

1~~2~~) The business name and registration number on the bond must correspond exactly with the business name and registration number in the Division's records.

23) The bond must be written on a form approved by the Department.

34) A copy of the bond must be received by the Division within 90 days after the effective date.

45) The bond shall not be canceled by a surety on less than 30 days' notice in writing to the Division. If a bond is canceled and the registrant fails to file a new bond with the Division in the required amount on or before the effective date of cancellation, the registrant's registration may be revoked. The total and aggregate liability of the surety on the bond is limited to the amount specified in the bond.

(Source: Amended by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

Section 1290.140 Request to Relocate a Dispensary
EMERGENCY

a) A dispensing organization may relocate a dispensary in the District where the dispensary is registered or awarded an authorization. To relocate a registered dispensary, the dispensing organization shall submit an application requesting the change and the relocation fee (see Section 1290.80) to the Division.

b) The new dispensary location shall meet all the requirements of the Act and this Part.

c) If the information and documents submitted by the dispensing organization comply with the Act and this Part and the proposed location is equal to or better than the prior location~~acceptable to the Division~~, the Division will issue a conditional approval to relocate. The dispensary organization may continue to operate at the existing location, until the new location is ready. The dispensary organization may not operate two locations under the same registration number.

d) Once the new dispensary is finished, the dispensing organization shall notify the Division and request an inspection.

e) Prior to issuing a registration and approval to operate, the Division will inspect the dispensary to confirm compliance with the Act and this Part. Final approval

for the dispensing organization to operate will be issued by the Division only after the completion of a successful inspection.

f) A dispensing organization shall not dispense medical cannabis at the new location until the Division approves the dispensary and issues an amended registration noting the new location.

g) Once the Division has issued an amended registration, the dispensing organization shall notify the Division of the proposed dispensary opening date.

h) The registration that includes the new address shall retain the expiration date of the previously issued registration.

i) An application for a relocation of a dispensary may not be combined with an application for renewing a dispensing organization registration. The Division shall process each application separately.

j) Should the dispensing organization relocate, it shall inform its existing patients of the new dispensary location.

(Source: Amended by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

SUBPART E: REGISTRATION OF DISPENSING ORGANIZATION AGENTS

Section 1290.200 Dispensing Organization Agent-in-Charge
EMERGENCY

a) Every dispensing organization shall designate, at a minimum, one agent-in-charge for each registered dispensary. The designated agent-in-charge must hold a dispensing organization agent identification card. Maintaining an agent-in-charge is a continuing requirement for the registration, except as provided in subsection (g).

b) The agent-in-charge shall be a principal officer or a full-time agent of the dispensing organization and shall manage the dispensary~~participate in dispensing organization affairs~~. Managing the dispensary~~Participation in dispensing organization affairs~~ includes, but is not limited to, responsibility for opening and closing the dispensary, delivery acceptance~~deliveries~~, oversight of sales~~services~~

and dispensary agents, recordkeeping, inventory, dispensary agent training, and compliance with the Act and this Part. Participation in affairs also includes the responsibility for maintaining all files subject to ~~audit or~~ inspection by the Division at the dispensary. ~~These files shall be located in Illinois.~~

c) The agent-in-charge is responsible for promptly notifying the Division of any change of information required to be reported to the Division.

~~d) If the dispensing organization is a corporation or a limited liability company, the agent-in-charge is responsible for maintaining the good standing of the corporation or limited liability company with the Secretary of State. If the dispensing organization is a foreign corporation, the agent-in-charge is responsible for maintaining its authorization to conduct business in Illinois in good standing.~~

de) In determining whether an agent-in-charge manages the dispensary~~participates in dispensing organization affairs~~, the Division may consider the responsibilities identified in this Section, the number of dispensary agents under the supervision of the agent-in-charge, and the employment relationship between the agent-in-charge and the dispensing organization, including the existence of a contract for employment and any other relevant fact or circumstance.

ef) The agent-in-charge is responsible for notifying the Division~~, on forms provided by the Division,~~ of a change in the employment status of all dispensing organization agents within five business days after the change, including notice to the Division if the termination of an agent was for diversion of product or theft of currency~~, and the nature and reason for the status change, within five business days after the change~~.

fg) In the event of the separation of an agent-in-charge due to death, incapacity, termination or any other reason and if the dispensary does not have an active agent-in-charge, the dispensing organization shall immediately contact the Division and request a temporary certificate of authority allowing the continuing operation. The request shall include the name of an interim agent-in-charge until a replacement is identified, or shall include the name of the replacement. The Division shall issue the temporary certificate of authority promptly after it approves the request. If a dispensing organization fails to promptly request a temporary certificate of authority after the separation of the agent-in-charge, its registration shall cease until the Division approves the temporary certificate of

authority or registers a new agent-in-charge. No temporary certificate of authority shall be valid for more than 90 days. The succeeding agent-in-charge shall register with the Division in compliance with this Part. Once the permanent succeeding agent-in-charge is registered with the Division, the temporary certificate of authority is void. No temporary certificate of authority shall be issued for the separation of an agent-in-charge due to disciplinary action by the Division related to his or her conduct on behalf of the dispensing organization.

g~~h~~) The dispensing organization agent-in-charge registration shall expire annually on the date it was issued. The agent-in-charge's registration shall be renewed annually. The Division shall review the dispensary's compliance history when determining whether to grant the request to renew.

h~~i~~) Upon termination of an agent-in-charge's employment, the dispensing organization shall immediately reclaim the dispensary agent identification card. The dispensing organization shall promptly return the identification card to the Division.

i~~j~~) The Division may deny an application or renewal, discipline or revoke~~revoke~~ an agent-in-charge identification card for any of the following reasons:

1) Submission of misleading, incorrect, false or fraudulent information in the application or renewal application;

2) Violation of the requirements of the Act or this Part;

3) Fraudulent use of the agent-in-charge identification card;

4) Selling, distributing, transferring in any manner, or giving medical cannabis to any unauthorized person;

5) Tampering with, falsifying, altering, modifying or duplicating an agent-in-charge identification card;

6) Tampering with, falsifying, altering, modifying the surveillance video footage, point of sale system, Illinois Cannabis Tracking System, or the state's verification system;

7) Tampering with, falsifying, altering, modifying patient, provisional

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patient, designated caregiver or OAPP participant applications;

8~~6~~) Failure to notify the Division immediately upon discovery~~within five business days after becoming aware~~ that the agent-in-charge identification card has been lost, stolen or destroyed;

9~~7~~) Failure to notify the Division within five business days after a change in the information provided in the application for an agent-in-charge identification card;~~ or~~

10~~8~~) Conviction of an excluded offense or any incident listed in Section 1290.200 or 1290.510 following the issuance of an agent-in-charge identification card;~~.~~

11) Overdispensing; or

12) For any just cause.

(Source: Amended by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

Section 1290.210 Dispensing Organization Agents
EMERGENCY

a) All principal officers, agents-in-charge and agents~~employees~~ of the dispensing organization are dispensing organization agents and shall hold an agent identification card. No person shall enter a dispensary to begin work at a dispensary prior to holding an agent identification card.

b) Only a dispensing organization principal officer or an agent-in-charge may apply for an agent identification card for himself or herself or other dispensary agents.

c) A dispensing organization agent shall visibly display an agent identification card issued by the Division at all times while at the dispensary.

d) An agent registration application shall be submitted by a dispensing organization principal officer or agent-in-charge on forms provided by the Division, along with the following:

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1) The name of the dispensing organization employing the agent, and the address of the dispensary;

2) A full set of fingerprints submitted to ISP as outlined in this Part;

3) A copy of the applicant's valid driver's license or State issued identification;

4) Electronic picture of applicant;

5) A document verifying the applicant's place of residency, such as a bank statement, cancelled check, insurance policy, etc. The document must contain the applicant's full residence address;

6) A sworn statement that the applicant has not been convicted of an excluded offense in any jurisdiction;

7) The applicant's social security number;

8) The registration fee (see Section 1290.80); and

9) Any additional information requested by the Division in the verification process.

e) The Division will deny an application or renewal of an agent identification card for a person convicted of an excluded offense.

f) If no excluded offense is found relating to the fingerprints, the applicant has submitted all required information and the applicant is otherwise qualified under the Act, the Division may approve the application or renewal. Within 15 days after approving an application or renewal, the Division shall issue an agent identification card that will be valid for the period specified on the face of the card and will be renewable upon the conditions set forth in this Part.

g) Dispensing organization agents have access to restricted access areas. They are responsible for the sale of cannabis and dispensary operations. Agents may accept deliveries from cultivation centers, and must document sales in compliance with the Act and this Part.

h) It is the responsibility of each registered dispensing organization to notify the Division of an agent's change of address.

i) Dispensing organization agents must promptly report any diversion or theft, or suspicion of diversion or theft, of cannabis or currency to the Division.

j) At least 30 days prior to the expiration of an agent identification card, the dispensing organization or the agent shall request the Division renew the annual agent identification card, include any information requested by the Division, and authorize ISP to conduct a criminal background check.

k) No dispensing organization shall, after the expiration of an agent identification card, employ or retain the holder of the card in any capacity. Upon expiration of an agent registration, the agent shall not enter the dispensary.

l) Upon termination of employment, the agent identification card shall be immediately returned to the dispensing organization. The dispensing organization shall promptly return the agent identification card to the Division.

m) The agent identification card is not transferable. It is the property of the State of Illinois and shall be surrendered upon demand of the Director.

n) A dispensing organization agent shall promptly report an arrest and any subsequent conviction of an excluded offense to the dispensing organization and to the Division.

o) Should the Division not be able to obtain the State or federal criminal records check from ISP as required by the Act and this Part, the Division may contract with a private detective or investigating agency licensed under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004 [225 ILCS 447] and in good standing with the Department for the purpose of conducting the records checks.

p) The Division may deny an application or a renewal, or discipline or revoke an agent identification card for any of the following reasons:

1) Submission of misleading, incorrect, false or fraudulent information in the application or renewal application;

2) Violation of the requirements of the Act or this Part;

3) Fraudulent use of the agent identification card;

4) Selling, distributing, transferring in any manner, or giving medical cannabis to any unauthorized person;

5) Tampering with, falsifying, altering, modifying or duplicating an agent identification card;

6) Tampering with, falsifying, altering, modifying the surveillance video footage, point of sale system, Illinois Cannabis Tracking System, or the State's verification system;

7) Tampering with, falsifying, altering, modifying patient, provisional patient, designated caregiver or OAPP participant applications;

86) Failure to notify the Division within five business days after becoming aware that the agent identification card has been lost, stolen or destroyed;

97) Failure to notify the Division within five business days after a change in the information provided in the application for an agent identification card or renewal; ~~or~~

108) Conviction of an excluded offense following the issuance of an agent identification card;~~.~~

11) For conduct that demonstrates incompetence or unfitness to work in a dispensary; or

12) For any just cause.

