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INTRODUCTION

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

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

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

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

ILLINOIS REGISTER PUBLICATION SCHEDULE FOR 2015

Issue#	Rules Due Date	Date of Issue
1	December 22, 2014	January 2, 2015
2	December 29, 2014	January 9, 2015
3	January 5, 2015	January 16, 2015
4	January 12, 2015	January 23, 2015
5	January 20, 2015	January 30, 2015
6	January 26, 2015	February 6, 2015
7	February 2, 2015	February 13, 2015
8	February 9, 2015	February 20, 2015
9	February 17, 2015	February 27, 2015
10	February 23, 2015	March 6, 2015
11	March 2, 2015	March 13, 2015
12	March 9, 2015	March 20, 2015
13	March 16, 2015	March 27, 2015
14	March 23, 2015	April 3, 2015
15	March 30, 2015	April 10, 2015
16	April 6, 2015	April 17, 2015
17	April 13, 2015	April 24, 2015
18	April 20, 2015	May 1, 2015
19	April 27, 2015	May 8, 2015
20	May 4, 2015	May 15, 2015

21	May 11, 2015	May 22, 2015
22	May 18, 2015	May 29, 2015
23	May 26, 2015	June 5, 2015
24	June 1, 2015	June 12, 2015
25	June 8, 2015	June 19, 2015
26	June 15, 2015	June 26, 2015
27	June 22, 2015	July 6, 2015
28	June 29, 2015	July 10, 2015
29	July 6, 2015	July 17, 2015
30	July 13, 2015	July 24, 2015
31	July 20, 2015	July 31, 2015
32	July 27, 2015	August 7, 2015
33	August 3, 2015	August 14, 2015
34	August 10, 2015	August 21, 2015
35	August 17, 2015	August 28, 2015
36	August 24, 2015	September 4, 2015
37	August 31, 2015	September 11, 2015
38	September 8, 2015	September 18, 2015
39	September 14, 2015	September 25, 2015
40	September 21, 2015	October 2, 2015
41	September 28, 2015	October 9, 2015
42	October 5, 2015	October 16, 2015
43	October 13, 2015	October 23, 2015
44	October 19, 2015	October 30, 2015
45	October 26, 2015	November 6, 2015
46	November 2, 2015	November 13, 2015
47	November 9, 2015	November 20, 2015
48	November 16, 2015	November 30, 2015
49	November 23, 2015	December 4, 2015
50	November 30, 2015	December 11, 2015
51	December 7, 2015	December 18, 2015
52	December 14, 2015	December 28, 2015

ILLINOIS BOARD OF HIGHER EDUCATION

NOTICE OF PROPOSED RULES

- 1) The Heading of the Part: Higher Education Distance Learning and Interstate Reciprocity
- 2) Code Citation: 23 Ill. Adm. Code 1033
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
1033.10	New Section
1033.20	New Section
1033.30	New Section
1033.40	New Section
- 4) Statutory Authority: The Higher Education Distance Learning Act [110 ILCS 145]
- 5) A Complete Description of the Subjects and Issues Involved: The Higher Education Distance Learning Act authorizes the Board to participate in a system of interstate reciprocity to simplify regulation in the expanding field of distance learning. This effort is part of a national initiative coordinated through the National Center for State Authorization Reciprocity Agreement (SARA) to establish minimum requirements and to provide a simplified method of regulating distance learning programs across state lines. The Board will serve as the designated portal agency for Illinois and will have many duties and responsibilities to ensure minimum standards are established and maintained.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? Yes, 39 Ill. Reg. 6042; May 1, 2015
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes. The system of interstate reciprocity was established by the National Council for State Authorization Reciprocity Agreement allows willing post-secondary institutions in member states to participate in such agreement on a voluntary basis. The Council's minimum requirements are incorporated in the Higher Education Distance Learning Act and proposed rules; the minimum requirements provide a simplified method of regulating distance learning programs.
- 10) Are there any other rulemakings pending on this Part? No

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- 11) Statement of Statewide Policy Objective: The proposed rule does not create or expand a State mandate as defined in Section 3 of the State Mandates Act [30 ILCS 805/3].
- 12) Time, Place and Manner in which interested persons may comment on this proposed rule: Comments on the proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice. Comments should be submitted to:

Karen Helland, Administrative Rules Coordinator
Illinois Board of Higher Education
1 N. Old State Capitol Plaza, Suite 333
Springfield IL 62701-1377

217/557-7358
fax: 217/782-8548
email: helland@ibhe.org
- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not-for-profit corporations affected: None
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of Professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: The 12/26/2014 Regulatory Agenda indicated the intent of the Board to adopt new rules pursuant to PA 98-792.

The full Text of the Proposed Rule begins on the next page:

ILLINOIS BOARD OF HIGHER EDUCATION

NOTICE OF PROPOSED RULES

TITLE 23: EDUCATION AND CULTURAL RESOURCES

SUBTITLE A: EDUCATION

CHAPTER II: BOARD OF HIGHER EDUCATION

PART 1033

HIGHER EDUCATION DISTANCE LEARNING AND INTERSTATE RECIPROCITY

Section

1033.10	Purpose
1033.20	Definitions
1033.30	Institution Approval Requirements
1033.40	Application Process and Participation

AUTHORITY: Implementing and authorized by the Higher Education Distance Learning Act [110 ILCS 145].

SOURCE: Adopted by emergency rulemaking at 39 Ill. Reg. 6042, effective April 16, 2015, for a maximum of 150 days; adopted at 39 Ill. Reg. _____, effective _____.

Section 1033.10 Purpose

- a) The purpose of this Part is to address the powers and duties delegated to the Board of Higher Education by the Higher Education Distance Learning Act, including, but not limited to, minimum standards for institutions of higher education participating in the interstate reciprocity agreements for distance learning. The Board will collaborate with the Illinois Community College Board (ICCB) to establish and ensure eligibility for Illinois public community colleges that desire to participate.
- b) The Higher Education Distance Learning Act authorizes the State of Illinois to participate in a system of interstate reciprocity to simplify regulation in the expanding field of distance learning. The system of interstate reciprocity established by the National Council for State Authorization Reciprocity Agreement allows willing post-secondary institutions in member states to participate in that agreement on a voluntary basis. Under the system, institutions participate through, and agree to be regulated by, their home state. The Council and statute establish minimum requirements and provide a simplified method of regulating distance learning programs. The system applies only to distance education. The Illinois Board of Higher Education is designated by the Act to be

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the lead agency coordinating all Illinois-based participating institutions in the distance learning interstate reciprocity program. The Board of Higher Education will collaborate with the ICCB to establish and ensure eligibility for Illinois public community colleges that desire to participate in the program.

Section 1033.20 Definitions

The definitions included in this Section apply to terms used in this Part in conjunction with the Higher Education Distance Learning Act and the "SARA Policies and Standards" issued and approved by the National Council for State Authorization Reciprocity Agreements on January 7, 2015 and any subsequent revisions as long as those revisions are consistent with the Higher Education Distance Learning Act.

"Accredited" means holding institutional accreditation by name as a U.S.-based institution from an accreditor recognized by the U.S. Department of Education (see Section 1 of the SARA Policies and Standards).

"Act" means the Higher Education Distance Learning Act [110 ILCS 145].

"Approve", "Approval", or "Authorization to Participate", in the context of an institutional application to operate under SARA, means a written statement issued by the Board that an institution meets the standards required by SARA and is eligible to operate under SARA (see Section 1 of the SARA Policies and Standards).

"Board" or "BHE" means the Illinois Board of Higher Education (Section 10 of the Act).

"Complaint" means a formal assertion in writing that the terms and conditions of the state authorization reciprocity agreement between the Board and the National Council for State Authorization Reciprocity Agreements, or of laws, standards or regulations incorporated by that agreement, are being violated by a person, institution, state, agency or other organization or entity operating under the terms of that agreement, including student complaints.

"C-RAC Guidelines" refers to the Interregional Guidelines for the Evaluation of Distance Education Programs (Online Learning) for best practices in postsecondary distance education developed by leading practitioners of distance

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education and adopted by the Council of Regional Accrediting Commissions (C-RAC) (see Section 1 of the SARA Policies and Standards).

"Distance Learning" or "Distance Education" means instruction offered by any means where the student and faculty member are in separate physical locations. It includes, but is not limited to, online, interactive video or correspondence courses or programs. (Section 10 of the Act)

"Executive Director" means the Executive Director of the Illinois Board of Higher Education.

"Home State" means the single member state recognized by the NC-SARA to regulate institutions that desire to participate in SARA.

"Host State" or "Reciprocal State" means a member state in which an institution operates under the terms of the agreement, other than the home state (see Section 1 of the SARA Policies and Standards).

"ICCB" means the Illinois Community College Board.

"Institution" means a degree-granting postsecondary entity (see Section 1 of the SARA Policies and Standards).

"Member State" means any state, commonwealth, district or territory of the United States that is a participant in good standing in a SARA (see Section 1 of the SARA Policies and Standards).

"NC-SARA" or "National Council for SARA" means the National Council for State Authorization Reciprocity Agreements (see Section 1 of the SARA Policies and Standards).

"Participation Agreement" means the agreement that each participating institution is required to sign and abide by in order to take advantage of the reciprocity agreement (Section 10 of the Act). For the purposes of the Act and this Part, the participation agreement is the application created by NC-SARA that contains the eligibility criteria and is to be completed and signed by the institution. The institution will submit the application to the Board and, after the institution has been approved by the Board staff and NC-SARA, the application becomes the participation agreement, subject to annual renewal.

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"Participating Institution" means any institution of higher learning that offers an associate's degree or higher, in whole or in part, through distance learning and has voluntarily or willingly entered into a participation agreement to be regulated by a participating home state with respect to institutional and program approval, complaints, and institutional and program reviews (Section 10 of the Act). For the purposes of the Act and this Part, the Board is the agency designated to serve as the point of contact for Illinois.

"Physical Presence" means on-going occupation of a physical location for instructional purposes or maintenance of an administrative office to facilitate instruction (Section 10 of the Act).

"Regional Compact" means the New England Board of Higher Education, Midwestern Higher Education Compact (to which Illinois belongs), Southern Regional Education Board, or Western Interstate Commission for Higher Education (see Section 1 of the SARA Policies and Standards).

"SARA" means the state authorization reciprocity agreement or the voluntary program that implements reciprocity agreements amongst states, institutions and the National Council for SARA.

"SARA Policies and Standards" refers to the document adopted by the National Council for SARA to administer the voluntary, regional approach to state oversight of distance education.

"State" means any state, commonwealth, district or territory of the United States that is a participant in good standing in a state authorization reciprocity agreement (Section 10 of the Act).

"State Authorization Reciprocity Agreement", "SARA", "Reciprocity Agreement", or "Interstate Reciprocity Agreement" means a voluntary agreement that establishes reciprocity between willing states for approval of postsecondary educational services delivered by distance learning beyond state boundaries (Section 10 of the Act). The development of these agreements among and between the state portal agencies and/or the regional compacts will be facilitated through NC-SARA.

Section 1033.30 Institution Approval Requirements

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- a) Authorization to Participate
- 1) Any degree-granting postsecondary institution, including public, private nonprofit and private for-profit institution, that desires to participate in SARA to offer distance education under the authority of the State of Illinois must:
 - A) Be accredited as defined in Section 1032.20.
 - B) Have Illinois as the designated home state, as defined in Section 1032.20, for postsecondary education offerings.
 - C) Be financially stable, evidenced by being State supported, or, for private for-profit and private nonprofit institutions participating in federal student aid programs under Title IV of the Higher Education Act of 1965 (PL 89-329), by meeting the following criteria: having a Federal Financial Responsibility Composite score of 1.5 or above; having a financial responsibility score between 1 and 1.4 and providing additional financial evidence described in subsection (a)(2) to the Board to determine financial status of the institution; or, for private for-profit and private nonprofit institutions not participating in federal student aid programs and without a Federal Financial Responsibility Composite Score, providing additional financial evidence described in subsection (a)(2) to the Board to determine financial status of the institution. No institution with a Federal Financial Responsibility Score below 1.0 will be determined eligible by the Board to participate in SARA through this State, even if any such institution is cleared by the U.S. Department of Education to participate in Title IV student aid programs.
 - 2) The following shall be used by the Board staff to determine the financial status of institutions required to provide additional financial evidence:
 - A) A written statement in the most recent fiscal year audited financial statement confirming that the institution is financially stable. The audited financial statement must show that the institution has

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adequate revenue to meet its financial obligations, including payment of unearned tuition.

- B) An irrevocable letter of credit from a bank or other similar financial institution in an amount equivalent to the estimated unearned tuition revenue from distance education students.
- b) Institutional participation shall be voluntary and, as such, institutions that choose not to participate will be governed by current Illinois statutes and regulations for distance education programs (the Board of Higher Education Act [110 ILCS 205], the Private College Act [110 ILCS 1005], the Academic Degree Act [110 ILCS 1010], and the Public Community College Act [110 ILCS 805], and 23 Ill. Adm. Code 1030, 1050 and 1051).
- c) Physical Presence
- 1) Any institution that meets the requirements of subsection (a) that has Illinois as the home state, is located in Illinois and holds its principal institutional accreditation in Illinois must receive Board approval for operating and degree granting authority under the Private College Act, the Academic Degree Act, or the Board of Higher Education Act, or be exempt from approval requirements as specified in 23 Ill. Adm. Code 1030.
 - 2) Any Illinois public community college desiring to participate in SARA shall be reviewed and approved by ICCB. This will not abrogate the Board of Higher Education's authority to request reviews of community colleges participating in the agreement.
 - 3) Any out-of-state institution from any SARA member state with physical presence as determined under this subsection (c)(3) must apply and obtain operating and degree granting authority from the Board. In determining whether such out-of-state participating institution has a physical presence, the following shall apply (see Section 5 of the SARA Policies and Standards):
 - A) The institution has a physical facility in this State, whether owned, operated or rented, for synchronous or asynchronous instruction;

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- B) The institution requires students to physically meet in a location for instructional purposes more than twice per full-term (quarter or semester) course for a total of more than six hours;
 - C) The institution offers a "short course" or seminars that require more than 20 contact hours;
 - D) The institution establishes a physical facility, whether owned, rented or operated by, or on behalf of, the institution, to provide information for the purpose of enrolling students or providing student support services;
 - E) The institution establishes an administrative office, including but not limited to office space for instructional or noninstructional staff;
 - F) The institution maintains a mailing address or phone exchange in Illinois.
- 4) Any out-of-state institution from a SARA member state that does not have physical presence in Illinois shall not be required by the Board to fulfill any additional Illinois requirements to operate under SARA if it does the following (see Section 5 of the SARA Policies and Standards):
- A) Offers distance learning courses that do not require students to gather in groups, except for the provisions in subsection (c)(3)(B);
 - B) Holds recruitment activities or advertises to students, whether through print, billboard, direct mail, internet, radio, television or other media;
 - C) Offers distance education courses on a military base if enrollment in those courses is limited to federal employees and family members;
 - D) Maintains a server, router or similar electronic service device housed in a facility that otherwise would not constitute physical presence (the presence of a server or similar pass-through

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switching device does not by itself constitute the offering of a course or program in Illinois);

- E) Has faculty, adjunct faculty, mentors, tutors or other academic personnel residing in Illinois (the presence of instructional faculty in Illinois, when those faculty teach entirely via distance education and never meet their students in person, does not establish physical presence for purposes of the SARA);
- F) Holds proctored exams on behalf of the institution in Illinois;
- G) Has contractual arrangements with third-party providers to offer or support SARA eligible programs. Any contact between a third-party provider of educational services and the State or SARA office must be made through the participating degree-granting institution. A third-party provider may not represent a participating institution regarding any subject under SARA's operating policies to any SARA office or the State of Illinois;
- H) Offers educational field experiences for students, including an educational field trip arranged for a group of students that are normally in residence at an institution in another state, with the exception of full-scale residency programs such as a summer session at a field station;
- I) Operates limited supervised field experiences. For the purposes of the SARA, interstate supervised field experiences originating from any member state's distance learning or campus-based program will be considered distance education not triggering physical presence if those activities involve placing not more than 10 students from any academic program, who are physically present simultaneously, at a single clinical facility or site in Illinois. Any out-of-state SARA member institution intending to have a larger pool of student placement must get approval from the Board to do so. Any out-of-state SARA member institution that owns a supervised field experience, clinical or practicum site shall be exempted from the limitations on placement of its own students at that site.

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- 5) Any participating institution offering distance learning courses leading to professional licensure must keep students, applicants and prospective students aware of the licensing requirements of that state. To comply with this requirement, participating institutions must do one of the following:
 - A) Provide notification in writing that the institution has determined that the course or program meets the requirements for professional licensure in the state in which the student resides; or
 - B) Provide notification in writing that the institution cannot confirm whether the course or program meets requirements for professional licensure in the state in which the student resides. The institution must provide the student with current contact information for any applicable licensing boards and advise the student to determine whether the program meets requirements for licensure.
- 6) Out-of-state institutions that choose to participate outside the reciprocity agreement or are from nonmember states will be bound by other Illinois laws for distance education programs.

Section 1033.40 Application Process and Participation

The following are the processes for institutional participation in SARA:

- a) Eligibility
 - 1) Any degree-granting institution whose main campus is located in Illinois and holds its principal institutional accreditation in Illinois, including public, private nonprofit and private for-profit institutions, can voluntarily apply to the Board to participate in SARA. The Board shall approve Illinois institutions meeting the eligibility requirements as described in this Section.
 - 2) Institutions are eligible to participate in SARA if they are in compliance with the standards, procedures and requirements established by the NC-SARA and the Board. Approved institutions are required to maintain the conditions of approval throughout the participation period. Any institution that fails to maintain conditions of approval may lose eligibility to

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participate in SARA and be removed at any time by the Board. The following are the criteria to determine eligibility:

- A) The Interregional Guidelines for the Evaluation of Distance Education (C-RAC Guidelines), or any other future guidelines adopted by the National Council for SARA for the interstate distance learning reciprocity program must be maintained by the institution at all times during the participation period. Participating institutions must comply with the following C-RAC Guidelines (see Section 4 of SARA Policies and Standards):
- i) Online learning is appropriate to the institution's mission and purposes;
 - ii) The institution's plans for developing, sustaining and, if appropriate, expanding online learning offerings are integrated into its regular planning and evaluation processes;
 - iii) Online learning is incorporated into the institution's systems of governance and academic oversight;
 - iv) Curricula for the institution's online learning offerings are coherent, cohesive and comparable in academic rigor to programs offered in traditional instructional formats;
 - v) The institution evaluates the effectiveness of its online learning offerings, including the extent to which the online learning goals are achieved, and uses the results of its evaluations to enhance the attainment of the goals;
 - vi) Faculty responsible for delivering the online learning curricula and evaluating the students' success in achieving the online learning goals are appropriately qualified and effectively supported;
 - vii) The institution provides effective student and academic services to support students enrolled in online learning offerings;

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- viii) The institution provides sufficient resources to support and, if appropriate, expand its online learning offerings; and
 - ix) The institution assures the integrity of its online offerings.
 - B) Authorization to operate under SARA shall last for 12 months. Every year following the initial approval, the Board shall determine if participating institutions still meet SARA requirements. Any institution that does not seek to renew and pay applicable participation fees will no longer be eligible to participate in SARA.
 - C) Community colleges may be deemed eligible by participating in a comparable approval process required by ICCB.
- b) Participation Fees
- 1) Institutions are assessed fees by the Board and by the National Council for Sara to participate in SARA.
 - A) The Board assesses an annual fee of \$1,750 to institutions participating in SARA and whose applications are managed by the Board. Full payment of these fees is required prior to Board staff review of the SARA application.
 - B) The National Council for SARA assesses initial and recurring fees to participating institutions. In order to be considered eligible to be a SARA institution by the Board, the institution must be in good standing with the National Council for SARA, including compliance with all Council fee requirements.
 - 2) Remittance
 - A) Board fees shall be submitted as check, certified check, cashier's check or money order payable to the Illinois Board of Higher Education.

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B) The Board shall return fees, minus a fee of \$250 for processing, if, after further investigation, the Board determines that the institution is not eligible to participate in SARA. No refund shall be awarded for any application that has been reviewed by Board staff. Applications withdrawn by the institution shall receive no refund.

C) Board fees shall be submitted to:

Illinois Board of Higher Education
Academic Affairs Fee Remittance
1 N. Old Capitol Plaza, Suite 300
Springfield IL 62701-1394

D) Applications submitted with insufficient or incorrect fees shall be considered incomplete. The Board will notify the institution of the correct amount due. No further action will be taken by the Board until the full or correct amount due is submitted.

c) Application and Approval Process

- 1) Any institution seeking to participate is required to complete an application and pay the participation fees.
- 2) The Board will provide SARA application forms to institutions, and Board staff will review the application to determine the institution's eligibility to participate in SARA.
- 3) Board participation fees shall be paid in full before an application is reviewed by staff.
- 4) Community colleges may be deemed SARA eligible by participating in a comparable ICCB approval process. No fee will be assessed by the Board of Higher Education.
- 5) Upon approval by the Board to participate in SARA, the institution will be sent an electronic link to make payment to the NC-SARA. The Board shall notify the Council when an institution has completed the application process.

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- d) **Maintenance of Approval**
Institutions are approved to participate in SARA if they are in compliance with the standards, procedures and requirements of this Part. Approved institutions are required to maintain the conditions of approval throughout the participation period. Any institution that fails to maintain conditions of approval may lose eligibility to participate in SARA and be removed at any time by the Board.
- 1) **Renewal**
Approval to participate in SARA is for 12 months. Any institution participating in SARA is required to renew annually and pay required renewal fees to the Board and to NC-SARA. Any institution that does not renew the participation agreement with the Board or pay required fees will no longer be eligible to participate in SARA. The Board will not process any institution's application for renewal until the full amount due is paid.
- 2) **Data Reporting**
Participating institutions must comply with the annual data reporting mandated by NC-SARA. SARA participating institutions shall annually submit the following data, and other data that NC-SARA may direct participating institutions to submit in the future, to NC-SARA (see Section 6 of the SARA Policies and Standards):
- A) The number of students enrolled in the institution via distance education delivered outside the home state of the institution. The data should be reported by state, territory or district in which the students reside.
- B) A list of programs that a student may complete without on-campus attendance (using the U.S. Department of Education definition of a distance education program).
- 3) **Reviews**
The staff of the Board may request reviews and visitations of SARA participating institutions as necessary for the implementation of the Act and this Part.
- 4) **Investigations of Institutions**

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- A) The Board staff shall initiate an investigation upon receipt by the Executive Director of a verified written complaint of an incident occurring within two years prior to the date the complaint was submitted. Complaints subject to investigation may include those arising from students, other SARA participating institutions, other SARA member states, the U.S. Department of Education, employers and licensing boards. Investigations may be initiated concerning any of the following:
- i) Any violation of SARA consumer protection provisions concerning dishonest or fraudulent claims, including but not limited to recruitment and marketing materials; job placement data; tuition, fees and financial aid; admission requirements for courses and programs; accreditation status of institutions; professional licensing requirements or the requirements of specialized accrediting bodies; and any coursework transfer to other institutions that causes harm or financial loss to students.
 - ii) Any violation of the C-RAC Guidelines or any other future guidelines adopted by NC-SARA for the interstate distance learning reciprocity program.
 - iii) Any violation of the provisions of the Private College Act, the Academic Degree Act, and 23 Ill. Adm. Code 1030 (Program Review (Private Colleges and Universities)).
 - iv) Loss, suspension, probation or similar adverse action taken by an accrediting body with which the institution is or was affiliated.
 - v) Actions of federal or state regulatory agencies or Offices of Attorneys General, Offices of Inspectors General, or similar bodies that may affect an institution's status with those bodies and/or affect the delivery of SARA programs.
 - vi) Failure to maintain financial stability as described in Section 1033.30(a).

