

BOARD PROPOSAL FOR PUBLIC COMMENT OCTOBER 3, 1996

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARD
PART 125

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AUTHORITY: Implementing Sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, and 41 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, and 41] authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27.]

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SUBPART A: GENERAL

Section 125.100 Applicability

- a) This Part applies to all regulatory and informational hearings and proceedings, and shall be read in conjunction with 35 Ill. Adm. Code Part 101. Hearings conducted pursuant to this Part are quasi-legislative in nature and the purpose is to gather information and comment to guide the Board in the rulemaking process. All testimony shall be sworn.
- b) All persons taking part in these hearings are participants, rather than parties as in contested cases. Non-attorneys may represent themselves and others at regulatory

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hearings and may ask questions of witnesses or give testimony as allowed by the hearing officer.

Section 125.102 Severability

If any provision of this Part or its application to any person or under any circumstances is adjudged invalid, such adjudication does not affect the validity of this Part as a whole or of any portion not adjudged invalid.

Section 125.104 Definitions

For the purpose of this Subpart, words and terms shall have the meaning as defined in 35 Ill. Adm. Code 101.Subpart B, unless otherwise provided.

Section 125.106 Types of Regulatory Proposals

- a) The Act provides for four types of regulatory proposals:
 - 1) Identical in substance rulemakings, as defined in Sections 7.2, 28.2 and 28.4 of the Act [415 ILCS 5/7.2, 28.2, and 28.4];
 - 2) Federally required rules, as defined in Section 28.2 of the Act [415 ILCS 5/28.2];
 - 3) Other regulatory proposals, both of general applicability and not of general applicability as allowed by Sections 26, 27 and 28 of the Act [415 ILCS 5/26, 27, and 28]; and
 - 4) Clean Air Act fast track rulemakings as defined by Section 28.5 of the Act [415 ILCS 5/28.5].
- b) The Administrative Procedures Act (APA) provides for three types of rulemakings:
 - 1) General rulemaking pursuant to Section 5-40 of the APA [5 ILCS 100/5-40] and Sections 26 and 27 of the Act [415 ILCS 5/26 and 27];
 - 2) Emergency rulemaking pursuant to Section 5-45 of the APA [5 ILCS 100/5-45] and Section 27 of the Act [415 ILCS 5/27]; and
 - 3) Peremptory rulemaking pursuant to Section 5-50 of the APA [5 ILCS 100/5-50].

Section 125.108 Public Comments

- a) The Board will accept written comments from any person concerning a regulatory proposal during the first notice period as defined in Section 125.604 of this Part. However, when adopting identical in substance regulations, the Board will accept written comments from United States Environmental Protection Agency (USEPA) and other persons for at least 45 days after the date of publication of the proposed regulations in the Illinois Register in accordance with Section 125.610 of this Part.
- b) Any person may submit written comments on any proposal within 14 days after the receipt of the hearing transcript in Board offices or within 14 days after regulation

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revision under Section 125.600 of this Part, unless otherwise specified by the hearing officer or the Board.

- c) Comments shall be filed with the Clerk and served in accordance with 35 Ill. Adm. Code 101.Subpart C, upon the Environmental Protection Agency (Agency), Department of Natural Resources (DNR), the Attorney General (if a participant), the proponent, and the participants on any service list established by the hearing officer pursuant to Section 125.422 of this Part.
- d) Comments which are not timely filed will not be considered, except as allowed by the hearing officer or the Board to prevent material prejudice.

SUBPART B: REGULATIONS OF GENERAL APPLICABILITY, RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AMENDMENTS AND SITE-SPECIFIC RULES

Section 125.110 Waiver Of Requirements

The Board may waive any of the non-statutory requirements of this Part upon a showing by a person that a particular requirement would create an undue burden on that person such as, the burden of compliance imposes financial costs that would preclude further participation, compliance would result in provision of information already provided in that proceeding.

Section 125.112 Other Proceedings

The Board may conduct such other noncontested or informational hearings as may be necessary to accomplish the purposes of the Act. Such hearings may include, but are not limited to, inquiry hearings to gather information on any subject the Board is authorized to regulate.

Section 125.200 Proposal for Regulations of General Applicability

Any person may submit a regulatory proposal for the adoption, amendment, or repeal of a regulation. The original and eleven (11) copies of each proposal shall be filed with the Clerk and one copy each with the Attorney General, the Agency and DNR.