(Source: Amended by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

Section 1290.230 State and Federal Criminal History Records Check
EMERGENCY

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a) Persons required to submit to a State and federal criminal history records check for convictions of an excluded offense shall submit to a fingerprint-based criminal history records check by providing a full set of fingerprints in an electronic format to an ISP livescan vendor whose equipment has been certified by ISP or a fingerprint vendor agency licensed by the Department, unless otherwise approved by the Division.

b) The ISP will act as the Division's agent, receiving electronic fingerprints and conducting background checks of each individual applying for an agent identification card.

c) ISP will conduct background checks for conviction information contained in the ISP and Federal Bureau of Identification criminal history databases, as permitted.

d) For verification of a statutorily imposed duty to conduct background checks pursuant to the Act, ISP will transmit the results of the background check to the Division and the transmittal shall conclude the verification process.

e) The electronic background checks shall be submitted as outlined in either the Uniform Conviction Information Act [20 ILCS 2635] or 20 Ill. Adm. Code 1265.30 (Electronic Transmission of Fingerprint Requirements).

f) Electronic transmission of fingerprint data to ISP shall be accomplished utilizing livescan procedures or other comparable technology approved for use by ISP.

g) Manual fingerprints will not be accepted and shall not be scanned and converted into an electronic format, unless otherwise approved by the Division.

h) Fingerprints shall be taken within one month~~the 30 days~~ prior to the application date or renewal date for an agent identification card, unless otherwise approved by the Division.

i) Fingerprint images of the individual being fingerprinted, and related alphanumeric identification data submitted, shall be submitted electronically to ISP.

j) If the fingerprints are rejected by ISP, the dispensary agent shall have his or her fingerprints collected electronically by a live scan fingerprint vendor a second time.

k) In the event of equipment malfunction or other special circumstance that make electronic transmission of fingerprint data impractical, the Division may allow limited use of paper fingerprint records.

l) The dispensing organization shall submit to the Division a copy of the livescan request form, with the agent identification card application or renewal and the receipt provided from the livescan fingerprint vendor containing the Transaction Control Number (TCN), as proof that fingerprints have been collected.

m) Dispensary agent identification card applications submitted without a copy of the livescan request form and receipt will be deemed incomplete and will not be processed until fingerprinting is completed.

n) Fees associated with the livescan fingerprint-based criminal history records check shall be the responsibility of the dispensing organization seeking an agent identification card.

(Source: Amended by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

SUBPART F: DISPENSARY OPERATION

Section 1290.300 Operational Requirements
EMERGENCY

a) It is the duty of the Division to enforce the provisions of the Act and this Part relating to the registration and oversight of dispensing organization, unless otherwise provided in the Act.

b) A dispensing organization awarded a registration shall operate in accordance with the representations made in its application and registration packet. It shall be in compliance with the Act and this Part while registered with the Division.

c) Only a dispensing organization that has been issued a registration by the Division shall own and operate a dispensary.

d) A dispensing organization must include the name of the dispensary on the packaging of any cannabis product it sells.

e) All medical cannabis and cannabis-infused products must be obtained from an Illinois registered cultivation center (see 8 Ill. Adm. Code 1000).

f) A dispensing organization shall inspect and count product received by the cultivation center before dispensing it.

g) A dispensing organization may only accept medical cannabis deliveries into a restricted access area. Deliveries may not be accepted through the public or limited access areas unless otherwise approved by the Division.

hf) A dispensing organization shall maintain compliance with State and local building, fire and zoning requirements or regulations.

ig) A dispensing organization shall submit a list ~~of all third party vendors~~ to the Division of the name of all service professionals that will work at the dispensary. The list shall include a description of the type of business or service provided. Changes to the service professional list ~~of third party vendors~~ shall be promptly provided. No service professional shall work in the dispensary until the name is provided to the Division on the service professional list.

jh) A registration shall allow the registrant to operate at a single location.

ki) A dispensary may operate between 6 a.m. and 8 p.m. local time.

lj) A dispensing organization must keep all lighting outside and inside the dispensary in good working order and wattage sufficient for security cameras.

mk) A dispensing organization shall not:

1) Produce or manufacture cannabis;~~.~~

2) Allow consumption of cannabis at the dispensary;~~.~~

3) Accept a~~Sell~~ cannabis product from a cultivation center unless it is pre-packaged and labeled in accordance with this Part, 8 Ill. Adm. Code 1000 and 77 Ill. Adm. Code 946;~~.~~

4) Sell cannabis or cannabis-infused products to a consumer unless the individual~~consumer~~ presents an active registered qualifying patient,

provisional patient, OAPP participant or designated caregiver card issued by DPH;~~.~~

5) Enter into an exclusive agreement with any cultivation center. Dispensaries shall provide patients, provisional patients and participants an assortment of products from various cultivation centers. The Division may request that a dispensary diversify its products as needed;

6) Refuse to conduct business with a cultivation center that has the ability to properly deliver the product and is permitted by DOA, on the same terms as other cultivation centers with whom it is dealing;~~.~~

7) Operate drive through windows;~~.~~

8) Transport cannabis to residences of registered qualifying patients, provisional patients, OAPP participants or designated caregivers;~~.~~

9) Operate a dispensary if its video surveillance equipment is inoperative;~~.~~

10) Operate a dispensary if the point of sale equipment is inoperative;~~.~~

11) Operate a dispensary if the State's medical cannabis electronic verification system or Illinois Cannabis Tracking System is inoperative;~~.~~

12) Have fewer than two people working at the dispensary at any time while the dispensary is open;~~.~~

13) Contract with, pay, or have a profit sharing arrangement with third party groups that assist individuals with finding a physician or completing the patient or participant application; or

14) Pay a referral fee to a third-party group for sending patients or participants to a specific dispensary.

(Source: Amended by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

Section 1290.320 Dispensary Access Oversight
EMERGENCY

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a) Access to a dispensary is restricted as defined in the Act and this Part. No person, except the following, are permitted entry into the restricted access areas in the dispensary:

1) Dispensing organization agents, the Division or the Division's authorized representative, ISP, or other federal or State officials performing duties as required by federal or State law;

2) Cultivation center agents with cultivation center agent identification cards may deliver medical cannabis to a dispensary;

3) Emergency personnel when necessary to perform official duties;

4) In connection with Part 300(i), a dispensing organization may allow service professionals to enter when working on a job that requires their presence at the dispensary, such as installing or maintaining security devices or providing construction services; and

5) Any person, other than a dispensary agent, authorized to be at a dispensary pursuant to this subsection (a) and with access to the restricted access area must be accompanied at all times by a dispensing organization agent.

b) No person, except the following, are permitted entry into the dispensary's limited access areas:

1) Qualified patients, provisional patients, and designated caregivers;

2) OAPP participants;

3) Dispensing organization agents, the Division or the Division's authorized representative, ISP, or other federal, State or local representatives performing duties as required by federal or State law;

4) Emergency personnel when necessary to perform official emergency duties;

5) In connection with Part 300(i), a dispensing organization may allow service professionals to enter when they are working on a job that requires

their presence at the dispensary, such as installing or maintaining security devices or providing construction services;

6) Upon a dispensary's prior written request, the Division may approve a request to allow a visitor to enter the limited access area of a dispensary. The written request must include the name of the dispensing organization agent requesting the visit, the name of the visitor, the reason for the visit and the date and time of the proposed visit. Visits must be for a purpose in furtherance of the Act. The Division must issue written approval before the dispensing organization allows a visitor access to the dispensary. Visitors are prohibited from entering the restricted access area.

7) Any person, other than a dispensary agent, authorized to be at a dispensary pursuant to this subsection (b) shall be monitored while in the limited access area at all times by dispensing organization agent.

d) All persons authorized to be at a dispensary pursuant to subsection (a) or (b) must present valid government issued identification with a picture prior to entry.

1) Once the person is verified, a dispensing organization agent shall record the person in a log with the date, time and purpose of the visit. The log shall be maintained at the dispensary and made available to the Department, at any time, for a period of five years.

2) A dispensing organization agent shall issue a numbered identification badge to persons authorized to be in a dispensary. Identification badges shall be worn while in the dispensary. All visitor identification badges shall be returned to a dispensing organization agent upon exit.

3) The dispensing organization shall institute best practices to preserve confidentiality of patient and OAPP participant identity and patient and OAPP participant sales.

(Source: Added by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

SUBPART G: SECURITY AND RECORDKEEPING

Section 1290.400 Inventory Control System

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF EMERGENCY AMENDMENTS

EMERGENCY

a) A dispensing organization agent-in-charge shall have primary oversight of the dispensing organization's medical cannabis inventory verification system, its point of sale~~control~~ system, and Illinois Cannabis Tracking System. The inventory point of sale~~control~~ system shall be real-time, web-based and accessible by the Division 24 hours a day, seven days a week.

b) A dispensing organization shall establish an account with the State's verification system and Illinois Cannabis Tracking System~~and implement an inventory control system for its medical cannabis~~ that documents:

1) Each sales transaction at the time of sale and each day's beginning inventory, acquisitions, sales, disposal and ending inventory.

2) Acquisition of medical cannabis and medical cannabis-infused products from a permitted cultivation center, including:

A) A description of the products including the quantity, strain, variety and batch number of each product received;

B) The name and registry identification number of the permitted cultivation center providing the medical cannabis;

C) The name and registry identification number of the permitted cultivation center agent delivering the medical cannabis;

D) The name and registry identification number of the dispensing organization agent receiving the medical cannabis; and

E) The date of acquisition.

3) The disposal of medical cannabis, including:

A) A description of the products, including the quantity, strain, variety, batch number and reason for the cannabis being disposed;

B) The method of disposal~~ and the name, address and telephone number of the disposal company~~; and

C) The date and time of disposal.

c) A dispensing organization shall use a point of sale system that establishes and maintains a real time interface with the State's web-based verification system to track patient and provisional patient limits, patient and provisional patient sales at the time of sale, inventory, currency and destruction consistent with the Act and this Part.

d) A dispensing organization shall use a point of sale system that establishes and maintains a real time interface with the State's Illinois Cannabis Tracking System to track OAPP participant's limits, OAPP participant sales at the time of sale, inventory, currency, OAPP participant's chosen dispensary and written certification.

e) Upon medical cannabis delivery, a dispensing organization shall confirm the product's name, strain name, weight and identification number on the manifest matches the information on the medical cannabis product label and package. The product name listed and the weight listed in the State's verification system and Illinois Cannabis Tracking System shall match the product packaging.

f~~e~~) The agent-in-charge shall conduct daily inventory reconciliation documenting and balancing medical cannabis inventory by confirming the State's verification system and Illinois Cannabis Tracking System matches the dispensing organization's point of sale system and the amount of physical product at the dispensary~~document an audit of the dispensing organization's daily inventory according to generally accepted accounting principles once every 30 calendar days~~.

1) A dispensing organization must receive Division approval prior to completing an inventory adjustment. It shall provide a detailed reason for the adjustment. Inventory adjustment documentation shall be kept at the dispensary for two years from the date performed.