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- vii) Failure to continue to meet any requirement in this Part.
- B) The institution involved in an investigation will be informed of the alleged violations and the processes of investigation. SARA participating institutions must work directly with the students to resolve certain SARA related complaints (e.g., complaints about grades or student conduct violations). The following are complaint procedures:
- i) Any complaints not resolved within the institution shall be reported to the BHE Executive Director for investigation and final resolution.
 - ii) After the Executive Director receives an unresolved complaint, he or she will initiate an investigation. The institution involved will be notified by the Board staff prior to initiating an investigation.
 - iii) Upon completion of an investigation, the Board staff will inform the institution of the status of the investigation. In the event that the alleged violations are substantiated, the institution may be removed from participating in SARA. The institution will be required to stop recruiting students for distance education under SARA until it gets a written clearance from the Board reauthorizing participation.
- C) The institution shall provide in its catalog and print promotional materials and on its website the institution complaint policies and procedures for reporting complaints, as well as the Board's website link for reporting complaints. The website information must include an electronic link to the Board's website on the first page (as registered with standard web/internet search engines).
- D) Community colleges may be deemed compliant by abiding by comparable ICCB processes.
- e) Revocation of Eligibility

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- 1) Grounds for revocation of eligibility to participate in SARA include the following:
 - A) Failure to renew the SARA and/or pay required fees;
 - B) Violation of any applicable Illinois State laws or any provisions in the SARA Policies and Standards;
 - C) Failure by an approved institution to maintain institutional accreditation or to report negative changes to its accreditation to the Board;
 - D) Failure to maintain financial stability;
 - E) Failure to continue to meet any requirement of this Part.
- 2) Neither NC-SARA nor the Board will issue a refund if an institution's eligibility is revoked due to violations of applicable Illinois State laws or SARA standards. Neither will any institution that voluntarily withdraws at any time during the participation year receive any refund.
- 3) Procedures for Revocation
 - A) Following the Board staff investigation of institutional practices, the staff may recommend to the Executive Director revocation of eligibility to participate in the SARA.
 - B) The Executive Director shall send to the institution an official letter of revocation. The institution shall have 15 business days to communicate with the Board in writing of actions that will be taken and the timeline to address the violations identified in the revocation letter.
 - C) The institution will be considered a SARA participant for the duration of a mandatory Board approved teach-out plan.
 - D) The Board may reinstate the institution at any time upon satisfactory correction of the violations that led to the revocation of eligibility.

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- f) **State Withdrawal**
If Illinois withdraws from SARA, institutions approved and operating under SARA through Illinois may continue to do so for the remainder of the academic term or 90 days after the receipt of the Illinois withdrawal notice, whichever is later, but not to exceed six months from the date of notice.

- g) **Registers**
The Board shall maintain a register on the Board web site with the names of the institutions that have been approved by the Board and NC-SARA to participate in the SARA program (www.ibhe.org). In addition, NC-SARA publishes a list of participating states and institutions on its web site (www.nc-sara.org).

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- 1) Heading of the Part: Reports of Child Abuse and Neglect
- 2) Code Citation: 89 Ill. Adm. Code 300
- 3) Section Number: 300.20 Proposed Action: Amendment
- 4) Statutory Authority: Implementing and authorized by the Abused and Neglected Child Reporting Act [325 ILCS 5], the Abandoned Newborn Infants Protection Act [325 ILCS 2] and Section 3 of the Consent by Minors to Medical Procedures Act [410 ILCS 210/3]
- 5) A Complete Description of the Subjects and Issues Involved: Definition of "relative" is broadened to include "step-grandparents" and "fictive kin" in compliance with legislation. A definition of "fictive kin" is added and the definition of "godparent" is amended for clarification. These changes implement Public Act 98-846 concerning relative home placement.

Several definitions that quote a statute verbatim have been updated.

- 6) Published studies and reports, and sources of underlying data used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Do these amendments contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Actions:</u>	<u>Illinois Register Citation:</u>
300.20	Amendment	39 Ill. Reg. 1; January 2, 2015
300.120	Amendment	39 Ill. Reg. 1; January 2, 2015

- 11) Statement of Statewide Policy Objective: This rulemaking does not create or expand the State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].

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- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice. Comments should be submitted to:

Jeff Osowski
Office of Child and Family Policy
Department of Children and Family Services
406 E. Monroe, Station #65
Springfield IL 62701-1498

217/524-1983
TDD: 217/524-3715
fax: 217/557-0692
email: CFPolicy@idcfs.state.il.us

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

- 13) Initial Regulatory Flexibility Analysis: The Department has determined that the proposed rulemaking will not have an economic impact on small businesses.
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included in either of the 2 most recent Regulatory Agendas because the need for rulemaking was not anticipated.

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

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TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER a: SERVICE DELIVERYPART 300
REPORTS OF CHILD ABUSE AND NEGLECT

Section	
300.10	Purpose
300.20	Definitions
300.30	Reporting Child Abuse or Neglect to the Department
300.40	Content of Child Abuse or Neglect Reports
300.45	Five Year Demonstration of the Differential Response Program
300.50	Transmittal of Child Abuse or Neglect Reports
300.60	Special Types of Reports (Recodified)
300.70	Referrals to the Local Law Enforcement Agency and State's Attorney
300.80	Delegation of the Investigation
300.90	Time Frames for the Investigation
300.100	Initial Investigation
300.110	The Formal Investigative Process
300.120	Taking Children into Temporary Protective Custody
300.130	Notices Whether Child Abuse or Neglect Occurred
300.140	Transmittal of Information to the Illinois Department of Professional Regulation and to School Superintendents
300.150	Referral for Other Services
300.160	Special Types of Reports
300.170	Child Death Review Teams
300.180	Abandoned Newborn Infants
300.APPENDIX A	Acknowledgement of Mandated Reporter Status
300.APPENDIX B	Child Abuse and Neglect Allegations

AUTHORITY: Implementing and authorized by the Abused and Neglected Child Reporting Act [325 ILCS 5], the Abandoned Newborn Infants Protection Act [325 ILCS 2] and Section 3 of the Consent by Minors to Medical Procedures Act [410 ILCS 210/3].

SOURCE: Adopted and codified as 89 Ill. Adm. Code 302 at 5 Ill. Reg. 13188, effective November 30, 1981; amended at 6 Ill. Reg. 15529, effective January 1, 1983; recodified at 8 Ill. Reg. 992; peremptory amendment at 8 Ill. Reg. 5373, effective April 12, 1984; amended at 8 Ill.

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Reg. 12143, effective July 9, 1984; amended at 9 Ill. Reg. 2467, effective March 1, 1985; amended at 9 Ill. Reg. 9104, effective June 14, 1985; amended at 9 Ill. Reg. 15820, effective November 1, 1985; amended at 10 Ill. Reg. 5915, effective April 15, 1986; amended at 11 Ill. Reg. 1390, effective January 13, 1987; amended at 11 Ill. Reg. 1151, effective January 14, 1987; amended at 11 Ill. Reg. 1829, effective January 15, 1987; recodified from 89 Ill. Adm. Code 302.20, 302.100, 302.110, 302.120, 302.130, 302.140, 302.150, 302.160, 302.170, 302.180, 302.190, and Appendix A at 11 Ill. Reg. 3492; emergency amendment at 11 Ill. Reg. 4058, effective February 20, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 12619, effective July 20, 1987; recodified at 11 Ill. Reg. 13405; amended at 13 Ill. Reg. 2419, effective March 1, 1989; emergency amendment at 14 Ill. Reg. 11356, effective July 1, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 17558, effective October 15, 1990; amended at 14 Ill. Reg. 19827, effective November 28, 1990; emergency amendment at 15 Ill. Reg. 14285, effective September 25, 1991; amended at 15 Ill. Reg. 17986, effective December 1, 1991; emergency amendment at 17 Ill. Reg. 15658, effective September 10, 1993, for a maximum of 150 days; emergency expired February 7, 1994; amended at 18 Ill. Reg. 8377, effective May 31, 1994; amended at 18 Ill. Reg. 8601, effective June 1, 1994; amended at 19 Ill. Reg. 3469, effective March 15, 1995; amended at 19 Ill. Reg. 10522, effective July 1, 1995; amended at 20 Ill. Reg. 10328, effective July 19, 1996; amended at 22 Ill. Reg. 18847, effective October 1, 1998; amended at 23 Ill. Reg. 13590, effective November 15, 1999; amended at 24 Ill. Reg. 7707, effective June 1, 2000; amended at 25 Ill. Reg. 12781, effective October 1, 2001; amended at 26 Ill. Reg. 7435, effective May 15, 2002; amended at 26 Ill. Reg. 11730, effective August 1, 2002; amended at 27 Ill. Reg. 1114, effective January 15, 2003; amended at 27 Ill. Reg. 9431, effective June 9, 2003; peremptory amendment at 29 Ill. Reg. 21065, effective December 8, 2005; amended at 33 Ill. Reg. 7862, effective June 15, 2009; amended at 34 Ill. Reg. 6373, effective May 1, 2010; amended at 35 Ill. Reg. 1599, effective January 15, 2011; amended at 35 Ill. Reg. 2861, effective February 8, 2011; amended at 36 Ill. Reg. 4026, effective March 5, 2012; amended at 36 Ill. Reg. 16756, effective November 15, 2012; emergency amendment at 38 Ill. Reg. 1100, effective January 1, 2014, for a maximum of 150 days; emergency expired May 30, 2014; amended at 38 Ill. Reg. 1962, effective December 31, 2013; amended at 38 Ill. Reg. 13214, effective June 11, 2014; amended at 39 Ill. Reg. _____, effective _____.

Section 300.20 Definitions

"Abandonment" means parental conduct that demonstrates the purpose of relinquishing all parental rights and claims to the child. Abandonment is also defined as any parental conduct that evinces a settled purpose to forego all parental duties and relinquish all parental claims to the child.

"Abused child" means a child whose parent or immediate family member, or any

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person responsible for the child's welfare, or any individual residing in the same home as the child, or a paramour of the child's parent:

inflicts, causes to be inflicted, or allows to be inflicted upon such child physical or mental injury, by other than accidental means, which causes death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function;

creates a substantial risk of physical or mental injury to such child by other than accidental means which would be likely to cause death, disfigurement, impairment of physical or emotional health, or loss of or impairment of any bodily function;

commits or allows to be committed any sex offense against such child, as such sex offenses are defined in the Criminal Code of 2012 [720 ILCS 5] or in the Wrongs to Children Act [720 ILCS 150], and extending those definitions of sex offenses to include children under 18 years of age;

~~*commits or allows to be committed the offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons as defined in Section 10-9 of the Criminal Code of 2012 against the child;*~~

commits or allows to be committed an act or acts of torture upon such child;

~~*inflicts excessive corporal punishment;*~~

commits or allows to be committed the offense of female genital mutilation, as defined in Section 12-34 of the Criminal Code of 2012, against the child;

causes to be sold, transferred, distributed, or given to such child under 18 years of age, a controlled substance as defined in Section 102 of the Illinois Controlled Substances Act [720 ILCS 570] in violation of Article IV of the Illinois Controlled Substances Act or in violation of the Methamphetamine Control and Community Protection Act [720 ILCS 646], except for controlled substances that are prescribed in accordance with Article III of the Illinois Controlled Substances Act and are dispensed to such child in a manner that substantially complies with the

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prescription; or

commits or allows to be committed the offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons for forced labor or services as defined in Section 10-9 of the Criminal Code of 2012 against the child.

A child shall not be considered abused for the sole reason that the child has been relinquished in accordance with the Abandoned Newborn Infant Protection Act [325 ILCS 2]. [325 ILCS 5/3]

"Act" means the Abused and Neglected Child Reporting Act [325 ILCS 5].

"Blatant disregard" means an incident where the real, significant, and imminent risk of harm would be so obvious to a reasonable parent or caretaker that it is unlikely that a reasonable parent or caretaker would have exposed the child to the danger without exercising precautionary measures to protect the child from harm. [325 ILCS 5/3]

"CANTS/SACWIS 8" or "C/S8" means the Department's document titled Notification of a Report of Suspected Child Abuse and/or Neglect. This document explains the Department's child abuse/neglect allegation investigation process.

"CANTS/SACWIS 9" or "C/S9" means the Department's document titled Notification of Intent to Indicate Child Care Worker for Report of Child Abuse and/or Neglect. This document is used to notify a person that the Department plans to indicate that person as a perpetrator of child abuse/neglect.

"CANTS/SACWIS 10" or "C/S10" means the Department's document titled Notice of Intent to Indicate a Child Care Worker for Report of Child Abuse and/or Neglect-Questions and Answers. This is an informational document explaining the impact of a determination of indicated child abuse/neglect and the appeal process.

"CANTS/SACWIS 11" or "C/S11" means the Department's document titled Notification of Indicated Decision in an Employment Related Report of Suspected Child Abuse and/or Neglect. This is the document by which the Department notifies a person that the Department has determined that there is credible evidence that he or she is responsible for the child abuse or neglect described in

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that document.

"Caregiver" means the child's parents, guardian, custodian or relative with whom the child lives and who has primary responsibility for the care and supervision of the child.

"Child" means any person under the age of 18 years, unless legally emancipated by reason of marriage or entry into a branch of the United States armed services. [325 ILCS 5/3]

"Child care facility" means any person, group of persons, agency, association, ~~or~~ organization, corporation, institution, center or group, whether established for gain or otherwise, who or which receives or arranges for care or placement of one or more children, unrelated to the operator of the facility, apart from the parents, with or without the transfer of the right of custody in any facility as defined in the Child Care Act of 1969 [225 ILCS 10], established and maintained for the care of children. "Child care facility" includes a relative who is licensed as a foster family home under Section 4 of the Child Care Act of 1969. [225 ILCS 10/2.05]

"Child care worker" means any person who is employed to work directly with children and any person who is an owner/operator of a child care facility, regardless of whether the facility is licensed by the Department. Child care facilities, for purposes of this definition, include child care institutions; child welfare agencies; day care/night care centers; day care/night care homes; day care/night care group day care homes; group homes; hospitals or health care facilities; schools, including school teachers and administrators, but not tenured school teachers or administrators who have other disciplinary processes available to them; and before and after school programs, recreational programs and summer camps. "Child care worker" also means persons employed as full-time nannies. A child care worker may, at his or her discretion, be subject to this Part if alleged to be responsible for child abuse or neglect outside of his or her employment. "Child care worker" includes a person: currently employed as a child care worker; currently enrolled in an academic program that leads to a position as a child care worker; or who has applied for a license required for a child care worker position. A person will be considered to be "employed as a child care worker" under this Part if, at the time of the notice of the investigation, he or she: has applied for, or will apply within 180 days for, a position as a child care worker; is enrolled in, or will commence within 180 days, an academic program that leads to a position as a

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child care worker; or has applied for a license as a child care worker.

"Child-placing agency" means a licensed public or private agency that receives a child for the purpose of placing or arranging for the placement of the child in a foster family home or other facility for child care, apart from the custody of the child's parents. [325 ILCS 2/10]

"Child Protective Service Unit" ~~or "CPS" or "CPS"~~ means certain specialized State employees of the Department assigned by the Director or his or her designee ~~or his or her designee~~ to perform the duties and responsibilities described under this Part. [325 ILCS 5/3] CPS staff ~~are~~ also referred to as child protection ~~investigative~~ staff. ~~[325 ILCS 5/3]~~

"Children for whom the Department is legally responsible" means children for whom the Department has temporary protective custody, custody or guardianship via court order, or children whose parents have signed an adoptive surrender or voluntary placement agreement with the Department.

"CPSW" means a Child Protective Service Worker.

"Collateral contact" means obtaining information concerning a child, parent, or other person responsible for the child from a person who has knowledge of the family situation but was not directly involved in referring the child or family to the Department for services.

"Credible evidence of child abuse or neglect" means that the available facts, when viewed in light of surrounding circumstances, would cause a reasonable person to believe that a child was abused or neglected.

"Delegation of an investigation" means the investigation of a report of child abuse or neglect has been deferred to another authority. The Department maintains responsibility for determining whether the report is indicated or unfounded, entering information about the report in the State Central Register and notifying the subjects of the report and mandated reporters of the results of the investigation.

"Department" or "DCFS" means the Department of Children and Family Services.

"Determination" means a final Department decision about whether there is

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credible evidence that child abuse or neglect occurred. A determination must be either "indicated" or "unfounded".

"DR Specialist" means a Differential Response Specialist as described in Section 300.45(e)(1).

"Disfigurement" means a serious or protracted blemish, scar, or deformity that spoils a person's appearance or limits bodily functions.

"Ecomap" means a pictorial representation of family connections to different systems and community and other resources to identify significant people and/or systems around the family to illustrate the strengths, impact and quality of each connection. (Hartman, A., Diagrammatic Assessment of Family Relationships. Social Casework, 59, 465-476 (1978).)

"Emergency medical facility" means a freestanding emergency center or trauma center, as defined in the Emergency Medical Services (EMS) Systems Act [210 ILCS 50]. [325 ILCS 2/10]

"Emergency medical professional" includes licensed physicians, and any emergency medical technician-basic, emergency medical technician-intermediate, emergency medical technician-paramedic, trauma nurse specialist, and pre-hospital RN, as defined in the Emergency Medical Services (EMS) Systems Act. [325 ILCS 2/10]

"Fictive kin" means any individual, unrelated by birth or marriage, who is shown to have close personal or emotional ties with the child or the child's family prior to the child's placement with the individual. [20 ILCS 505/7(b)]

"Fire station" means a fire station within the State with at least one staff person. [325 ILCS 2/10]

"Formal investigation" means those activities conducted by Department [child protection](#) ~~investigative~~ staff necessary to make a determination as to whether a report of suspected child abuse or neglect is indicated or unfounded. Those activities shall include: *direct contact with the subject or subjects of the report as soon as possible after the report is received; an evaluation of the environment of the child named in the report and any other children in the same environment; a determination of the risk to such children if they continue to remain in the existing*

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environments, as well as a determination of the nature, extent and cause of any condition enumerated in such report; the name, age and condition of other children in the environment; and an evaluation as to whether there would be an immediate and urgent necessity to remove the child from the environment if appropriate family preservation services were provided. After seeing to the safety of the child or children, the Department shall forthwith notify the subjects of the report, in writing, of the existence of the report and their rights existing under the Act in regard to amendment or expungement. [325 ILCS 5/7.4(b)(3)]

"Genogram" means a pictorial representation of an individual's family relationships.

"Godparent" is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting in raising a child if the parent cannot raise the child. ~~The worker shall verify the godparent/godchild relationship by contacting the parents to confirm the fact that they did, in fact, designate the person as the godparent. If the parents are unavailable, the worker should contact other close family members to verify the relationship.~~ If the person is considered to be the child's godparent, in order for placement to occur, the same placement selection criteria as contained in 89 Ill. Adm. Code 301.60 (Placement Selection Criteria) must be met. If the godparent is not a licensed foster parent, all the conditions currently in effect for placement with relatives in 89 Ill. Adm. Code 301.80 ([Relative Home Placement](#)) must be met.

"Hospital" has the same meaning as in the Hospital Licensing Act [210 ILCS 85].

"Indicated report" means any report of child abuse or neglect made to the Department for which it is determined, after an investigation, that credible evidence of the alleged abuse or neglect exists.

"Initial investigation" means those activities conducted by Department [child protection](#) ~~investigative~~ staff to determine whether a report of suspected child abuse or neglect is a good faith indication of abuse or neglect and, therefore, requires a formal investigation. Good faith in this context means that the report was made with the honest intention to identify actual child abuse or neglect.

"Initial oral report" means a report alleging child abuse or neglect for which the State Central Register has no prior records on the family.

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"Involved subject" means a child who is the alleged victim of child abuse or neglect or a person who is the alleged perpetrator of the child abuse or neglect.

"Legal custody" means the relationship created by a court order in the best interest of a newborn infant that imposes on the infant's custodian the responsibility of physical possession of the infant, the duty to protect, train, and discipline the infant, and the duty to provide the infant with food, shelter, education, and medical care, except as these are limited by parental rights and responsibilities. [325312 ILCS 2/10]

"Local law enforcement agency" means the police of a city, town, village or other incorporated area or the sheriff of an unincorporated area or any sworn officer of the Illinois Department of State Police.

"Mandated reporters" means those individuals required to report suspected child abuse or neglect to the Department. A list of these persons and their associated responsibilities is provided in Section 300.30 ~~of this Part~~.

"Member of the clergy" means a clergyman or practitioner of any religious denomination accredited by the religious body to which he or she belongs. [325 ILCS 5/3]

"Neglected child" means any child:

who is not receiving the proper or necessary nourishment or medically indicated treatment, including food or care not provided solely on the basis of present or anticipated mental or physical impairment as determined by a physician acting alone or in consultation with other physicians, or otherwise is not receiving the proper or necessary support, or medical or other remedial care recognized under State law as necessary for a child's well-being (including when there is harm or substantial risk of harm to the child's health or welfare) (including where there is harm or substantial risk of harm to the child's health or welfare), or other care necessary for a child's well-being, including adequate food, clothing and shelter; or

who is subjected to an environment which is injurious insofar as:

the child's environment creates a likelihood of harm to the child's

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health, physical well-being or welfare; and

the likely harm to the child is the result of a blatant disregard of parent or caretaker responsibilities; or who is abandoned by his or her parents or other person responsible for the child's welfare without a proper plan of care; or

who has been provided with interim crisis intervention services under Section 3-5 of the Juvenile Court Act of 1987 [705 ILCS 405/3-5] and whose parent, guardian, or custodian refuses to permit the child to return home and no other living arrangement agreeable to the parent, guardian, or custodian can be made, and the parent, guardian, or custodian has not made any other appropriate living arrangement for the child; or

who is a newborn infant whose blood, urine or meconium contains any amount of controlled substance as defined in Section 102(f) of the Illinois Controlled Substances Act [720 ILCS 570/102(f)] or a metabolite thereof, with the exception of a controlled substance or metabolite thereof whose presence in the newborn infant is the result of medical treatment administered to the mother or newborn infant.