Section 125.202 Proposal Contents for a Regulations of General Applicability

All proponents shall provide the following as part of their proposal:

- a) The language of the proposed regulation or amendment, including an identification of the existing regulatory language proposed to be amended or deleted. Language being added shall be indicated by underscoring and language being deleted shall be indicated by strike-outs. The proposed rule shall be drafted in accordance with 1 Ill. Adm. Code 100.Subpart C;
- b) A statement of the reasons supporting the proposal, including a statement of the facts which support the proposal, and a statement of the purpose and effect of the proposal. The statement shall discuss the applicable factors listed in Section 27(a) of the Act. The statement of reasons shall include to the extent reasonably practicable, the universe of affected sources and facilities and the economic impact of the proposed rule. [415 ILCS 5/27(a)];
- c) A synopsis of all testimony to be presented by the proponent at hearing;

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- d) Copies of any material to be incorporated by reference within the proposed regulation pursuant to Section 5-75 of the APA [5 ILCS 100/5-75];
- e) Proof of service upon all persons required to be served pursuant to Section 125.422 of this Part;
- f) Unless the proponent is the Agency or DNR, a petition signed by at least 200 persons, pursuant to Section 28 of the Act and subpart 125.410(b) [415 ILCS 5/28];
- g) Where any information required by this Subpart is inapplicable or unavailable, a complete justification for such inapplicability or unavailability;
- h) When the Agency proposes a rule it believes is federally required it shall so certify its proposal in accordance with Section 125.500 of this Part; and
- I) When the Agency proposes a rule implementing the Clean Air Act under Section 28.5 of the Act the proposal shall clearly state that the proposal is being submitted pursuant to 28.5 of the Act [415 ILCS 5/28.5].

Section 125.204 Proposal Of RCRA Amendments

In addition to satisfying the requirements of Section 125.202 of this Part, any proposal to amend the RCRA regulations shall:

- a) Indicate whether it is made pursuant to the provisions of Section 22.4(a), 22.4(b) or 22.4(c) of the Act [415 ILCS 5/22.4(a), (b), and (c)];
- b) Include a listing of all amendments to the corresponding federal regulations since the period encompassed by the last amendment of the Board's RCRA rules; and
- c) Include a certificate of service indicating that a copy of the proposal has been served on the USEPA. Service shall be made at the following address:

Director, Waste Management Division
USEPA, Region V
230 South Dearborn Street
Chicago, Illinois 60604

Section 125.206 Notice of Site-Specific RCRA Proposals

- a) Public notice of hearings on site-specific RCRA proposals shall be given at least 30 days before the date of the hearing.
- b) In addition to the requirements of Section 28 of the Act, the Board, at a minimum, will give notice of hearings on a site-specific RCRA proposal to the following persons:
 - 1) Federal agencies as designated by the USEPA;
 - 2) Illinois Department of Transportation;
 - 3) Illinois Department of Natural Resources;

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- 4) Illinois Department of Public Health;
 - 5) The Governor of any other state adjacent to the county in which the facility is located;
 - 6) Elected officials of any counties, in other states, adjacent to the county in which the facility is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility.
- c) In addition to the methods of notice by publication of Section 28 of the Act [415 ILCS 5/28] and Section 125.416 of this Part, the Board will give notice by broadcast over at least one radio station in the area of the facility containing the information required by subsections (d)(2) and (d)(4) through (d)(8) below.
- d) A hearing notice on a site-specific RCRA proposal will include the following information:
- 1) The address of the Board office;
 - 2) Name and address of the proponent and, if different, of the facility for which the site-specific rule is sought;
 - 3) A brief description of the business conducted at the facility and the activity described in the proposal;
 - 4) A description of the relief requested in the proposal;
 - 5) Name, address and telephone number of the Clerk of the Board, from whom interested persons may obtain further information, including copies of the proposal;
 - 6) The name, address and telephone number of the Agency's representative in the rulemaking;
 - 7) A description of any written comment period or a statement that a comment period will be established in the future;
 - 8) A statement that the record in the rulemaking is available at the Board office for inspection, except those portions which are claimed or determined to be trade secrets, and that procedures are available whereby disclosure may be sought by the public. Any such claim shall be made in accordance with 35 Ill. Adm. Code 130;
 - 9) A statement that site-specific rules may be adopted pursuant to 415 ILCS 5/27 et seq. and 35 Ill. Adm. Code 125.202, and a citation to the Board regulations sought to be modified; and
 - 10) Any additional information considered necessary or proper.

