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CHAPTER I: DEPARTMENT OF NATURAL RESOURCES
SUBCHAPTER h: WATER RESOURCES

PART 3730
ALLOCATION OF WATER FROM LAKE MICHIGAN

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AUTHORITY: Implementing and authorized by the Level of Lake Michigan Act [615 ILCS 50].

SOURCE: Adopted at 4 Ill. Reg. 38, p. 223, effective September 9, 1980; amended at 5 Ill. Reg. 9158, effective September 1, 1981; codified at 7 Ill. Reg. 9683; amended at 9 Ill. Reg. 386, effective January 1, 1985; amended at 14 Ill. Reg. 1484, effective January 3, 1990; recodified from 92 Ill. Adm. Code 730, Department of Transportation, to Department of Natural Resources, at 22 Ill. Reg. 7362; amended at 27 Ill. Reg. 7786, effective April 21, 2003; amended at 38 Ill. Reg. 22801, effective November 18, 2014.

SUBPART A: GENERAL RULES

Section 3730.101 Scope and Purpose

a) This Part governs the practices and procedures of the Director and his or her delegated representatives, and all allocation and enforcement proceedings conducted by them pursuant to the Level of Lake Michigan Act [615 ILCS 50].

b) This Part implements the Department's program for the apportionment of water to be diverted from Lake Michigan among its regional organizations, municipalities, political subdivisions, agencies or instrumentalities for domestic purposes or for

direct diversion into the Chicago Area Waterway System to maintain the waterway in a reasonably satisfactory sanitary condition. Consistent with the limitations expressed in a U.S. Supreme Court Decree (Wisconsin v. Illinois, 449 U.S. 48 (1980)), the Lake Michigan water so diverted, whether by way of pumpage for domestic purposes from the lake, the sewage effluent derived from which reaches the Illinois Waterway, or by way of storm runoff from the Lake Michigan watershed that is diverted into the Chicago Area Waterway System, or by way of direct diversion from the lake into the waterway, shall not exceed a 40 year running average of 3,200 cubic feet per second.

(Source: Amended at 38 Ill. Reg. 22801, effective November 18, 2014)

Section 3730.102 Definitions

As used in this Part except where the context indicates otherwise, the following terms shall have the meanings specified:

"Act" means the Level of Lake Michigan Act [615 ILCS 50];

"Annual accounting period" shall be October 1 of each calendar year through the last day in September in the succeeding calendar year;

"Chicago Area Waterway System" or "CAWS" is an engineered system of man-made canals and natural waterways that serves as both a navigation link between Lake Michigan and the Mississippi River system and an outlet for stormwater and effluent. It consists of the North Shore Channel, North Branch of the Chicago River (below the North Branch Dam), Chicago River, South Branch of the Chicago River, South Fork of the South Branch of the Chicago River (Bubbly Creek), Chicago Sanitary and Ship Canal, Cal-Sag Channel and portions of the Calumet River and Little Calumet River leading up to the O'Brien lock. In this Part the term "Chicago Area Waterway System" has the same meaning as the term "Sanitary and Ship Canal" used in the Level of Lake Michigan Act [615 ILCS 50];

"Department" means the Illinois Department of Natural Resources;

"Director" means the Director of the Illinois Department of Natural Resources or his or her duly delegated representatives;

"Emergency allocation" means a temporary allocation of Lake Michigan water in accordance with Section 3730.305;

"Emergency and standby use" means water pumped to maintain an adequate water

supply in the event of a partial or total failure of the primary water supply source of a permittee;

"Gross annual pumpage" means the total amount of water delivered to a user's system;

"Hearing Officer" means a person duly designated as the hearing officer by the Director;

"Hydrant uses" means, but is not limited to, all water obtained from hydrants for uses such as fire fighting and training, water main flushing, sewer flushing, street cleaning, and unmetered public and private construction;

"Net annual pumpage" means the total amount of water delivered to a user's system not including wholesale water delivered to other water systems, also referred to as system input volume;

"New users" refers to any regional organization, municipality, political subdivision, agency, instrumentality, organization, association, or individual that did not have an allocation of Lake Michigan water from the Department on July 1, 1980;

"Non-revenue water" is the difference between net annual pumpage (system input volume) and billed, authorized consumption. Non-revenue water shall be determined by taking the net annual pumpage of a water system and subtracting from that amount the quantity of water that is billed, metered consumption and that is billed, unmetered consumption. Non-revenue water includes water that is lost from the system due to underregistration of meters, systematic data handling errors, leakage anywhere within the distribution system, unauthorized consumption or unbilled authorized consumption;

"Party" means an entity that:

has made application to the Department for an allocation of the Lake Michigan diversion pursuant to the Act; or

has been made a party by the Hearing Officer pursuant to Section 3730.203(c);

"Permittee" means any regional organization, municipality, political subdivision, agency, instrumentality, organization, association or individual that has an allocation permit for water from the Lake Michigan diversion;

"Water Year" mans the annual accounting period consisting of 12 months terminating on the last day of September. As an example, the 2015 Water Year begins on October 1, 2014 and terminates on September 30, 2015.

(Source: Amended at 38 Ill. Reg. 22801, effective November 18, 2014)

Section 3730.103 Filing

Documents and requests permitted or required to be filed with the Hearing Officer shall be addressed to and mailed to or filed with the Hearing Officer at the following address:

Hearing Officer
Lake Michigan Allocation Proceedings
Illinois Department of Natural Resources
One Natural Resources Way
Springfield IL 62702-1271

or with such other person as the Director may designate from time to time.

(Source: Amended at 27 Ill. Reg. 7786, effective April 21, 2003)

Section 3730.104 Form of Documents

a) Documents shall clearly show the file or docket number and title of the proceeding in connection with which they are filed, and shall be clearly designated to indicate the nature of the relief sought, inter alia, "application for allocation permit", "complaint", "petition for modification", "petition for emergency allocation" or "motion".

b) Except as otherwise provided, four copies of all documents, including application, complaints, motions, petitions, and petitions for review, shall be filed with the Hearing Officer. Only two copies of any discovery motion, interrogatories, answers to interrogatories, or subpoena filed with or by the Hearing Officer need to be filed with the Hearing Officer.

c) Documents shall be prepared on unglazed white paper of greater than 12 pound weight and measuring 8½" x 11". All documents shall be fastened on the left side or in the upper left hand corner. The left margin of each page shall be at least 1½ inches and the right margin at least one inch.

d) One copy of each document will be signed by the applicant or party or by his or her authorized representative or attorney.

e) Documents shall contain the name, address and phone number of the applicant or party filing or his or her authorized representative or attorney.