A child shall not be considered neglected for the sole reason that the child's parent or other person responsible for his or her welfare has left the child in the care of an adult relative for any period of time.

A child shall not be considered neglected for the sole reason that the child has been relinquished in accordance with the Abandoned Newborn Infant Protection Act [325 ILCS 5].

A child shall not be considered neglected or abused for the sole reason that such child's parent or other person responsible for his or her welfare depends upon spiritual means through prayer alone for the treatment or cure of disease or remedial care under Section 4 of the Abused and Neglected Child Reporting Act. ~~When~~Where the circumstances indicate harm or substantial risk of harm to the child's health or welfare and necessary medical care is not being provided to treat or prevent that harm or risk of harm because the parent or other person responsible for the child's welfare depends upon spiritual means alone for treatment or cure, the child is subject to the requirements of the Act for the reporting of, investigation of, and provision of protective

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services with respect to the child and his or her health needs, and in such cases spiritual means through prayer alone for the treatment or cure of disease or for remedial care will not be recognized as a substitute for necessary medical care, if the Department or, as necessary, a juvenile court determines that medical care is necessary.

A child shall not be considered neglected or abused solely because the child is not attending school in accordance with the requirements of Article 26 of the School Code [105 ILCS 5/Art. 26]. [325 ILCS 5/3]

"Newborn infant" means a child who a licensed physician reasonably believes is 30 days old or less at the time the child is initially relinquished to a hospital, police station, fire station, or emergency medical facility, and who is not an abused or a neglected child. [325 ILCS 2/10]

"Perpetrator" means a person who, as a result of investigation, has been determined by the Department to have caused child abuse or neglect.

"Person responsible for the child's welfare" means:

the child's parent, guardian, foster parent, or relative caregiver;

an operator, supervisor, or employee of a public or private residential agency or institution or public or private profit or not-for-profit child care facility; or

any other person responsible for the child's welfare at the time of the alleged abuse or neglect, including:

any person that is the custodian of a child under 18 years of age who commits or allows to be committed, against the child, the offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons for forced labor or services, as provided in Section 10-9 of the Criminal Code of 2012; or

any person who came to know the child through an official capacity or position of trust, including but not limited to health care professionals, educational personnel, recreational supervisors, members of the clergy and volunteers or support

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personnel in any setting where children may be subject to abuse or neglect, including any person that is the custodian of a child under 18 years of age who commits or allows to be committed, against a child, the offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons for forced labor or services, as provided in Section 10-9 of the Criminal Code of 2012. [325 ILCS 5/3]

"Police station" means:

a municipal police station;

a county sheriff's office;

a campus police department located on any college or university owned or controlled by the State or any private college or private university that is not owned or controlled by the State when employees or the campus police department are present; or

any of the district headquarters of the Illinois State Police. [325 ILCS 2/10]

"Private guardianship" means an individual person appointed by the court to assume the responsibilities of the guardianship of the person as defined in Section 1-3 of the Juvenile Court Act of 1987 [705 ILCS 405/1-3] or Article XI of the Probate Act of 1975 [755 ILCS 5/Art. XI].

"Relative", for purposes of placement of children for whom the Department is legally responsible, means any person, 21 years of age or over, other than the parent, who:

is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to each other), godparent (as defined in this Section), great-uncle, or great-aunt;

is the spouse, or party to a civil union, of such a relative;

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is the child's step-father, step-mother, step-grandfather, step-grandmother, or adult step-brother or step-sister; ~~or~~

is the partner, or adult child of a partner, in a civil union with the child's mother or father; or

is a fictive kin as defined in this Section.

Relative also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. For children who have been in the guardianship of the Department, have been adopted, and are subsequently returned to the temporary custody or guardianship of the Department, a "relative" may also include any person who would have qualified as a relative under this definition prior to the adoption, but only if the Department determines that it would be in the best interests of the child to consider this person a relative. [20 ILCS 505/7(b)]

"Relinquish" means to bring a newborn infant, who a licensed physician reasonably believes is 30 days old or less, to a hospital, police station, fire station, or emergency medical facility and to leave the infant with personnel of the facility, if the person leaving the infant does not express an intent to return for the infant or states that he or she will not return for the infant. In the case of a mother who gives birth to an infant in a hospital, the mother's act of leaving ~~that~~ the new born infant at the hospital

without expressing an intent to return for the infant; or

stating that she will not return for the infant is not a "relinquishment" under the Abandoned Newborn Infant Protection Act~~the Act~~. [325 ILCS 2/10]

"Strengthening and Supporting Families service period" means a level of service intervention that will average 90 days, but no more than 120 days.

"State Central Register" is the record of child abuse and/or neglect reports maintained by the Department pursuant to the Act.

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"Subject of a report" means any child reported to the child abuse/neglect State Central Register, and his or her parent, personal guardian or other person responsible for the child's welfare who is named in the report.

"SSF worker" means a Strengthening and Supporting Families worker.

"Temporary protective custody" means custody within a hospital or other medical facility or a place previously designated by the Department, subject to review by the Court. Temporary protective custody cannot exceed 48 hours, excluding Saturdays, Sundays and holidays.

"Undetermined report" means any report of child abuse or neglect made to the Department in which it was not possible to complete an investigation within 60 days on the basis of information provided to the Department.

"Unfounded report" means any report of child abuse or neglect for which it is determined, after an investigation, that no credible evidence of the alleged abuse or neglect exists.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Placement and Visitation Services
- 2) Code Citation: 89 Ill. Adm. Code 301
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
301.20	Amendment
301.80	Amendment
- 4) Statutory Authority: The Children and Family Services Act [20 ILCS 505]; Section 3-6-2(g) of the Unified Code of Corrections [730 ILCS 5/3-6-2(g)]; Section 1-103 of the Illinois Alcoholism and Other Drug Abuse and Dependency Act [20 ILCS 301]; the Adoption Assistance and Child Welfare Act of 1980 (42 USCA 670 et seq.); 45 CFR 1356.40 and 1356.41; the Juvenile Court Act of 1987 [705 ILCS 405]; and the Adoption Act [750 ILCS 50]
- 5) A Complete Description of the Subjects and Issues Involved: Section 301.20 - Definition of "relative" is broadened to include "step-grandparents" and "fictive kin" in compliance with legislation. "Fictive kin" and "placing worker" are defined. Definition of "godparent" is amended for clarification. Definitions that quote a statute verbatim have been updated.

Section 301.80 – Provides that godparents and fictive kin may be considered to be relatives for purposes of placement of a child in DCFS custody or guardianship. Requires fictive kin to apply for licensure as a foster family home within 6 months of a child's placement in that home. Emphasizes the responsibility of placing workers and permanency workers to identify and contact relatives when a child enters substitute care and when a child in care requires a change in placement. Adds a list of considerations for placement with relatives. Changes requirement for criminal background checks from age 17 to 18 in compliance with previous legislation.
- 6) Published studies and reports, and sources of underlying data used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does tthis rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No

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

<u>Section Numbers:</u>	<u>Proposed Actions:</u>	<u>Illinois Register Citation:</u>
301.20	Amendment	39 Ill. Reg. 19; January 2, 2015
301.60	Amendment	39 Ill. Reg. 19; January 2, 2015
301.70	Amendment	39 Ill. Reg. 19; January 2, 2015
301.80	Amendment	39 Ill. Reg. 19; January 2, 2015
301.220	Amendment	39 Ill. Reg. 19; January 2, 2015
301.230	Amendment	39 Ill. Reg. 19; January 2, 2015
301.250	New Section	39 Ill. Reg. 19; January 2, 2015
301.255	New Section	39 Ill. Reg. 19; January 2, 2015

- 11) Statement of Statewide Policy Objective: This rulemaking does not create or expand the State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice. Comments should be submitted to:

Jeff Osowski
Office of Child and Family Policy
Department of Children and Family Services
406 E. Monroe, Station #65
Springfield IL 62701-1498

217/524-1983
TDD: 217/524-3715
fax: 217/557-0692
email: CFPolicy@idcfs.state.il.us

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

- 13) Initial Regulatory Flexibility Analysis: The Department has determined that the proposed rulemaking will not have an economic impact on small businesses.

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- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included in either of the 2 most recent Regulatory Agendas because the need for rulemaking was not anticipated.

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

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TITLE 89: SOCIAL SERVICES

CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES

SUBCHAPTER a: SERVICE DELIVERY

PART 301

PLACEMENT AND VISITATION SERVICES

Section

- 301.1 Purpose (Renumbered)
- 301.2 Definition (Repealed)
- 301.3 Foster Care Placement Goal (Renumbered)
- 301.4 Plans to Achieve This Goal (Renumbered)

SUBPART A: PLACEMENT SERVICES

Section

- 301.10 Purpose
- 301.20 Definitions
- 301.30 Introduction
- 301.40 Legal Authority to Place
- 301.50 Emergency Placement
- 301.60 Placement Selection Criteria
- 301.70 Sibling Placement
- 301.80 Relative Home Placement
- 301.90 Foster Family Home Care
- 301.100 Residential Care
- 301.110 Care in a Medical/Psychiatric Facility
- 301.120 Sharing Appropriate Information with the Caregiver
- 301.130 Medical Examinations for Children in Placement
- 301.140 Education of Children While in Placement

SUBPART B: VISITATION SERVICES

Section

- 301.200 Purpose
- 301.210 Family-Child Visitation
- 301.220 Sibling Visitation
- 301.230 Contact Among Siblings Placed Apart
- 301.240 Grandparents Visitation

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SUBPART C: FOSTER CARE PLACEMENT GOAL

Section	Purpose
301.310	Purpose
301.320	Foster Care Placement Goal
301.330	Plans to Achieve This Goal

SUBPART D: FOSTER PARENT/RELATIVE CAREGIVER
IDENTIFYING INFORMATION

Section	Purpose
301.410	Purpose
301.420	Confidentiality of Foster Parent/Relative Caregiver Identifying Information
301.430	Routine Disclosure of Foster Parent/Relative Caregiver Identifying Information
301.440	Specific Disclosure of Foster Parent/Relative Caregiver Identifying Information
301.450	Specific Notice of Disclosure
301.460	Disclosure Prohibited
301.470	Redislosure Prohibited

301.APPENDIX A Criminal Convictions that Prevent Placement of Children with Relatives

AUTHORITY: Implementing and authorized by the Children and Family Services Act [20 ILCS 505]; Section 3-6-2(g) of the Unified Code of Corrections [730 ILCS 5/3-6-2(g)]; Section 1-103 of the Illinois Alcoholism and Other Drug Abuse and Dependency Act [20 ILCS 301]; the Adoption Assistance and Child Welfare Act of 1980 (42 USC 670 et seq.); 45 CFR 1356.40 and 1356.41; the Juvenile Court Act of 1987 [705 ILCS 405]; and the Adoption Act [750 ILCS 50].

SOURCE: Adopted and codified at 7 Ill. Reg. 881, effective January 12, 1983; amended at 9 Ill. Reg. 9904, effective July 1, 1985; amended at 19 Ill. Reg. 9438, effective July 1, 1995; emergency amendment at 20 Ill. Reg. 3961, effective February 16, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 4602, effective March 15, 1996; amended at 20 Ill. Reg. 9036, effective July 11, 1996; amended at 20 Ill. Reg. 9518, effective July 5, 1996; amended at 21 Ill. Reg. 13580, effective October 1, 1997; amended at 23 Ill. Reg. 13062, effective October 20, 1999; emergency amendment at 24 Ill. Reg. 6427, effective March 27, 2000, for a maximum of 150 days; emergency expired August 23, 2000; amended at 25 Ill. Reg. 841, effective January 5, 2001; amended at 25 Ill. Reg. 11803, effective September 14, 2001; amended at 26 Ill. Reg. 11739, effective August 1, 2002; amended at 34 Ill. Reg. 7898, effective May 31, 2010; amended at 36 Ill. Reg. 2098, effective January 30, 2012; amended at 36 Ill. Reg. 4039, effective March 5,

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2012; expedited correction at 37 Ill. Reg. 19419, effective March 5, 2012; amended at 39 Ill. Reg. _____, effective _____.

SUBPART A: PLACEMENT SERVICES

Section 301.20 Definitions

"Administrative case review" or "ACR" means case reviews required by 42 USC 675(1) and 20 ILCS 505/6a.

"Biological father" means a man who was not married to the mother when the child was born and who has acknowledged his paternity in open court, or who has signed a statement acknowledging paternity, or who is legally presumed to be the father because he married the child's mother after the child's birth and his name appears on the child's official record of birth, or whose paternity is adjudicated in court. When paternity has been established in the above manner, the relatives of the biological father as well as those of the mother may be considered for the placement of related children.

"Child only standard of need" means the assistance standard for cases in which no adult member is included, as established by the Illinois Department of Human Services in 89 Ill. Adm. Code 111 (Assistance Standards).

"Children for whom the Department is legally responsible" means children for whom the Department has temporary protective custody, custody or guardianship via court order, or children whose parents signed an adoptive surrender or voluntary placement agreement with the Department.

"Contact between siblings", as used in this Part, means telephone and written communication among siblings who are placed apart from one another.

"Department" as used in this Part, means the Department of Children and Family Services.

"Diligent search", as used in this Part, means the efforts used by the Department to find a joint placement for siblings who must be placed apart from their families. Diligent search is further defined in Section 301.70(c) ~~of this Part~~.

"Family" means one or more adults and children, related by blood, marriage, civil

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union or adoption and residing in the same household.

"Father" means a man~~"Father" means a man~~ presumed to be the natural father of a child if:

he and the child's natural mother are or have been married to each other, even though the marriage is or could be declared invalid, and the child is born or conceived during such marriage;

after the child's birth, he and the child's natural mother have married each other, even though the marriage is or could be declared invalid, and he is named, with his consent, as the child's father on the child's birth certificate pursuant to Section 12 of the Vital Records Act ~~pursuant to Section 12 of the Vital Records Act~~ [410 ILCS 535];

he and the child's natural mother have signed an acknowledgment of paternity in accordance with rules adopted by the Illinois Department of Healthcare and Family Services under Section 10-17.7 of the Illinois Public Aid Code [305 ILCS 5/10-17.7] ~~[750 ILCS 45/5];~~ or

he and the child's natural mother have signed an acknowledgement of parentage or, if the natural father is someone other than the one presumed to be the father under this Section, an acknowledgement of parentage and denial of paternity in accordance with Section 12 of the Vital Records Act. ~~[750 ILCS 45/5] he and the child's mother have signed a petition to establish the parent and child relationship by consent of the parties in accordance with Section 6 of the Act. (See Sections 5(a)(4) and 6 of the Act [750 ILCS 45/5(a)(4) and 6].)~~

A man can rebut a presumption of paternity only as provided in Section 5(b) of the Illinois Parentage Act of 1984 [750 ILCS 45/5(b)] ~~before a court of jurisdiction.~~ Father also means a man who adopts a child or has been determined by court or administrative adjudication to be the child's father.

"Federally-funded foster care" means foster care maintenance payments made in accordance with Title IV-E of the Social Security Act for which federal matching grants are received.

"Fictive kin" means any individual, unrelated by birth or marriage, who is shown

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to have close personal or emotional ties with the child or the child's family prior to the child's placement with the individual. [20 ILCS 505/7(b)]

"Final placement decision" means the decision made by the Department, within 90 days after the initial placement of a child with a relative, to leave or remove the child in the relative home based on the evaluation of the results of the criminal background check of the relative and household members and based on the best interest of the child.

"Foster care payment" means the amount paid by the Department for a child's room, board, clothing, and personal allowance in a licensed foster family home.

"Godparent" is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting in raising the child if the parent cannot raise the child. ~~The worker shall verify the godparent/godchild relationship by contacting the parents to confirm the fact that they did, in fact, designate the person as the godparent. If the parents are unavailable, the worker should contact other close family members to verify the relationship.~~ If the person is considered to be the child's godparent, in order for placement to occur, the same placement selection criteria as contained in Section 301.60 (Placement Selection Criteria) must be met. If the godparent is not a licensed foster parent, all the conditions currently in effect for placement with relatives in Section 301.80 ([Relative Home Placement](#)) must be met.

"Joint placement", in the context of sibling placement, means the siblings are placed in the same substitute care setting.

"LEADS" means Law Enforcement Agency Data System.

"Parents" means the child's legal parents whose parental rights have not been terminated and adoptive parents. Biological fathers are considered legal parents when paternity has been established as required by the definition [of "father"](#) in this Section.

"Permanency goal" means the desired outcome of intervention and service, which is determined to be consistent with the health, safety, well-being, and best interests of the child. A permanent legal status is usually a component of the permanency goal.

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"Permanent family placement" means placement in a foster family home or a relative home that is intended to last until the child reaches age 21 or until the child is capable of self-sufficiency. The Department may retain guardianship of the child or the foster parent or relative may assume guardianship of the child.

"Permanent legal status" means a legally binding relationship between a child and a family as established by birth or a court of law.

"Placement Clearance Process" means the approval of a child's placement in foster care or unlicensed relative care from the Placement Clearance Unit.

"Placing worker" means the Child Protection Specialist, Permanency Worker or Intact Family Worker with responsibility to select the substitute care placement for a child.

"Region" means Cook County or any of the downstate Department of Children and Family Services regions.

"Relative", for purposes of placement of children for whom the Department is legally responsible, *means any person, 21 years of age or over, other than the parent, who:*

is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to each other), godparent (as defined in this Section), great-uncle, or great-aunt, or

is the spouse, or party to a civil union, of such a relative, or

is the child's step-father, step-mother, step-grandfather, step-grandmother, or adult step-brother or step-sister, or

is the partner, or adult child of a partner, in a civil union with the child's mother or father, or:

is a fictive kin as defined in this Section.

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Relative also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. For children who have been in the guardianship of the Department, have been adopted, and are subsequently returned to the temporary custody or guardianship of the Department, a "relative" may also include any person who would have qualified as a relative under this definition prior to the adoption, but only if the Department determines that it would be in the best interests of the child to consider this person a relative. [20 ILCS 505/7(b)]

"Residential facility", for the purposes of the Aristotle P. Consent Decree, means all non-foster care or relative home care placements.

"Service plan" means a written plan on a form prescribed by the Department in the plan toward the permanency goal for the children required by 42 USC 675(5), 325 ILCS 5/8.2, and 89 Ill. Adm. Code 315 (Permanency Planning).

"Short-term diagnostic placement" means a placement limited to 30 days after the time period deemed clinically necessary to complete the appropriate diagnostic evaluation or treatment, and in no event shall last more than 90 days.

"Siblings" means children in the custody or guardianship of the Department who have a shared biological or adoptive parent.

"Substitute care" means the care of children who require placement away from their families. Substitute care includes foster family care, care of a child for whom the Department is legally responsible provided in a relative family home, care provided in a group home, and care provided in a child care or other institution.

"Visitation", as used in this Subpart, means face-to-face contact between parents and their children who are in substitute care or among siblings who are placed apart from one another.

"Voluntary placement agreement" means a time-limited written request and consent from a parent, guardian or legal custodian of a child for placement of the child out of the home. When signed by designated Department staff, the Department agrees to provide child welfare services which include placement.

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(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 301.80 Relative Home Placement

- a) A child for whom the Department is legally responsible may be placed in the home of a relative when the Department has reason to believe that the relative can safely and adequately care for the child in the absence of formal licensing, including training. In determining whether relative home placement is in the best interests of the child, the placing worker shall consider the child's prior relationship with the relative, the comfort level of the child with the relative, and the extent to which the relative complies with the placement selection criteria of Section 301.60(b).
- b) "Fictive kin" and "godparents", as defined in Section 301.20, may be considered to be related to a child when the child is in the custody or guardianship of the Department and in need of a substitute care placement. Unless otherwise specified, the requirements in this Section pertaining to relative home placements also apply to placement with persons that the parents or child have identified as fictive kin or the child's godparents.
- c) Obtaining Information about Relatives
- 1) Child Entering Substitute Care
- A) The placing worker shall ask the parents to identify relatives who may be positive placement resources for the child. When the child is able to understand that he/she will be entering substitute care, the placing worker shall also ask the child to help identify these resources.
- B) When considering a godparent as a placement resource, the placing worker may identify the godparent/godchild relationship by contacting one or both parents to confirm the fact that they did, in fact, designate the person as the child's godparent. If the parents are unavailable, the placing worker shall contact other close family members to identify the relationship. When the child is able to understand, the child shall also be asked to help identify his/her godparent. The placing worker must determine that the godparent established a close and caring relationship with the child prior to

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the child's placement with the godparent or is part of the family support system.

C) When considering a fictive kin as a placement resource, the placing worker must determine that the fictive kin established a close and caring relationship with the child prior to the child's placement with the fictive kin or is part of the family support system.

D) The placing worker shall contact the persons identified by the parent and child to attempt to locate an immediate placement for the child. The placing worker shall document each contact in a contact note.

E) The assigned Permanency Worker shall continue discussions with the parents and child about any relatives (includes godparents and fictive kin) who might be support resources for the child. The Permanency Worker shall contact each person to determine their interest in being a positive placement or support resource for the child. Each contact shall be documented in a contact note.

2) Children in Substitute Care Requiring Change of Placement

A) The placing worker for the child shall continue to have discussions with the parents about relatives (includes godparents and fictive kin) who may be willing to be positive placement resources for the child. When the child is able to understand, the child shall also be asked to help identify these resources.

B) When considering a godparent as a placement resource, the placing worker may identify the godparent/godchild relationship by contacting one or both parents to confirm the fact that they did, in fact, designate the person as the child's godparent. If the parents are unavailable, the placing worker shall contact other close family members to identify the relationship. When the child is able to understand, the child shall also be asked to help identify his/her godparent. The placing worker must determine that the godparent established a close and caring relationship with the child prior to

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the child's placement with the godparent or is part of the family support system.

C) When considering a fictive kin as a placement resource, the placing worker must determine that the fictive kin established a close and caring relationship with the child prior to the child's placement with the fictive kin or is part of the family support system.