Section 125.208 Proposal for Site-Specific Regulations

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Any person may submit a written proposal for the adoption, amendment or repeal of a substantive site-specific regulation. The original and eleven (11) copies of each proposal shall be filed with the Clerk and one copy each served upon the Agency, DNR, and the Attorney General.

Section 125.210 Proposal Contents for Site-Specific Regulations

Proponents of site-specific regulations other than those relating to RCRA, shall comply with the requirements of Section 125.202 of this Part in addition to the following requirements:

- a) The proponent shall identify the regulations which are to be addressed by the proposed amendment and the language to be added, deleted, or repealed. Language being added shall be indicated by underscoring and language being deleted shall be indicated by strike-outs. If the proposed site-specific rule seeks an exemption from or modification of a rule of general applicability, the proposed site-specific rule may not be proposed as an amendment to the general rule. Instead, the site-specific rule must be proposed as its own section;
- b) In the event that the proposed rule would replace the applicability of a general rule to the pollution source, the proposal shall specify, with supporting documentation, the reasons why the general rule is not technically feasible or economically reasonable for the person or site. Such documentation shall include relevant information on other similar persons' or sites' ability to comply with the general rule;
- c) The proposal shall describe the person or site for which regulatory change is sought and the area affected by the proposed change. The proposal shall also include a detailed assessment of the environmental impact of the proposed change, and include a description of all available treatment or control options;
- d) The proposal shall demonstrate that the Board may grant the requested relief consistent with federal law governing the subject of the proposal (e.g. Underground Injection Control program, Resource Conservation and Recovery Act, etc.); and
- e) Where any information required by this Subpart is inapplicable or unavailable, the proposal shall include a justification for such inapplicability or unavailability.

Section 125.212 Dismissal

- a) Failure of the proponent to satisfy the content requirements for proposals under this Subpart or failure to respond to Board requests for additional information will render a proposal subject to dismissal for inadequacy.
- b) Failure of the proponent to pursue disposition of the proposal in a timely manner will render a proposal subject to dismissal. In making this determination, the Board will consider factors including, but not limited to, the history of the proceeding and the proponent's compliance with any Board or hearing officer orders.
- c) A proposal will be dismissed for inadequacy in cases in which the Board, after evaluating the proposal, cannot determine the statutory authority on which the proposal is made. In all such cases, a statement informing the proponent of the Board's basis for dismissal will be made. Dismissal of a proposal will not bar a proponent from re-submitting a proposal in the absence of any deadline imposed by the Act or Board regulations.

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- d) Any person may file a motion challenging the statutory authority and/or sufficiency of the proposal pursuant to 35 Ill. Adm. Code 101.Subpart E.

SUBPART C: CLEAN AIR ACT AMENDMENTS (CAAA) FAST TRACK RULEMAKING

Section 125.300 Applicability

This subpart applies to *a proceeding to promulgate a rule that the CAAA requires to be adopted before December 31, 1996... requires to be adopted refers only to those regulations for which the United States Environmental Protection Agency is empowered to impose sanctions against the State for failure to adopted such rules.* [415 ILCS 5/28.5(c).]

Section 125.302 Agency Proposal

- a) When proposing a regulation required by the CAAA for adoption, the Agency must meet the following requirements:
- 1) The proposed rule must be in APA form;
 - 2) The proposal must be accompanied by a cover sheet which states that it is a proposal under Section 28.5 of the Act;
 - 3) *The proposal shall clearly identify the provisions and portions of the federal statute, regulations, guidance, policy statement, or other documents upon which the rule is based;*
 - 4) A summary of the rule, including a general description of the alternative selected and the basis for the alternative, must accompany the proposal;
 - 5) The Agency must provide the Board with a summary of economic and technical data relied upon in drafting the proposal, a list of documents relied upon for drafting, and/or which will be used at hearing and copies of these documents; and
 - 6) *The proposal shall contain, a description of the geographical area to which the rule is intended to apply, a description of the process or processes affected, an identification by classes of the entities expected to be affected, and a list of sources expected to be affected by the rule to the extent known to the agency.*

[415 ILCS 5/28.5]

- b) The Board will conduct a brief technical review of any proposal under this subpart for minimal compliance with the requirements in subsection a) above. Failure of the proposal to meet these requirements may result in the proposal not being accepted for filing by the Board.