(Source: Amended at 38 Ill. Reg. 22801, effective November 18, 2014)

Section 3730.105 Service of Documents and Proof of Service

a) Where the Hearing Officer or any person is required by statute or by the provisions of these rules to serve any document upon any person, service shall (in the absence of specific provisions in these rules to the contrary) be made in accordance with the provisions of this section.

b) Where any person is required to serve any document filed with the Hearing Officer, service shall be made by that person or by his representative on or before the day on which the document is filed.

c) Documents may be served upon a party, his attorney, or other duly constituted agent by delivering a copy or by mailing a copy to the last known address. When a party is represented by an attorney of record in any proceeding, service shall be made upon such attorney.

d) Delivery of a copy pursuant to this section means handing it to the party, his attorney, or other duly constituted agent or other person in charge of the office of the person being served; or, if there is no one in charge of such office, leaving it in a conspicuous place therein; or, if such office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

e) Service by mail is complete upon mailing.

f) Proof of service, as provided in this Section, shall be filed before action is taken. The proof of service shall show the time and manner of service, and may be by written acknowledgment of service, by certificate of the person effecting the service, or by other proof as satisfactory to the Hearing Officer. Failure to make proof of service will not affect the validity of the service. The Hearing Officer may allow the proof to be amended or supplied at any time before action is taken unless to do so would result in material prejudice to a party.

Section 3730.106 Computation of Time

a) Computation of any period of time prescribed by these rules or the Act shall begin with the first business day following the day on which the act, event or development initiating such period of time occurs, and shall run until the end of

the last day, or the next following business day if the last day is a Saturday, Sunday or legal holiday. Where the period of time is five days or less, Saturdays, Sundays and legal holidays shall be excluded in the computation of time.

b) Notice requirements shall be construed to mean notice received, but proof that notice was dispatched by means reasonably calculated to be received by the prescribed date shall be prima facie proof that notice was timely received.

Section 3730.107 Appearances and Representation

a) Any person entitled to participate in proceedings may appear as follows:

1) A natural person may appear in his own behalf or by an attorney at law licensed and registered to practice in the State of Illinois.

2) A business, non-profit, or government organization may appear by any bonafide officer, employee, or representative, or may be represented by an attorney licensed and registered to practice in the State of Illinois, or both.

b) Attorneys not licensed and registered to practice in the State of Illinois may appear on motion.

c) An attorney appearing in a representative capacity shall file a written notice of appearance together with proof of service on all parties or their respective attorneys.

Section 3730.108 Designation and Representation

a) A party entitled to participate in the hearing proceeding may designate another entity to represent its interests by filing with the Department a written application accompanied by a Resolution from the governing board of the designating party and a written Acceptance from the entity appearing in a representative capacity. The Designation of Representation and Acceptance of such designation shall be made on forms prescribed by the Department and executed by duly authorized officials of the parties. The designating party may withdraw the designation at any time upon its own motion with or without the consent of the previous designee.

b) The designated representative will be responsible to file all documents, complete all applications, answer all inquiries, present all testimony, and represent all other interest of the designating party for the purpose of applying for and obtaining a water withdrawal permit for water from Lake Michigan.

c) After receipt of the aforementioned documents, all correspondence will be directed to the designated representative only and the designating party is irrevocably bound by its action in these matters until such time as the designation is withdrawn and receipt of such withdrawal is acknowledged by the Department.

Section 3730.109 Public Information

a) The Department shall maintain files containing all information submitted to or produced by the Department or Hearing Officers relating to matters within the Department's jurisdiction, except that internal communications of the Department shall be filed only at the request of the Director or his designated representatives. Without limiting the generality of the foregoing, the files shall include, among other things: pleadings, motions, notices, minutes, transcripts, exhibits, orders and opinions; proposed and adopted regulations; communications to or from the Department; newsletters and other releases; business records; and informal complaints received.

b) All such files shall be open to reasonable public inspection and copying, at the expense of the interested party.

c) The Department shall maintain a comprehensive index of all files open to public inspection.

d) The Department may in its discretion disseminate from time to time newsletters, digests of minutes and other releases regarding any matter before the Department.

Section 3730.110 Severability

If any rules, sentence, clause, subsection, phrase or requirement of these rules is for any reason held to be unconstitutional or violative of law, by a court of competent jurisdiction, such decision shall not affect or impair the validity of the remaining portions of these rules.

SUBPART B: HEARING

Section 3730.201 Applicability

The rules of this part shall apply to all hearings concerning allocation of Lake Michigan water other than rulemaking.

Section 3730.202 Authorization of Hearings

a) Allocation Hearing: Except in the case of an emergency allocation, the Department shall hold allocation hearing(s) as authorized by the Act within 90

days of submission to the Department of an application for allocation or on the motion of the Department, the purpose of which shall be publicly stated to be contemplation of allocations of Lake Michigan water. The burden of proof in an allocation proceeding will lie with each applicant for an allocation.

b) Enforcement Proceeding: The Department may hold hearing(s) as authorized by the Act within 90 days of submission to the Department by any entity of a complaint for misuse of allocation, or on the motion of the Department for the purpose of gathering information with reference to abuse or misuse of any allocation and of entering an order presenting findings and directing a course of action, including changes in allocations previously made. Hearings will be held on all complaints which comply with Section 3730.205 (a), are not plainly devoid of merit or frivolous, and do not deal with a subject on which a hearing has been held within the preceding six months.

c) Petitions for Modification: The Department may hold hearing(s) on a petition for modification of an allocation permit. The burden of proof in a modification proceeding will lie with the petitioner/applicant. Hearings will be held on all petitions which comply with Section 3730.310 (a).

d) Petitions for Emergency Allocation: The Department shall within 60 days of issuing and entering an order for an emergency allocation give notice and conduct a hearing regarding such emergency allocation.

e) Designation of Hearing Officer: If the Department authorizes a hearing under any of the above sections, the Director shall designate a Hearing Officer to preside over such hearing.