D) The placing worker shall contact all relatives identified by the parents or child, as well as any others previously contacted who expressed interest in being a placement resource. Each contact shall be documented in a contact note.

d) Considerations for Placement with Relatives

When assessing a relative as a placement resource, the placing worker shall also consider:

- 1) The quality of the relative's relationship with the child;
- 2) The relative's ability to protect the child from abusive parents and/or his or her own risk behaviors;
- 3) The relative's attitude towards the indicated findings that have been made with regard to the child and family;
- 4) Whether the relative was involved with the family dynamics that led to the removal of the child from his/her parents;
- 5) The relative's role, if any, in resolving or intervening in the present situation;
- 6) The relative's willingness to work with the permanency worker and the Child and Family Team in implementing the Family Service Plan;
- 7) The relative's willingness to work towards the permanency goal and accept necessary services;
- 8) Adequacy of personal supports to ensure the relative's ability to care for

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and meet the child's identified needs; and

9) In cases involving domestic violence, how placement with the relative supports the ability of the parents to fulfill the service plan and/or have safe contact with the child.

eb) No child under age 18 for whom the Department is legally responsible shall be placed with a relative unless the conditions for placement specified in this Section have been met prior to placement of the child with the relative. Staff of the placing agency shall meet with the relative and ascertain that the relative meets the following conditions for placement and signs an agreement to that effect. The relative:

- 1) will care for no more than the number of children consistent with the number and ages of children permitted in a licensed foster family home (89 Ill. Adm. Code 402, Licensing Standards for Foster Family Homes);
- 2) is willing and capable of protecting the children from harm by the parents or any other person whose actions or inactions allegedly threatened the children's safety or well-being as determined by a child abuse or neglect investigation pursuant to the Abused and Neglected Child Reporting Act [325 ILCS 5];
- 3) agrees not to transfer physical custody of the children to anyone, including parents or other relatives, unless previously authorized in writing by the Department;
- 4) agrees not to allow the indicated or alleged perpetrators of abuse or neglect to reside in the relative's home unless previously authorized in writing by the Department;
- 5) agrees to notify the Department of any changes in the household composition;
- 6) agrees to notify the Department of any change of address prior to moving;
- 7) agrees to seek the prior written consent of the Department for non-emergency medical, psychological, or psychiatric testing or treatment;

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- 8) agrees to take the children out of state only if previously authorized in writing by the Department;
 - 9) agrees to abide by any conditions or limitations on the parent-child visitation plan;
 - 10) is willing to cooperate with the agency, the children's parents and other resource persons to help develop and achieve the permanency goal recorded in the children's service plan;
 - 11) agrees to adequately supervise the children so they are not left in situations or circumstances which are likely to require judgment or actions greater than the child's level of maturity, physical condition, and/or mental abilities would reasonably dictate;
 - 12) agrees not to subject the child to corporal punishment, verbal abuse, threats, or derogatory remarks about the child or the child's family;
 - 13) agrees that any and all firearms and ammunition shall be locked up at all times and kept in places inaccessible to children. No firearms possessed in violation of a State or federal law or a local government ordinance shall be present in the home at any time; and
 - 14) agrees to sign, and have all members residing in the home age ~~18~~17 and over sign, an authorization for a criminal background check and agrees to be fingerprinted no later than 30 days after the placement for a final child placement decision.
- fe) Prior to placement with a relative, staff of the placing agency shall visit the home of the proposed caregiver and shall determine whether the following conditions for placement are met:
- 1) background checks of the Child Abuse Neglect Tracking System (CANTS) as required by 89 Ill. Adm. Code 385 (Background Checks) and a check of the Statewide Child Sex Offender Registry have been completed on all adult members of the household and children age 13 and over, communicated to the supervising agency prior to placement, and appropriate decisions made. If a report of abuse or neglect exists, staff of the placing agency have made appropriate decisions whether the child

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should be placed with the relative based on the following considerations:

- A) the type of indicated abuse and neglect;
 - B) the age of the individual at the time of the report;
 - C) the length of time that has elapsed since the most recent indicated report;
 - D) the relationship of the report to the ability to care for the related children; and
 - E) evidence of successful parenting;
- 2) a check of the Law Enforcement Agency Data System (LEADS) on all adult members of the household and children age 13 and over is completed prior to placement of the related children. If the results of the LEADS check identify prior criminal convictions listed in Appendix A for any adult member of the household, children shall not be placed in the relative's home unless a waiver has been granted in accordance with the requirements of Appendix A;
 - 3) the home is free from observable hazards;
 - 4) prescription and non-prescription drugs, dangerous household supplies, and dangerous tools are stored in places inaccessible to children;
 - 5) any and all firearms and ammunition are locked up at all times and kept in places inaccessible to children;
 - 6) basic utilities (water, heat, electricity) are in operation;
 - 7) sleeping arrangements are suitable to the age and sex of the children;
 - 8) meals can be provided daily to the related children in sufficient quantities to meet the children's nutritional needs;
 - 9) supervision of the related children can be assured at all times, including times when the relative is employed or otherwise engaged in activity

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outside of the home;

- 10) the relative can provide basic necessities for themselves and their own children;
- 11) the relative can access health care and provide necessary in-home support for any health care needs of the related children;
- 12) no member of the household appears to have a communicable disease that could pose a threat to the health of the related children or an emotional or physical impairment that could affect the ability of the caregiver to provide routine daily care to the related children or to evacuate them safely in an emergency;
- 13) there is no evidence of current drug or alcohol abuse by any household member as determined by the placing agency's observations and statements provided by the relative;
- 14) the relative has the ability to contact the agency, if necessary, and the ability to be contacted;
- 15) the relative has immediate access to a telephone when the related child has medical or other special needs;
- 16) the relative shall cooperate with the supervising agency's educational and service plan for the child;
- 17) the relative is able to communicate with the child in the parent's or child's preferred language.

g) Fictive Kin: Requirement to Apply for Licensure

- 1) A fictive kin with whom a child is placed shall apply for licensure as a Home of Relative (HMR) foster family home within 6 months after the child's placement with the fictive kin.
- 2) A child may not be removed from the home of a fictive kin solely on the basis that the fictive kin failed to apply for licensure as an HMR foster family home within 6 months after the child's placement in the home, or

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failed to attain an HMR foster family home license. However, a fictive kin who fails to apply for or obtain an HMR foster family home license shall at all times be in compliance with 89 Ill. Adm. Code 301.80 (Unlicensed Relative Placement).

- h) Within 90 days after initial placement of a relative child, a final placement decision shall be determined by a supervisor of the placing agency based on the criminal background check results of all persons 18 years and older who are living in the home and based on the best interest of the child.
- i) Prior to or concurrent with placement in a relative's home, staff of the placing agency shall document, on the form prescribed by the Department, that the conditions for placement prescribed by this Section have been met.
- j) The supervising agency shall reassess the appropriateness of the relative home placement on an on-going basis and at least prior to each administrative case review or at any point the supervising agency has reason to believe the relative caregiver can no longer safely or adequately care for the children. Appropriateness is determined by the extent to which the home is in compliance with the conditions described in subsections (e) and (f) and by an evaluation of the continued safety of the children, including an evaluation of any pending criminal charges against any adult members of the household.
- k) The Department may, after providing notice as required by 89 Ill. Adm. Code 337 (Service Appeal Process), move the child to another placement if the Department determines, based on the consideration and assessment of the safety and well-being of the child, the child's permanency goal, and the best interests or special needs of the child, that an alternative placement is necessary.
- l) Only placements in licensed foster family homes receive the foster care payment rate. Relatives who care for children for whom the Department is legally responsible may, but need not, apply for licensure as a foster family home in accordance with the requirements of 89 Ill. Adm. Code 402 (Licensing Standards for Foster Family Homes). When a relative is licensed under Part 402, the relative will receive the established foster care payment rate appropriate for the number and ages of foster children placed in care. Relatives who are unlicensed receive the child only standard of need.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Services Delivered by the Department of Children and Family Services
- 2) Code Citation: 89 Ill. Adm. Code 302
- 3) Section Number: 302.20 Proposed Action: Amendment
- 4) Statutory Authority: The Children and Family Services Act [20 ILCS 505]; Section 3-6-2(g) of the Unified Code of Corrections [730 ILCS 5/3-6-2(g)]; the Illinois Alcoholism and Dangerous Drug Dependency Act [20 ILCS 305]; the Adoption Assistance and Child Welfare Act of 1980 (42 USCA 670 et seq.); 45 CFR 1356.40 and 1356.41; the Juvenile Court Act of 1987 [705 ILCS 405]; and the Adoption Act [750 ILCS 50]
- 5) A Complete Description of the Subjects and Issues Involved: Definition of "relative" is broadened to include "step-grandparents" and "fictive kin" in compliance with legislation. Definition of "Fictive kin" is added and definition of "godparent" is amended for clarification. These changes implement Public Act 98-846 concerning relative home placement.

Several definitions that quote a statute verbatim have been updated.

- 6) Published studies and reports, and sources of underlying data used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Actions:</u>	<u>Illinois Register Citation:</u>
302.20	Amendment	39 Ill. Reg. 47; January 2, 2015
302.40	Amendment	39 Ill. Reg. 47; January 2, 2015

- 11) Statement of Statewide Policy Objective: This rulemaking does not create or expand the State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice. Comments should be submitted to:

Jeff Osowski
Office of Child and Family Policy
Department of Children and Family Services
406 E. Monroe, Station #65
Springfield IL 62701-1498

217/524-1983
TDD: 217/524-3715
fax: 217/557-0692
email: CFPolicy@idcfs.state.il.us

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

- 13) Initial Regulatory Flexibility Analysis: The Department has determined that the proposed rulemaking will not have an economic impact on small businesses.
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included in either of the 2 most recent Regulatory Agendas because the need for rulemaking was not anticipated.

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

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER a: SERVICE DELIVERYPART 302
SERVICES DELIVERED BY THE
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

SUBPART A: GENERAL PROVISIONS

Section	Purpose
302.10	Purpose
302.20	Definitions
302.30	Introduction
302.40	Department Service Goals
302.50	Functions in Support of Services

SUBPART B: REPORTS OF SUSPECTED CHILD ABUSE OR NEGLECT (RECODIFIED)

Section	Purpose
302.100	Reporting Child Abuse or Neglect to the Department (Recodified)
302.110	Content of Child Abuse or Neglect Reports (Recodified)
302.120	Transmittal of Child Abuse or Neglect Reports (Recodified)
302.130	Special Types of Reports (Recodified)
302.140	Referrals to the Local Law Enforcement Agency and State's Attorney (Recodified)
302.150	Delegation of the Investigation (Recodified)
302.160	The Investigative Process (Recodified)
302.170	Taking Children Into Temporary Protective Custody (Recodified)
302.180	Notification of the Determination Whether Child Abuse or Neglect Occurred (Recodified)
302.190	Referral for Other Services (Recodified)

SUBPART C: DEPARTMENT CHILD WELFARE SERVICES

Section	Purpose
302.300	Adoptive Placement Services (Repealed)
302.305	Adoption Listing Service for Hard-to-Place Children or Children with Disabilities for Whom the Department is Not Legally Responsible

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302.310	Adoption Assistance
302.311	Nonrecurring Adoption Expenses (Repealed)
302.315	Adoption Registry (Repealed)
302.320	Counseling or Casework Services
302.330	Day Care Services
302.340	Emergency Caretaker Services
302.350	Family Planning Services
302.360	Health Care Services
302.365	Mental Health Services (Repealed)
302.370	Homemaker Services
302.380	Information and Referral Services
302.390	Behavioral Health Services
302.400	Successor Guardianship (Repealed)
302.405	Subsidized Guardianship Program
302.410	Subsidized Guardianship (KinGap)

SUBPART D: INTENSIVE FAMILY PRESERVATION SERVICES

Section	Purpose
302.500	Purpose
302.510	Implementation of the Family Preservation Act
302.520	Types of Intensive Family Preservation Services
302.530	Phase In Plan for Statewide Family Preservation Services
302.540	Time Frames

302.APPENDIX A	Acknowledgement of Mandated Reporter Status (Recodified)
302.APPENDIX B	Calculating the Amount of Adoption Assistance (Repealed)

AUTHORITY: Implementing and authorized by the Children and Family Services Act [20 ILCS 505]; Section 3-6-2(g) of the Unified Code of Corrections [730 ILCS 5/3-6-2(g)]; the Illinois Alcoholism and Dangerous Drug Dependency Act [20 ILCS 305]; the Adoption Assistance and Child Welfare Act of 1980 (42 USCA 670 et seq.); 45 CFR 1356.40 and 1356.41; the Juvenile Court Act of 1987 [705 ILCS 405]; and the Adoption Act [750 ILCS 50].

SOURCE: Adopted and codified at 5 Ill. Reg. 13188, effective November 30, 1981; amended at 6 Ill. Reg. 15529, effective January 1, 1983; recodified at 8 Ill. Reg. 992; peremptory amendment at 8 Ill. Reg. 5373, effective April 12, 1984; amended at 8 Ill. Reg. 12143, effective July 9, 1984; amended at 9 Ill. Reg. 2467, effective March 1, 1985; amended at 9 Ill. Reg. 9104, effective June 14, 1985; amended at 9 Ill. Reg. 15820, effective November 1, 1985; amended at 10 Ill. Reg.

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5557, effective April 15, 1986; amended at 11 Ill. Reg. 1390, effective January 13, 1987; amended at 11 Ill. Reg. 1551, effective January 14, 1987; amended at 11 Ill. Reg. 1829, effective January 15, 1987; recodified to 89 Ill. Adm. Code 300 at 11 Ill. Reg. 3492, Sections 302.20, 302.100, 302.110, 302.120, 302.130, 302.140, 302.150, 302.160, 302.170, 302.180, 302.190, Appendix A; amended at 13 Ill. Reg. 18847, effective November 15, 1989; amended at 14 Ill. Reg. 3438, effective March 1, 1990; amended at 14 Ill. Reg. 16430, effective September 25, 1990; amended at 14 Ill. Reg. 19010, effective November 15, 1990; amended at 16 Ill. Reg. 274, effective December 31, 1992; emergency amendment at 17 Ill. Reg. 2513, effective February 10, 1993, for a maximum of 150 days; emergency expired July 9, 1993; amended at 17 Ill. Reg. 13438, effective July 31, 1993; amended at 19 Ill. Reg. 9107, effective June 30, 1995; amended at 19 Ill. Reg. 9485, effective July 1, 1995; emergency amendment at 19 Ill. Reg. 10746, effective July 1, 1995, for a maximum of 150 days; emergency expired November 27, 1995; emergency amendment at 19 Ill. Reg. 16735, effective November 28, 1995, for a maximum of 150 days; amended at 20 Ill. Reg. 4606, effective March 15, 1996; amended at 20 Ill. Reg. 6670, effective May 1, 1996; emergency amendment at 21 Ill. Reg. 1033, effective January 1, 1997, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 3265, effective March 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 6204, effective May 15, 1997; amended at 21 Ill. Reg. 10912, effective July 29, 1997; amended at 22 Ill. Reg. 7140, effective April 13, 1998; emergency amendment at 22 Ill. Reg. 7289, effective April 13, 1998, for a maximum of 150 days; emergency expired September 10, 1998; amended at 22 Ill. Reg. 8803, effective May 15, 1998; amended at 22 Ill. Reg. 21314, effective December 1, 1998; emergency amendment at 25 Ill. Reg. 4292, effective March 15, 2001, for a maximum of 150 days; emergency expired August 11, 2001; amended at 25 Ill. Reg. 11821, effective August 31, 2001; amended at 25 Ill. Reg. 16243, effective December 15, 2001; amended at 26 Ill. Reg. 11747, effective August 1, 2002; amended at 26 Ill. Reg. 16434, effective October 22, 2002; amended at 28 Ill. Reg. 2155, effective February 1, 2004; emergency amendment at 28 Ill. Reg. 10405, effective July 8, 2004, for a maximum of 150 days; emergency expired December 4, 2004; amended at 29 Ill. Reg. 20354, effective November 30, 2005; amended at 30 Ill. Reg. 2323, effective February 2, 2006; amended at 32 Ill. Reg. 11611, effective July 10, 2008; emergency amendment at 33 Ill. Reg. 14310, effective October 1, 2009, for a maximum of 150 days; amended at 34 Ill. Reg. 3248, effective February 26, 2010; emergency amendment at 34 Ill. Reg. 13182, effective September 1, 2010, for a maximum of 150 days; emergency expired January 28, 2011; amended at 35 Ill. Reg. 2899, effective February 8, 2011; amended at 35 Ill. Reg. 8204, effective May 15, 2011; amended at 36 Ill. Reg. 4048, effective March 5, 2012; expedited correction at 37 Ill. Reg. 19427, effective March 5, 2012; amended at 39 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 302.20 Definitions

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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"Adoption assistance" or "adoption subsidy" means financial assistance from the Department that is provided to the adoptive parents after the finalization of an adoption.

"Adoption placement" means a living arrangement with a family that is directed toward establishing that family as the child's new legal parents. To be considered an adoptive placement the child must be placed in a licensed foster family home or a license-exempt relative home and either:

be legally free (parental rights have been terminated or both parents have surrendered their parental rights); or

be placed in a legal risk adoptive placement that has passed legal screening as described in 89 Ill. Adm. Code 309 (Adoption Services for Children for Whom the Department of Children and Family Services is Legally Responsible).

"Biological father" means a man who was not married to the mother when the child was born and who has acknowledged his paternity in open court, or who has signed a statement acknowledging paternity, or who is legally presumed to be the father because he married the child's mother after the child's birth and his name appears on the child's official record of birth, or whose paternity is adjudicated in court. When paternity has been established in the above manner, the relatives of the biological father as well as those of the mother may be considered for the placement of the related children.

"Child welfare services" means ~~publicly funded~~ *publicly funded* social services ~~that~~ *that* are directed toward the accomplishment of the following purposes:

protecting and promoting the health, safety and welfare of ~~all~~ children, including homeless, dependent, or neglected children;

preventing, ~~or~~ remedying, or assisting in the solution of problems that may result in, the neglect, abuse, exploitation, or delinquency of children;

preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child

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removal is desirable and possible when the child can be cared for at home without endangering the child's health and safety;

restoring to their families children who have been removed, by the provision of services to the child and the families when the child can be cared for at home without endangering the child's health and safety;

placing children in suitable adoptive homes, in cases where restoration to the biological family is not safe, possible or appropriate;

assuring safe and adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption. At the time of placement, the Department shall consider concurrent planning, so that permanency may occur at the earliest opportunity. Consideration should be given so that if reunification fails or is delayed, the placement made is the best available placement to provide permanency for the child;

providing supportive services and living maintenance ~~that which~~ contributes to the physical, emotional and social well-being of children for whom the Department is legally responsible who are pregnant and unmarried; ~~and~~

providing shelter and independent living services for homeless youth; and

placing and maintaining children in facilities that provide separate living quarters for children under the age of 18 and for children 18 years of age and older, unless a child 18 years of age is in the last year of high school education or vocational training, in an approved individual or group treatment program, or in a licensed shelter facility or secure child care facility.

The Department is not required to place or maintain children:

who are in a foster home,⁵ or

who are persons with a developmental disability, as defined in the Mental Health and Developmental Disabilities Code [405 ILCS 5],⁵ or

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who are female children who are pregnant, pregnant and parenting or parenting, or

who are siblings,

in facilities that provide separate living quarters for children 18 years of age and older and for children under 18 years of age. [20 ILCS 505/5]

These services include but are not limited to: counseling, advocacy, protective and family maintenance day care, homemaker, emergency caretaker, family planning, adoption, placement, child protection, and information and referral.

"Children for whom the Department is legally responsible" means children for whom the Department has temporary protective custody, custody or guardianship via court order, or children whose parents ~~have~~ signed an adoptive surrender or voluntary placement agreement with the Department.

"Custodial Caregiver" means an individual with whom a child resides who is directly responsible for the day-to-day care of the child ensuring the child's safety and well-being.

"Department" means the Department of Children and Family Services.

"Family" means one or more adults and children, related by blood, marriage, civil union, or adoption and residing in the same household.

"Fictive kin" means any individual, unrelated by birth or marriage, who is shown to have close personal or emotional ties with the child or the child's family prior to the child's placement with the individual. [20 ILCS 505/7(b)]

"Godparent" is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting in raising the child if the parent cannot raise the child. ~~The worker shall verify the godparent/godechild relationship by contacting the parents to confirm the fact that they did, in fact, designate the person as the godparent. If the parents are unavailable, the worker should contact other close family members to verify the relationship.~~ If the person is considered to be the child's godparent, in order for placement to occur, the same placement selection criteria as contained in 89 Ill. Adm. Code 301.60

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(Placement Selection Criteria) must be met. If the godparent is not a licensed foster parent, all the conditions currently in effect for placement with relatives in 89 Ill. Adm. Code 301.80 ([Relative Home Placement](#)) must be met.

"Level of care" means one of the following types of substitute care that would be appropriate for the child, if placed in foster care: regular foster care, intensive foster care, or specialized foster care.

"Minimum parenting standards" means that a parent or other person responsible for the child's welfare sees that the child is adequately fed, clothed appropriately for the weather conditions, provided with adequate shelter, protected from physical, mental and emotional harm, and provided with necessary medical care and education as required by law.

"Parents" means the child's legal parents whose rights have not been terminated and adoptive parents. Biological fathers are considered legal parents when paternity has been established as required by the definition in this Section.

"Permanency goal" means the desired outcome of intervention and service ~~that,~~ ~~which~~ is determined to be consistent with the health, safety, well-being, and best interests of the child. A permanent legal status is usually a component of the permanency goal.

"Permanent legal status" means a legally binding relationship between a child and a family as established by birth or a court of law.

"Pre-existing condition" means, for purposes of adoption assistance and subsidized guardianship, a disabling physical, emotional or mental health condition that the child had prior to the finalization of the adoption or transfer of guardianship. Such condition must be documented by a duly licensed or credentialed professional.

"Private guardianship" means an individual person appointed by the court to assume the responsibilities of the guardianship of the person as defined in Section 1-3 of the Juvenile Court Act of 1987 [705 ILCS 405/1-3] or Article XI of the Probate Act of 1975 [755 ILCS 5/Art. XI].

"Relative", for purposes of placement of children for whom the Department is legally responsible, means any person, 21 years of age or over, other than the

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parent, who:

is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to each other), godparent (as defined in this Section), great-uncle, or great-aunt; or

is the spouse, or party to a civil union, of such relative; or

is the child's step-father, step-mother, step-grandfather, step-grandmother or adult step-brother or step-sister; ~~or~~

is the partner, or adult child of a partner, in a civil union with the child's mother or father; ~~or~~

is a fictive kin as defined in this Section.

Relative also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, where the child and its sibling are placed together with that person. For children who have been in the guardianship of the Department, have been adopted, and are subsequently returned to the temporary custody or guardianship of the Department, a "relative" may also include any person who would have qualified as a relative under this definition prior to the adoption, but only if the Department determines that it would be in the best interests of the child to consider this person a relative. [20 ILCS 505/7(b)]

"Service constellation" means a variety of services provided to a child and his/her family.

"Service plan" means a written plan on a form prescribed by the Department in the plan toward the permanency goal for the children.

"Siblings" means children in the custody or guardianship of the Department who have a shared biological or adoptive parent.

"Subsidized Guardianship Program" means a program of the Department~~child~~

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~~welfare demonstration project~~ that offers a financial subsidy to relative care or licensed foster home caregivers who are willing to assume private guardianship of children who are eligible for the program. The Subsidized Guardianship Program is further defined in Section 302.405 (Subsidized Guardianship) and Section 302.410 (Subsidized Guardianship (KinGap)).