Section 125.304 Hearings

- a) Within 14 days of the receipt of a rule the Board will file the proposed rule for first notice and schedule all hearings. Additionally, the Board will send notice to the appropriate newspaper of the scheduled hearing. Such notice shall be published by the newspaper at least 30 days prior to the date of the hearing.

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- b) The first hearing shall be held within 55 days of the receipt of the rule and is reserved for the Agency's testimony and witnesses.
- c) Any person may request a second hearing within seven days of the first hearing. Such a request may be made on the record at the first hearing or in writing. If done in writing it must be filed with the Board and served upon the service list.
- d) If the Board receives no request for a second hearing and the Agency and the affected entities are in agreement on the rule, or a portion of the rule, and the USEPA has not informed the Board of any unresolved objections the second and/or third hearings may be canceled. If the Board is not specifically informed of an agreement, the second hearing will not be canceled.
- e) In order to cancel the second and/or third hearing, the Agency must state on the record at hearing that it and the affected entities are in agreement or notify the Board and the service list in writing.
- f) Because of the short time frames involved, hearing dates may be chosen by the assigned Board member and hearing officer without consultation with the participants and CAAA hearings need only be held in one affected area of the State.

Section 125.306 Pre-filed Testimony

- a) The service list for purposes of pre-filed testimony will close at 4:30 P.M. 16 days before the date of hearing.
- b) Ten days before the hearing, copies of pre-filed testimony must be served upon all people who are on the service list as closed pursuant to subsection (a) above.
- c) The Board may grant a waiver of the pre-filing deadline or requirement for good cause. For purposes of this subpart, good cause shall mean uncontrollable circumstances.
- d) Participants who do not pre-file their testimony will only be allowed to testify if time remains in that hearing day. The hearing will not be continued from day to day to accommodate participants who do not pre-file.

SUBPART D: SERVICE AND FILING OF DOCUMENTS, MOTIONS, PRODUCTION OF INFORMATION, SUBPOENAS, PRE-HEARING CONFERENCES, AND HEARINGS

Section 125.400 Service and Filing of Documents

All documents shall be served and filed in accordance with 35 Ill. Adm. Code 101.Subpart C.

Section 125.402 Motions, Production of Information, and Subpoenas

Motion practice, production of information and the issuance of subpoenas in regulatory proceedings is governed by 35 Ill. Adm. Code 101. All motions and responses shall be filed with the Board and served upon the hearing officer, the proponent, the Agency, DNR, the Attorney General, and all persons on any service list established pursuant to subsection 125.422(b) of this Part.

Section 125.404 Initiation and Scheduling of Pre-hearing Conferences

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- a) *To the extent consistent with any deadline for adoption of any regulations mandated by State or federal law, prior to initiating any hearing on a regulatory proposal, the Board may assign a qualified hearing officer who may schedule a pre-hearing conference between the proponent and any or all of the potentially affected persons. [415 ILCS 5/27(d).]*
- b) In accordance with Section 27(d) of the Act, the notice requirements of Section 28 of the act and Section 125.416 shall not apply to such pre-hearing conferences. [415 ILCS 5/27(d) and 28.] However, the hearing officer will give notice to the proponents and any person who is included on the notice list of that proposal.

Section 125.406 Purpose of Pre-hearing Conference

The purpose of a pre-hearing conference shall be:

- a) *To maximize understanding of the intent and application of the proposal;*
- b) *To reach agreement on aspects of the proposal, if possible; and*
- c) *To attempt to identify and limit the issues of disagreement among the participants to promote efficient use of the time at hearing.*

[415 ILCS 5/27(d).]