(Source: Amended at 9 Ill. Reg. 386, effective January 1, 1985)

Section 3730.203 Parties

a) The party seeking an allocation permit, an emergency allocation, or the modification of an allocation permit shall be designated as the petitioner. Any party initiating an enforcement proceeding shall be designated as the complainant. Any party who seeks to be heard and whose interests are adverse to the petitioner's or the complainant's shall be designated as the respondent.

b) Incorrect designation of a party is not a ground for dismissal but the name of a party may be corrected at any time.

c) If a complete determination of a controversy cannot be had without the presence of other parties, the Hearing Officer may direct them to be made parties. The

Hearing Officer may allow the intervention of other persons of entities with an interest in the matter on any side of the controversy or in aid of the Department.

(Source: Amended at 38 Ill. Reg. 22801, effective November 18, 2014)

Section 3730.204 Allocation Applications and Petitions for Modification

Four copies of application for allocations, petition for emergency allocation, and petition for modification shall be filed with the Department and shall contain:

a) In the case of an Application for Allocation, all information required under Section 3730.302.

b) In the case of a Petition for Emergency Allocation, all information required under Section 3730.305.

c) In the case of a Petition for Modification, all information required under Section 3730.310 including reference to any change in circumstances or any information previously submitted pursuant to Section 3730.302 and any claimed errors in interpretation of the Act or the rules.

Section 3730.205 Complaint

a) Pursuant to Section 3730.202 (b), a Complaint shall contain the following:

1) a reference to the provision of the Act or the rules of which the respondent(s) is alleged to be in violation; and

2) the dates, location, events, nature, extent and duration of abuses or misuses alleged to constitute violations of the Act or the rules complained of to an extent sufficient to advise respondent(s) of the full extent and nature of matters complained of adequate to reasonably allow preparation of a defense.

b) Unless respondent files an answer within 20 days after receipt of the complaint, all material allegations shall be taken as denied. All motions preliminary to a hearing shall be presented to the Hearing Officer at least 5 days prior to the date of hearing, or on such other date as the Hearing Officer or these rules shall designate.

Section 3730.206 Notice of Hearing

a) In cases in which a hearing is held pursuant to Section 3730.202(a), (c) or (d), the

commencement of the hearing shall be within 90 days after the date on which the application for allocation or petition for modification of allocation was received by the Department unless otherwise ordered by the Hearing Officer, or within 60 days after an order for an emergency allocation was entered by the Department. The Department shall give notice of hearing in these cases as follows:

1) to all permittees; petitioners; the Counties of Cook, DuPage, Kane, Kendall, Lake, Will, and McHenry; the City of Chicago; the Metropolitan Water Reclamation District; the Illinois Environmental Protection Agency; and the Chicago Metropolitan Agency for Planning; and

2) by publication not less than twice in newspapers of general circulation in the immediate and remote areas that may be affected by diversions of Lake Michigan waters, such publications to be no longer than one week apart, and the hearing to be held within 10 days following date of last publication.

b) In cases in which a hearing is held pursuant to Section 3730.202(b), complainants and respondents shall receive notice by certified mail of the time and place of the hearing no less than 20 days before the hearing is held. In addition, complainants must provide proof of service of the complaint on each respondent showing that service was completed in compliance with Section 3730.105 no less than 20 days before the hearing is held.

c) The Hearing Officer shall make available to any person copies of applications, petitions, or complaints at the time the hearing date is announced.

(Source: Amended at 38 Ill. Reg. 22801, effective November 18, 2014)

Section 3730.207 Prehearing Conferences

a) In any proceeding the Hearing Officer may direct parties or their attorneys to appear, upon 10 or more days written notice, at a specified time and place for a conference, prior to or during the course of hearing for the purpose of formulating issues and considering:

1) The simplification of issues of fact and law;

2) the necessity or desirability of amending documents for the purpose of clarification, amplification, or limitation;

3) the possibility of making admissions of certain averments of fact or stipulations concerning the use of matters of public record to avoid

unnecessary introduction of proof;

4) the limitation of the number of witnesses, including experts;

5) the propriety of prior mutual exchange between or among parties of prepared testimony and exhibits; and

6) such other matters as may aid in the simplification of the evidence and disposition of the proceeding.

b) Action taken at the conference shall be recorded in an appropriate ruling unless the parties enter into written stipulations as to such matters, or agree to a statement thereof made on the record by the Hearing Officer.

Section 3730.208 Discovery

a) Hearing Officer

1) The Hearing Officer may order production of documents or things, depositions, or interrogatories in his or her discretion upon the written request of any party or by the Department on its own motion, either by an order directed to a party or by subpoena directed to a non-party:

A) when necessary to expedite the proceedings;

B) to ensure a clear or concise record;

C) to ensure a fair opportunity to prepare for the hearing; or

D) to avoid surprise at the hearing.

2) The Hearing Officer shall restrict such discovery when necessary to prevent undue delay or harassment.

b) The Hearing Officer may in his or her discretion order the following discovery upon written request of any party:

1) a list of witnesses who are known to the party, who have knowledge of the occurrence or other relevant facts;

2) a list of expert witnesses who may be called at the hearing, which shall be submitted to all parties prior to the hearing; and

3) reasonable inspection of the premises by experts.

c) Any person, including a party, who is deposed, interrogated or required to submit documents or things under this Section may be examined regarding any matter, not privileged, that is relevant to the subject matter of the pending case, or that may lead to the discovery of relevant information.

d) All depositions and interrogatories taken pursuant to this Section shall be for purposes of discovery only, except as provided in this Section. The depositions and interrogatories may be used for purposes of impeachment and as admissions of the deposed or interrogated party. Upon application to the Hearing Officer either before or after the taking of depositions or interrogatories and upon showing that, at the time of the hearing, the party deposed or interrogated will not be available to participate in the hearing because of death, age, sickness, infirmity, absence from the Northeastern Illinois Metropolitan Region (specifically the counties of Cook, DuPage, Kane, Kendall, Lake, McHenry and Will), or other exceptional circumstances, the Hearing Officer may order that the deposition or interrogatories be used as evidence in the hearing.

e) Upon transcription of the deposition, it shall be made available to the deponent for examination and signature, unless signature is waived both by the deponent and by the parties who are represented at the deposition. Any changes in form or substance that the deponent desires to make shall be entered upon the deposition by the court reporter taking the same with a statement of the reasons given by the deponent making them. The deposition shall then be signed by the deponent unless the deponent is ill or cannot be found or refuses to sign, in which event the court reporter's certification shall state the reason for the omission of the signature.