"Voluntary placement agreement" means a time-limited written request and consent from a parent, guardian or legal custodian of a child for placement of the child out of the home. When signed by designated Department staff, the Department agrees to provide child welfare services that include placement.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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- 1) Heading of the Part: Access to and Eligibility for Child Welfare Services
- 2) Code Citation: 89 Ill. Adm. Code 304
- 3)

<u>Section Number:</u>	<u>Proposed Action:</u>
304.2	Amendment
- 4) Statutory Authority: Section 5 of the Children and Family Services Act [20 ILCS 505/5]; Sections 2 and 2.1 of the Abused and Neglected Child Reporting Act [325 ILCS 5/2 and 5/2.1]; Section 1-2 of the Juvenile Court Act of 1987 [705 ILCS 405/1-2]; the Illinois Alcoholism and Other Drug Abuse and Dependency Act [20 ILCS 301]; the Adoption Assistance and Child Welfare Act of 1980, which amends Section 471 of the Social Security Act (42 USCA 671 (a) (14))
- 5) A Complete Description of the Subjects and Issues Involved: Definition of "relative" is broadened to include "step-grandparents" and "fictive kin" in compliance with legislation. Definition of "Fictive kin" is added and definition of "godparent" is amended for clarification. These changes implement PA 98-846 concerning relative home placement.

Several definitions that quote a statute verbatim have been updated.
- 6) Published studies and reports, and sources of underlying data used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? Yes

<u>Section Number:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
304.2	Amendment	39 Ill. Reg. 62; January 2, 2015
- 11) Statement of Statewide Policy Objective: This rulemaking does not create or expand the State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice. Comments should be submitted to:

Jeff Osowski
Office of Child and Family Policy
Department of Children and Family Services
406 E. Monroe, Station #65
Springfield IL 62701-1498

217/524-1983
TDD: 217/524-3715
fax: 217/557-0692
email: CFPolicy@idcfs.state.il.us

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

- 13) Initial Regulatory Flexibility Analysis: The Department has determined that the proposed amendment will not have an economic impact on small businesses.
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included in either of the 2 most recent Regulatory Agendas because the need for rulemaking was not anticipated.

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

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER a: SERVICE DELIVERYPART 304
ACCESS TO AND ELIGIBILITY FOR CHILD WELFARE SERVICES

Section

304.1	Purpose
304.2	Definitions
304.3	Introduction to Child Welfare Services
304.4	Eligibility for Child Welfare Services
304.5	Access to Child Welfare Services
304.6	Decision Concerning Case Opening

AUTHORITY: Implementing and authorized by Section 5 of the Children and Family Services Act [20 ILCS 505/5]; Sections 2 and 2.1 of the Abused and Neglected Child Reporting Act [325 ILCS 5/2 and 5/2.1]; Section 1-2 of the Juvenile Court Act of 1987 [705 ILCS 405/1-2]; the Illinois Alcoholism and Other Drug Abuse and Dependency Act [20 ILCS 301]; the Adoption Assistance and Child Welfare Act of 1980, which amends Section 471 of the Social Security Act (42 USCA 671 (a) (14)).

SOURCE: Adopted and codified at 5 Ill. Reg. 13117, effective November 30, 1981; amended at 8 Ill. Reg. 12118, effective July 9, 1984; amended at 17 Ill. Reg. 251, effective December 31, 1992; amended at 19 Ill. Reg. 9429, effective July 1, 1995; emergency amendment at 19 Ill. Reg. 10738, effective July 1, 1995, for a maximum of 150 days; emergency expired November 27, 1995; amended at 20 Ill. Reg. 1569, effective January 10, 1996; amended at 22 Ill. Reg. 18843, effective October 1, 1998; amended at 26 Ill. Reg. 11756, effective August 1, 2002; amended at 36 Ill. Reg. 4058, effective March 5, 2012; amended at 39 Ill. Reg. _____, effective _____.

Section 304.2 Definitions

"Abused child" means a child whose parent or immediate family member, or any person responsible for the child's welfare, or any individual residing in the same home as the child, or a paramour of the child's parent:

inflicts, causes to be inflicted, or allows to be inflicted upon such child physical or mental injury, by other than accidental means, which causes

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death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function;

creates a substantial risk of physical or mental injury to such child by other than accidental means which would be likely to cause death, disfigurement, impairment of physical or emotional health, or loss of or impairment of any bodily function;

commits or allows to be committed any sex offense against such child, as such sex offenses are defined in the Criminal Code of ~~2012+96+~~ [\[720 ILCS 5\]](#) ~~as amended~~ or in the [Wrongs to Children Act \[720 ILCS 150\]](#), and extending those definitions of sex offenses to include children under 18 years of age;

commits or allows to be committed an act or acts of torture upon such child;

inflicts excessive corporal punishment; ~~or~~

commits or allows to be committed the offense of female genital ~~mutilation~~~~mutilation~~, as defined in Section 12-34 of the Criminal Code of ~~2012+96+~~, against the child;:-

causes to be sold, transferred, distributed, or given to such child under 18 years of age, a controlled substance, as defined in Section 102 of the Illinois Controlled Substances Act [720 ILCS 570], in violation of Article IV of the Illinois Controlled Substances Act or in violation of the Methamphetamine Control and Community Protection Act [720 ILCS 646], except for controlled substances that are prescribed in accordance with Article III of the Illinois Controlled Substances Act and are dispensed to such child in a manner that substantially complies with the prescription; or

commits or allows to be committed the offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons for forced labor or services, as defined in Section 10-9 of the Criminal Code of 2012, against the child.

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A child shall not be considered abused for the sole reason that the child has been relinquished in accordance with the Abandoned Newborn Infant Protection Act. [325 ILCS 5/3]

"Addicted minor" includes any minor who is an addict or an alcoholic as defined in the Alcoholism and Other Drug Abuse and Dependency Act [20 ILCS 301/1-10].

"Adjudicated", as used in ~~this Part, these rules~~ means that the Juvenile Court has entered an order declaring that a child is ~~abused~~, neglected, dependent, a minor requiring authoritative intervention, a delinquent minor or an addicted minor.

"Biological father" means a man who was not married to the mother when the child was born and who has acknowledged his paternity in open court, or who has signed a statement acknowledging paternity, or who is legally presumed to be the father because he married the child's mother after the child's birth and his name appears on the child's official record of birth, or whose paternity is adjudicated in court. When paternity has been established in the above manner, the relatives of the biological father as well as those of the mother may be considered for the placement of related children.

"Child welfare services" means ~~public~~~~publicly funded~~ social services that are directed toward the accomplishment of the following purposes:

protecting and promoting the health, safety and welfare of ~~all~~ children, including homeless, dependent, or neglected children;

preventing or remedying, or assisting in the solution of problems that may result in, the neglect, abuse, exploitation, or delinquency of children;

preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing the breakup of the family where the prevention of child removal is desirable and possible when the child can be cared for at home without endangering the child's health and safety;

restoring to their families children who have been removed, by the provision of services to the child and the families when the child can be cared for at home without endangering the child's health and safety;

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placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate;

assuring safe and adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption. At the time of placement, the Department shall consider concurrent planning, as described in Section 5(1-1) of the Children and Family Services Act [20 ILCS 505/5(1-1)] so that permanency may occur at the earliest opportunity. Consideration should be given so that, if reunification fails or is delayed, the placement made is the best available placement to provide permanency for the child;

providing supportive services and living maintenance ~~that~~which contribute to the physical, emotional and social well-being of children who are pregnant and unmarried;

providing shelter and independent living services for homeless youth; and

placing and maintaining children in facilities that provide separate living quarters for children under the age of 18 and for children 18 years of age and older, unless a child 18 years of age is in the last year of high school education or vocational training, in an approved individual or group treatment program, in a licensed shelter facility, or secure child care facility. The Department is not required to place or maintain children:

who are in a foster home;

who are persons with a developmental disability as defined in the Mental Health and Developmental Disabilities Code [405 ILCS 5];

who are female children who are pregnant, pregnant and parenting or parenting; or

who are siblings, in facilities that provide separate living quarters for children 18 years of age and older and for children under 18 years of age. [20 ILCS 505/5(a)(3)]

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These services include, but are not limited to: counseling, advocacy, day care, homemaker, emergency caretaker, family planning, adoption, visitation, placement, child protection, and information and referral.

"Delinquent minor" means a minor who before his or her ~~18th~~^{17th} birthday violated or attempted to violate a Federal or State law or municipal ordinance. Delinquent minor is further defined in the Juvenile Court Act of 1987 [705 ILCS 405].

"Department client" means a child or a family who is receiving child welfare services either directly from the Department or through the Department's purchase of service providers.

"Dependent minor" means any minor under 18 years of age:

who is without a parent, guardian or legal custodian;

who is without proper care because of the physical or mental disability of his parent, guardian or custodian;

who is without proper medical or other remedial care recognized under State law or other care necessary for his or her well being through no fault, neglect or lack of concern by his parents, guardian or custodian, provided that no order may be made terminating parental rights, nor may a minor be removed from the custody of his or her parents for longer than 6 months, pursuant to an adjudication as a dependent minor under Section 2-4(c) of the Juvenile Court Act of 1987, unless it is found to be in his or her best interest by the court or the case automatically closes as provided under Section 2-31 of the Juvenile Court Act of 1987; or

who has a parent, guardian or legal custodian who with good cause wishes to be relieved of all residual parental rights and responsibilities, guardianship or custody, and who desires the appointment of a guardian of the person with power to consent to the adoption of the minor under Section 2-29 of the Juvenile Court Act of 1987.

This ~~definition~~ does not apply to a minor who would be included herein solely for the purpose of qualifying for financial assistance for himself, his parent or parents, guardian or custodian or to a minor solely because his

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or her parent or parents or guardian has left the minor for any period of time in the care of an adult relative who the parent or parents or guardian know is both a mentally capable adult relative and physically capable adult relative, as defined by the Juvenile Court Act of 1987. [705 ILCS 405/2-4]

"Family" means one or more adults and children, related by blood, marriage, civil union or adoption and residing in the same household.

"Fictive kin" means any individual, unrelated by birth or marriage, who is shown to have close personal or emotional ties with the child or the child's family prior to the child's placement with the individual. [20 ILCS 505/7(b)]

"Godparent" is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting in raising the child if the parent cannot raise the child. ~~The worker shall verify the godparent/godchild relationship by contacting the parents to confirm the fact that they did, in fact, designate the person as the godparent. If the parents are unavailable, the worker should contact other close family members to verify the relationship.~~ If the person is considered to be the child's godparent, in order for placement to occur, the same placement selection criteria as contained in 89 Ill. Adm. Code 301.60 (Placement Selection Criteria) must be met. If the godparent is not a licensed foster parent, all the conditions currently in effect for placement with relatives in 89 Ill. Adm. Code 301.80 (Relative Home Placement) must be met.

"Minimum parenting standards" means that a parent or other person responsible for the child's welfare sees that the child is adequately fed, clothed appropriately for the weather conditions, provided with adequate shelter, protected from physical, mental and emotional harm, and provided with necessary medical care and education required by law. ~~A parent who has abandoned a child, deserted a child for three months, or failed to demonstrate a reasonable degree of interest, concern, or responsibility as to the welfare of a newborn child for 30 days after birth is deemed to have failed to have met the minimum parenting standards, unless the parent has arranged for the child's care in the home of a relative who is willing and capable of assuming responsibility for the child. In addition, a parent who is addicted to alcohol or who is a drug addict, as defined in Section 1-103 of the Alcoholism and Other Drug Abuse and Dependency Act [20 ILCS 301/1-10] and who has consistently failed to cooperate in a rehabilitation program for a period of at least six months is deemed to have failed to have met the minimum~~

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~~parenting standards unless the parent has arranged for the child's safety and well being despite the parent's addiction.~~

"Minor requiring authoritative intervention" or "MRAI" means *any minor under 18 years of age:*

who is:

absent from home without consent of parent, guardian or custodian, or

beyond the control of his or her parent, guardian or custodian, ~~in~~ circumstances ~~that~~~~which~~ constitute a substantial or immediate danger to the minor's physical safety; and

who, after being taken into limited custody for the period provided for in Section 3-3 of the Juvenile Court Act of 1987 ~~this Section~~ and offered interim crisis intervention services, where available, refuses to return home after the minor and his or her parent, guardian or custodian cannot agree to an arrangement for an alternative voluntary residential placement or to the continuation of such placement.

Any minor taken into limited custody for the reasons specified in Section 3-3 of the Juvenile Court Act of 1987 ~~this Section~~ may not be adjudicated an MRAI~~an MRAI~~ until the following number of days have elapsed from his or her having been taken into limited custody: 21 days for the first instance of being taken into limited custody and 5 days for the second, third, or fourth instances of being taken into limited custody. For the fifth or any subsequent instance of being taken into limited custody for the reasons specified in Section 3-3~~this Section~~, the minor may be adjudicated as requiring authoritative intervention without any specified period of time expiring after his or her being taken into limited custody, without the minor's being offered interim crisis intervention services, and without the minor's being afforded an opportunity to agree to an arrangement for an alternative voluntary residential placement. Notwithstanding any other provision of Section 3-3~~this Section~~, for the first instance in which a minor is taken into limited custody where one year has elapsed from the last instance of his having been taken into limited custody, the minor may not be adjudicated an MRAI~~an MRAI~~

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until 21 days have passed since being taken into limited custody. [705 ILCS 405/3-3]

"Neglected child" means any child who is not receiving the proper or necessary nourishment or medically indicated treatment including food or care not provided solely on the basis of present or anticipated mental or physical impairment as determined by a physician acting alone or in consultation with other physicians or otherwise is not receiving the proper or necessary support or medical or other remedial care recognized under State law as necessary for a child's well-being (including where there is harm or substantial risk of harm to the child's health or welfare), or other care necessary for a child's well-being, including adequate food, clothing and shelter; or who is abandoned by his or her parents or other person responsible for the child's welfare without a proper plan of care; or who has been provided with interim crisis intervention services under Section 3-5 of the Juvenile Court Act of 1987 [705 ILCS 405/3-5] and whose parent, guardian, or custodian refuses to permit the child to return home and no other living arrangement agreeable to the parent, guardian, or custodian can be made, and the parent, guardian, or custodian has not made any other appropriate living arrangement for the child; or who is a newborn infant whose blood, urine or meconium contains any amount of controlled substance as defined in Section 102(f) of the Illinois Controlled Substances Act or a metabolite thereof, with the exception of a controlled substance or metabolite thereof whose presence in the newborn infant is the result of medical treatment administered to the mother or newborn infant. A child shall not be considered neglected for the sole reason that the child's parent or other person responsible for his or her welfare has left the child in the care of an adult relative for any period of time. A child shall not be considered neglected for the sole reason that the child has been relinquished in accordance with the Abandoned Newborn Infant Protection Act [325 ILCS 5]. A child shall not be considered neglected or abused for the sole reason that such child's parent or other person responsible for his or her welfare depends upon spiritual means through prayer alone for the treatment or cure of disease or remedial care under Section 4 of the Abused and Neglected Child Reporting Act. When the circumstances indicate harm or substantial risk of harm to the child's health or welfare and necessary medical care is not being provided to treat or prevent that harm or risk of harm because the parent or other person responsible for the child's welfare depends upon spiritual means alone for treatment or cure, the child is subject to the requirements of the Abused and Neglected Child Reporting Act for the reporting of, investigation of, and provision of protective services with respect to the child and his or her health needs, and, in such cases,

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spiritual means through prayer alone for the treatment or cure of disease or for remedial care will not be recognized as a substitute for necessary medical care, if the Department or, as necessary, a juvenile court determines that medical care is necessary. *A child shall not be considered neglected or abused solely because the child is not attending school in accordance with the requirements of Article 26 of the School Code* [\[105 ILCS 5/Art. 26\]](#). [325 ILCS 5/3]

"Purchase of services provider" means an agency or individual offering services to a Department client through a signed contract with the Department.

"Relative", for purposes of placement of children for whom the Department is legally responsible, *means any person, 21 years of age or over, other than the parent, who:*

is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to each other), godparent (as defined in this Section), great-uncle, or great-aunt, or

is the spouse, or party to a civil union, of such a relative, or

is the child's step-father, step-mother, [step-grandfather, step-grandmother](#) or adult step-brother or step-sister, ~~or~~

is the partner, or adult child of a partner, in a civil union with the child's mother or father, ~~or~~

[is a fictive kin as defined in this Section.](#)

Relative also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. [For children who have been in the guardianship of the Department, have been adopted, and are subsequently returned to the temporary custody or guardianship of the Department, a "relative" may also include any person who would have qualified as a relative under this definition prior to the adoption, but only if](#)

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the Department determines that it would be in the best interests of the child to consider this person a relative. [20 ILCS 505/7(b)]

"Services delivered by the Department" means those social services provided either directly by Department of Children and Family Services staff or by purchase of service providers.

"Voluntary placement agreement" means a time-limited written request and consent from a parent, guardian or legal custodian of a child for placement of the child out of the home. When signed by designated Department staff, the Department agrees to provide child welfare services which include placement.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Adoption Services for Children for Whom the Department of Children and Family Services is Legally Responsible
- 2) Code Citation: 89 Ill. Adm. Code 309
- 3) Section Number: 309.20 Proposed Action: Amendment
- 4) Statutory Authority: Sections 4 and 5 of the Children and Family Services Act [20 ILCS 505/4 and 5] and the Adoption Act [750 ILCS 50]; implementing the Adoption Assistance and Child Welfare Act of 1980 (42 USCA 670 et seq; 45 CFR 1356.40 and 1356.41); and the Adoption and Safe Families Act (42 USCA 1305)
- 5) A Complete Description of the Subjects and Issues Involved: Definition of "relative" is broadened to include "step-grandparents" and "fictive kin" in compliance with legislation. Definitions of "Fictive kin" and "godparent" are added. These changes implement PA 98-846 concerning relative home placement.

Several definitions that quote a statute verbatim have been updated

- 6) Published studies and reports, and sources of underlying data used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Actions:</u>	<u>Illinois Register Citation:</u>
309.20	Amendment	39 Ill. Reg. 74; January 2, 2015
309.30	Amendment	39 Ill. Reg. 74; January 2, 2015
309.35	New Section	39 Ill. Reg. 74; January 2, 2015
309.40	Amendment	39 Ill. Reg. 74; January 2, 2015
309.100	Amendment	39 Ill. Reg. 74; January 2, 2015
309.110	Amendment	39 Ill. Reg. 74; January 2, 2015
309.130	Amendment	39 Ill. Reg. 74; January 2, 2015

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309.135	New Section	39 Ill. Reg. 74; January 2, 2015
309.140	Amendment	39 Ill. Reg. 74; January 2, 2015

- 11) Statement of Statewide Policy Objective: This rulemaking does not create or expand the State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice. Comments should be submitted to:

Jeff Osowski
Office of Child and Family Policy
Department of Children and Family Services
406 E. Monroe, Station #65
Springfield IL 62701-1498

217/524-1983
TDD: 217/524-3715
fax: 217/557-0692
email: CFPolicy@idcfs.state.il.us

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

- 13) Initial Regulatory Flexibility Analysis: The Department has determined that the proposed rulemaking will not have an economic impact on small businesses.
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included in either of the 2 most recent Regulatory Agendas because the need for rulemaking was not anticipated.

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

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

TITLE 89: SOCIAL SERVICES

CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES

SUBCHAPTER a: SERVICE DELIVERY

PART 309

ADOPTION SERVICES FOR CHILDREN FOR WHOM THE DEPARTMENT OF
CHILDREN AND FAMILY SERVICES IS LEGALLY RESPONSIBLE

Section

309.10	Purpose
309.20	Definitions
309.30	Recruitment of Adoptive Families
309.40	Adoption Listing Services
309.50	Identification of Children for Potential Adoption Planning
309.60	Legal Risk Placements
309.70	Freeing Children for Adoption
309.80	Termination of Parental Rights
309.90	Putative Father Registry
309.100	Preparation of Children for Adoption
309.105	Who May Adopt a Child
309.110	Preparation and Training of Adoptive Families
309.120	Preparation of the Child's Biological Parents
309.130	Placement Considerations
309.140	Placement of Children with Adoptive Families
309.150	Providing Information to Adoptive Families
309.160	Post-Placement Services
309.170	Post-Adoption Services
309.180	Adoption Assistance
309.190	Adoption Registry

AUTHORITY: Implementing and authorized by Sections 4 and 5 of the Children and Family Services Act [20 ILCS 505/4 and 5] and the Adoption Act [750 ILCS 50]; implementing the Adoption Assistance and Child Welfare Act of 1980 (42 USCA 670 et seq; 45 CFR 1356.40 and 1356.41); and the Adoption and Safe Families Act (42 USCA 1305).

SOURCE: Adopted at 22 Ill. Reg. 8769, effective May 15, 1998; amended at 23 Ill. Reg. 11098, effective September 16, 1999; amended at 25 Ill. Reg. 11778, effective September 14, 2001; amended at 26 Ill. Reg. 16449, effective October 23, 2002; emergency amendment at 30 Ill. Reg. 17123, effective October 13, 2006, for a maximum of 150 days; emergency expired March 11,

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2007; amended at 31 Ill. Reg. 8466, effective June 8, 2007; amended at 36 Ill. Reg. 4069, effective March 5, 2012; amended at 39 Ill. Reg. _____, effective _____.

Section 309.20 Definitions

"Adoption assistance" or "adoption subsidy" means financial assistance and other services from the Department which are provided to the adoptive parents after the finalization of an adoption of a child with special needs as defined in Section 309.180.

"Adoption placement" means a living arrangement with a family ~~that~~^{which} is directed toward establishing that family as the child's new legal parents.

"Adoption triad" means the adoptive family, the adoptee (child being adopted) and the biological family.

"Adult" means a person who has attained the age of 18.

"Agency" means a public child welfare agency or a licensed child welfare agency.

"Attachment" means the lasting psychological tie between two people who have significance for each other that endures through space and time and serves to join them emotionally.

"Best interests", as defined in the Juvenile Court Act of 1987, means consideration of the following factors~~"Best interests" as defined in the Juvenile Court Act of 1987 means consideration of the following factors~~ in the context of the child's age and developmental needs:

the physical safety and welfare of the child, including food, shelter, health, and clothing;

the development of the child's identity;

the child's background and ties, including familial and religious;

the child's sense of attachments, including:

where the child actually feels love, attachment, and a sense of

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being valued (as opposed to where adults believe the child should feel such love, attachment, and sense of being valued);

the child's sense of security;

the child's sense of familiarity;

continuity of affection for the child;

the least disruptive placement alternative for the child;

the child's wishes and long-term goals;

the child's community ties, including church, school, and friends;

the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

the uniqueness of every family and child;

the risks attendant to entering and being in substitute care; and

the preferences of the persons available to care for the child. [705 ILCS 405/1-3]

"Certification training" means training directed toward preparing a family to adopt a child for whom the Department of Children and Family Services is legally responsible and may consist of the following different types of training:

six hours of standardized training for foster care conversion adoptions ~~that~~^{which} means that a foster parent or relative caregiver is adopting a child who has been in his or her care; or

six ~~hours~~^{hour} of standardized training and an additional individualized training plan specific to the child's needs for adoptive parents who have not had the child in their care prior to the adoptive placement; or

training specified by private child welfare agencies who meet the

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standards of the Council on Accreditation of Services for Families and Children.