Section 125.408 Pre-hearing Order

- a) *No record of the pre-hearing conference need be kept, nor shall any participant or the Board be bound by any discussions conducted at the pre-hearing conference.*
- b) *Notwithstanding subsection (a), with the consent of all participants in the pre-hearing conference, the hearing officer may enter a pre-hearing order delineating issues to be heard, agreed facts, and other matters.*
- c) *If the participants in the pre-hearing conference agree to having a pre-hearing order entered pursuant to subsection (b), the hearing officer may require that those participants furnish a draft of a proposed order setting forth the substance of the agreements reached at the pre-hearing conference. The hearing officer will enter that order if he agrees that it sets forth the substance of the agreement. The order shall identify which participants have agreed to the substance of the order.*
- d) *A pre-hearing order shall not be binding on nonparticipants in the pre-hearing conference.*

[415 ILCS 5/27(d).]

Section 125.410 Authorization Of Hearing

- a) The Clerk shall assign a docket number to any proposal. All regulatory proposals will be placed on the Board agenda for determination of adequacy under the Act and this Part. The proponent must cure any inadequacy identified by Board order before the proposal will proceed to hearing.

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- b) The Board will schedule a hearing on a proposal if it finds that such proposal is *supported by an adequate statement of reasons, is accompanied by a petition signed by at least 200 persons, is not plainly devoid of merit, and does not deal with a subject on which a hearing has been held in the last 6 months.*
- c) In accordance with Section 28 (a) of the Act, if a proposal is made by the Agency, or DNR, *the Board shall schedule a public hearing without regard to the above conditions* in subsection (a) of this Section as soon as practicable.

[415 ILCS 5/ 28(a).]

- d) Pursuant to Section 28 of the Act, *the Board may also in its discretion schedule a public hearing upon any proposal without regard to the above conditions* in subsection (a) of this Section. [415 ILCS 5/28.]
- e) If the Board determines that a proposal meets the requirements of subsection (a), and if any filing fee required by Section 28(a) of the Act and 35 Ill. Adm. Code 101.302 has been paid, the Board will issue an order accepting the proposal for hearing. Such an order will be construed as starting the time clock for purposes of any first notice publication deadlines for federally required rules. [415 ILCS 5/28(a).]
- f) When the Board authorizes a hearing, the Chairman will designate one or more attending Board members and a qualified hearing officer. A member of the Board may serve as hearing officer if otherwise qualified.
- g) In the case of a proposed regulatory change under the provisions of 35 Ill. Adm. Code 302.211(j) or 304.141(c), the requirement of subsection (a) relating to a requirement of 200 signatures shall not apply. In such case only a single hearing shall be required, to be held in the affected county.
- h) The Board may consolidate proposals for hearing or decision.

Section 125.412 Scheduling of Hearings

- a) Except as otherwise provided by the Act, *no substantive regulation shall be adopted, amended or repealed until after a public hearing in the area of the State concerned.* In the case of site-specific rules, a public hearing shall be held in the affected county. *In the case of state-wide regulations, hearings shall be held in at least two areas.* [415 ILCS 5/28(a).]
- b) If the proponent or any participant wishes to request a hearing beyond the number of hearings specified by the hearing officer, that person must demonstrate, in a motion to the hearing officer, that failing to hold an additional hearing would result in material prejudice to the movant. The motion may be oral, if made at hearing or written. The movant must show that he exercised due diligence in its participation in the proceeding and why an additional hearing, as opposed to the opportunity to submit written comments pursuant to Section 125.108 of this Part, is necessary.

Section 125.414 Hearings on the Economic Impact of New Proposals

- a) In accordance with Section 27(b) of the Act, before the final adoption of any proposal, *the Board shall conduct at least one hearing on the economic impact of any such new regulation.* [415 ILCS 5/27(b)]

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- b) If information of the economic impact of a proposed regulation is given at a general hearing on the proposal, the Board need not hold a special hearing on only the economic impact.

Section 125.416 Notice of Hearing

- a) The hearing officer will set a time and place for hearing. The Clerk shall give notice of the date of the hearing as follows:
 - 1) By notice in the Board's Environmental Register and on the Board's Web Site; and
 - 2) *At least 20 days prior to the scheduled date of the hearing the Board shall give notice of such hearing by public advertisement in a newspaper of general circulation in the area of the state concerned. The notice shall include, the date, time, place and purpose of such hearing. [415 ILCS 5/28(a).]*
 - 3) Where required by federal law, including but not limited to air pollution and RCRA proposals, newspaper notice shall be published at least 30 days prior to the hearing date.
- b) In accordance with Section 28(a) of the Act, the Clerk will give notice by mail to the proponent and to all persons who are on the notice list in accordance with Section 125.422 of this Part. [415 ILCS 5/28(a).]
- c) Hearings which are continued on the hearing record for a period of 45 days or less do not require notice that complies with subsections (a) and (b) above.