2~~1~~) If the dispensing organization~~audit~~ identifies an imbalance~~a reduction~~ in the amount of medical cannabis after the daily inventory reconciliation due to mistake,~~in the dispensing organization's inventory not due to documented causes,~~ the dispensing organization shall determine how~~where~~ the imbalance~~loss~~ occurred and immediately upon discovery

take and document corrective action. If the~~The~~ dispensing organization cannot identify the reason for the mistake within two calendar days after first discovery, it shall inform the Division immediately in writing of the imbalance~~loss~~ and the corrective action taken to date. The dispensing organization shall work diligently to determine the reason for the mistake~~within two business days after first discovery~~.

3~~2~~) If the dispensing organization identifies an imbalance~~reduction~~ in the amount of medical cannabis after~~in~~ the daily inventory reconciliation or through other means due to theft,~~is due to~~ criminal activity or suspected criminal activity, the dispensing organization shall immediately determine how the reduction occurred and take and document corrective action. Within 24 hours after the first discovery of the reduction due to theft, criminal activity or suspected criminal activity, the dispensing organization shall inform~~make a report identifying the circumstances surrounding reduction to~~ the Division and ISP in writing in connection with Section 1290.445~~, who may notify local law enforcement authorities~~.

~~3) If the audit identifies an increase in the amount of medical cannabis in the dispensing organization's inventory not due to documented causes, the dispensing organization shall determine where the increase occurred and take and document corrective action.~~

4) The dispensing organization shall file an annual compilation report with the Division, including a financial statement~~submit quarterly audit statements to the Division~~ that shall include, but not be limited to, an income statement, balance sheet, profit and loss statement, statement of cash flow ~~and weekly cannabis inventory, including cannabis acquisition~~, wholesale cost and sales and any other documentation requested by the Division in writing. The financial statement shall include any other information the Division deems necessary in order to effectively administer this Act and all rules, regulations, orders and final decisions promulgated under this Act. Statements required by this section shall be filed with the Division within 60 days after the end of the calendar year. The compilation report shall include a letter authored by a licensed CPA that it has been reviewed and is accurate based on the information provided. The dispensing organization, financial statement and accompanying documents are not required to be audited unless specifically requested by the Division~~, prepared in accordance with~~

~~generally accepted accounting principles. Annually, the dispensing organization shall submit an audit including the same information, compiled and certified by an auditor or CPA~~.

g~~d~~) A dispensing organization shall:

1) Maintain the documentation required in this Section in a secure locked location at the dispensing organization for five years from the date on the document;

2) Provide any documentation required to be maintained in this Section to the Division for review upon request; and

3) If maintaining a bank account, retain for a period of five years a record of each deposit or withdrawal from the account.

h~~e~~) A dispensing organization shall not accept returns of medical cannabis. If cannabis is abandoned at the dispensary, it shall be accounted for and destroyed in compliance with this Part.

(Source: Amended by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

Section 1290.405 Storage Requirements
EMERGENCY

a) Authorized On-Premises Storage. A dispensing organization must store inventory on the registered premises. All inventory stored on the registered premises must be secured in a restricted access area and tracked consistently with the inventory tracking rules.

b) A dispensary ~~premises~~ shall be of suitable size and construction to facilitate cleaning, maintenance and proper operations.

c) A dispensary shall maintain adequate lighting, ventilation, temperature, humidity control and equipment.

d) Containers storing medical cannabis that have been tampered with or opened shall be labeled with the date opened and quarantined~~separated~~ from other medical cannabis products in the vault until they are disposed.

e) Medical cannabis that was tampered with or damaged shall not be stored at the registered premises for more than seven calendar days~~one week~~.

f) Medical cannabis samples shall be in a sealed container. Samples shall be maintained in the restricted access area.

~~f) The dispensary shall be maintained in a clean and orderly condition.~~

~~g) The dispensary shall be free from infestation by insects, rodents, birds or pests.~~

g~~h~~) The dispensary storage areas shall be maintained in accordance with the security requirements (see Section 1290.410).

h~~i~~) Medical cannabis must be stored at appropriate temperatures and under appropriate conditions to help ensure that its packaging~~identity~~, strength, quality and purity are not adversely affected.

(Source: Amended by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

Section 1290.410 Security Requirements
EMERGENCY

a) A dispensing organization shall implement security measures to deter and prevent entry into and theft of~~from restricted access areas containing~~ cannabis or currency.

b) A dispensing organization shall submit changes to the floor plan or security plan to the Division for pre-approval. All cannabis shall be maintained and stored in a restricted access area during construction.

c) The dispensing organization shall implement security measures to protect the premises, registered qualifying patients, provisional patients, designated caregivers, OAPP participants and dispensing organization agents including, but not limited to the following:

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF EMERGENCY AMENDMENTS

1) Establish a locked door or barrier between the facility's entrance and the limited access area~~. The limited access area shall only be accessible to registered qualifying patients, designated caregivers, principal officers and agents, service professionals conducting business with the dispensing organization, and persons authorized by the Act and this Part~~;

2) Prevent individuals from remaining on the premises if they are not engaging in activity permitted by the Act or this Part;

3) Develop a policy that addresses the maximum capacity and patient flow in the waiting rooms and patient care areas;

4) Dispose of cannabis in accordance with this Part;

5) During hours of operation, store and dispense all cannabis from the~~in established~~ restricted access area. During operational hours, cannabis shall be stored in an enclosed locked room or cabinet and accessible only to specifically authorized agents~~. The minimum number of dispensary agents essential for efficient operations shall be in the restricted access areas~~;

6) When the dispensary is closed, store all cannabis and currency in a reinforced~~secure locked safe or~~ vault room in the restricted access area and in a manner as to prevent diversion, theft or loss;

7) Keep the reinforced vault room~~all safes, vaults~~ and any other equipment or cannabis storage areas securely locked and protected from unauthorized entry;

8) Keep an electronic daily log of dispensary agents with access to the reinforced vault room~~safe or vault~~ and knowledge of the access code or combination;

9) Keep all locks and security equipment in good working order;

10) The security and alarm system shall be operational at all times.

11) Prohibit keys, if applicable, from being left in the locks, or stored or placed in a location accessible to persons other than specifically authorized personnel;

12) Prohibit accessibility of security measures, including combination numbers, passwords or electronic or biometric security systems to persons other than specifically authorized agents;

13) Ensure ~~that the outside perimeter of~~ the dispensary interior and exterior premises are~~is~~ sufficiently lit to facilitate surveillance;

14) Ensure that trees, bushes and other foliage outside of the dispensary premises do not allow for a person or persons to conceal themselves from sight;

15) Develop emergency policies and procedures for securing all product and currency following any instance of diversion, theft or loss of cannabis, and conduct an assessment to determine whether additional safeguards are necessary; and

16) Develop sufficient additional safeguards in response to any special security concerns, or as required by the Division.

d) The Division may request or approve alternative security provisions that it determines are an adequate substitute for a security requirement specified in this Part. Any additional protections may be considered by the Division in evaluating overall security measures.

e) A dispensing organization shall provide additional security as needed and in a manner appropriate for the community where it operates.

f) Restricted Access Areas

1) All restricted access areas must be identified by the posting of a sign that shall be a minimum of 12" x 12" and that states "Do Not Enter – Restricted Access Area – ~~Access Restricted to~~ Authorized Personnel Only" in lettering no smaller than one inch in height.

2) All restricted access areas shall be clearly described in the floor plan of the registered premises, in the form and manner determined by the Division, reflecting walls, partitions, counters and all areas of entry and exit. The floor plan shall show all storage, disposal and retail sales areas.

3) All restricted access areas must be secure, with locking devices that prevent access from the limited access areas.

~~4) All service professionals conducting business with the dispensing organization and visitors must obtain a numbered visitor identification badge prior to entering a restricted access area, and shall be escorted at all times by a dispensary agent authorized to enter the restricted access area. All visitors must be logged in and out, and that log shall be maintained for five years on-site and available for inspection by the Division at all times. All visitor identification badges shall be returned upon exit.~~

g) Security and Alarm

1) A dispensing organization shall have an adequate security plan and security system to prevent and detect diversion, theft or loss of cannabis, currency or unauthorized intrusion using commercial grade equipment installed by an Illinois licensed private alarm contractor or private alarm contractor agency that shall, at a minimum, include:

A) A perimeter alarm on all entry points and glass break protection on perimeter windows;

B) Security shatterproof tinted film on exterior windows;

C~~B~~) A failure notification system that provides an audible, text or visual notification of any failure in the surveillance system, including but not limited to, panic buttons, alarms, and video monitoring system. The failure notification system shall provide an alert to designated dispensing organization agents within five minutes after the failure, either by telephone~~, email~~ or text message;

D~~C~~) A duress alarm, panic button and alarm, or holdup alarm and~~or~~ after-hours intrusion detection alarm that by design and purpose

will directly or indirectly notify, by the most efficient means, the Public Safety Answering Point (PSAP) for the law enforcement agency having primary jurisdiction;

E) Security equipment to deter and prevent unauthorized entrance into the dispensary, including electronic door locks on the limited and restricted access areas that include devices or a series of devices to detect unauthorized intrusion that may include a signal system interconnected with a radio frequency method, cellular, private radio signals or other mechanical or electronic device;

~~D) Unobstructed video surveillance of all enclosed dispensary areas, unless prohibited by law, including all points of entry and exit that shall be appropriate for the normal lighting conditions of the area under surveillance. The cameras shall be directed so all areas are captured, including, but not limited to, safes, vaults, sales areas and areas where cannabis is stored, handled, dispensed or destroyed. Cameras shall be angled to allow for facial recognition, the capture of clear and certain identification of any person entering or exiting the dispensary area and in lighting sufficient during all times of night or day~~;

~~E) Unobstructed video surveillance of outside areas, the storefront and the parking lot, that shall be appropriate for the normal lighting conditions of the area under surveillance. Cameras shall be angled so as to allow for the capture of facial recognition, clear and certain identification of any person entering or exiting the dispensary, the immediate surrounding area and license plates of vehicles in the parking lot;~~

~~F) Twenty-four hour recordings from all video cameras available for immediate viewing by the Division upon request. Recordings shall not be destroyed or altered and retained for at least 90 days. Recordings shall be retained as long as necessary if the dispensing organization is aware of the loss or theft of cannabis or a pending criminal, civil or administrative investigation, or legal proceeding for which the recording may contain relevant information;~~

~~G)~~ ~~The ability to immediately produce a clear, color still photo from the surveillance video, either live or recorded;~~

~~H)~~ ~~A date and time stamp embedded on all video surveillance recordings. The date and time shall be synchronized and set correctly and shall not significantly obscure the picture;~~

~~I)~~ ~~The ability to remain operational during a power outage and ensure all access doors are not solely controlled by an electronic access panel to ensure that locks are not released during a power outage; and~~

~~J)~~ ~~All video surveillance equipment shall allow for the exporting of still images in an industry standard image format, including .jpg, .bmp and .gif. Exported video shall have the ability to be archived in a proprietary format that ensures authentication of the video and guarantees that no alteration of the recorded image has taken place. Exported video shall also have the ability to be saved in an industry standard file format that can be played on a standard computer operating system. All recordings shall be erased or destroyed prior to disposal.~~

2) All security system equipment and recordings shall be maintained in good working order, in a secure location so as to prevent theft, loss, destruction or alterations.