(Source: Amended at 38 Ill. Reg. 22801, effective November 18, 2014)

Section 3730.209 Admissions

a) Request for Admission of Fact. A party, or the Department on its own motion, may serve on any other party a written request for the admission by the latter of the truth of any specified relevant fact set forth in the request.

b) Request for Admission of Genuineness of Document. A party or the Department on its own motion, may serve on any other party a written request for admission of the genuineness of any relevant documents described in the request. Copies of the documents shall be served with the request unless copies have already been furnished.

c) Admission in the Absence of Denial.

1) Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 20 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either:

A) a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters; or

B) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part.

2) If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested admission. If good faith requires that a party deny only a part, or requires qualification of a matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder. Any objections to a request or to an answer shall be heard by the Hearing Officer upon prompt notice and motion of the party making the request.

d) Effect of Admission. Any admission by a party pursuant to a request under this rule is for the purpose of the pending action only. It does not constitute an admission by him for any other purpose and may not be used against him in any other proceeding.

Section 3730.210 Authority of Hearing Officer

The Hearing Officer shall have the duty to conduct a fair and impartial hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear and complete record. He shall have all powers necessary to these ends including (but not limited to) the power to:

a) require, when appropriate, all parties to state their position with respect to any proposal, application, petition, or complaint;

b) administer oaths and affirmations;

c) examine witnesses and direct witnesses to testify;

d) regulate the course of the hearing;

e) limit the number of times any witness may testify, limit repetitious or cumulative testimony, and establish reasonable limits on the amount of time each witness may testify;

f) to issue discovery orders pursuant to Section 3730.208;

g) to issue subpoenas pursuant to Section 3730.212;

h) conduct hearings and prehearing conferences;

i) Rule or reserve ruling on the admissibility of evidence and amendments to pleadings;

j) continue a hearing from day to day or adjourn it to a later date by announcement thereof at the hearing or by appropriate notice thereof to all parties; and

k) direct parties to enter their appearances on the record.

Section 3730.211 Hearing Procedure

a) General Provisions

1) All hearings shall be open to the public.

2) All testimony taken at such hearings shall be under oath or affirmation.

3) All relevant evidence is admissible if, in the opinion of the Hearing Officer, it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record.

4) In determining the admissibility of evidence, the Hearing Officer shall give consideration to, but not be bound by rules of evidence governing civil proceedings.

5) Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge and experience of the Hearing Officer. Whenever official notice is requested or the Hearing Officer intends to take such notice on his own motion, prior notice shall be given to all parties with an opportunity to comment on the relevance or accuracy of the material of which official notice may be

taken.

6) Copies of direct testimony of any witness shall be served upon the Hearing Officer at least 7 days in advance of the session of the hearing at which such testimony is offered.

7) All motions and objections made during a public hearing shall be stated orally on the record, including the grounds of such objection.

8) When objection is made to the admissibility of evidence, such evidence may be received subject to such other objection and later ruling.

9) All motions other than those made during a hearing shall be in writing and shall state briefly the order or relief applied for and the grounds for such motion. Any such motion shall be filed with the Hearing Officer and a copy thereof shall be served at the same time on the parties. Answering statements, if any, shall be filed in writing with the Hearing Officer within 5 days after service of the motion upon the party filing the answering statement, and a copy thereof shall be served within the same period upon the other parties. The Hearing Officer may in his discretion, call for oral arguments on any such motion.

10) Parties may agree by stipulation upon facts involved in the proceeding. Any stipulation reached before a final determination by the Director shall be submitted in writing to the Hearing Officer and shall become effective only if approved by the Hearing Officer.

11) Statements from interested citizens may be presented if authorized by the Hearing Officer. These statements are subject to the same Rules and Regulations as herein set forth.

b) Cross-Examination

1) Upon the hearing of any action any party thereto or any person for whose immediate benefit the action is prosecuted or defended, or the officers, directors or managing agents or any party to the action, may be called and examined as if under cross-examination at the instance of any party. The party calling for the examination is not precluded from rebutting the testimony thus given by countertestimony and may impeach the witness by proof of prior inconsistent statements.

2) If the Hearing Officer determines that a witness is hostile or unwilling, he may be examined by the party calling him as if under cross-examination.

3) The scope of cross-examination shall be defined by those issues relevant to the Director's determination.

4) Repetitious cross-examination may be limited by the Hearing Officer.

c) Documentary Evidence

1) The Hearing Officer may receive material and relevant evidence which would be relied upon by reasonably prudent persons in the conduct of serious affairs which is reasonably necessary to resolution of the issue for which it is offered; provided that the rules relating to privileged topics shall be observed.

2) the Hearing Officer shall exclude immaterial, irrelevant, and repetitious evidence.

3) When the admissibility of disputed evidence depends upon an arguable interpretation of substantive law, the Hearing Officer shall admit such evidence.

4) Upon stipulation of the parties, the Hearing Officer may order the record of any relevant prior proceeding before the Department incorporated into the record of the present proceeding. In such an event, the Hearing Officer shall incorporate the entire or appropriate portions of the record constituting such prior proceeding into the present proceeding.

5) Relevant scientific or technical articles, treatises or materials may be introduced into evidence subject to qualification of the author and subject to refutation or disputation through any introduction of comparable documentary evidence or expert testimony.

6) When a party desires to offer in evidence any portion of the record in any other proceeding or previously filed applications, such portion or application shall be offered in the form of an exhibit unless objected to or otherwise stipulated by the parties. Upon objection such materials may be submitted for admission pursuant to sub-section c(9) of this section.

7) When any material or relevant matter offered in evidence by any party is embraced in a book, paper or document containing other matter not material or relevant, the party offering the same shall plainly designate the matter so offered. If, in the judgment of the Hearing Officer, such immaterial or irrelevant matter would unnecessarily encumber the record,

such book, paper or document will not be received in evidence as a whole, but the material or relevant portions thereof, if otherwise admissible, may be read into the record or a true copy thereof supplied in the form of an exhibit.