"Children for whom the Department of Children and Family Services is legally responsible" means children for whom the Department has temporary protective custody, custody or guardianship via court order, or children whose parents have signed an adoptive surrender or voluntary placement agreement with the Department.

"Confidential intermediary" is an individual appointed by the court *for the purpose of exchanging medical information with one or more mutually consenting biological relatives, obtaining identifying information about one or more mutually consenting biological relatives, or arranging contact with one or more mutually consenting biological relatives. Additionally, in cases where an adopted or surrendered person is deceased, an adult child of the adopted or surrendered person or his or her adoptive parents or surviving spouse may file a petition under Section 18.3a of the Adoption Act [750 ILCS 50/18.3a] and in cases where the birth parent is deceased, an adult birth sibling of the adopted or surrendered person or of the deceased birth parent may file a petition under Section 18.3a for the purpose of exchanging medical information with one or more mutually consenting biological relatives of the adopted or surrendered person, obtaining identifying information about one or more mutually consenting biological relatives of the adopted or surrendered person, or arranging contact with one or more mutually consenting biological relatives of the adopted or surrendered person.* ~~for the purpose of obtaining from biological parents or siblings of an adopted person information concerning the background of a psychological or genetically-based medical problem experienced or which may be experienced by the adopted person or obtaining assistance in treating such a problem. [750 ILCS 50/18.3a] The duties and responsibilities of a~~ A confidential intermediary are set out in Section 18.3a(i) of the Adoption Act ~~is obliged by law to protect the identity and privacy of the biological family as well as that of the adoptive family and adopted person.~~

"Consent to adoption by a specified person" is a voluntary act by the parents to relinquish all parental rights of a child to a person or persons specified by the parents in the specific consent document. Consent to adoption by a specified person is further described in Section 309.70 (Freeing Children for Adoption).

"Fictive kin" means any individual, unrelated by birth or marriage, who is shown

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to have close personal or emotional ties with the child or the child's family prior to the child's placement with the individual. [20 ILCS 505/7(b)]

"Godparent" is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting in raising the child if the parent cannot raise the child. If the person is considered to be the child's godparent, in order for placement to occur, the same placement selection criteria as contained in Section 301.60 (Placement Selection Criteria) must be met. If the godparent is not a licensed foster parent, all the conditions currently in effect for placement with relatives in Section 301.80 (Relative Home Placement) must be met.

"Internal legal screening" means an internal review required by the Department prior to referring a case for termination of parental rights for the purpose of freeing a child for adoption. Depending on local practice, a representative of the State's Attorney's Office may participate in the screening. The purpose of the screening is to determine whether sufficient grounds for termination of parental rights exist and whether adoption is in the best interest of the child. Legal screening is further described in Section 309.80 (Termination of Parental Rights).

"Legal risk placement" means the placement with a family of a child, not yet legally free for adoption, made in the best interests of the child with the intent that the family will become an adoptive resource for the child should the child become legally free for adoption.

"Parental unfitness" means a finding by the court that a person is unfit to parent a child, without regard to the likelihood that the child will be placed for adoption. The grounds of unfitness are described in Section 1(D) of Section 309.50 (Identification of Children for Potential Adoption Planning) and in the Adoption Act [750 ILCS 50/1(D)].

"Persons approved for adoption" means persons who have been licensed as a foster family home in accordance with 89 Ill. Adm. Code 402 (Licensing Standards for Foster Family Homes) or relative caregivers with whom children have been placed in accordance with 89 Ill. Adm. Code 301 (Placement and Visitation Services) and who also meet the certification requirements of Section 309.110(c) ~~of this Part~~.

"Post-adoption services" are services meant to assist and support the family in

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maintaining itself in a healthy and nurturing environment and in preserving the adoption. Post-adoption services may include, but are not limited to, social, psychological, psychiatric, health, educational and adoption preservation services. Financial services are available to families and adoptees following the legal consummation of the adoption, when they are eligible for adoption assistance. Post-adoption services also address the needs of adult adoptees and their biological families to seek information and contact, when desired.

"Putative father" means a male, regardless of age, who may be a child's father, but who was not married to the child's mother on or before the date that the child was or is to be born and for whom paternity of the child has not been established in a court proceeding.

"Relative", for purposes of placement of children for whom the Department is legally responsible, means any person, 21 years of age or over, other than the parent, who:

is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to each other), godparent (as defined in this Section), great-uncle, or great-aunt; or

is the spouse, or party to a civil union, of such a relative; or

is the child's step-father, step-mother, step-grandfather, step-grandmother or adult step-brother or step-sister; or

is the partner, or adult child of a partner, in a civil union with the child's mother or father; or

is a fictive kin as defined in this Section.

"Relative" also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. For children who have been in the guardianship of the Department, have been adopted, and are subsequently returned to the temporary custody or guardianship of the

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Department, a "relative" may also include any person who would have qualified as a relative under this definition prior to the adoption, but only if the Department determines that it would be in the best interests of the child to consider this person a relative. [20 ILCS 505/7(b)]

"Surrender for adoption" is a voluntary act by the parents to relinquish all parental rights of a child to an agency for the purpose of placing the child for adoption.

"Termination of parental rights" is a legal action of the court or a voluntary action by the parents ~~that~~^{which} relieves the birth parents of a child of all parental responsibility for the child and deprives them of all legal rights with respect to the child.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Permanency Planning
- 2) Code Citation: 89 Ill. Adm. Code 315
- 3) Section Number: 315.20 Proposed Action:
Amendment
- 4) Statutory Authority: The Children and Family Services Act [20 ILCS 505], the Abused and Neglected Child Reporting Act [325 ILCS 5], the Adoption Assistance and Child Welfare Act of 1980, amending Section 475 of the Social Security Act (42 USCA 670 et seq.), the Juvenile Court Act of 1987 [705 ILCS 405], and the Adoption Act [750 ILCS 50]
- 5) A Complete Description of the Subjects and Issues Involved: Definition of "relative" is broadened to include "step-grandparents" and "fictive kin" in compliance with legislation. Definition of "Fictive kin" is added and definition of "godparent" is amended for clarification. These changes implement PA 98-846 concerning relative home placement.

Several definitions that quote a statute verbatim have been updated.
- 6) Published studies and reports, and sources of underlying data used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
315.20	Amendment	39 Ill. Reg. 98; January 2, 2015
315.30	Amendment	39 Ill. Reg. 98; January 2, 2015
315.45	Amendment	39 Ill. Reg. 98; January 2, 2015
315.70	Amendment	39 Ill. Reg. 98; January 2, 2015
315.120	Amendment	39 Ill. Reg. 98; January 2, 2015
315.125	New Section	39 Ill. Reg. 98; January 2, 2015
315.130	Amendment	39 Ill. Reg. 98; January 2, 2015

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- 11) Statement of Statewide Policy Objective: This rulemaking does not create or expand the State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice. Comments should be submitted to:

Jeff Osowski
Office of Child and Family Policy
Department of Children and Family Services
406 E. Monroe, Station #65
Springfield IL 62701-1498

217/524-1983
TDD: 217/524-3715
fax: 217/557-0692
email: CFPolicy@idcfs.state.il.us

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

- 13) Initial Regulatory Flexibility Analysis: The Department has determined that the proposed rulemaking will not have an economic impact on small businesses.
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included in either of the 2 most recent Regulatory Agendas because: the need for rulemaking was not anticipated.

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

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NOTICE OF PROPOSED AMENDMENT

TITLE 89: SOCIAL SERVICES

CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES

SUBCHAPTER a: SERVICE DELIVERY

PART 315

PERMANENCY PLANNING

SUBPART A: PRINCIPLES OF PERMANENCY PLANNING

Section

- 315.10 Purpose
- 315.20 Definitions
- 315.30 Best Interests Health and Safety of the Child
- 315.40 Accountability
- 315.45 The Need for a Permanent Home
- 315.50 Reasonable Efforts/Reasonable Progress
- 315.60 The Child's Sense of Time
- 315.70 The Critical Decisions
- 315.80 Components of the Permanency Planning Process

SUBPART B: ASSESSMENT AND OTHER CASEWORK ACTIVITIES

Section

- 315.100 Assessment
- 315.110 Worker Interventions and Contacts
- 315.120 Family Meetings
- 315.130 Developing the Service Plan
- 315.140 Distributing the Service Plan
- 315.150 Revising the Service Plan
- 315.160 Case Reviews and Court Hearings

SUBPART C: SELECTING THE PERMANENCY GOAL

Section

- 315.200 Selection of the Permanency Goal
- 315.205 Return Home Within Five Months
- 315.210 Return Home Within One Year
- 315.215 Return Home Pending Status Hearing
- 315.220 Substitute Care Pending Court Determination on Termination of Parental Rights
- 315.225 Adoption
- 315.230 Guardianship

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315.235	Independence
315.240	Cannot Be Provided for in a Home Environment
315.241	Continuing Foster Care
315.245	Concurrent Planning
315.250	Applicability of Reunification Services

SUBPART D: EVALUATION AND DECISIONMAKING

Section

315.300	Evaluating Whether Children in Placement Should Be Returned Home
315.305	When Reunification Is Inappropriate
315.310	Termination of Services and Planning for Aftercare

AUTHORITY: Implementing and authorized by the Children and Family Services Act [20 ILCS 505], the Abused and Neglected Child Reporting Act [325 ILCS 5], the Adoption Assistance and Child Welfare Act of 1980, amending Section 475 of the Social Security Act (42 USCA 670 et seq.), the Juvenile Court Act of 1987 [705 ILCS 405], and the Adoption Act [750 ILCS 50].

SOURCE: Adopted at 23 Ill. Reg. 2539, effective February 1, 1999; amended at 25 Ill. Reg. 11785, effective September 14, 2001; amended at 26 Ill. Reg. 7720, effective May 24, 2002; amended at 26 Ill. Reg. 11765, effective August 1, 2002; amended at 28 Ill. Reg. 8465, effective June 4, 2004; amended at 32 Ill. Reg. 8103, effective May 30, 2008; amended at 35 Ill. Reg. 14934, effective September 1, 2011; amended at 36 Ill. Reg. 4073, effective March 5, 2012; expedited correction at 37 Ill. Reg. 19431, effective March 5, 2012; amended at 39 Ill. Reg. _____, effective _____.

SUBPART A: PRINCIPLES OF PERMANENCY PLANNING

Section 315.20 Definitions

"Administrative case review" means a review of permanency planning open to the participation of the parents of the child, conducted by a person who panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subjects of the review, pursuant to section 475 of the Social Security Act (See 42 USC 675(6)). The administrative case review is also open to the participation of other professionals involved in assessing or treating the child, any legal representative of the parent or child, and the foster parents as specified in 89 Ill. Adm. Code 316-~~60~~ (Administrative Case Reviews and Court Hearings).

"Best interest of the child", as defined in the Juvenile Court Act of 1987, means

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consideration of~~has been defined by law to include~~ the following factors:

the physical safety and welfare of the child, including food, shelter, health, and clothing;

the development of the child's identity;

the child's background and ties, including familial and religious;

the child's sense of attachments, including:

where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

the child's sense of security;

the child's sense of familiarity;

continuity of affection for the child;

the least disruptive placement alternative for the child;

the child's wishes and long-term goals;

the child's community ties, including church, school, and friends;

the child's need for permanence, which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

the uniqueness of every family and child;

the risks attendant to entering and being in substitute care; and

the preferences of the persons available to care for the child. [705 ILCS 405/1-3]

"Children for whom the Department is legally responsible" means children for

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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whom the Department has temporary protective custody, custody or guardianship via court order, or children whose parents have signed an adoptive surrender or voluntary placement agreement with the Department.

"Client service plan" means a written plan on a form prescribed by the Department that guides all participants in the plan of intervention toward the permanency goals for the children.

"Concurrent planning" means a process whereby the Department or its service provider works toward family reunification with a family whose children has been removed from the home while, at the same time, developing an alternative plan, if reunification with the family cannot be attained.

"Family" means one or more adults and children, related by blood, marriage, civil union, or adoption and residing in the same household.

"Father" means a ~~man~~ *presumed to be the natural father of a child if:*

he and the child's natural mother are or have been married to each other, even though the marriage is or could be declared invalid, and the child is born or conceived during such marriage;

after the child's birth, he and the child's natural mother have married each other, even though the marriage is or could be declared invalid, and he is named, with his consent, as the child's father on the child's birth certificate pursuant to Section 12 of the Vital Records Act [410 ILCS 535/12] ~~pursuant to Section 12 of the Vital Records Act;~~

he and the child's natural mother have signed an acknowledgment of paternity in accordance with rules adopted by the Illinois Department of Healthcare and Family Services under Section 10-17.7 of the Illinois Public Aid Code [305 ILCS 5/10-17.7] ~~89 Ill. Adm. Code 160 (Child Support Enforcement);~~

he and the child's mother have signed an acknowledgement of parentage or, if the natural father is someone other than the one presumed to be the father under this Section, an acknowledgement of parentage and denial of paternity in accordance with Section 12 of the Vital Records Act. [750 ILCS 45/5] ~~a petition to establish the parent and child relationship by~~

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~~consent of the parties in accordance with Section 6 of the Illinois Parentage Act of 1984.~~

~~A man can rebut a presumption of paternity only as provided in Section 5(b) of the Illinois Parentage Act of 1984 [750 ILCS 45/5(b)]. A man can rebut a presumption of paternity before a court of jurisdiction. [750 ILCS 45/5]~~

Father also means a man who adopts a child or has been determined by court or administrative adjudication to be the child's father.

~~*"Fictive kin" means any individual, unrelated by birth or marriage, who is shown to have close personal or emotional ties with the child or the child's family prior to the child's placement with the individual. [20 ILCS 505/7(b)]*~~

"Godparent" is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting the child if the parent cannot raise the child. ~~The worker shall verify the godparent/godechild relationship by contacting the parents to confirm the fact that they did, in fact, designate the person as the godparent. If the parents are unavailable, the worker should contact other close family members to verify the relationship.~~ If the person is considered to be the child's godparent, in order for placement to occur, the same placement selection criteria as contained in 89 Ill. Adm. Code 301.60 (Placement Selection Criteria) must be met. If the godparent is not a licensed foster parent, all the conditions currently in effect for placement with relatives in 89 Ill. Adm. Code 301.80 (Relative Home Placement) must be met.

"Guardian" means an individual person appointed by the court to assume the responsibilities of the guardianship of the person as defined in Section 1-3 of the Juvenile Court Act of 1987 [705 ILCS 405/1-3] or Article XI of the Probate Act of 1975 [755 ILCS 5/Art. XI].

"Individual Treatment Plan" or "ITP" or "Treatment Plan" as defined in 59 Ill. Adm. Code 132 (Medicaid Community Mental Health Services Program) means a written document developed by the appropriate service provider staff with the participation of the client with a mental illness and, if applicable, the client's guardian, which specifies the client's diagnosis, problems, and service needs to be addressed, the intermediate objectives and long-term goals for the services and the planned interventions for achieving these goals.

"Individualized Education Plan/Program" or "IEP" means the document prepared

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by the local school district, as a result of a Multi-disciplinary Conference, that identifies the specific special education services that will be provided to the child. The IEP also includes education goals, services, frequency, quantity and duration. IEP is further defined in 23 Ill. Adm. Code 226 (Special Education).

"Individualized Family Service Plan" or "IFSP" means a written working document developed for each child in order to facilitate the provisions of Early Intervention (EI) services. The IFSP is created by the family, an inter-disciplinary team, the core EI agency, and the case manager (service coordinator). The EI agency is responsible for coordinating the IFSP implementation.

"Minimum parenting standards" means that a parent or other person responsible for the child's welfare is able and willing to ensure that a child is healthy and safe, which includes ensuring that the child is adequately fed, clothed appropriately for the weather conditions, provided with adequate shelter, protected from physical, mental and emotional harm, and provided with necessary medical care and education required by law.

"Parents" means the child's legal parents whose rights have not been terminated and adoptive parents. Biological fathers are considered legal parents when paternity has been established as required by the definition in this Section.

"Permanency goal" means the desired outcome of intervention and service ~~that, which~~ is determined to be consistent with the health, safety, well-being, and best interests of the child. A permanent legal status is usually a component of the permanency goal.

"Permanent legal status" means a legally binding relationship between a child and a family as established by birth or by a court of law.

"Rehabilitative services plan" means a written plan developed in accordance with 59 Ill. Adm. Code 132.155 (Medicaid Community Mental Health Services), which includes identification of the problems to be addressed, the rehabilitative services to be provided and the outcomes to be achieved for eligible clients served by the Department pursuant to the Abused and Neglected Child Reporting Act, the Children and Family Services Act or the Juvenile Court Act of 1987.

"Relative", for purposes of placement of children for whom the Department is legally responsible, *means any person, 21 years of age or over, other than the*

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parent, who:

is currently related to the child in any of the following ways by blood, adoption, marriage, or civil union: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to each other), godparent (as defined in this Section), great-uncle, or great-aunt, or

is the spouse, or party to a civil union, of such a relative, or

is the child's step-father, step-mother, step-grandfather, step-grandmother or adult step-brother or step-sister ~~through a current marriage~~, or

is the partner, or adult child of a partner, in a civil union with the child's mother or father, or

is a fictive kin as defined in this Section.

Relative also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. For children who have been in the guardianship of the Department, have been adopted, and are subsequently returned to the temporary custody or guardianship of the Department, a "relative" may also include any person who would have qualified as a relative under this definition prior to the adoption, but only if the Department determines that it would be in the best interests of the child to consider this person a relative. [20 ILCS 505/7(b)]

"Service termination planning" means service planning that starts with the first contact with the family and that focuses on providing a smooth transition from Department guardianship or custody. It includes the receipt of child welfare services to discharge from guardianship or custody and the termination of Department funded services.

"Substitute care" means the care of children who require placement away from their families or private guardians. Substitute care includes foster family care, care provided in a relative home placement as defined in 89 Ill. Adm. Code 301 (Placement and Visitation Services), Section 301.80 (Relative Home Placement),

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care provided in a group home, care provided in a maternity center or a child care, mental health or other institution, and care provided in an independent living arrangement.

"Termination of parental rights" means a court order that relieves the legal parents of parental responsibility for the child and revokes all legal rights with respect to the child. The termination order also frees the child from all obligations of maintenance and obedience with respect to the legal parents.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Administrative Case Reviews and Court Hearings
- 2) Code Citation: 89 Ill. Adm. Code 316
- 3) Section Number: 316.20 Proposed Action: Amendment
- 4) Statutory Authority: Section 5 of the Children and Family Services Act [20 ILCS 505/5], Section 7.1 of the Abused and Neglected Child Reporting Act [325 ILCS 5/7.1], the Adoption Assistance and Child Welfare Act of 1980, amending Section 475 of the Social Security Act (42 USCA 675), Section 2-5 of the Juvenile Court Act of 1987 [705 ILCS 405/2-5], and Section 1 of the Adoption Act [750 ILCS 50/1]
- 5) A Complete Description of the Subjects and Issues Involved: Definitions of "Fictive kin", "godparent" and "relative" are added. These changes implement PA 98-846 concerning relative home placement.

Several definitions that quote a statute verbatim have been updated.

- 6) Published studies and reports, and sources of underlying data used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Actions:</u>	<u>Illinois Register Citation:</u>
316.20	Amendment	39 Ill. Reg. 123; January 2, 2015
316.30	Amendment	39 Ill. Reg. 123; January 2, 2015
316.40	Amendment	39 Ill. Reg. 123; January 2, 2015
316.80	Amendment	39 Ill. Reg. 123; January 2, 2015
316.110	Amendment	39 Ill. Reg. 123; January 2, 2015
316.120	Amendment	39 Ill. Reg. 123; January 2, 2015
316.130	Amendment	39 Ill. Reg. 123; January 2, 2015

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- 11) Statement of Statewide Policy Objective: This rulemaking does not create or expand the State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice. Comments should be submitted to:

Jeff Osowski
Office of Child and Family Policy
Department of Children and Family Services
406 E. Monroe, Station #65
Springfield IL 62701-1498

217/524-1983
TDD: 217/524-3715
fax: 217/557-0692
email: CFPolicy@idcfs.state.il.us

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

- 13) Initial Regulatory Flexibility Analysis: The Department has determined that the proposed rulemaking will not have an economic impact on small businesses.
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included in either of the 2 most recent Regulatory Agendas because the need for rulemaking was not anticipated.

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

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NOTICE OF PROPOSED AMENDMENT

TITLE 89: SOCIAL SERVICES

CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES

SUBCHAPTER a: SERVICE DELIVERY

PART 316

ADMINISTRATIVE CASE REVIEWS AND COURT HEARINGS

Section

316.10	Purpose
316.20	Definitions
316.30	Administrative Case Review System
316.40	Frequency of Administrative Case Reviews
316.50	Conduct and Participation at Administrative Case Reviews
316.60	Notice of Administrative Case Reviews
316.70	Roles and Responsibilities of the Administrative Case Reviewer
316.80	Caseworker Responsibilities at the Administrative Case Review
316.90	Decision Review
316.100	Appealability of Decisions
316.110	The Department's Role in the Juvenile Court
316.120	Permanency Hearings
316.130	Caseworker Responsibilities at the Permanency Hearing
316.140	Compliance with the Client Service Planning Requirements

AUTHORITY: Implementing and authorized by Section 5 of the Children and Family Services Act [20 ILCS 505/5], Section 7.1 of the Abused and Neglected Child Reporting Act [325 ILCS 5/7.1], the Adoption Assistance and Child Welfare Act of 1980, amending Section 475 of the Social Security Act (42 USCA 675), Section 2-5 of the Juvenile Court Act of 1987 [705 ILCS 405/2-5], and Section 1 of the Adoption Act [750 ILCS 50/1].

SOURCE: Adopted at 23 Ill. Reg. 2528, effective February 1, 1999; amended at 26 Ill. Reg. 16909, effective November 8, 2002; amended at 35 Ill. Reg. 14942, effective September 1, 2011; amended at 36 Ill. Reg. 4082, effective March 5, 2012; amended at 39 Ill. Reg. _____, effective _____.

Section 316.20 Definitions

"Administrative case review" means a review of permanency planning open to the participation of the parents of the child, conducted by a person who is not responsible for the case management of, or the delivery of services to, either the

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child or the parents who are the subjects of the review. (See 42 USC 675(6)). The administrative case review is also open to the participation of other professionals involved in assessing or treating the child, any legal representative of the parent or child, and the foster parents as specified in [this PartSection 316.50 \(Conduct and Participation at Administrative Case Reviews\)](#).

"Administrative case reviewer" means a trained professional who is not responsible for the case management of, or delivery of services to, either the child or the parents who are the subjects of the review.

"Children for whom the Department is legally responsible" means children for whom the Department has temporary protective custody, custody or guardianship via court order, or children whose parents have signed an adoptive surrender or voluntary placement agreement with the Department.