3) Access to ~~rooms where~~ surveillance monitoring recording equipment resides shall be limited to persons that are essential to surveillance operations, law enforcement authorities acting within their jurisdiction, security system service personnel and the Division. A current list of authorized dispensary agents and service personnel that have access to the surveillance equipment~~room~~ must be available to the Division upon request.

4) All security equipment shall be inspected and tested at regular intervals, not to exceed one month~~30 calendar days~~ from the previous inspection and test to ensure the systems remain functional.

5) The security system shall provide protection against theft and diversion that is facilitated or hidden by tampering with computers or electronic records.

6) The dispensary shall ensure all access doors are not solely controlled by an electronic access panel to ensure that locks are not released during a power outage.

h) To monitor the dispensary~~facility and prevent unauthorized access to medical cannabis at the dispensary~~, the dispensing organization shall incorporate continuous electronic video monitoring including the following:

~~1)~~ ~~Security equipment to deter and prevent unauthorized entrance into restricted access areas that includes devices or a series of devices to detect unauthorized intrusion that may include a signal system interconnected with a radio frequency method, cellular, private radio signals or other mechanical or electronic device.~~

~~2)~~ ~~Electronic monitoring including:~~

1~~A~~) All monitors must be 19-inches or greater;

2) Unobstructed video surveillance of all enclosed dispensary areas, unless prohibited by law, including all points of entry and exit that shall be appropriate for the normal lighting conditions of the area under surveillance. The cameras shall be directed so all areas are captured, including, but not limited to, safes, vaults, sales areas and areas where cannabis is stored, handled, dispensed or destroyed. Cameras shall be angled to allow for facial recognition, the capture of clear and certain identification of any person entering or exiting the dispensary area and in lighting sufficient during all times of night or day;

3) Unobstructed video surveillance of outside areas, the storefront and the parking lot, that shall be appropriate for the normal lighting conditions of the area under surveillance. Cameras shall be angled so as to allow for the capture of facial recognition, clear and certain identification of any person entering or exiting the dispensary, the immediate surrounding area and license plates of vehicles in the parking lot;

4) Twenty-four-hour recordings from all video cameras available for immediate viewing by the Division upon request. Recordings shall not be destroyed or altered and retained for at least 90 days. Recordings shall be retained as long as necessary if the dispensing organization is aware of the loss or theft of cannabis or a pending criminal, civil or administrative investigation, or legal proceeding for which the recording may contain relevant information;

5) The ability to immediately produce a clear, color still photo from the surveillance video, either live or recorded;

6) A date and time stamp embedded on all video surveillance recordings. The date and time shall be synchronized and set correctly and shall not significantly obscure the picture;

7) The ability to remain operational during a power outage and ensure all access doors are not solely controlled by an electronic access panel to ensure that locks are not released during a power outage;

8) All video surveillance equipment shall allow for the exporting of still images in an industry standard image format, including .jpg, .bmp and .gif. Exported video shall have the ability to be archived in a proprietary format that ensures authentication of the video and guarantees that no alteration of the recorded image has taken place. Exported video shall also have the ability to be saved in an industry standard file format that can be played on a standard computer operating system. All recordings shall be erased or destroyed prior to disposal;

9) The video surveillance system shall be operational during a power outage with a four-hour minimum battery backup;

10~~B~~) A video printer capable of immediately producing a clear still photo from any video camera image;

~~C)~~ ~~Video cameras recording all points of entry and exit from the dispensary, the limited access areas, the restricted access areas and that are capable of identifying activity occurring adjacent to the building, with a recording resolution that shall be sufficient to distinctly view the entire area under surveillance;~~

11D) A video camera or cameras recording at each point of sale location allowing for the identification of the dispensary agent distributing the cannabis and any qualifying patient or designated caregiver purchasing medical cannabis. The camera or cameras shall capture the sale, the individuals and the computer monitors used for the sale;

12E) Storage of video recordings from the video cameras for at least 90 calendar days;

13F) A failure notification system that provides an audible and visual notification of any failure in the electronic video monitoring system; and

~~G) Sufficient battery backup for video cameras and recording equipment to support recording in the event of a power outage; and~~

14H) All electronic video surveillance monitoring must record at least the equivalent of eight frames per second and be available to the Division and ISP~~on a real-time~~ 24 hours~~ hour~~ a day in real-time via a secure web-based portal with reverse functionality~~, every day, live feed accessible by the Division~~.

i3) The dispensing organization shall maintain policies and procedures that include:

1A) Security~~security~~ plan with protocols for patient, provisional patient, OAPP participant, caregiver and agent safety and management and security of cannabis and currency as outlined in the Act and this Part;

2B) Restricted access to the areas in the dispensary that contain cannabis to authorized agents;

3C) Identification of authorized agents;

4D) Controlled access and prevention of loitering both inside and outside the dispensary~~facility~~;

5E) Conducting electronic monitoring; and

6F) Use of a panic button.

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF EMERGENCY AMENDMENTS

(Source: Amended by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

Section 1290.415 Recordkeeping
EMERGENCY

a) Dispensing organization records must be maintained electronically and be available for inspection by the Division upon request. The dispensing organization shall develop recordkeeping policies and procedures consistent with this Part.

b) Required written records include, but are not limited to, the following:

1) Operating procedures;

2) Inventory records, policies and procedures;

3) Security Records;

4) Audit records;

5) Staffing plan; and

6) Business records that shall include manual or computerized records of:

A) Assets and liabilities;

B) Monetary transactions;

C) Written or electronic accounts that shall include bank statements, journals, ledgers and supporting documents, agreements, checks, invoices, receipts and vouchers; and

D) Any other financial accounts reasonably related to the dispensary operations.

7) Storage and transfer of records. If a dispensary closes due to insolvency, revocation, bankruptcy or for any other reason, all records must be

preserved at the expense of the dispensing organization for at least three years in a form and location in Illinois acceptable to the Division. The dispensing organization shall keep the records longer if requested by the Division. The dispensing organization shall notify the Division of the location where the dispensary records are stored or transferred.

8) All other records, policies and procedures required by the Act and this Part.

(Source: Amended by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

Section 1290.420 Cleaning and Sanitation
EMERGENCY

a) A dispensing organization shall ensure that any building or equipment used by a dispensing organization for the storage or sale of medical cannabis is maintained in a clean and sanitary condition.

b) The dispensary shall be free from infestation by insects, rodents, or pests.

(Source: Amended by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

Section 1290.425 Administration
EMERGENCY

a) A dispensing organization shall operate continuously and maintain an uninterrupted supply of medical cannabis for qualifying patients, provisional patients, OAPP participants and designated caregivers.

b) A dispensary shall be open for a minimum of 35 hours a week, except as otherwise authorized by the Division.

c) A dispensing organization shall establish, maintain and comply with written policies and procedures as submitted in an Operations and Management Practices Plan, approved by the Division, for the security, storage, inventory and distribution of cannabis. These policies and procedures shall include methods for identifying, recording and reporting diversion, theft or loss, and for correcting

errors and inaccuracies in inventories. At a minimum, dispensing organizations shall ensure the written policies and procedures provide for the following:

1) Conduct mandatory and voluntary recalls of cannabis products. The procedure shall be adequate to deal with recalls due to any action initiated at the request of the Division and any voluntary action by the dispensing organization to remove defective or potentially defective cannabis from the market or any action undertaken to promote public health and safety ~~by replacing existing cannabis with improved products or packaging~~;

2) Prepare for, protect against, and handle any crises that affects the security or operation of a dispensary in the event of strike, fire, flood or other natural disaster, or other situations of local, State or national emergency;

3) Ensure that outdated, damaged, deteriorated, misbranded or adulterated cannabis is segregated from other cannabis and destroyed. This procedure shall provide for written documentation of the cannabis disposition;

4) Ensure the oldest stock of a cannabis product is distributed first. The procedure may permit deviation from this requirement, if such deviation is temporary and appropriate;

5) Train agents in the provisions of the Act and the Division's administrative rules, to effectively operate the point of sale system, the State's Verification system, Illinois Cannabis Tracking System, proper inventory handling and tracking,~~to~~ adhere to patient, provisional patient, OAPP participant and caregiver confidentiality requirements, specific uses of cannabis or cannabis-infused products, instruction regarding regulatory inspection preparedness and law-enforcement interaction; awareness of the legal requirements for maintaining status as an agent and other topics as specified by the dispensing organization or the Division. The dispensing organization shall maintain evidence of all training provided for every agent in its files and subject to inspection and audit by the Division. The Dispensing Organization shall ensure agents receive a minimum of~~At a minimum, agents shall receive~~ eight hours of training annually, unless otherwise approved by the Division;

6) Develop and maintain business records consistent with industry standards, including by-laws, consents, manual or computerized records of assets and

liabilities, audits, monetary transactions, journals, ledgers and supporting documents, including agreements, checks, invoices, receipts and vouchers. These records shall be retained for five years;

7) Inventory control, including:

A) Tracking qualifying patient and provisional patient records, including purchases, denials of sale and confidentiality; ~~and~~

B) Tracking OAPP participant records, including purchases, denials of sale, verification of written certification, selected dispensary, and confidentiality; and

C~~B~~) Disposal of unusable or damaged cannabis as required by the Act and this Part; and

8) Patient and Participant education and support, including:

A) Updated information about the purported effectiveness of various forms and methods of medical cannabis administration;

B) Updated information about the purported effectiveness of strains of medical cannabis on specific conditions;

C) Current educational information issued by DPH about the health risks associated with the use or abuse of cannabis;

D) Whether possession of cannabis is illegal under federal law;

E) Information about possible side effects;

F) Prohibition on smoking medical cannabis in public places; and

G) Offer any other appropriate patient education or support materials.

d) A dispensing organization shall maintain copies of the policies and procedures on the dispensary premises and provide copies to the Division upon request.

e) A dispensing organization shall review dispensing organization policies and procedures at least once every 12 months from the issue date of the registration and update as needed or as requested by the Division.

f) A dispensing organization shall ensure that each principal officer and each dispensary agent has a current agent identification card in the agent's immediate possession when the agent is at the dispensary.

g) A dispensing organization shall ensure that any identifying information about a qualifying patient, provisional patient, OAPP participant or caregiver is kept in compliance with the privacy and security rules of HIPAA (45 CFR 164).

h) A dispensing organization shall provide prompt written notice to the Division, including the date of the event, when a dispensing organization agent no longer is employed by the dispensing organization;~~:~~

~~1) Serves as a principal officer of the dispensing organization; or~~

~~2) Is employed by the dispensing organization.~~

i) A dispensing organization shall promptly document and report any loss or theft of medical cannabis from the dispensary to the ISP~~appropriate law enforcement agency~~ and the Division. It is the duty of any agent who becomes aware of the loss or theft to report it as provided in this Part. If the dispensing organization knows that a principal officer or dispensary agent has been arrested for or convicted of an excluded offense, the dispensing organization shall promptly notify the Division.

j) A dispensing organization shall post the following information in a conspicuous location in an area of the dispensary accessible to consumers:

1) The dispensing organization's registration; and

2) The hours of operation.

k) A dispensing organization shall not:

1) Allow a physician to conduct a physical examination of a patient for purposes of diagnosing a debilitating medical condition or a medical

condition for which opioids have been or could be prescribed at the dispensary;

2) Allow a physician to hold a direct or indirect economic interest in the dispensary if the physician recommends the use of medical cannabis to ~~qualifying~~ patients or OAPP participants or is in a partnership or other fee or profit-sharing relationship with a physician who recommends medical cannabis;

3) Accept referral of patients or OAPP participants from a physician; or

4) Allow a physician to advertise at the dispensary.

l) A physician may work as an independent contractor with a dispensing organization, provided that the physician's involvement is limited exclusively to designing, implementing or conducting non-proprietary medical research or studies.

m) Violation of any requirement under this Section may subject the dispensing organization to discipline, up to and including revocation of its registration.