8) When an exhibit of a documentary character is marked for identification and offered in evidence, four copies thereof shall be furnished to the Hearing Officer and one copy to each party who requests a copy unless the Hearing Officer rules otherwise. Copies will be retained by the Hearing Officer and the Department.

9) When a party desires to offer in evidence any evidence heretofore considered in the issuance of a previous allocation order, such evidence shall be reintroduced by the proponent thereof provided said proponent has a witness or witnesses available who will state under oath that such evidence represents his testimony and is subject to cross-examination.

d) Depositions. During the pendency of any proceeding, the Hearing Officer either upon his own motion or upon application in writing by any party may cause the deposition for use as evidence in the proceeding of any witness within or without the State to be taken in the manner provided by law for depositions in civil actions in the course of this State, and to that end may compel the attendance of witnesses and the production of books, papers, accounts and documents. Except under special circumstances and for good cause shown, no deposition may be taken except upon 10 days prior notice to all parties.

e) Postponement or Continuance of Hearing.

1) A hearing may be postponed or continued for due cause by the Hearing Officer upon his own motion or upon motion of a party to the Hearing.

2) Notice of motion for postponement or continuance shall be given in writing, by the party requesting the motion, to all parties to the hearing within a reasonable time in advance of the previously scheduled hearing date.

f) Default. Failure of a party to appear on the date set for hearing, or failure to proceed as ordered by the Hearing Officer shall constitute a default. Within 30 days after notice to the party of the default order and upon good cause being shown, the party may move to vacate the default and be allowed to proceed as if no default had been entered. Upon default the Director shall enter such order as is appropriate based upon the evidence introduced at the hearing.

Section 3730.212 Subpoenas

a) Pursuant to Section 10 of the Act, upon verified application to the Hearing Officer by any party and upon a showing that such subpoena is reasonably required, or on motion of the Hearing Officer, the Hearing Officer shall issue a subpoena for attendance at a deposition or a hearing, which may include a command to produce books, papers, documents, or tangible things designated therein and reasonably necessary to resolution of the matter under consideration, subject to the limitations on discovery prescribed by these Rules.

b) Every subpoena shall state the title of the action and shall command each person to whom it is directed to attend and give testimony at the time and place therein specified.

c) The Hearing Officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may quash or modify the subpoena if it is unreasonable and oppressive.

d) Any person served with a subpoena issued in accordance with these rules who shall refuse or neglect to appear or to testify, or to produce books, papers, accounts or documents as commanded in such subpoena shall be guilty of a Class B misdemeanor.

Section 3730.213 Official Record

a) The petitioner or complainant, as applicable, shall provide a court reporter who shall record and transcribe a stenographic record of all hearings and will provide for such copies of the transcript as the Department may require for its own purposes.

b) After the transcript is filed, the Hearing Officer shall entertain requests for corrections and enter corrections either on the record of a subsequent hearing or in an Order.

c) The transcript of the hearing, all pleadings, all exhibits entered into evidence, and any documents officially noticed pursuant to Section 3730.211(a)(5) shall constitute the record.

d) Transcripts of hearings conducted by the Department shall be kept in the custody of the Department and will be open for inspection during the regular office hours. Copies may be made at the expense of the interested party.

(Source: Amended at 38 Ill. Reg. 22801, effective November 18, 2014)

Section 3730.214 Order of Hearing Officer or Director

The Hearing Officer's findings and recommended order shall be presented to the Director for his approval. The Director may issue the recommended order as his own or he may modify the recommended order or reconsider the order or order a rehearing. Any party may petition the Director for reconsideration or for a rehearing within 30 days of the issuance of the Director's order. A copy of the order or decision of the Director shall be filed in the records of the Department and served on each party to the proceeding. Any order and decision of the Director shall be open for public inspection at his offices during regular office hours.

Section 3730.215 Hearing Officer's Proposed Order

Prior to, during or following the taking of testimony, the hearing of oral argument and the filing of briefs, if any, filed with him by the parties, the Hearing Officer may require filing of proposed orders including proposed findings of fact and conclusions of law.

SUBPART C: ALLOCATION RULES

Section 3730.301 Allocation Permits

a) No regional organization, municipality, political subdivision, agency or instrumentality, or any other organization, association or individual desiring to use water from Lake Michigan that is subject to allocation under the Act shall divert or use any such water after July 1, 1977, unless it has previously obtained from the Department a valid allocation permit.

b) The Department shall issue an allocation permit to any applicant it determines to be entitled to an allocation of water from the Lake Michigan diversion according to the criteria set out in this Subpart. The permit shall state the allocation the applicant is allowed, the starting date and duration of the permitted allocation, and such conditions as specified in Sections 3730.307 and 3730.309 as the Department may require the applicant to comply with in order to receive or to continue to receive its allocated share of the Lake Michigan diversion. Allocations for residential, industrial and commercial uses will be limited for each annual accounting period. Allocations for navigational makeup and discretionary dilution will be limited by a running average over five annual accounting periods. The Department will hold an amount of Lake Michigan water in reserve for lockage and leakage that will be based on a running average over 40 annual accounting periods.

c) If, over a five-year running period, a permittee appropriates water in amounts greater than 105% of its allocation for that period or if it appropriates in excess of

115% of its allocation in any one annual accounting period, the Department may issue a notice of violation of the allocation permit.

d) If a permittee commits a permit violation under subsection (a), (b) or (c) or if it fails to observe the conditions attached to its allocation permit, the Department may issue a notice of violation. Upon hearing and determination of violation, the permittee shall be deemed to have failed to obey an order made by the Department and may be subject to a fine of not less than $1,000 and not more than $10,000 to be recovered in the name of the People of the State of Illinois in any court of competent jurisdiction. Each day in which the prohibited activity continues shall constitute a new and separate violation of a Department order.

e) If, over a five-year running period, a permittee appropriates water in amounts less than 90% of its allocation for the period, any entity or the Department, on its own motion, may initiate proceedings for a modification according to Sections 3730.204(c) and 3730.310. Any modification shall be preceded by notice as provided in Section 3730.206, and a hearing shall be held in conformance with Subpart B.

f) If a permittee, because of physical limitations, cannot use an allocation, the Department may allocate this water, after notice and a hearing, to another use during an accounting period or hold it in reserve for future use without prejudice to any permittee's allocation in succeeding accounting periods.