Section 125.418 Record

All testimony shall be recorded stenographically. The transcript, all written testimony, all exhibits offered in connection with the hearing, and all written submissions filed with the Clerk under Sections 125.108 of this Part before or after the close of the hearing shall constitute the record.

Section 125.420 Authority of Hearing Officer

The hearing officer shall have the same authorities in rulemaking proceedings as those granted for adjudicatory matters in 35 Ill. Adm. Code 101.Subpart F.

Section 125.422 Notice and Service Lists

- a) The hearing officer shall maintain a notice list for each regulatory proceeding. The notice list will consist of those persons who have furnished their names and addresses to the hearing officer or the Clerk's office concerning the proposal. Notice of all Board action and hearing officer orders will be given to all persons included on the notice list.
- b) The hearing officer may establish a service list for any regulatory proceeding, in addition to the notice list. The hearing officer may direct participants to serve copies of all documents upon the persons listed on the service list. In deciding whether to establish a service list, the hearing officer will consider factors including but not limited to, the complexity of the proceeding and the number of participants. For

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purposes of fast-track rulemakings under Section 28.5 of the Act, participants of record shall be the individuals on the service list. [415 ILCS 5/28.5.]

- c) The Board will not accept general requests to appear on all notice lists. Interested persons must submit their names for each proceeding in accordance with subsection (a) above.

Section 125.424 Pre-hearing Submission of Testimony and Exhibits

- a) The proponent shall submit all written testimony and any related exhibits 21 days prior to the hearing at which the witness testifies, unless the hearing officer directs otherwise to prevent material prejudice or undue delay.
- b) The hearing officer may require the pre-hearing submission of testimony, questions, responses, answers, and any related exhibits by the proponent or participants other than the proponent if the hearing officer determines that such a procedure will provide for a more efficient hearing.
- c) The original and four (4) copies of any pre-submitted testimony, questions, answers, responses, and/or exhibits shall be filed with the Clerk. The hearing officer, the Agency, DNR, and, if a participant, the Attorney General shall each be served with one copy of each testimony and exhibit. One copy shall also be served upon the proponent and each participant on any service list, unless otherwise specified or limited by the hearing officer. Such service shall be initiated on or before the date that copies are filed with the Clerk.
- d) All testimony, questions, answers, responses, and exhibits shall be served and submitted in the form required by 35 Ill. Adm. Code 101.Subpart C and labeled with the docket number of the proceeding, the name of the witness submitting the material or exhibit, and the title of the material or exhibit.
- e) The proponent and each participant who has pre-submitted testimony, questions, answers, and/or responses shall bring the number of copies designated by the hearing officer of that testimony and any exhibits to the hearing.
- f) Testimony submitted prior to hearing will be entered into the record as if read, unless the hearing officer determines that it will aid public understanding to have the testimony read. All persons testifying will be sworn and will be subject to examination. Modifications to previously submitted testimony and exhibits may be allowed by the hearing officer at hearing provided that such modifications are either non-substantive in nature or would not materially prejudice another person's participation at hearing. Objections to such modifications are waived unless raised at hearing.
- g) Where pre-hearing submission of testimony is required pursuant to subsection (a) and (b), any testimony which is not pre-submitted in a timely manner will be allowed only as time permits pursuant to Section 125.420 of this Part.

Section 125.426 Admissible Information

All information which is relevant and not repetitious or privileged shall be admitted by the hearing officer.

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Section 125.428 Presentation of Testimony and Order of the Hearing

- a) All witnesses at hearings shall be sworn;
- b) Testimony shall be in narrative form; and
- c) Proponents shall present testimony in support of the proposal first. Any questions and/or testimony in opposition to the proposal shall follow as time permits, unless otherwise ordered by the hearing officer to prevent material prejudice or undue delay.

Section 125.430 Questioning of Witnesses

All witnesses shall be subject to questioning by any person. Repetitious, irrelevant, harassing, or cumulative questioning will be prohibited by the hearing officer. The Board will not consider as substantive evidence any unsworn information which is presented in the form of a question during questioning of any witness.