"Family" means one or more adults and children, related by blood, marriage, civil union, or adoption and residing in the same household.

"Fictive kin" means any individual, unrelated by birth or marriage, who is shown to have close personal or emotional ties with the child or the child's family prior to the child's placement with the individual. [20 ILCS 505/7(b)]

"Godparent" is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting in raising the child if the parent cannot raise the child. If the person is considered to be the child's godparent, in order for placement to occur, the same placement selection criteria as contained in 89 Ill. Adm. Code 301.60 (Placement Selection Criteria) must be met. If the godparent is not a licensed foster parent, all the conditions currently in effect for placement with relatives in 89 Ill. Adm. Code 301.80 (Relative Home Placement) must be met.

"Parents" means the child's legal parents, including adoptive parents, whose rights have not been terminated. Biological fathers are considered legal parents when paternity has been established as required by the definition in [Permanency Planning](#) (89 Ill. Adm. Code [315 \(Permanency Planning\)](#)).~~315.20~~.

"Permanency goal" means the desired outcome of intervention and service [that](#), ~~which~~ is determined to be consistent with the health, safety, well-being, and best interests of the child. A permanent legal status is usually a component of the

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permanency goal.

"Relative", for purposes of placement of children for whom the Department is legally responsible, means any person, 21 years of age or over, other than the parent, who:

is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to each other), godparent (as defined in this Section), great-uncle, or great-aunt; or

is the spouse, or party to a civil union, of such a relative; or

is the child's step-father, step-mother, step-grandfather, step-grandmother, or adult step-brother or step-sister; or

is the partner, or adult child of a partner, in a civil union with the child's mother or father; or

is a fictive kin as defined in this Section.

"Relative" also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. For children who have been in the guardianship of the Department, have been adopted, and are subsequently returned to the temporary custody or guardianship of the Department, a "relative" may also include any person who would have qualified as a relative under this definition prior to the adoption, but only if the Department determines that it would be in the best interests of the child to consider this person a relative. [20 ILCS 505/7(b)]

"Service plan" means a written plan on a form prescribed by the Department that guides all participants in the plan toward the permanency goals for the children.

"Substitute care" means the care of children who require placement away from their families. Substitute care includes foster family care, care provided in a relative home placement as defined in 89 Ill. Adm. Code 301.80 (Relative Home

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Placement), care provided in a group home, ~~and~~ care provided in a maternity center or a child care, mental health or other institution, and care provided in an independent living arrangement.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Interstate Placement of Children
- 2) Code Citation: 89 Ill. Adm. Code 328
- 3) Section Number: 328.2 Proposed Action: Amendment
- 4) Statutory Authority: The Interstate Compact on the Placement of Children Act [45 ILCS 15]; Sections 4 and 5 of the Children and Family Services Act [20 ILCS 505/4 and 5]; Section 16 of the Child Care Act of 1969 [225 ILCS 10/16], and the Interstate Compact on Adoption Act [45 ILCS 17/5-1]
- 5) A Complete Description of the Subjects and Issues Involved: Definition of "relative" is broadened to include "step-grandparents" and "fictive kin" in compliance with legislation. Definition of "Fictive kin" is added and definition of "godparent" is amended for clarification. These changes implement Public Act 98-846 concerning relative home placement.

Several definitions that quote a statute verbatim have been updated.

- 6) Published studies and reports, and sources of underlying data used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? Yes

<u>Section Number</u> :	<u>Proposed Action</u> :	<u>Illinois Register Citation</u> :
328.2	Amendment	39 Ill. Reg. 137; January 2, 2015

- 11) Statement of Statewide Policy Objective: This rulemaking does not create or expand the State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].

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- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice. Comments should be submitted to:

Jeff Osowski
Office of Child and Family Policy
Department of Children and Family Services
406 E. Monroe, Station #65
Springfield IL 62701-1498

217/524-1983
TDD: 217/524-3715
fax: 217/557-0692
email: CFPolicy@idcfs.state.il.us

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

- 13) Initial Regulatory Flexibility Analysis: The Department has determined that the proposed rulemaking will not have an economic impact on small businesses.
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included in either of the 2 most recent Regulatory Agendas because the need for rulemaking was not anticipated.

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

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NOTICE OF PROPOSED AMENDMENT

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER b: PROGRAM AND TECHNICAL SUPPORTPART 328
INTERSTATE PLACEMENT OF CHILDREN

SUBPART A: INTERSTATE COMPACT ON PLACEMENT OF CHILDREN

Section

328.1	Purpose
328.2	Definitions
328.3	Placement of Illinois Children
328.4	Placement of Children From Other States
328.5	Removal of Illinois Children

SUBPART B: INTERSTATE COMPACT ON ADOPTION AND MEDICAL ASSISTANCE

Section

328.100	Purpose
328.110	Interstate Compact
328.120	Definitions
328.130	Relocation of Adopted Children from Illinois to Other States
328.140	Relocation of Adopted Children from ICAMA Party State into Illinois

AUTHORITY: Implementing and authorized by the Interstate Compact on the Placement of Children Act [45 ILCS 15]; Sections 4 and 5 of the Children and Family Services Act [20 ILCS 505/4 and 5]; Section 16 of the Child Care Act of 1969 [225 ILCS 10/16] and the Interstate Compact on Adoption Act [45 ILCS 17/5-1].

SOURCE: Adopted and codified at 7 Ill. Reg. 9207, effective August 5, 1983; amended at 23 Ill. Reg. 5245, effective May 1, 1999; amended at 26 Ill. Reg. 11773, effective August 1, 2002; amended at 39 Ill. Reg. _____, effective _____.

SUBPART A: INTERSTATE COMPACT ON PLACEMENT OF CHILDREN

Section 328.2 Definitions

"Children for Whom the Department has Legal Responsibility" or "Department

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Wards", as used in this ~~Part, Subpart~~ means children for whom the Department of Children and Family Services has temporary protective custody, custody or guardianship via court order, ~~or as well as~~ children whose parents have signed an adoptive surrender or voluntary placement agreement with the Department.

"Facility" means a person, group of persons, or corporation caring for children licensed under applicable laws. Facility includes, but is not limited to, child care institution, related or non-related foster family home or group home.

"Fictive kin" means any individual, unrelated by birth or marriage, who is shown to have close personal or emotional ties with the child or the child's family prior to the child's placement with the individual. [20 ILCS 505/7(b)]

"Godparent" is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting in raising the child if the parent cannot raise the child. ~~The worker shall verify the godparent/godechild relationship by contacting the parents to confirm the fact that they did, in fact, designate the person as the godparent. If the parents are unavailable, the worker should contact other close family members to verify the relationship.~~ If the person is considered to be the child's godparent, in order for placement to occur, the same placement selection criteria as contained in 89 Ill. Adm. Code ~~301302.60~~ (Placement Selection Criteria) must be met. If the godparent is not a licensed foster parent, all the conditions currently in effect for placement with relatives in 89 Ill. Adm. Code 301.80 (Relative Home Placement) must be met.

"Interstate Compact on the Placement of Children" is a law, enacted by all 50 states and the territories of Guam and the Virgin Islands, for the purpose of establishing uniform procedures for handling the interstate placement of children in foster homes, adoptive homes, or other child care facilities.

"Placement", as used in this ~~Part, Subpart~~, means the arrangement for the continuing care of a child in a foster or adoptive family home, group home, child care institution, or other child care facility as defined by the Child Care Act of 1969 [225 ILCS 10]. Placements do not include care of a child in a medical facility, a mental health facility, a correctional facility or an educational facility.

"Relative", for purposes of placement of children for whom the Department is legally responsible, means any person, 21 years of age or over, other than the parent, who:

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is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to each other), godparent (as defined in this Section), great-uncle, or great-aunt;

is the spouse, or party to a civil union, of such a relative;

is the child's step-father, step-mother, step-grandfather, step-grandmother or adult step-brother or step-sister;

is the partner, or adult child of a partner, in a civil union with the child's mother or father; or

is a fictive kin as defined in this Section.

Relative also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. For children who have been in the guardianship of the Department, have been adopted, and are subsequently returned to the temporary custody or guardianship of the Department, a "relative" may also include any person who would have qualified as a relative under this definition prior to the adoption, but only if the Department determines that it would be in the best interests of the child to consider this person a relative. [20 ILCS 505/7(b)]

"Relative", for purposes of placement of children for whom the Department is legally responsible, means any person, 21 years of age or over, other than the parent, who:

- is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to each other), godparent (as defined above), great-uncle, or great-aunt, or
- is the spouse of such a relative, or

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- ~~is the child's step father, step mother, or adult step brother or step sister.~~

~~Relative also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. [20 ILCS 505/7(b)]~~

(Source: Amended at 39 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Service Appeal Process
- 2) Code Citation: 89 Ill. Adm. Code 337
- 3) Section Number: Proposed Action
337.20 Amendment
- 4) Statutory Authority: Sections 4 and 5 of the Children and Family Services Act [20 ILCS 505/4 and 5]
- 5) A Complete Description of the Subjects and Issues Involved: Definition of "relative" is broadened to include "step-grandparents" and "fictive kin" in compliance with legislation. Definition of "Fictive kin" is added and definition of "godparent" is amended for clarification. These changes implement PA 98-846 concerning relative home placement.

Several definitions that quote a statute verbatim have been updated.

- 6) Published studies and reports, and sources of underlying data used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? Yes

<u>Section Number:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
337.20	Amendment	39 Ill. Reg. 143; January 2, 2015

- 11) Statement of Statewide Policy Objective: This rulemaking does not create or expand the State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice. Comments should be submitted to:

Jeff Osowski

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

Office of Child and Family Policy
Department of Children and Family Services
406 E. Monroe, Station #65
Springfield IL 62701-1498

217/524-1983
TDD: 217/524-3715
fax: 217/557-0692
email: CFPolicy@idcfs.state.il.us

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

- 13) Initial Regulatory Flexibility Analysis: The Department has determined that the proposed rulemaking will not have an economic impact on small businesses.
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included in either of the 2 most recent Regulatory Agendas because the need for rulemaking was not anticipated.

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

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

TITLE 89: SOCIAL SERVICES

CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES

SUBCHAPTER a: SERVICE DELIVERY

PART 337

SERVICE APPEAL PROCESS

Section	
337.10	Purpose
337.20	Definitions
337.30	The Service Appeal Process
337.40	Department and Provider Agency Responsibilities on Appealable Issues
337.50	The Right to a Service Appeal
337.60	Who May Appeal
337.70	What May Be Appealed
337.80	What May Not Be Appealed
337.90	Notices of Department or Provider Agency Decisions
337.100	How to Request a Service Appeal
337.110	Grounds for Dismissal of a Service Appeal Request
337.120	Time Frames for the Service Appeal Process
337.130	Continuing Services During the Service Appeal Process
337.140	Confidentiality During the Service Appeal Process
337.150	Notice Concerning a Service Appeal
337.160	Abandonment of a Service Appeal
337.170	Fair Hearing Appeal Rights
337.180	The Administrative Law Judge
337.190	Record of a Fair Hearing
337.200	Combined Hearings
337.210	Continuances Requested in a Combined Hearing
337.220	The Final Administrative Decision
337.230	Who Receives a Copy of the Final Administrative Decision
337.240	Notice of the Availability of Judicial Review
337.250	Severability of This Part

AUTHORITY: Implementing and authorized by Sections 4 and 5 of the Children and Family Services Act [20 ILCS 505/4 and 5].

SOURCE: Adopted at 17 Ill. Reg. 1046, effective January 15, 1993; amended at 19 Ill. Reg. 7175, effective June 1, 1995; amended at 19 Ill. Reg. 10557, effective July 1, 1995; emergency

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amendment at 25 Ill. Reg. 4283, effective March 19, 2001, for a maximum of 150 days; emergency amendment repealed in response to an Objection of the Joint Committee on Administrative Rules at 25 Ill. Reg. 6735, effective May 8, 2001; amended at 26 Ill. Reg. 6246, effective June 1, 2002; amended at 26 Ill. Reg. 11778, effective August 1, 2002; amended at 36 Ill. Reg. 4388, effective March 7, 2012; amended at 39 Ill. Reg. _____, effective _____.

Section 337.20 Definitions

"Adequate notice" means a notice that contains all of the elements identified in Section 337.90(c) of this Part.

"Administrative Hearings Unit" means the Department's unit responsible for receiving requests for and acting upon a service appeal and conducting fair hearings on appeal.

"Administrative law judge" means an attorney who is appointed by the Director of the Department and who is responsible for conducting the fair hearing.

"Administrator of the Administrative Hearings Unit" means the person who is responsible for receiving requests for a service appeal and for coordinating the fair hearings.

"Appellant" means the person who requests a service appeal or on whose behalf a service appeal is requested.

"Authorized representative" means a person authorized in writing by the appellant to assist the appellant in the appeal process. If the appellant is unable to reduce such authorization to writing, the Department shall assist the appellant in doing so. The representative may be legal counsel or other spokesperson.

"Clinical Intervention for Placement Preservation"~~Child and Youth Investment Teams~~ or "CIPP"~~CAYIT~~ means a regionally based, multidisciplinary team consisting of designated DCFS staff, the child (when age-appropriate), the child's family, extended family and others who have relevant and current information about the child, and professionals who are critical to achieve informed, sound decision-making.

"Clinical Intervention for Placement Preservation (CIPP)"~~CAYIT~~ Action Plan"

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means a written document summarizing a clinical assessment of a child's or youth's service needs, identifying the resources required to meet those needs, and establishing time frames for their achievement.

"Child welfare services" means public social services that are directed toward the accomplishment of the following purposes:

protecting and promoting the health, safety and welfare of ~~all~~ children, including homeless, dependent, or neglected children;

~~preventing, preventing or~~ remedying, or assisting in the solution of problems that may result in, the neglect, abuse, exploitation, or delinquency of children;

preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal is desirable and possible when the child can be cared for at home without endangering the child's health and safety;

restoring to their families children who have been removed by the provision of services to the child and the families when the child can be cared for at home without endangering the child's health and safety;

placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate;

assuring safe and adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption. At the time of placement, the Department shall consider concurrent planning so that permanency may occur at the earliest opportunity. Consideration should be given so that if reunification fails or is delayed, the placement made is the best available placement to provide permanency for the child;

providing supportive services and living maintenance that contributes to the physical, emotional and social well-being of children for whom the Department is legally responsible who are pregnant and unmarried;~~providing supportive services and living maintenance that~~

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~~contributes to the physical, emotional and social well-being of children who are pregnant and unmarried;~~

~~providing shelter and independent living services for homeless youth; and providing shelter and independent living services for homeless youth; and~~

~~placing and maintaining children in facilities that provide separate living quarters for children under the age of 18 and for children 18 years of age and older, unless a child 18 years of age is in the last year of high school education or vocational training, in an approved individual or group treatment program, or in a licensed shelter facility, or secure child care facility. The Department is not required to place or maintain children:~~

~~who are in a foster home, or~~

~~who are persons with a developmental disability developmentally disabled, as defined in the Mental Health and Developmental Disabilities Code [405 ILCS 5], or~~

~~who are female children who are pregnant, pregnant and parenting or parenting, or~~

~~who are siblings,~~

~~in facilities that provide separate living quarters for children 18 years of age and older and for children under 18 years of age. [20 ILCS 505/5(a)(3)].~~

These services include but are not limited to: counseling, advocacy, day care, homemaker, emergency caretaker, family planning, adoption, visitation, placement, child protection and information and referral.

"Clinical placement review" means a process in which designated clinical Department staff will review a disputed decision by the Department or purchase of service agency to remove a child from the home of a foster family or relative caregiver, when the child will be placed in the home of another foster family or relative caregiver.

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"Date of action" means the effective date of the action or proposed action by the Department or provider agency that resulted in the appeal.

"Date of appeal" means the postmark date or date of receipt of appellant's written request for an appeal, whichever is earlier, at the address specified in the notice.

"Date of notice" means the date on which the appellant receives written notice of the Department's intended action or decision or the date on which the appellant learns of the intended action or decision, if a written notice was not provided.

"Day care services" means care provided to children for less than 24 hours per day in facilities requiring licensure under the Child Care Act of 1969 [225 ILCS 10] in facilities exempt from licensure, in the homes of relatives, or in their own home.

"Department representative" means an attorney or designated individual responsible for presenting the Department's position in mediation, staffings and negotiations and at an emergency review and fair hearing.

"Emergency review" means a limited review of the actions or decisions of the Department or provider agency that may adversely affect an individual or individuals served by the Department. An emergency review provides for an interim decision pending a fair hearing.

"Fair hearing", as used in this Part, means a formal review of the action or decision of the Department or provider agency to determine whether that action or decision is in compliance with applicable laws and rules and will be in the best interests of the child.

"Family" means one or more adults and children, related by blood, marriage, civil union or adoption and residing in the same household~~the biological or adoptive parents (provided a court has not terminated parental rights), legal guardian, or any relative who has assumed custody and control of the child in the absence of the child's biological or adoptive parents.~~

"Final administrative decision" means the Department's final decision, order, or determination on an appealed issue rendered by the Director in a particular case that affects the legal rights, duties or privileges of appellants and that may be appealed in a circuit court under the Administrative Review Law [735 ILCS

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5/Art. III].

"Fictive kin" means any individual, unrelated by birth or marriage, who is shown to have close personal or emotional ties with the child or the child's family prior to the child's placement with the individual. [20 ILCS 505/7(b)]

"Godparent" is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting in raising the child if the parent cannot raise the child. ~~The worker shall verify the godparent/godechild relationship by contacting the parents to confirm the fact that they did, in fact, designate the person as the godparent. If the parents are unavailable, the worker should contact other close family members to verify the relationship.~~ If the person is considered to be the child's godparent, in order for placement to occur, the same placement selection criteria as contained in 89 Ill. Adm. Code 301.60 (Placement Selection Criteria) must be met. If the godparent is not a licensed foster parent, all the conditions currently in effect for placement with relatives in 89 Ill. Adm. Code 301.80 (Relative Home Placement) must be met.

"Imminent risk of harm" means that individuals' actions, omissions or conditions endanger the life, or seriously jeopardize the physical or mental health or safety of themselves or others, if protective action would not be taken immediately.

"Individual legally acting on a person's behalf" means an individual who has been appointed by a court to act on behalf of a person when the person is incompetent, incapacitated, or otherwise unable to speak for himself or herself.

"Mediation" means a meeting open to all parties affected by the decision being appealed to attempt agreement on the issue in dispute with a mediator, who assists the parties in resolving issues and drawing up an agreement.

"Mediator" means a neutral third party appointed by the Director of the Department who conducts the mediation and assists the parties in resolving issues and drawing up an agreement.

"Parties" means the Department or its agents and those persons who have appealed the service decisions made by the Department or its agents.

"Preponderance of the evidence" means the greater weight of the evidence or evidence that renders a fact more likely than not.

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"Provider agency" means an agency offering case management and/or casework services through a signed contract with the Department for paid services.

"Relative", for purposes of placement of children for whom the Department is legally responsible, means *any person, 21 years of age or over, other than the parent, who:*

is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to each other), godparent (as defined in this Section), great-uncle, or great-aunt, or

is the spouse, or party to a civil union, of such a relative, or

is the child's step-father, step-mother, step-grandfather, step-grandmother or adult step-brother or step-sister, or:

is the partner, or adult child of a partner, in a civil union with the child's mother or father, or

is a fictive kin as defined in this Section.

"Relative" also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. For children who have been in the guardianship of the Department, have been adopted, and are subsequently returned to the temporary custody or guardianship of the Department, a "relative" may also include any person who would have qualified as a relative under this definition prior to the adoption, but only if the Department determines, and documents, that it would be in the child's best interests to consider this person a relative, based upon the factors for determining best interests set forth in Section 1-3(4.05) of the Juvenile Court Act of 1987 [705 ILCS 405/1-3(4.05)]. [20 ILCS 505/7(b)]

"Request for an appeal" means the written request by an appellant for a fair hearing to review an action taken or a decision made by the Department or a

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provider agency on behalf of the Department. If the appellant is unable to request an appeal in writing, the Department or provider agency shall help the appellant put the request in writing.

"Reviewer" means the person appointed by the Department to conduct an emergency review.

"Service appeal process" means the appeal system offered by the Department to parents, children, guardians ad litem, foster parents and relative caregivers to challenge service decisions of the Department.

"Services" means child welfare or day care services, including placement services or benefits provided by the Department or its provider agencies under Titles IV and XX of the Social Security Act (42 USC 601 et seq. and 1397 et seq.) or the laws of the State of Illinois.

"Stay of action" means the action or decision made by the Department or its provider agency will not be implemented pending an emergency review or final administrative decision by the Department.

"Timely written notice" means a notice that complies with the requirements of Section 337.90(b).

(Source: Amended at 39 Ill. Reg. _____, effective _____)

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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- 1) Heading of the Part: Appeal of Foster Family Home License Denials by Relative Caregivers
- 2) Code Citation: 89 Ill. Adm. Code 338
- 3) Section Number: 338.20 Proposed Action: Amendment
- 4) Statutory Authority: Section 5 of the Children and Family Services Act [20 ILCS 505/ 5]
- 5) A Complete Description of the Subjects and Issues Involved: Definition of "relative" is broadened to include "step-grandparents" and "fictive kin" in compliance with legislation. Definition of "Fictive kin" is added and definition of "godparent" is amended for clarification. These changes implement Public Act 98-846 concerning relative home placement.

Several definitions that quote a statute verbatim have been updated.

- 6) Published studies and reports, and sources of underlying data used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? Yes

<u>Section Number:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
338.20	Amendment	39 Ill. Reg. 153; January 2, 2015

- 11) Statement of Statewide Policy Objective: This rulemaking does not create or expand the State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice. Comments should be submitted to:

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

Jeff Osowski
Office of Child and Family Policy
Department of Children and Family Services
406 E. Monroe, Station #65
Springfield IL 62701-1498

217/524-1983
TDD: 217/524-3715
fax: 217/557-0692
email: CFPolicy@idcfs.state.il.us

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

- 13) Initial Regulatory Flexibility Analysis: The Department has determined that the proposed rulemaking will not have an economic impact on small businesses.
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included in either of the 2 most recent Regulatory Agendas because: the need for rulemaking was not anticipated.

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

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER b: PROGRAM AND TECHNICAL SUPPORTPART 338
APPEAL OF FOSTER FAMILY HOME LICENSE DENIALS
BY RELATIVE CAREGIVERS

Section

338.10	Purpose
338.20	Definitions
338.30	Who May Appeal
338.40	What May Be Appealed
338.50	What May Not Be Appealed
338.60	Concurrent Jurisdiction
338.70	Notices of Department Decisions
338.80	The Appeal Process
338.90	Internal Review
338.100	The Administrative Hearing
338.110	Rights and Responsibilities in Administrative Hearings
338.120	Rules of Evidence
338.130	The Administrative Law Judge
338.140	Combined or Separate Hearings
338.150	Final Administrative Decision
338.160	Records of Administrative Hearings
338.170	Severability of This Part
338.180	Transition Provisions

AUTHORITY: Implementing and authorized by Section 5 of the Children and Family Services Act [20 ILCS 505/5].