(Source: Amended at 38 Ill. Reg. 22801, effective November 18, 2014)

Section 3730.302 Application

An application for an allocation permit shall contain the following information, to be filed on forms provided by the Department:

a) The name and location of the applicant;

b) A description of the geographic area that the applicant supplies or intends to supply with water, and the number of people residing within that area;

c) An enumeration of the uses to which the allocation is intended to be put, including the proportion of the allocation that goes to each use;

d) A description of all proposed and existing systems for the storage, treatment, transportation and distribution of water and the location of any discharge of wastewater effluent within the area the applicant intends to supply with water from the allocation, including the location, dates of construction, and major

improvements of wells;

e) A description of all present sources of water supply, within the area described under subsection (b), including a breakdown stating the amounts and quality of water currently available and the quantity prospectively available from each source;

f) A statement of anticipated future needs during the period for which application for a water allocation is being made, including projected land use changes and population changes and per capita use;

g) A description of the applicant's current and proposed water conservation programs, measures and ordinances that promote the efficient use of its water supply;

h) Such other information relevant to the Lake Michigan allocation as the Department deems appropriate.

(Source: Amended at 38 Ill. Reg. 22801, effective November 18, 2014)

Section 3730.303 Classification of Water Users

a) Applicants will be divided into broad categories determined by water use. The categories in order of descending priorities are: Categories IA, IB, IIA, IIB and III.

1) Category IA – Applicants whose primary water needs are residential, commercial or industrial and whose future or continued use of Lake Michigan water is the most economical source of supply.

2) Category IB – Applicants whose primary water demands are residential, commercial and industrial and whose use of Lake Michigan water would reduce the regional use of the deep aquifer.

3) Category IIA − Applicants whose primary water demands are for the minimum flows necessary to meet navigation requirements and minimum discretionary dilution flows necessary to maintain the Chicago Area Waterway System in a reasonably satisfactory sanitary condition.

4) Category IIB – Applicants whose water demands are for the minimum discretionary dilution flows necessary to meet water quality standards in the Chicago Area Waterway System.

5) Category III – Applicants whose water demands do not fall into Category IA, IB, IIA, or IIB.

b) In determining the need for Category IA and IB allocations, the Department will consider the following items:

1) Adequacy of supply from sources other than Lake Michigan.

2) Economics of alternative supplies.

3) For new applicants, priority will be given to allocations for domestic purposes.

4) For new applicants, allocations of Lake Michigan water will be made with the goal of reducing withdrawals from the Cambrian-Ordovician Aquifer (deep aquifer).

c) In determining the need for priorities within Categories IIA and IIB, the Department will consider the following items:

1) A limitation of 270 cubic feet per second for discretionary dilution for water quality purposes in the Chicago Area Waterway System.

2) The need to meet navigation requirements in the Chicago Area Waterway System.

3) The minimum discretionary diversion needed to keep water quality in the Chicago Area Waterway System in a reasonable satisfactory sanitary condition.

d) Category III applicants do not qualify for an allocation of water from Lake Michigan.

e) The Department will normally make allocations to meet the full water needs of Category IA and IB applicants as determined by the Department before any water is allocated to applicants in Category IIA and IIB.

f) In determining the amount of water available for allocations to Categories IA, IB,

IIA and IIB, the Department will consider the amount of water that must be reserved for storm water runoff, lockage and leakage and a reserve for future increases in demands and storm water runoff.

(Source: Amended at 38 Ill. Reg. 22801, effective November 18, 2014)

Section 3730.304 Water Needs Criteria

The Department will determine anticipated water needs for each applicant. The Department will take into consideration in making that determination the population of the area to be served, projected population growth, current and projected per capita consumption within the area, the nature and extent of industrial uses (including a consideration of typical requirements for similar industries), municipal and hydrant uses (public facilities, park upkeep, fire protection), implementation of conservation practices, and the reduction of non-revenue water as required by this Section.

a) Conservation practices that will be considered with respect to applicants in Categories IA and IB include the extent of metering, the provision of building codes for water efficient equipment, ordinances that promote the efficient use of water for lawn sprinkling and other outside uses, rate structures that encourage conservation, past record of enforcement of water saving ordinances, expenditures for maintenance and repair of water distribution systems, and implementation of specific ground water conservation levels of usage recommended by State or regional planning agencies. The Director may establish maximum reasonable per capita consumption rates for each user based upon either an evaluation of the relative proportion of industrial, commercial and residential users served by the permittee or the efficiency of the permittee's water distribution system, or both. Applicants in Categories IA and IB shall limit non-revenue water so that it is less than 12% of net annual pumpage in Water Year 2015, decreasing to no more than 10% by Water Year 2019 and all years thereafter. Applicants whose non-revenue water exceeds the non-revenue thresholds (12% in Water Year 2015, decreasing to 10% in Water Year 2019) shall submit a water system improvement plan that outlines the actions the applicant plans to undertake, along with a timeframe, to reduce non-revenue water to less than the thresholds outlined in this subsection. The Department may grant a waiver to the requirement to submit a water system improvement plan to an applicant whose non-revenue water exceeds the thresholds if it can be shown that the reason for exceeding the non-revenue water threshold is due to metered, but unbilled, consumption or to authorized, unmetered, unbilled consumption when the quantity can be determined through acceptable engineering practices. The Department will consider this information in determining proper allocation amounts.

b) Conservation practices that will be considered with respect to applicants in

Categories IIA and IIB include improved and more accurate measurement and accounting procedures, improved treatment of all wastewater flows, elimination of untreated combined sewer bypass flows, reasonable use of aeration facilities, implementation of navigational and storm response operations, and procedures to minimize Lake Michigan diversion and implementation of effective programs of leak prevention, detection and correction.