SUBPART E: CERTIFICATION OF REQUIRED RULES

Section 125.500 Agency Certification

- a) *When the Agency proposes a rule which it believes to be a required rule, as defined by Section 28.2(a) of the Act the Agency shall so certify in its proposal, identifying the federal law to which the proposed rule will respond and the rationale upon which the certification is based. Such certification shall include a citation to the specific section of the specific federal law to which the proposed rule will respond.*
- b) *The Board shall either accept or reject the certification within 45 days and shall reference the certification in the Illinois register as provided by the APA.*

[415 ILCS 5/28.2(b).]

Section 125.502 Challenge To Agency Certification

- a) If any person wishes to challenge the Agency's certification that a proposed rule is a required rule, that person shall file an objection to that certification within 21 days of the date of the Board's order accepting a proposal for hearing. Such objection shall state the reasons that the objector believes that the proposed rule is not a required rule, and shall include all arguments which the objector wishes the Board to consider. A copy of the objection shall be served upon the Agency and DNR.
- b) The Agency may file a response to any objection within 14 days of the service of that objection. No reply by the objector will be allowed, unless the Board orders otherwise to avoid material prejudice.
- c) No hearing will be held on any objection filed pursuant to this Section.

Section 125.504 Board Determination

- a) The Board will rule upon any objection filed pursuant to this Subpart within 60 days of the date that the Board accepts a proposal for hearing.

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- b) In ruling upon an objection to an Agency certification, the Board will consider all information in the record of that proceeding, including but not limited to the proposal, the objection, and the Agency response to the objection. The burden of proof is on the objector.
- c) The Board will give notice of its determination to the objector, the Agency, DNR, and any person who has asked to be placed on the notice list pursuant to Section 125.422 of this Part for that proposal.
- d) Orders entered pursuant to this Section are interlocutory in nature and may be appealed only pursuant to 35 Ill. Adm. Code 101.308.

SUBPART F: BOARD ACTION

Section 125.600 Revision Of Proposed Regulations

- a) The Board may revise the proposed regulations before adoption upon its own motion or in response to suggestions made at hearing and in written comments made prior to second notice. No additional hearing on the revisions need be held.
- b) Unless otherwise provided in the Act, *the Board may revise proposed regulations after hearing in response to objections or suggestions made by the Joint Committee on Administrative Rules (JCAR) pursuant to subsection (b) of Sections 5.40 and subsection (a) of Section 5.110 of the Illinois Administrative Procedure Act.* The Board may make such revision where it finds:
 - 1) *That such objections or suggestions relate to the statutory authority upon which the regulation is based, whether the regulation is in proper form, or whether adequate notice was given; and*
 - 2) *That the record before the Board is sufficient to support such a change without further hearing.*

[415 ILCS 5/28(a).]

Section 125.602 Adoption Of Regulations

The Board adopts first notice, second notice and final opinions and orders in regulatory matters. Only the first notice proposal and the final adopted rules are published by the Secretary of State in accordance with the APA. In adopting any new regulation, except a required rule or an identical in substance regulation, *the Board shall, in its written opinion, make a determination, based upon the evidence in the public hearing record, as to whether the proposed regulation has any adverse economic impact on the people of the state of Illinois.* [415 ILCS 5/27(b).]

Section 125.604 First Notice Of Proposed Regulations

Except when otherwise directed by the Act, the Board will give first notice of its proposed adoption, amendment, or repeal of regulations pursuant to Section 5-40 of the APA. [5 ILCS 100/5-40.] The first notice period will be at least 45 days, and will begin on the day that first notice is published in the Illinois Register. The Board will accept written comments from any person concerning the proposed regulations during the first notice period.

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Section 125.606 Second Notice Of Proposed Regulations

- a) Except when otherwise directed by the Act, the Board will give second notice of its proposed adoption, amendment, or repeal of regulations to JCAR. The second notice period shall begin on the date written notice is received by JCAR, and shall expire 45 days after the date, except as provided by Section 5-40 of the APA. [5 ILCS 100/5-40.] The Board will accept comments only from JCAR during the second notice period.
- b) After the beginning of the second notice period, no substantive changes will be made to the proposed regulation, except in response to objections or suggestions from JCAR. Such changes will be made pursuant to Section 125.600 of this Part.