(Source: Amended by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

Section 1290.430 Dispensing Medical Cannabis to Patients and Provisional Patients EMERGENCY

a) *A person provided a written certification for a debilitating medical condition who has submitted a* valid *completed online application to the Department* and his or her designated caregiver *shall receive a provisional registration and shall be entitled to purchase medical cannabis from a specified licensed dispensing organization for a period of 90 days or until his or her application has been denied or he or she receives a registry identification card, whichever is earlier.* (Section 55(b) of the Act).

b) Before a dispensing organization allows a qualifying patient or designated caregiver into the limited access area, it must verify the person's identity by comparing the DPH issued patient identification card or designated caregiver card

with an Illinois driver's license or State identification card or federally issued identification.

c) Before a dispensing organization allows a provisional patient into the limited access area, it must verify the person's identity by comparing the provisional patient's provisional registration along with state or federally issued identification.

da) Before a dispensing organization agent dispenses medical cannabis to a qualifying patient, provisional patient or a designated caregiver, the agent shall:

~~1)~~ ~~Verify the identity of the qualifying patient or the designated caregiver;~~

12) Verify the validity of the qualifying patient or designated caregiver's DPH patient registry identification card or verify the validity of the provisional patient's provisional registration;

23) Confirm~~Enter~~ the qualifying patient, provisional patient or designated caregiver's registry identification number in the State's~~listed on the qualifying patient or designated caregiver's registry identification card into the medical cannabis~~ electronic verification system;

34) Verify that the qualifying patient or designated caregiver has a current authorization by DPH to purchase medical cannabis;

4) Verify that the provisional patient's provisional registration has not expired and is authorized by DPH to purchase medical cannabis

5) Verify that the amount of medical cannabis the qualifying patient, provisional patient or designated caregiver is requesting would not cause the qualifying patient or provisional patient to exceed the limit on obtaining no more than two and one-half ounces of medical cannabis during any 14-calendar-day period, unless approved by DPH; and

6) Enter the following information into the State's~~medical cannabis electronic~~ verification system for the qualifying patient, provisional patient or designated caregiver:

A) The dispensing organization agent's registry identification number;

B) The dispensing organization's ~~registry~~ identification number;

C) The amount, type and strain of medical cannabis dispensed;

D) Identity of the individual to whom the medical cannabis was dispensed, whether the qualifying patient, provisional patient or the qualifying patient's designated caregiver; and

E) The date and time the medical cannabis was dispensed.

e) A dispensary may not dispense more than the DPH approved amount of usable cannabis to a qualifying patient, provisional patient or designated caregiver during a period of 14 days.

f) In the event a dispensing organization dispenses in excess of a patient's usable amount, it shall notify the Division in writing within 48 hours. The notification shall include the date and time of the transaction which caused the overage, the name of the agent in charge on duty, the amount of the overage, the patient or provisional patient's registry identification number and a detailed narrative of the circumstances surrounding the overage. The notification report shall outline the methods the dispensary will use to self-correct and prevent this type of over-dispensing from reoccurring.

g) A dispensing organization shall notify the DPH if it determines a person is attempting to submit or did submit a fraudulent written certification in the patient application.

h~~b~~) A~~Any~~ dispensary that sells edible cannabis-infused products must do so in compliance with the Act, DPH's Administrative Rules and this Part.

(Source: Amended by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

Section 1290.431 Dispensing Medical Cannabis to OAPP participants EMERGENCY

a) Before a dispensing organization allows an OAPP participant into the limited access area, it must verify the person's identity by comparing the OAPP

participant's name and date of birth in the Illinois Cannabis Tracking System with a state or federally issued identification.

b) Before a dispensing organization agent dispenses medical cannabis to an OAPP participant, the agent shall:

1) Confirm the OAPP participant is in the Illinois Cannabis Tracking System and is authorized by DPH to purchase medical cannabis;

2) Verify the OAPP participant's identity by confirming the following:

A) Name, phone number, and participant's identity using a state or federal identification card;

B) Date of birth and that the participant is not under 21 years of age;

C) Original written certification was submitted in the application and includes the name of the issuing physician;

D) The written certification was issued within 90 days of registering in the Opioid Participant Pilot Program; and

E) The start and expiration date the OAPP participant can purchase medical cannabis.

3) Confirm the OAPP participant is not a registered qualifying patient or provisional patient;

4) Verify that the amount of medical cannabis the OAPP participant is requesting would not cause the OAPP participant to exceed the limit of obtaining more than two and one-half ounces of medical cannabis during any 14-calendar day period; and

5) Enter the following information into the Illinois Cannabis Tracking System for the OAPP participant:

A) The dispensing organization agent's identification number;

B) The dispensing organization's registry identification number;

C) The amount, type, strain, weight and usable weight of medical cannabis dispensed;

D) Identity of the individual to whom medical cannabis was dispensed; and

E) The date and time the medical cannabis was dispensed.

6) In the event a dispensing organization dispenses in excess of an OAPP participant's usable amount, it shall notify the Division in writing within 48 hours. The notification shall include the date and time of the transaction which caused the overage, the name of agent-in-charge on duty, the amount of the overage, the OAPP participant's registry identification number, and a detailed narrative of the circumstances surrounding the overage. The notification report shall outline the methods the dispensary will use to self-correct and prevent this type of over-dispensing from reoccurring.

7) A dispensing organization shall notify DPH if it determines a person is attempting to submit or did submit a fraudulent written certification in an OAPP application.

(Source: Added by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

Section 1290.440 Recall of Medical Cannabis
EMERGENCY

a) A dispensing organization must establish a policy for communicating a recall for cannabis or a cannabis-derived product that has been shown to present a reasonable or a remote probability that use of or exposure to the product will cause serious adverse health consequences. This policy should include:

1) A mechanism to contact all patients, provisional patients, OAPP participants, and designated caregiverscustomers who have, or likely have, obtained the product from the dispensary. The communication must include information on the policy for return of the recalled product;

2) A mechanism to contact the cultivation center or vendor that manufactured the cannabis;

3) Communication with the Division, DOA and DPH within 24 hours; and

4) Outreach via media, as necessary and appropriate.

b) Any recalled cannabis product must be disposed of by the dispensing organization.

(Source: Amended by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

Section 1290.445 Report of Loss or Theft of Cannabis
EMERGENCY

a) A~~Any principal officer or agent of a~~ dispensing organization shall promptly document and report any loss or theft of cannabis, criminal activity or suspected criminal activity~~from the dispensary~~ to ~~the appropriate~~ ISP ~~District~~ and the Division.

b) The dispensing organization shall promptly make the report to the Division by phone, and in writing by email~~deposited in the U.S. mail, postage prepaid~~, within 24~~48~~ hours after having reasonable cause to believe that cannabis has been lost or stolen from the dispensary or of the discovery of the loss or theft.

c) The report to the Division shall include the name and address of the dispensary, the amount and type of cannabis lost or stolen, the circumstances surrounding the loss or theft, the date and time of the loss or theft, the date the loss or theft was discovered, the person who discovered the loss or theft and the person responsible for the loss or theft if known and any other information that the reporter believes might be helpful in establishing the cause of the loss or theft.

d) Persons required to make reports or cause reports to be made under this Section include ~~the~~ dispensing organization agents and employees of the State of Illinois who are involved in investigating or regulating dispensaries if the report has not been made by the dispensary organization.

e) In addition to the persons required to report loss or theft of cannabis, any other person may make a report to the Division, or to any law enforcement officer, if the person has reasonable cause to suspect loss or theft of cannabis.

f) A person required to make reports or cause reports to be made under this Section who fails to comply with the requirements of this Section is guilty of, at a minimum, a Class A misdemeanor.

g) The Division shall initiate an administrative investigation of each report of loss or theft under the Act and this Part.

h) If, during the investigation of a report made pursuant to this Section, the Division obtains information indicating possible criminal acts, the Division shall refer the matter to the appropriate law enforcement agency for further investigation or prosecution. ~~The Division shall make the entire file of its investigation available to the appropriate law enforcement agencies.~~

(Source: Amended by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

Section 1290.450 Destruction and Disposal
EMERGENCY

a) Cannabis and cannabis-infused products must be destroyed by rendering it unusable following the methods set forth in this Section.

b) Any product to be destroyed shall be destroyed on the same day and time weekly unless otherwise approved by the Division. A dispensing organization shall notify the Division and ISP of this day and time at the initial registration inspection. Any change in the day and time must be communicated to the Division and ISP at least three days before implementation~~At least seven days prior to rendering cannabis unusable and disposing of it, the dispensing organization shall notify the Division and ISP. Notification shall include the date and time the cannabis will be rendered unusable and disposed. If the dispensing organization's policy designates the destruction of cannabis on the same day and time weekly, communication of that day and time shall be sufficient to comply with this subection (b). Any change in the date and time must be communicated to the Division and ISP~~.

c) The allowable method to render cannabis waste unusable is by grinding and incorporating the cannabis waste with other ground materials so the resulting mixture is at least 50% non-cannabis waste by volume. Other methods to render cannabis waste unusable must be approved by the Division before implementation. Material used to grind with the cannabis falls into two categories, compostable waste and non-compostable waste.

1) Compostable Mixed Waste: Cannabis waste to be disposed as compost feedstock or in another organic waste method (for example, anaerobic digester) may be mixed with the following types of waste materials:

A) Food waste;

B) Yard waste; or

~~C)~~ ~~Vegetable based grease or oils; or~~

C~~D~~) Other wastes as approved by the Division (e.g., agricultural material, biodegradable products and paper, clean wood, fruits and vegetables, plant matter).

2) Non-compostable Mixed Waste: Cannabis waste to be disposed in a landfill or by another disposal method may be mixed with the following types of waste materials:

A) Paper waste;

B) Cardboard waste;

C) Plastic waste;

D) Soil; or

E) Other wastes as approved by the Division (e.g., non-recyclable plastic, broken glass, leather).

d) Cannabis waste rendered unusable following the methods described in this Section can be disposed. Disposal of the cannabis waste rendered unusable may

be delivered to a permitted solid waste facility for final disposition. Examples of acceptable permitted solid waste facilities include:

1) Compostable Mixed Waste: Compost, anaerobic digester or other facility with approval of the jurisdictional health department.