(Source: Amended at 38 Ill. Reg. 22801, effective November 18, 2014)

Section 3730.305 Emergencies

a) Upon the occurrence of an unforeseen event and where necessary to safeguard the health, safety, or welfare of the people of the State of Illinois, the Director shall make an emergency allocation of water upon a showing by any user or applicant that:

1) *A water shortage emergency exists, threatening the public health, safety, or welfare* of people whom the user or applicant intends to supply with water; and

2) the user or applicant is making provisions to prevent the continuation or recurrence of such emergency allocations by developing alternative sources of water supply.

b) The effectiveness of an emergency allocation order shall last until the Department has issued and entered an order after a hearing regarding the emergency allocation is held in accordance with Section 3730.202(d).

c) All hearings on emergency allocations will be held after notice has been given pursuant to Section 3730.206(a).

(Source: Amended at 9 Ill. Reg. 386, effective January 1, 1985)

Section 3730.306 Transfer of Water Use Rights

a) A user may not transfer any portion of its allocation of Lake Michigan water to another user unless the transferor has satisfied all of the conditions precedent attached to its water allocation permit and the Department has approved the transfer according to the procedures in subsection (b) or (c).

b) All requests for transfers, except those described in subsection (c), shall be processed as petitions for modification of the allocation permits of the transferor and the transferee according to Sections 3730.204(c) and 3730.310. These

requests shall not be approved or disapproved unless notice has been given as provided in Section 3730.206 and a hearing has been held in conformance with Subpart B.

c) Any request for a transfer that includes the following statements may be approved by the Department after 30 days notice to all permittees and an opportunity for hearing has been provided:

1) The transferor must have satisfied all of the conditions precedent attached to its water allocation permit.

2) The transferee must be a duly constituted regional water supply organization.

3) The transferor and transferee must clearly indicate that the transferee assumes responsibility for compliance by the transferor with the requirements of Sections 3730.307 and 3730.309.

4) The requested transfer must comprise 100% of the transferor's allocation.

5) The transferred allocation must be used solely by the transferor.

d) Transfers to another user of any part of an allocation, except those transfers described in subsection (c), will be considered prima evidence of a reduction in the transferor's water use needs equivalent in size to the transferred allocation when the transferor applies for a renewal permit. However, evidence that an applicant has obtained additional Lake Michigan water from other users beyond that amount originally allocated to the transferee will not be sufficient to establish a prima facie case that the transferee-applicant's original allocation should be increased by a corresponding amount.

e) All transfers terminate upon the expiration of the transferor's allocation permit.

(Source: Amended at 38 Ill. Reg. 22801, effective November 18, 2014)

Section 3730.307 Conservation Practices and Other Permit Conditions

a) The Department shall condition allocations within a user category upon required conservation practices for each user category as specified in subsections (b) and (c). Failure by any permittee to meet the conservation requirements applicable to it within a reasonable period of time will, upon notice, hearing and determination of the failure, constitutes a violation of a Department order.

b) Permittees in Categories IA and IB shall limit non-revenue water so that it is less than 12% of net annual pumpage (system input volume) in Water Year 2015, decreasing to no more than 10% by Water Year 2019 and all years thereafter. Permittees whose non-revenue water exceeds the non-revenue thresholds (12% in Water Year 2015, decreasing to 10% by Water Year 2019) shall submit a water system improvement plan that outlines the actions the permittee plans to undertake, along with a timeframe, to reduce non-revenue water to less than the thresholds outlined in this subsection. The Department may grant a waiver to the requirements to submit a water system improvement plan to a permittee whose non-revenue water exceeds the thresholds if it can be shown that the reason for exceeding the non-revenue water threshold is due to metered, but unbilled, consumption or to authorized, unmetered, unbilled consumption when the quantity can be determined through acceptable engineering practices. The Department recognizes that actions necessary to reduce water losses can require significant capital expenditures and a lengthy timeframe, and that communities face other pressing infrastructure needs, and will take this into account in reviewing and approving water system improvement plans.

c) The Department shall require evidence of adoptions by the permittee of the following conservation practices as applicable to the particular user:

1) Leakage monitoring and correction for storage, transmission and distribution systems.

2) Metering of all new construction. When practicable and feasible, the Department recommends sub-metering in new multi-family buildings.

3) Metering of existing non-metered services as part of any major remodeling.

4) The adoption of ordinances requiring that new and replacement plumbing fixtures be a labeled WaterSense product, as specified by USEPA.

5) The adoption of ordinances requiring the installation of closed system air conditioning in all new construction and in all remodeling.

6) The adoption of ordinances requiring that all lavatories for public use in new construction or remodeling be equipped with metering or self-closing faucets.

7) The adoption of ordinances requiring that all newly constructed or remodeled car wash installations be equipped with a water recycling system.

8) The adoption of ordinances that restrict non-essential outside water uses to prevent excessive, wasteful use. These shall provide that unrestricted lawn sprinkling will not be allowed from May 15 through September 15 of each year by requiring, as a minimum, that lawn sprinkling shall not occur on consecutive days nor shall any lawn sprinkling occur during at least a 6 hour period in the middle of the day (i.e., 10 a.m. through 4 p.m., noon to 6 p.m.) when evapotranspiration is at its highest. New lawns (less than 3 months old) may be exempted from this provision. In addition, new/replacement sprinkler systems shall be equipped with a WaterSense labeled irrigation controller and shall be in compliance with Section 2.5(g) of the Illinois Plumbing License Law [225 ILCS 320].

9) Development and implementation of public programs to encourage efficient water use.

10) Installation of facilities and implementation of programs to reduce to a reasonable minimum, and to accurately account for, water used for navigational and discretionary diversion purposes.

d) Within 90 days after receipt of an allocation permit, each permittee that uses any water from deep aquifer pumpage shall submit and implement a phased program designed to end this practice, other than for emergency or standby use, within five years after the receipt of Lake Michigan water. New applicants may petition the Department for a waiver of this requirement, which the Department may grant if it determines that the applicant has a legitimate legal or practical basis for its inability to comply with this requirement and when a partial allocation of Lake Michigan water will result in reduced pumpage from the deep aquifer. Existing permittees are not eligible to petition the Department for a waiver of this requirement.

e) As a condition of receiving an allocation of Lake Michigan water, all permittees will limit unmetered hydrant uses to 1% or less of net annual pumpage in each annual accounting period. The Department may grant an exception to this requirement if it can be shown by the user that this requirement can't be met. In determining the merits of a request for an exception, the Department considers such factors as engineering studies of hydrant uses and unusual circumstances during an annual accounting period.

f) The Department recommends that all permittees adopt water rate structures based on metered water use and that water rate structures be developed that will discourage excessive water use. The Department also recommends that water rates reflect the full cost of water, including the long term cost to properly

maintain and operate the water supply distribution system in such a manner as to keep system losses to a minimum.