Section 125.608 Notice Of Board Final Action

The Board will give notice of its final action on a proposal to the proponent, the Agency, DNR, the Attorney General, and all persons on the notice list. The Board will publish notice of its final action in the Environmental Register and on its Home Page, and will enter a written opinion stating the reasons in support of its final action.

Section 125.610 Adoption of Identical In Substance Regulation

- a) Prior to adopting Identical In Substance regulations, the Board will:
 - 1) Make available to the public a proposed opinion and order containing the text of the rules at the Board's Chicago Office and on the Board's Home Page;
 - 2) Publish the proposed regulations in the Illinois Register;
 - 3) Serve a copy of the proposed opinion and order on the USEPA; and
 - 4) Receive written comments from the USEPA and other persons for at least 45 days after the date of publication in the Illinois Register.
- b) After consideration of comments from the USEPA, the Agency, the Attorney General and the public, the Board will adopt the verbatim text of such USEPA regulations as are necessary and appropriate for authorization of the program. Except as provided in Section 7.2 of the Act, the only changes that may be made by the Board to the federal regulations are those changes that are necessary for compliance with the Illinois Administrative Code, and technical changes that in no way change the scope or meaning of any portion of the regulations. [415 ILCS 5/ 7.2(a).]
- c) As provided by Sections 13(c), 13.3, 17.5, 22.4(a), 22.4(d), and 22.7(d) of the Act, the provisions of Title VII of the Act and Section 5-50 of the APA [5 ILCS 100/5-50] shall not apply to Identical In Substance Rulemakings. [415 ILCS 5/13(c), 13.3, 17.5, 22.4(a), 22.4(d), and 22.7(d).]

Section 125.612 Adoption Of Emergency Regulations

- a) *When the Board finds that a situation exists which reasonably constitutes a threat to the public interest, safety, or welfare, the Board may adopt regulations in accordance with Section 5-45 of the APA [5 ILCS 100/5-45]. [415 ILCS 27(c).]*

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- b) *When the Board finds that a severe public health emergency exists, the board may, in relation to any proposed regulation, order that such regulation take effect without delay. The Board shall proceed with any required hearings while the regulation continues in effect. [415 ILCS 5/27(c).]*

Section 125.614 Adoption Of Peremptory Regulations

- a) When the Board finds that a peremptory rulemaking is necessary and states in writing its reasons for that finding, the Board shall adopt peremptory rulemaking upon filing a notice of rulemaking with the Secretary of State pursuant to Section 5-70 of the APA. [5 ILCS 100/5-70.]
- b) Notice of such peremptory rulemaking will be published in the Illinois Register in accordance with Section 5-50 of the APA. [5 ILCS 100/5-50.]

SUBPART G: MOTION FOR RECONSIDERATION AND APPEAL

Section 125.700 Filing Of Motion For Reconsideration

Motion for reconsideration or modification of any Board order taking substantive action on a regulatory proposal shall be filed in accordance with 35 Ill. Adm. Code 101.1002. The contents of such motions are governed by 35 Ill. Adm. Code 101.Subpart J.

Section 125.702 Disposition Of Motions For Reconsideration

- a) After commencement of the second notice period, no substantive changes may be made to a proposed rulemaking unless it is made in response to an objection or suggestion of JCAR in accordance with Section 5-110(c) of the APA. [5 ILCS 100/5-110(c).] Therefore, submission of second notice of a proposal to JCAR will preclude the Board from revising that proposal in response to a motion for reconsideration. However, the Board may resubmit a rule for first notice if necessary to prevent material prejudice.
- b) An adopted rule becomes effective upon the filing of that rule with the Secretary of State. Therefore, the Board is precluded from allowing a motion for reconsideration of a final order adopting a rule, if that rule has been filed with the Secretary of State.

Section 125.704 Correction of Publication Errors

The Board may make technical corrections to proposed or adopted rules, published in the Illinois Register or filed with the Secretary of State, only in accordance with 1 Ill. Adm. Code 100.240. No hearing need be held on such corrections.

Section 125.706 Appeal

Any final Board order may be appealed to the appellate court within 35 days of the service of that order, pursuant to Sections 29 and 41 of the Act. [415 ILCS 5/29 and 41.]