2) Non-compostable Mixed Waste: Landfill, incinerator or other facility with approval of the jurisdictional health department.

e) All waste and unusable product shall be weighed, recorded and entered into the State's verification system~~inventory system~~ prior to rendering it unusable. This~~Verification of this~~ event shall be performed by an agent-in-charge or under the supervision of the agent-in-charge and conducted under~~in an area with~~ video surveillance.

f) Electronic documentation of destruction and disposal shall be maintained for a period of at least five years.

(Source: Amended by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

SUBPART H: DISCIPLINE

Section 1290.500 Investigations
EMERGENCY

a) Dispensing organizations are subject to random and unannounced dispensary inspections and cannabis testing by the Division and ISP.

b) The Division and its authorized representatives may enter any place, including a vehicle, in which cannabis is held, stored, dispensed, sold, produced, delivered, transported, manufactured or disposed of and inspect in a reasonable manner, the place and all pertinent equipment, containers and labeling, and all things including records, files, financial data, sales data, shipping data, pricing data, personnel data, research, papers, processes, controls and facility, and inventory any stock of cannabis and obtain samples of any cannabis or cannabis product, any labels or containers for cannabis, or paraphernalia.

c) The Division may conduct an investigation of an applicant, application, dispensing organization, principal officer, dispensary agent, service professional~~third party vendor~~ or any other party associated with a dispensing organization for an alleged violation of the Act or this Part or to determine qualifications to be granted a registration by the Division.

d) The Division may require an applicant or dispensing organization to produce documents, records or any other material pertinent to the investigation of an application or alleged violations of the Act or this Part. Failure to provide the required material may be grounds for denial or discipline.

e) Every person charged with preparation, obtaining or keeping records, logs, reports or other documents in connection with the Act and this Part, and every person in charge, or having custody, of those documents shall, upon request by the Division, make the documents immediately available for inspection and copying by the Division, the Division's authorized representative or others authorized by law to review the documents.

f) All information collected by the Division in the course of an examination, inspection or investigation of a registrant or applicant, including, but not limited to, any complaint against a registrant filed with the Division and information collected to investigate a complaint, shall be maintained for the confidential use of the Division and shall not be disclosed, except as otherwise provided in the Act.

(Source: Amended by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

Section 1290.510 Grounds for Discipline
EMERGENCY

a) The Division, after notice to the applicant or registrant, may refuse to issue or renew, place on probation, temporarily suspend, suspend, ~~refuse to issue or renew~~ or revoke a dispensing organization registration or agent identification card in any case in which the Division finds any of the following:

1) Material misstatement in furnishing information to the Division;

2) Violations of the Act or this Part;

3) Obtaining an authorization or registration by fraud or misrepresentation;

4) A pattern of conduct that demonstrates incompetence or unfitness to work in or operate a dispensary;

5) Aiding or assisting another person in violating any provision of the Act or this Part;

6) Failing to respond to a written request for information by the Division within 30 days;

7) Engaging in unprofessional, dishonorable or unethical conduct of a character likely to deceive, defraud or harm the public;

8) Discipline by another U.S. jurisdiction or foreign nation;

9) A finding by the Division that the registrant, after having his or her registration placed on suspended or probationary status, has violated the terms of the suspension or probation;

10) Conviction, entry of a plea of guilty, nolo contendere or the equivalent in a state or federal court of ~~a principal officer or agent in charge to~~ an excluded offense, a felony, or of two or more misdemeanors involving moral turpitude during the previous five years as shown by a certified copy of a court record;

11) Excessive use or addiction to alcohol, narcotics, stimulants or any other chemical agent or drug;

12) A finding by the Division of a ~~substantial~~ discrepancy in a Division audit of medical cannabis;

13) A finding by the Division of a substantial discrepancy in a Division audit of capital or funds;

14) A finding by the Division of acceptance of medical cannabis from a source other than a cultivation center registered by DOA;

15) An inability to operate using reasonable judgment, skill or safety due to physical or mental illness or other impairment or disability, including without limitation, deterioration through the aging process or loss of motor skills or mental incompetence;

16) Failing to report to the Division within the timeframes established, or if not identified, 14 days, of any adverse final action taken against the dispensing organization or an agent by a licensing jurisdiction in any state or any territory of the United States or any foreign jurisdiction, any governmental agency, any law enforcement agency or any court defined in this Section;

17) Failing to comply with a subpoena issued by the Division;

18) Failure to promptly inform the Division of any change of address;

19) Disclosing customer names, personal information or protected health information in violation of any State or federal law;

20) Operating a dispensary before obtaining a registration from the Division;

21) Dispensing cannabis to any person other than a qualifying patient, provisional patient, ~~or~~ designated caregiver, or OAPP participant with either a valid registry identification card, provisional registration or confirmation in the Illinois Cannabis Tracking System;

22) A principal officer or agent-in-charge failing to report to the Division when he or she knows or should have known that an agent was using medical cannabis when the agent does not have a qualifying patient registry identification card, provisional registration or is not an OAPP participant;

23) Dispensing cannabis when prohibited by the Act or this Part;

24) Any fact or condition which, if it had existed at the time of the original application for the registration, would have warranted the denial of the registration;

25) Permitting a person without a valid agent identification card to be employed by the dispensing organization;

26) Failure to assign an agent-in-charge as required by this Part;

27) Personnel insufficient in number or unqualified in training or experience to properly operate the dispensary business;

28) Any pattern of activity that causes a harmful impact on the community; ~~and~~

29) Failing to prevent diversion, theft or loss of medical cannabis; or~~.~~

30) For any just cause.

b) If the Division determines that the dispensing organization committed a violation, the Division may take any disciplinary or non-disciplinary action as the Division may deem proper, including fines not to exceed $10,000 for each violation.

c) If the Division determines that a person or entity is a principal officer or holds a financial~~an~~ interest in more than five dispensary registrations in violation of this Part, the Division will suspend the registrations of all dispensaries held by that person until the person is divested from all dispensing organizations that exceed the limit provided for in this Part. If the person or persons does not divest from all dispensing organizations that exceed the limit provided for in this Part within 30 days, the Division will revoke the registration for the dispensaries, based on date acquired, that exceed the limit.

d) A notice of violation issued by the Division shall include a clear and concise statement of each violation, the statute or rule violated, the discipline sought and a notice of opportunity for hearing.

e) If a dispensing organization contests the violation, it shall provide written notice to the Division requesting a hearing within 10 days after service of the notice of violation.

f) Upon receipt of the request for hearing, the Division shall confirm receipt of the notice and hold an administrative hearing as provided in the Act and this Part.

g) If a dispensing organization does not contest a revocation notice, it may surrender its registration by written notice to the Division and return its registration.

h) The effective date of nonrenewal or revocation of a registration by the Division shall be any of the following:

1) Until otherwise ordered by the circuit court, revocation is effective on the date set by the Division in the revocation notice, or upon final action after hearing under the Act and this Part, whichever is later;

2) Until otherwise ordered by the circuit court, nonrenewal is effective on the date of expiration of the existing registration, or upon final action after hearing under the Act and this Part, whichever is later; however, a registration shall not be deemed to have expired if the Division fails to respond to a timely request for renewal under this Act or for a hearing to contest nonrenewal under this Part.

i) All fines imposed under this Section shall be paid within 60 days after the effective date of the order imposing the fine or as otherwise specified in the order.

j) A circuit court order establishing that an agent-in-charge or principal officer holding a registration is a person in need of mental health treatment may operate as a suspension of the registration.

k) In a contested case, administrative hearings conducted under the jurisdiction of the Department will be subject to the Division's Rules as they apply to hearings. [68 IAC 1110].

(Source: Amended by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

Section 1290.540 Subpoenas; Oaths; Attendance of Witnesses (Repealed)
EMERGENCY

~~a) The Director or hearing officer may compel by subpoena or subpoena duces tecum the attendance and testimony of witnesses and the production of documents and records pertinent to any inquiry, verification or enforcement action. The fees and mileage shall be paid in the same manner as prescribed in civil cases in the courts of this State.~~

~~b) The Director, the hearing officer or a certified shorthand court reporter may administer oaths at any Division-ordered hearing. Notwithstanding any other statute or Division rule to the contrary, all requests for testimony or production of documents or records shall be in accordance with the Act, Civil Administrative Code [20 ILCS 5], the Division's hearing rules (68 Ill. Adm. Code 1110) and this Part.~~

(Source: Repealed by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

Section 1290.550 Request for Hearing (Repealed)
EMERGENCY

~~The Division shall carry out a request for hearing by an aggrieved person as follows:~~

~~a) Upon receipt of a request in writing for a hearing, the hearing officer shall conduct a hearing to review the contested violation.~~

~~b) Before the hearing is held, notice of the hearing shall be sent by the hearing officer to the person making the request for the hearing and to the person who issued the contested violation. In the notice the hearing officer shall specify the date, time and place of the hearing that shall be held not less than 10 days after the notice is served. The notice shall designate the violation being reviewed. The notice may be served by delivering it personally to a party or its representative or by mailing it regular and certified mail to the party's address on file with the Division.~~

(Source: Repealed by emergency rulemaking at 42 Ill. Reg. 23202, effective December 3, 2018, for a maximum of 150 days)

CHIEF PROCUREMENT OFFICER FOR THE
ILLINOIS DEPARTMENT OF TRANSPORTATION

JANUARY 2019 REGULATORY AGENDA

a) Part (Heading and Code Citations): Chief Procurement Officer for the Department of Transportation – Contract Procurement; 44 Ill. Admin. Code 6

1) Rulemaking:

A) Description: The Chief Procurement Officer for the Department of Transportation (CPO) will be amending this Part, as necessary to reflect changes made to 30 ILCS 500 by the 100th General Assembly.

B) Statutory Authority: 30 ILCS 500

C) Scheduled meeting/hearing dates: None scheduled

D) Date Agency anticipates First Notice: Spring 2019

E) Effect on small businesses, small municipalities or not-for-profit corporations: Small Businesses could be affected.

F) Agency contact person for information:

Bill Grunloh, Chief Procurement Officer
Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield IL 62764

217/558-5434

G) Related rulemakings and other pertinent information: None

DEPARTMENT OF INSURANCE

JANUARY 2019 REGULATORY AGENDA

a) Part (Heading and Code Citations): Advertising and Sales Promotion of Life Insurance and Annuities, 50 Ill. Adm. Code 909

1) Rulemaking:

A) Description: We need to update a reference in the regulation to Actuarial Standard of Practice (ASOP) 24 to cite the date of the most current version of the ASOP, which is December 2016.