(Source: Amended at 38 Ill. Reg. 22801, effective November 18, 2014)

Section 3730.308 Duration of Permit and Renewals

a) The Department shall determine the duration of each allocation permit, which shall be stated upon the face of the permit.

b) At the expiration of each allocation permit, the permit shall be renewed year by year in the same amount and on the same conditions as were in force upon expiration of the permit, unless any entity, or the Department on its own motion, files a petition for modification in compliance with Section 3730.204 (c) and 3730.310 and the Department determines that the petition is not frivolous. A permit shall remain in force and effect pending a determination by the Department of the issues raised in the modification proceedings.

Section 3730.309 Reporting Requirements

a) Within 60 days after the end of each accounting period, all permittees shall furnish the following information and such other information relevant to the Lake Michigan allocation as the Department may require on forms provided by the Department:

1) Total water use from all sources for the accounting year and the percentage of water distributed through metered services;

2) Average daily water use by month from all sources for the accounting year;

3) Maximum and minimum daily pumpage from all sources for the accounting year and the dates of these events;

4) Total pumpage from Lake Michigan, shallow aquifer wells, and deep aquifer wells, including the number and location of each well, and the percentage of total water use for the accounting year from each source;

5) Individual well production rates for the accounting year, including well numbers, average pumping rates, and average number of hours pumped per day;

6) For each well, a list of all parameters that exceed the standards in 35 Ill.

Adm. Code 620;

7) A list of which wells, if any, interfere with each other during simultaneous pumping;

8) A description of any problems anticipated from any well supply during the next accounting period;

9) The amount and percentage of water from all sources for the accounting period used for each of the following purposes:

A) Residential,

B) Industrial and commercial,

C) Municipal,

D) Firefighting and training,

E) Water main flushing,

F) Sewer flushing,

G) Street cleaning,

H) Public and private construction,

I) Leakage,

J) Lockage,

K) Storm water runoff,

L) Navigational makeup,

M) Discretionary diversion,

N) Unmetered services,

O) Non-revenue water, and

P) Other identified uses;

10) Summaries of the results and recommendations of any leak surveys conducted in the accounting period;

11) Amounts transferred and sources of all water sold or otherwise provided to any other named distribution system during the accounting period;

12) A copy of the current water rates for all consumers, including an indication whether each water rate structure is declining, flat or increasing; and

13) The name, address and telephone number of the person the Department should contact if further information is needed.

b) Within 30 days after the end of each month, all permittees with an intake structure on Lake Michigan shall state the daily pumpage rates for Lake Michigan water, the monthly average pumpage rate, the average daily supply transferred to other named entities, and such other information relevant to the Lake Michigan allocation as the Department may reasonably require on forms provided by the Department.

c) Within 30 days after the end of each month, all permittees who are the first Illinois users of water diverted from Lake Michigan outside Illinois shall state the daily pumpage rates for Lake Michigan water, the monthly average pumpage rate, the average daily supply transferred to other entities, and such other information relevant to the Lake Michigan allocation as the Department may reasonably require on forms provided by the Department.

(Source: Amended at 38 Ill. Reg. 22801, effective November 18, 2014)

Section 3730.310 Petitions for Modification

a) Petitions for modification of an allocation permit may be filed by any entity at any time. Petitions for modification must comply with Section 3730.204(c). If the Department finds that any such petition is supported by an adequate statement of reasons, is not plainly devoid of merit or frivolous, and does not deal with a subject on which a hearing has been held within the preceding six months, a hearing shall be held pursuant to Sections 3730.201 through 3730.215. Copies of each petition for modification shall be served upon all parties to the allocation proceedings. A copy of the service list may be obtained from the Department.

b) Bases for modification of an allocation permit include, but are not limited to:

1) Evidence of a substantial change in circumstances that results in a change

in water needs of the entity;

2) Violation of a permit condition and/or failure or neglect to properly utilize an allocation;

3) Determination by the Department that a total reallocation is necessary to best utilize the Lake Michigan diversion to preserve the health, safety and welfare of the Northeastern Illinois Metropolitan Region; or

4) Notification received by the Department from the Illinois Environmental Protection Agency stating that pollution abatement facilities affecting the water quality of the Chicago Area Waterway System have become operational or that standards affecting the water quality of the Chicago Area Waterway System have been changed.

c) In the Department's determination of the outcome of a modification proceeding, the Department shall determine the effect of a modification on any outstanding securities, debt obligations or contractual obligations of any permittee whose allocation is the subject of the modification proceeding and shall endeavor to avoid any material adverse effect on these obligations.

d) The Department may, in its discretion, schedule a hearing upon any petition without regard to the existence of the factors listed in subsection (b) if it deems holding the hearing to be in the public interest.

(Source: Amended at 38 Ill. Reg. 22801, effective November 18, 2014)

SUBPART D: ADMINISTRATIVE REVIEW

Section 3730.401 Administrative Review

All final administrative orders of the Director except those orders which deal with rulemaking shall be subject to judicial review pursuant to the Administrative Review Law [735 ILCS 5/Art. III] by filing a complaint and causing the issuance of summons on the Director and on each of the other defendants within 35 days from the date that a copy of such order sought to be reviewed was served.

Section 3730.402 Modification of Order and Decision of Department

The Director at any time prior to the date on which he is required to file his answer in a judicial review proceeding may upon reasonable advance notice given to all parties by registered or certified mail, which notice shall not be less than ten days in advance of such date, modify or set aside in whole or in part the Order and Decision appealed from.

SUBPART E: PENALTIES

Section 3730.501 Penalties

Any person who shall neglect or refuse or fail to obey any lawful order made by the Department or to carry the same into effect in accordance with the terms thereof shall be guilty of a business offense and shall be liable to a fine of not less than $1,000.00 nor more than $10,000.00 to be recovered in the name of the People of the State of Illinois in any court of competent jurisdiction, as provided in Section 8 of the Act.