B) Statutory Authority: 215 ILCS 5/149, 151, 236, 237, 401, 426 and Article XXXI

C) Scheduled meeting/hearing dates: None

D) Date Agency anticipates First Notice: January 2019

E) Effect on small businesses, small municipalities or not-for-profit corporations: None

F) Agency contact person for information:

Kevin Fry, Deputy Director
Financial/Corporate Regulatory Division
Illinois Department of Insurance
320 West Washington
Springfield IL 62767

217/782-1756 or 217/782-4515

G) Related rulemakings and other pertinent information: 50 Ill. Adm. Code 1406

b) Part (Heading and Code Citations): Annual Financial Reporting, 50 Ill. Adm. Code 925

1) Rulemaking:

A) Description: The proposed change to Part 925 will require insurers to establish an internal audit function to enhance corporate governance. Small companies are exempt from the requirement if they do not meet a

premium threshold. The amendments will be based on NAIC Model Regulation #205, which will be an accreditation standard effective 1/1/2020. Additionally, incorporations by reference in Part 925 will be updated for newer editions.

B) Statutory Authority: 215 ILCS 5/132.1 through 132.7, 136, 401 and 402, 215 ILCS 125/5-3, 215 ILCS 110/25, 215 ILCS 130/4003, 215 ILCS 5/401.

C) Scheduled meeting/hearing dates: None

D) Date Agency anticipates First Notice: June 2019

E) Effect on small businesses, small municipalities or not-for-profit corporations: None expected

F) Agency contact person for information:

Kevin Fry, Deputy Director
Financial/Corporate Regulatory Division
Illinois Department of Insurance
320 West Washington
Springfield IL 62767

217/782-1756 or 217/782-4515

G) Related rulemakings and other pertinent information:

c) Part (Heading and Code Citations): Misrepresentation and False Warranties, 50 Ill. Adm. Code 941

1) Rulemaking:

A) Description: To address concerns of individuals who drive for rideshare companies, the amendments to Part 941.20 will limit rescissions to those based on information about the insured's driving record not disclosed at the time of application, and prohibit companies from charging more premium for violations discovered "after-the-fact" if they didn't run a MVR/CLUE search report at the time of application and this information

would have been included on those reports. Section 941.10 will be amended to cite to the applicable statute instead of quoting it. Housekeeping changes will also be made throughout the Part.

B) Statutory Authority: 215 ILCS 5/154 and 401

C) Scheduled meeting/hearing dates: None

D) Date Agency anticipates First Notice: Spring 2019

E) Effect on small businesses, small municipalities or not-for-profit corporations: None expected

F) Agency contact person for information:

Reid McClintock, Deputy Director
Property and Casualty Products/Agent Services
Illinois Department of Insurance
320 W. Washington St.
Springfield IL 62767-0001

217/558-3952 or 217/782-4515

G) Related rulemakings and other pertinent information:

d) Part (Heading and Code Citations): Credit Life and Credit Accident and Health Insurance, 50 Ill. Adm. Code 1051

1) Rulemaking:

A) Description: This rule provides guidance on the filing of Credit Life Insurance rates. We are seeking to amend the rule to more closely align with Illinois statutes regarding the need for an administrative hearing and to more closely align with the NAIC model regulation.

B) Statutory Authority: 215 ILCS 5/155.58 and 155.62

C) Scheduled meeting/hearing dates: None are currently scheduled.

D) Date Agency anticipates First Notice: Spring 2019

E) Effect on small businesses, small municipalities or not-for-profit corporations: None

F) Agency contact person for information:

Kevin Fry, Deputy Director
Financial/Corporate Regulatory Division
Illinois Department of Insurance
320 West Washington
Springfield IL 62767

217/782-1756 or 217/782-4515

G) Related rulemakings and other pertinent information: Parts 1052 and 1053, related to credit disability insurance and credit premium refunds, are also being amended.

e) Part (Heading and Code Citations): Credit Accident and Health Insurance, 50 Ill. Adm. Code 1052

1) Rulemaking:

A) Description: This rule provides guidance on the filing of Credit Accident and Health Insurance rates. We are seeking to amend the rule to more closely align with the NAIC model regulation.

B) Statutory Authority: 215 ILCS 5/155.58 and 155.62

C) Scheduled meeting/hearing dates: None are currently scheduled.

D) Date Agency anticipates First Notice: Spring 2019

E) Effect on small businesses, small municipalities or not-for-profit corporations: None

F) Agency contact person for information:

DEPARTMENT OF INSURANCE

JANUARY 2019 REGULATORY AGENDA

Kevin Fry, Deputy Director
Financial/Corporate Regulatory Division
Illinois Department of Insurance
320 West Washington
Springfield IL 62767

217/782-1756 or 217/782-4515

G) Related rulemakings and other pertinent information: Parts 1051 and 1053, related to credit disability insurance and credit premium refunds, are also being amended.

f) Part (Heading and Code Citations): Premium Refunds, 50 Ill. Adm. Code 1053

1) Rulemaking:

A) Description: This rule provides guidance on premium refunds for decreasing term insurance and level term insurance. We are seeking to amend the rule to more closely align with the NAIC model regulation and to possibly to incorporate it into Part 951, thereby eliminating the rule altogether.

B) Statutory Authority: 215 ILCS 5/155.58 and 155.62

C) Scheduled meeting/hearing dates: None currently scheduled.

D) Date Agency anticipates First Notice: Spring 2019

E) Effect on small businesses, small municipalities or not-for-profit corporations: None

F) Agency contact person for information:

Kevin Fry, Deputy Director
Financial/Corporate Regulatory Division
Illinois Department of Insurance
320 West Washington
Springfield IL 62767

217/782-1756 or 217/782-4515

G) Related rulemakings and other pertinent information: Parts 1051 and 1052, related to credit disability insurance and credit premium refunds, are also being amended.

g) Part (Heading and Code Citations): Individual and Group Life Insurance Policy Illustrations, 50 Ill. Adm. Code 1406

1) Rulemaking:

A) Description: We need to update two references in the regulation to Actuarial Standard of Practice (ASOP) 24 to cite the date of the most current version of the ASOP, which is December 2016.

B) Statutory Authority: 215 ILCS 5/224 and 230.1

C) Scheduled meeting/hearing dates: None are scheduled.

D) Date Agency anticipates First Notice: January 2019

E) Effect on small businesses, small municipalities or not-for-profit corporations: None

F) Agency contact person for information:

Kevin Fry, Deputy Director
Financial/Corporate Regulatory Division
Illinois Department of Insurance
320 West Washington
Springfield IL62767

217/782-1756 or 217/782-4515

G) Related rulemakings and other pertinent information: 50 Ill. Adm. Code 909

h) Part (Heading and Code Citations): Variable Contracts, 50 Ill. Adm. Code 1551

DEPARTMENT OF INSURANCE

JANUARY 2019 REGULATORY AGENDA

1) Rulemaking:

A) Description: Part 1551 will be amended to change references to the former National Association of Security Dealers (NASD) to refer instead to the entity's successor, the Financial Industry Regulatory Authority (FINRA), and its rules. The mortality table will be updated, and the reference in Section 1551.60 will be revised to reflect that mortality tables don't have later amendments or editions. Housekeeping changes will also be made.

B) Statutory Authority: 215 ILCS 5/Art. XIV½, 401 and 245.24

C) Scheduled meeting/hearing dates: None

D) Date Agency anticipates First Notice: March 2019

E) Effect on small businesses, small municipalities or not-for-profit corporations: None

F) Agency contact person for information:

Michael Maher
Deputy Director of Fraud & Investigations
Illinois Department of Insurance
122 S Michigan Ave, 19th Floor
Chicago IL 60603

312/814-1767 or 217/782-4515

G) Related rulemakings and other pertinent information: Part 3117 will also need to be amended to change NASD references to FINRA.

i) Part (Heading and Code Citations): Construction and Filing of Accident and Health Insurance Policy Forms, 50 Ill. Adm. Code 2001

1) Rulemaking:

A) Description: Section 2001.11 needs to be amended for the reference to the Illinois EHB Benchmark Plan, which was updated this year.

B) Statutory Authority: 215 ILCS 5/143, 355, 356a, Arts. IX and XX, and 401; 215 ILCS 125/4-13

C) Scheduled meeting/hearing dates: None

D) Date Agency anticipates First Notice: Spring 2019

E) Effect on small businesses, small municipalities or not-for-profit corporations: None

F) Agency contact person for information:

Jennifer Reif
Deputy Director, Health Products
Illinois Department of Insurance
320 West Washington
Springfield IL 62767

217/577-7311 or 217/782-4515

G) Related rulemakings and other pertinent information: None

j) Part (Heading and Code Citations): Accident and Health Reserves, 50 Ill. Adm. Code 2004

1) Rulemaking:

A) Description: 2004.10 needs to be amended to update the incorporation by reference of the NAIC Valuation Manual.

B) Statutory Authority: 215 ILCS 5/223, 353a and 401

C) Scheduled meeting/hearing dates: None

D) Date Agency anticipates First Notice: Spring 2019

E) Effect on small businesses, small municipalities or not-for-profit corporations: None

DEPARTMENT OF INSURANCE

JANUARY 2019 REGULATORY AGENDA

F) Agency contact person for information:

Kevin Fry, Deputy Director
Financial/Corporate Regulatory Division
Illinois Department of Insurance
320 West Washington
Springfield IL 62767

217/782-1756 or 217/782-4515

G) Related rulemakings and other pertinent information: None

k) Part (Heading and Code Citations): Infertility Coverage, 50 Ill. Adm. Code 2015

1) Rulemaking:

A) Description: Part 2015 will be amended to be consistent with applicable statutes and recent legislation, and to eliminate redundant language.

B) Statutory Authority: 215 ILCS 5/356m, 215 ILCS 5/401 and 215 ILCS 125/5-3

C) Scheduled meeting/hearing dates: None

D) Date Agency anticipates First Notice: January 2019

E) Effect on small businesses, small municipalities or not-for-profit corporations: None

F) Agency contact person for information:

Jennifer Reif
Deputy Director, Health Products
Illinois Department of Insurance
320 West Washington
Springfield IL62767

217/577-7311 or 217/782-4515

G) Related rulemakings and other pertinent information: None

l) Part (Heading and Code Citations): Arson Fraud Detection Reporting System, 50 Ill. Adm. Code 2303

1) Rulemaking:

A) Description: Part 2303 will be revised to remove outdated references to the Property Insurance Loss Register (PILR), which is no longer in existence. PILR had been the entity to which companies submitted property loss claim information and which created search analysis reports for similar information received by the Illinois State Fire Marshal.

B) Statutory Authority: 215 ILCS 5/155.23 and 401

C) Scheduled meeting/hearing dates: None

D) Date Agency anticipates First Notice: March 2019

E) Effect on small businesses, small municipalities or not-for-profit corporations: None

F) Agency contact person for information:

Reid McClintock, Deputy Director
Property and Casualty Products/Agent Services
Illinois Department of Insurance
320 W. Washington St.
Springfield IL 62767-0001

217/558-3952 or 217/782-4515

G) Related rulemakings and other pertinent information: None

m) Part (Heading and Code Citations): Administrative Hearing Procedures, 50 Ill. Adm. Code 2402

1) Rulemaking:

DEPARTMENT OF INSURANCE

JANUARY 2019 REGULATORY AGENDA

A) Description: The Department's administrative hearing rules in this Part will be repealed in their entirety and replaced with new rules more consistent with the model established by the rules that the Central Management Services is proposing for its Bureau of Administrative Hearings.

B) Statutory Authority: 215 ILCS 5/143.23, 401, 402 and 403

C) Scheduled meeting/hearing dates: None are currently scheduled.

D) Date Agency anticipates First Notice: Spring 2019

E) Effect on small businesses, small municipalities or not-for-profit corporations: None anticipated.

F) Agency contact person for information:

Paulette Dove
General Counsel
Illinois Department of Insurance
320 W. Washington St.
Springfield IL 62767-0001

217/785-5044 or 217/782-4515

G) Related rulemakings and other pertinent information: None

n) Part (Heading and Code Citations): General Provisions, 50 Ill. Adm. Code 2500

1) Rulemaking:

A) Description: Part 2500 was last amended in 2007. The current amendments will revise and update definitions and outdated references.

B) Statutory Authority: Implementing Sections 408, 409, 412, 444 and 444.1 and authorized by Sections 401 and 409(5) of the Illinois Insurance Code [215 ILCS 5/401, 408, 409, 409(5), 412, 444 and 444.1] and Section 12 of the Fire Investigation Act [425 ILCS 25/12].

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C) Scheduled meeting/hearing dates: None

D) Date Agency anticipates First Notice: March 2019

E) Effect on small businesses, small municipalities or not-for-profit corporations: None

F) Agency contact person for information:

Rob Havens, Acting Chief Financial Officer
Finance Administration Division
Illinois Department of Insurance
320 W. Washington St.
Springfield IL 62767-0001

217/782-8638 or 217/782-4515

G) Related rulemakings and other pertinent information: Parts 2510, 2515, 2520, 2525

o) Part (Heading and Code Citations): Annual Privilege Tax, 50 Ill. Adm. Code 2510

1) Rulemaking:

A) Description: Parts 2510 and 2515 need to be amended to alter the computation of the Corporate Income tax deduction allowed on the Privilege and Retaliatory return. The Rule change is needed as a result of the change in the calculation of Corporate Income Tax required by the Illinois Department of Revenue (IDOR). IDOR now requires one consolidated return for insurance and non-insurance related entities. This will overstate the Corporate Income Tax deduction on the Privilege and Retaliatory return. The deduction needs to be limited to income taxes paid for insurance related net income only by implementing some form of an allocation formula. The insurance only portion of the Corporate taxes paid should be the allowable offset on the Privilege and Retaliatory return. The amendments will also remove outdated Illustrations and information that is duplicated from the Illinois Insurance Code.

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B) Statutory Authority: 215 ILCS 5/401, 409, 444 and 444.1

C) Scheduled meeting/hearing dates: None

D) Date Agency anticipates First Notice: March 2019

E) Effect on small businesses, small municipalities or not-or-profit corporations: None

F) Agency contact person for information:

Rob Havens, Acting Chief Financial Officer
Finance Administration Division
Illinois Department of Insurance
320 W. Washington St.
Springfield IL 62767-0001

217/782-8638 or 217/782-4515

G) Related rulemakings and other pertinent information: Parts 2500, 2515, 2520, 2525

p) Part (Heading and Code Citations): Annual Retaliatory Tax, 50 Ill. Adm. Code 2515

1) Rulemaking:

A) Description: Parts 2510 and 2515 need to be amended to alter the computation of the Corporate Income tax deduction allowed on the Privilege and Retaliatory return. The Rule change is needed as a result of the change in the calculation of Corporate Income Tax required by the Illinois Department of Revenue (IDOR). IDOR now requires one consolidated return for insurance and non-insurance related entities. This will overstate the Corporate Income Tax deduction on the Privilege and Retaliatory return. The deduction needs to be limited to income taxes paid for insurance related net income only by implementing some form of an allocation formula. The insurance only portion of the Corporate taxes paid should be the allowable offset on the Privilege and Retaliatory return. Part The amendments will also remove outdated Illustrations from the rule.

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B) Statutory Authority: 215 ILCS 5/401, 409, 444 and 444.1

C) Scheduled meeting/hearing dates: None

D) Date Agency anticipates First Notice: March 2019

E) Effect on small businesses, small municipalities or not-for-profit corporations: None

F) Agency contact person for information:

Rob Havens, Acting Chief Financial Officer
Finance Administration Division
Illinois Department of Insurance
320 W. Washington St.
Springfield, IL 62767-0001

217/782-8638 or 217/782-4515

G) Related rulemakings and other pertinent information: Parts 2500, 2510, 2520, 2525

q) Part (Heading and Code Citations): Annual State Fire Marshal Tax, 50 Ill. Adm. Code 2520

1) Rulemaking:

A) Description: The amendments to Part 2520 will remove outdated descriptions and amend directions regarding percentage of premium in the calculation of Fire Marshal Tax.

B) Statutory Authority: Implementing Section 12 of the Fire Investigation Act [425 ILCS 25/12] and authorized by Section 401 of the Illinois Insurance Code [215 ILCS 5/401].

C) Scheduled meeting/hearing dates: None

D) Date Agency anticipates First Notice: March 2019

E) Effect on small businesses, small municipalities or not-for-profit corporations: None

F) Agency contact person for information:

Rob Havens, Acting Chief Financial Officer
Finance Administration Division
Illinois Department of Insurance
320 W. Washington St.
Springfield, IL 62767-0001

217/782-8638 or 217/782-4515

G) Related rulemakings and other pertinent information: Parts 2500, 2510, 2515, 2525

r) Part (Heading and Code Citations): Overpayments, Refunds, Amendments and Penalties, 50 Ill. Adm. Code 2525

1) Rulemaking:

A) Description: The provisions of the Part do not accurately reflect the current process, and the provisions regarding hearings need clarification. The rule will be amended to remove language that quotes or paraphrases statute, and make sure the language is consistent with current statute and that the process for refunds, credits, and hearings are clear and understandable by the consumers who use the rule.

B) Statutory Authority: Implementing Section 412 of the Illinois Insurance Code [215 ILCS 5/412] and Section 13 of the Fire Investigation Act [425 ILCS 25/13] and authorized by Section 401 of the Illinois Insurance Code [215 ILCS 5/401].

C) Scheduled meeting/hearing dates: None

D) Date Agency anticipates First Notice: March 2019

E) Effect on small businesses, small municipalities or not-for-profit corporations: None

F) Agency contact person for information:

Rob Havens, Acting Chief Financial Officer
Finance Administration Division
Illinois Department of Insurance
320 W. Washington St.
Springfield IL 62767-0001

217/782-8638 or 217/782-4515

G) Related rulemakings and other pertinent information: Parts 2500, 2510, 2515, 2520

s) Part (Heading and Code Citations): Licensing and Suitability Requirements for the Solicitation of Variable Contracts, 50 Ill. Adm. Code 3117

1) Rulemaking:

A) Description: Part 3117 will be amended to change references to the former National Association of Security Dealers (NASD) to refer instead to the entity's successor, the Financial Industry Regulatory Authority (FINRA). Housekeeping changes will also be made.

B) Statutory Authority: 215 ILCS 5/Art. XXXI, 401 and 500-145

C) Scheduled meeting/hearing dates: None

D) Date Agency anticipates First Notice: March 2019

E) Effect on small businesses, small municipalities or not-for-profit corporations: None

F) Agency contact person for information:

Michael Maher
Deputy Director of Fraud & Investigations
Illinois Department of Insurance
122 S Michigan Ave, 19th Floor

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Chicago IL 60603

312/814-1767 or 217/782-4515

G) Related rulemakings and other pertinent information: Part 1551 will also need to be amended to change NASD references to FINRA.

t) Part (Heading and Code Citations): Health Maintenance Organization, 50 Ill. Adm. Code 4521

1) Rulemaking:

A) Description: Part 4521.80 currently requires HMOs to comply with financial reporting requirements as set forth in the now repealed Section 2-7 of the HMO Act. HMOs are now subject to the same financial reporting requirements as all other insurance companies pursuant to 215 ILCS 5/136. Because the rule refers to statutory language that is no longer in effect, it will be updated to reflect financial reporting requirements for HMOs as they exist today. In addition, an incorporation by reference in Part 4521.30 may need to be updated for a newer edition.

B) Statutory Authority: Implementing and authorized by Sections 4-6.1, 4-17, 5-2 and 5-7 of the Health Maintenance Organization Act [215 ILCS 125/4-6.1, 4-17, 5-2 and 5-7]; 42 USC 300gg-22; and 45 CFR 150.101(b)(2) and 150.201.

C) Scheduled meeting/hearing dates: None are scheduled.

D) Date Agency anticipates First Notice: Spring 2019

E) Effect on small businesses, small municipalities or not-for-profit corporations: None

F) Agency contact person for information:

Kevin Fry, Deputy Director
Financial/Corporate Regulatory Division
Illinois Department of Insurance
320 West Washington

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Springfield IL 62767

217/782-1756 or 217/782-4515

G) Related rulemakings and other pertinent information: None

PROCLAMATION

2018-234
Disaster Proclamation – Christian County

WHEREAS, on December 1, 2018, bands of severe storms generating tornadoes and straight-line winds moved through central Illinois; and,

WHEREAS, these storms ravaged Christian County, destroying houses and necessitating the rescue of trapped residents; and,

WHEREAS, the storms caused serious personal injuries, power outages impacting thousands of customers, and widespread damage to critical infrastructure and property; and,

WHEREAS, the amount of debris generation as a result of the storms has significantly impacted response and recovery efforts; and,

WHEREAS, reports received by the Illinois Emergency Management Agency from Christian County officials indicate that local resources and capabilities have been exhausted and that State resources are needed to respond and to recover from the effects of these storms; and,

WHEREAS, these conditions provide legal justification under section 7 of the Illinois Emergency Management Act for the issuance of a proclamation of disaster;

THEREFORE, in the interest of aiding the people of Illinois and the local governments responsible for ensuring public health and safety, I, Bruce Rauner, Governor of the State of Illinois, hereby proclaim as follows:

Section 1. Pursuant to the provisions of Section 7 of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7, I find that a disaster exists within the State of Illinois and specifically declare Christian County as a disaster area.

Section 2. The Illinois Emergency Management Agency is directed to continue implementation of the State Emergency Operations Plan and coordinate State resources to support local governments in disaster response and recovery operations.

Section 3. To aid with emergency purchases as authorized by the Illinois Emergency Management Agency Act, the provisions of the Illinois Procurement Code and companion regulations and policies that would in any way prevent, hinder or delay necessary action in coping with the disaster are suspended to the extent that they are not required by federal law.

PROCLAMATION

Section 4: This proclamation can facilitate a request for Federal disaster assistance if a complete and comprehensive assessment of damage indicates that effective recovery is beyond the capabilities of the State and affected local governments.

Section 5: This proclamation shall be effective immediately and remain in effect for 30 days.

Issued by the Governor December 3, 2018
Filed by the Secretary of State December 3, 2018

ILLINOIS ADMINISTRATIVE CODE
Issue Index - With Effective Dates

Rules acted upon in Volume 42, Issue 50 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.