SOURCE: Emergency rules adopted at 19 Ill. Reg. 12305, effective August 11, 1995, for a maximum of 150 days; adopted at 20 Ill. Reg. 1574, effective January 10, 1996; amended at 26 Ill. Reg. 11786, effective August 1, 2002; amended at 39 Ill. Reg. _____, effective _____.

Section 338.20 Definitions

"Administrative hearing" in the context of this Part means a formal review of the

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Department's decision to deny a foster family home license to the relative who is serving as caregiver of children for whom the Department is legally responsible.

"Administrative law judge" means the person who is appointed by the Director of the Department and is responsible for conducting the fair hearing.

"Administrator of the Administrative Hearings Unit" means the person who is responsible for coordinating the administrative hearing appeal process.

"Appeal file" means the correspondence, statements, reports, investigative files, documents and other written material submitted to the Administrative Hearings Unit and the appellant after the commencement of the appeal. It does not include any documents or other material ~~that~~^{which} may be in the custody of any other unit of DCFS, unless the document or material has been submitted to both the appellant and the Administrative Hearings Unit.

"Appellant" means the person who requests a review or administrative hearing or in whose behalf a review and administrative hearing is requested.

"Children for whom the Department is legally responsible" means children for whom the Department has temporary protective custody, custody or guardianship via court order, or children whose parents ~~have~~^{has} signed an adoptive surrender or voluntary placement agreement with the Department.

"Date of action" means the date on which any Department action becomes effective.

"Date of appeal" is the postmark date on the appellant's request to appeal the Department's decision to deny the application for a foster family home license.

"Date of notice" means the date of the written notice of the Department's decision.

"Department's representative" means an attorney or designated individual~~the person who is~~ responsible for presenting the Department's case.

"Fictive kin" means any individual, unrelated by birth or marriage, who is shown to have close personal or emotional ties with the child or the child's family prior to the child's placement with the individual. [20 ILCS 505/7(b)]

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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"Final administrative decision" means the Department's final decision, order or determination on an appealed issue rendered by the Director in a particular case that affects the legal rights, duties or privileges of participants and that may be further appealed to the circuit court under the Administrative Review Law [\[735 ILCS 5/Art. III\]](#).

"Full-time care" means the child is a resident of the household, whether on a temporary, emergency, or permanent basis, and is receiving family care usually provided by a parent or guardian.

"Godparent" is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting in raising the child if the parent cannot raise the child. ~~The worker shall verify the godparent/godchild relationship by contacting the parents to confirm the fact that they did, in fact, designate the person as the godparent. If the parents are unavailable, the worker should contact other close family members to verify the relationship.~~ If the person is considered to be the child's godparent, in order for placement to occur, the same placement selection criteria as contained in 89 Ill. Adm. Code [301.60302.60](#) (Placement Selection [Criteria](#)) must be met. If the godparent is not a licensed foster parent, all the conditions currently in effect for placement with relatives in 89 Ill. Adm. Code 301.80 ([Relative Home Placement](#)) must be met.

"License" means a document issued by the Department of Children and Family Services which authorizes a relative caregiver to operate a foster family home in accordance with 89 Ill. Adm. Code 402 (Licensing Standards for Foster Family Homes) and the provisions of the Child Care Act of 1969 [\[225 ILCS 10\]](#) and rules promulgated thereunder.

"Party" to any administrative hearing or other proceeding in the Department is the Department or the appellant, as the case may be.

"Relative", for purposes of placement of children for whom the Department is legally responsible, means any person, 21 years of age or over, other than the parent, who:

is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to

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each other), godparent (as defined in this Section), great-uncle, or great-aunt, or

is the spouse, or party to a civil union, of such a relative, or

is the child's step-father, step-mother, step-grandfather, step-grandmother or adult step-brother or step-sister, or

is the partner, or adult child of a partner, in a civil union with the child's mother or father, or

is a fictive kin as defined in this Section.

Relative also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. For children who have been in the guardianship of the Department, have been adopted, and are subsequently returned to the temporary custody or guardianship of the Department, a "relative" may also include any person who would have qualified as a relative under this definition prior to the adoption, but only if the Department determines that it would be in the best interests of the child to consider this person a relative. [20 ILCS 505/7(b)]

"Relative" for purposes of placement of children for whom the Department is legally responsible, means any person, 21 years of age or over, other than the parent, who:

- is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to each other), godparent (as defined in this Section), great-uncle, or great-aunt, or
- is the spouse of such a relative, or
- is the child's step-father, step-mother, or adult step-brother or step-sister.

Relative also includes a person related in any of the foregoing ways to a sibling of

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~~*a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. [20 ILCS 505/7(b)]*~~

(Source: Amended at 39 Ill. Reg. _____, effective _____)

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Authorized Child Care Payments
- 2) Code Citation: 89 Ill. Adm. Code 359
- 3) Section Number: 359.2 Proposed Action:
Amendment
- 4) Statutory Authority: Section 5 of the Children and Family Services Act [20 ILCS 505/ 5]
- 5) A Complete Description of the Subjects and Issues Involved: Definition of "relative" is broadened to include "step-grandparents" and "fictive kin" in compliance with legislation. Definition of "Fictive kin" is added and definition of "godparent" is amended for clarification. These changes implement Public Act 98-846 concerning relative home placement.

Several definitions that quote a statute verbatim have been updated.

- 6) Published studies and reports, and sources of underlying data used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? Yes

<u>Section Number:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
359.2	Amendment	39 Ill. Reg. 159; January 2, 2015

- 11) Statement of Statewide Policy Objective: This rulemaking does not create or expand the State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice. Comments should be submitted to:

Jeff Osowski

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

Office of Child and Family Policy
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The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

- 13) Initial Regulatory Flexibility Analysis: The Department has determined that the proposed rulemaking will not have an economic impact on small businesses.
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included in either of the 2 most recent Regulatory Agendas because the need for rulemaking was not anticipated.

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

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER c: FISCAL ADMINISTRATIONPART 359
AUTHORIZED CHILD CARE PAYMENTS

Section

359.1	Purpose
359.2	Definitions
359.3	Introduction
359.4	Payments for Substitute Care Services
359.5	Payments for Family Preservation and Auxiliary Services
359.6	Payments for Independent Living Arrangements
359.7	Payments for Children's Personal and Physical Maintenance
359.8	Payments for Unmarried Mothers (Repealed)
359.9	Payments for Medical Care
359.10	Overpayments and Repayments

AUTHORITY: Implementing and authorized by Section 5 of the Children and Family Services Act [20 ILCS 505/5].

SOURCE: Adopted and codified at 5 Ill. Reg. 13129, effective November 30, 1981; amended at 9 Ill. Reg. 19705, effective December 16, 1985; amended at 10 Ill. Reg. 15575, effective September 19, 1986; amended at 19 Ill. Reg. 10464, effective July 1, 1995; emergency amendment at 21 Ill. Reg. 3259, effective March 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 10904, effective July 29, 1997; amended at 26 Ill. Reg. 11791, effective August 1, 2002; amended at 39 Ill. Reg. _____, effective _____.

Section 359.2 Definitions

"Auxiliary services" means those services provided by the Department to children in their own homes as well as to children in placement which supplement or complement the primary service. For example, when advocacy services are provided to children in substitute care, this is an auxiliary service.

"Child only standard of need" means the assistance standard for cases in which no adult member is included, as determined by the Illinois Department of Human Services.

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NOTICE OF PROPOSED AMENDMENT

"Children for whom the Department has legal responsibility" means children for whom the Department has temporary protective custody, custody or guardianship via court order, or whose parents ~~have~~^{has} signed an adoptive surrender or voluntary placement agreement with the Department.

"Family preservation services" means those services provided to children and families who require social services to maintain the family unit intact.

"Fictive kin" means any individual, unrelated by birth or marriage, who is shown to have close personal or emotional ties with the child or the child's family prior to the child's placement with the individual. [20 ILCS 505/7(b)]

"Foster care payment" means the amount paid by the Department for a child's room, board, clothing, and personal allowance in a licensed foster family home.

"Godparent" is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting in raising the child if the parent cannot raise the child. ~~The worker shall verify the godparent/godechild relationship by contacting the parents to confirm the fact that they did, in fact, designate the person as the godparent. If the parents are unavailable, the worker should contact other close members to verify the relationship.~~ If the person is considered to be the child's godparent, in order for placement to occur, the same placement selection criteria as contained in 89 Ill. Adm. Code ~~301.302.60~~ (Placement Selection Criteria) must be met. If the godparent is not a licensed foster parent, all the conditions currently in effect for placement with relatives in 89 Ill. Adm. Code 301.80 (Relative Home Placement) must be met.

"Overpayment" means an amount paid for a service in excess of the actual incurred expenses or rate for that service or a payment for a service that is not rendered. This includes board payments for a child that continue after the child is no longer in the placement for which the payment is made.

"Relative", for purposes of placement of a child for whom the Department is legally responsible, means any person, 21 years of age or over, other than the parent, who:

is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew,

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to each other), godparent (as defined in this Section), first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to each other), godparent (as defined in this Section), great-uncle or great-aunt, or

is the spouse, or party to a civil union, of such a relative, or

is the child's step-father, step-mother, or adult step-brother or step-sister, or-

is the partner, or adult child of a partner, in a civil union with the child's mother or father, or

is a fictive kin as defined in this Section.

Relative also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. For children who have been in the guardianship of the Department, have been adopted, and are subsequently returned to the temporary custody or guardianship of the Department, a "relative" may also include any person who would have qualified as a relative under this definition prior to the adoption, but only if the Department determines that it would be in the best interests of the child to consider this person a relative. [20 ILCS 505/7(b)]

"Substitute care services" means those services provided to children who require placement away from their families or private guardians. Substitute care includes foster family care, care provided in a relative home placement as defined in 89 Ill. Adm. Code 301.80 (Relative Home Placement), care provided in a group home, care provided in a maternity center or a child care facility, mental health or other institution, and care provided in an independent living arrangement.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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- 1) Heading of the Part: Licensing Standards for Foster Family Homes
- 2) Code Citation: 89 Ill. Adm. Code 402
- 3) Section Number: 402.2 Proposed Action: Amendment
- 4) Statutory Authority: The Child Care Act of 1969 [225 ILCS 10]
- 5) A Complete Description of the Subjects and Issues Involved: Definition of "relative" is broadened to include "step-grandparents" and "fictive kin" in compliance with legislation. Definition of "Fictive kin" is added and definition of "godparent" is amended for clarification. These changes implement Public Act 98-846 concerning relative home placement.

Several definitions that quote a statute verbatim have been updated.

- 6) Published studies and reports, and sources of underlying data used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Actions:</u>	<u>Illinois Register Citation:</u>
402.2	Amendment	39 Ill. Reg. 165; January 2, 2015
402.12	Amendment	39 Ill. Reg. 165; January 2, 2015
402.16	Amendment	39 Ill. Reg. 165; January 2, 2015

- 11) Statement of Statewide Policy Objective: This rulemaking does not create or expand the State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice. Comments should be submitted to:

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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Jeff Osowski
Office of Child and Family Policy
Department of Children and Family Services
406 E. Monroe, Station #65
Springfield IL 62701-1498

217/524-1983
TDD: 217/524-3715
fax: 217/557-0692
email: CFPolicy@idcfs.state.il.us

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

- 13) Initial Regulatory Flexibility Analysis: The Department has determined that the proposed rulemaking will not have an economic impact on small businesses.
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included in either of the 2 most recent Regulatory Agendas because the need for rulemaking was not anticipated.

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

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

TITLE 89: SOCIAL SERVICES

CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES

SUBCHAPTER e: REQUIREMENTS FOR LICENSURE

PART 402

LICENSING STANDARDS FOR FOSTER FAMILY HOMES

Section

402.1	Purpose
402.2	Definitions
402.3	Effective Date of Standards (Repealed)
402.4	Application for License
402.5	Application for Renewal of License
402.6	Provisions Pertaining to Permits
402.7	Provisions Pertaining to the License
402.8	General Requirements for the Foster Home
402.9	Requirements for Sleeping Arrangements
402.10	Nutrition and Meals
402.11	Business and Employment of Foster Parents Family
402.12	Qualifications of Foster Family Parents
402.13	Background Inquiry
402.14	Health of Foster Family
402.15	Number and Ages of Children Served
402.16	Meeting Basic Needs of Children
402.17	Health Care of Children
402.18	Religion
402.19	Recreation and Leisure Time
402.20	Education
402.21	Discipline of Children
402.22	Emergency Care of Children
402.23	Release of Children
402.24	Confidentiality of Information
402.25	Required Written Consents
402.26	Records to be Maintained
402.27	Licensing Supervision
402.28	Adoptive Homes
402.29	Director's Waivers
402.30	Severability of This Part

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- 402.APPENDIX A Criminal Convictions That Prevent Licensure
402.APPENDIX B Number and Ages of Children in Foster Family Home: No Child Requires Specialized Care
402.APPENDIX C Number and Ages of Children in Foster Family Home: Child Requires Specialized Care

AUTHORITY: Implementing and authorized by the Child Care Act of 1969 [225 ILCS 10].

SOURCE: Adopted and codified at 5 Ill. Reg. 9548, effective October 1, 1981; emergency amendment at 6 Ill. Reg. 15580, effective December 15, 1982, for a maximum of 150 days; amended at 7 Ill. Reg. 3439, effective April 4, 1983; amended at 7 Ill. Reg. 13858, effective November 1, 1983; amended at 8 Ill. Reg. 23197, effective December 3, 1984; amended at 11 Ill. Reg. 4292, effective March 1, 1987; emergency amendment at 16 Ill. Reg. 11879, effective July 13, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 267, effective December 21, 1992; emergency amendment at 18 Ill. Reg. 8481, effective May 20, 1994, for a maximum of 150 days; emergency expired on October 17, 1994; amended at 19 Ill. Reg. 1801, effective February 1, 1995; amended at 19 Ill. Reg. 9463, effective July 1, 1995; emergency amendment at 19 Ill. Reg. 10743, effective July 1, 1995, for a maximum of 150 days; emergency expired November 27, 1995; amended at 20 Ill. Reg. 1589, effective January 10, 1996; emergency amendment at 20 Ill. Reg. 3954, effective February 16, 1996, for a maximum of 150 days; emergency expired July 15, 1996; amended at 21 Ill. Reg. 4548, effective April 1, 1997; amended at 22 Ill. Reg. 205, effective December 19, 1997; amended at 23 Ill. Reg. 7877, effective July 15, 1999; emergency amendment at 24 Ill. Reg. 6417, effective March 27, 2000, for a maximum of 150 days; emergency expired August 23, 2000; amended at 24 Ill. Reg. 17052, effective November 1, 2000; amended at 26 Ill. Reg. 2624, effective February 11, 2002; amended at 26 Ill. Reg. 11796, effective August 1, 2002; amended at 30 Ill. Reg. 6321, effective March 31, 2006; amended at 33 Ill. Reg. 11441, effective August 1, 2009; amended at 36 Ill. Reg. 4086, effective March 5, 2012; amended at 39 Ill. Reg. _____, effective _____.

Section 402.2 Definitions

"Adoptive placement" means a living arrangement with a family that is directed toward establishing that family as the child's new legal parents. To be considered an adoptive placement, the child must be placed in a licensed foster family home or license exempt relative home for purposes of adoption and:

be legally free (parental rights have been terminated or both parents have surrendered their parental rights); or

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be placed in a legal risk adoptive placement that has passed legal screening as described in 89 Ill. Adm. Code 309 (Adoption Services for Children for Whom the Department of Children and Family Services is Legally Responsible).

"Approved smoke detector" or "detector" means a smoke detector of the ionization or photoelectric type that complies with all the requirements of the rules and regulations of the Illinois State Fire Marshal. (~~Section 2 of the Smoke Detector Act~~ [425 ILCS 60/2])

"Approved in-service training" means:

Foster PRIDE module or other Department approved training;

foster parent conferences sponsored by the Department;

other conferences approved by the Department;

training provided under the auspices of a licensed child welfare agency when the agency's foster care program has been accredited by the Council on Accreditation of Services for Families and Children, Inc., 520 Eighth Avenue, Suite 2202B, New York NY 10018;

materials borrowed from the Department's Foster/Adoptive Parent Lending Libraries;

training toward first-aid, Heimlich maneuver, and/or cardiopulmonary resuscitation (CPR) certification; or

other training, substantially meeting the Department's Foster PRIDE/Adopt PRIDE training, approved in writing by the Department of Children and Family Services.

"Background check" means:

Individuals 17 years of age or older:

a criminal history check via fingerprints that are submitted to the Illinois State Police and the Federal Bureau of Investigation (FBI)

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for comparison to their criminal history records, as appropriate;
and

Individuals 13 years of age or older:

a check of the Statewide Automated Child Welfare Information System (SACWIS) and other state child protection systems, as appropriate, to determine whether an individual is currently alleged or has been indicated as a perpetrator of child abuse or neglect; and

a check of the Statewide Child Sex Offender Registry.

"CANTS" means the Child Abuse and Neglect Tracking System ~~that, which~~ has been replaced by SACWIS .

"Child" means any person under 18 years of age. [225 ILCS 10/2.01]

"Child care assistant" means an adult, 18 years of age or older, (whether a volunteer or an employee) who assists a licensed foster parent in the care of children within the foster home.

"Child care facility" means any person, group of persons, agency, association, ~~or~~ organization, corporation, institution, center or group, whether established for gain or otherwise, who or which receives or arranges for care or placement of one or more children, unrelated to the operator of the facility, apart from the parents, with or without the transfer of the right of custody in any facility as defined in the Child Care Act of 1969 [225 ILCS 10]~~the Child Care Act~~, established and maintained for the care of children. Child care facility includes a relative who is licensed as a foster family home under~~pursuant to~~ Section 4 of the Child Care Act. [225 ILCS 10/2.05]

"Classifiable fingerprints" means fingerprints obtained through an electronic or ink printing process that were determined to provide sufficiently clear impressions to identify the individual from whom the prints were obtained.

"Common parentage" means having the same biological or adoptive father, the same biological or adoptive mother, or the same biological or adoptive father and mother.

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"Complete application for foster family home license" means, at a minimum, a completed written application form; written authorization by the applicant and all adult members of the household to conduct a criminal background investigation; medical evidence in the form of a medical report, on forms prescribed by the Department, that the applicant and all members of the household are free from communicable diseases or physical and mental conditions that affect their ability to provide care for the child or children; the names and addresses of at least 3 persons not related to the applicant who can attest to the applicant's moral character; and fingerprints submitted by the applicant and all adult members of the applicant's household. [225 ILCS 10/4]

"Corporal punishment" means hitting, spanking, beating, shaking, pinching, and other measures that produce physical pain.

"Department" means the Illinois Department of Children and Family Services. [225 ILCS 10/2.02]

"Discipline" means the process of helping children to develop inner controls so that they can manage their own behavior in socially acceptable ways. Discipline does not include the use of corporal punishment as defined in this Part.

"Educational advocacy training" means the 6-hour training that prepares foster parents to effectively advocate for the special educational needs of the children in their care by providing information on children's educational rights and foster parents' responsibility to protect those rights.

"Expanded capacity license" means the foster family home has been issued a license from the Department authorizing the foster family to accept more than six children for care (including the family's own children under age 18 and all other children under age 18 receiving full-time care) as permitted in Section 402.15(c) (for foster care placements) or (e) (for adoptive placements).

"Foster family home" means a facility for child care in residences of families who receive no more than 8 children unrelated or related to them, unless all the children are of common parentage, or residences of relatives who receive no more than 8 related or unrelated children placed by the Department, unless the children are of common parentage, for the purpose of providing family care and training for the children on a full-time basis, except the Director of Children and Family Services, pursuant to Department regulations, may waive the limit of 8

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children unrelated to an adoptive family for good cause to facilitate an adoptive placement. The family's or relative's own children, under 18 years of age, shall be included in determining the maximum number of children served. [225 ILCS 10/2.17] The Department requires foster family homes to receive an expanded capacity license allowing them to receive more than six children, including their own children under age 18 and all other children under the age of 18 receiving full-time care.

"Full-time care" means the child is a resident of the household, whether on a temporary, emergency, or permanent basis, and is receiving family care usually provided by a parent or guardian.

"Godparent" is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting in raising the child if the parent cannot raise the child. The worker shall verify the godparent/godchild relationship by contacting the parents to confirm the fact that they did, in fact, designate the person as the godparent. If the parents are unavailable, the worker should contact other close family members to verify the relationship. If the person is considered to be the child's godparent, in order for placement to occur, the same placement selection criteria as contained in 89 Ill. Adm. Code 301.60 (Placement Selection Criteria) must be met. If the godparent is not a licensed foster parent, all the conditions currently in effect for placement with relatives in 89 Ill. Adm. Code 301.80 ([Relative Home Placement](#)) must be met.

"In-service training" means approved training provided to currently licensed foster parents.

"License" means a document issued by the Department of Children and Family Services that authorizes child care facilities to operate in accordance with applicable standards and the provisions of the Child Care Act.

"License applicant" means the operator or person with direct responsibility for daily operation of the facility to be licensed. [225 ILCS 10/4.4]~~(Section 4.4 of the Child Care Act)~~

"Licensed physician" means a person licensed to practice medicine in the State of Illinois.

"Licensee" means those individuals, agencies, or organizations who hold a license

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or permit issued by the Department of Children and Family Services.

"Licensing representative" means persons authorized by the Department under the Child Care Act to perform licensing activities.

"Licensing study" means a written review and assessment of an application for license, on-site visits, interviews, and the collection and review of supporting documents to determine compliance with the Child Care Act of 1969 and the standards prescribed by this Part.

"Member of the household" means a person who resides in a family home as evidenced by factors including, but not limited to, maintaining clothing and personal effects at the household address, or receiving mail at the household address, or using identification with the household address.

"Minor traffic violation" means a traffic violation under the laws of the State of Illinois or any municipal authority in Illinois or another state or municipal authority that is punishable solely by fines as a petty offense. *"Minor traffic violation" means a traffic violation under the laws of the State of Illinois or any municipal authority in Illinois or another state or municipal authority which is punishable solely by fines as a petty offense. [625 ILCS 5/6-601]*

"Multi-purpose room" means a room in the foster family home that has been designed for several purposes. A multi-purpose room that is temporarily converted into a bedroom may only be a pass through room in the home if the privacy of the children using the room for a bedroom can be ensured. Activities within the room shall be normal bedroom activities such as sleeping, dressing and playing while used as a bedroom.

"Non-active status" means a licensed foster home has no foster placements and maintains continuous compliance with this Part that, by mutual written agreement with the Department, does not receive regular licensing monitoring visits by the Department or supervising agency.

"Permit" means a one-time only document issued by the Department of Children and Family Services for a two month period to allow the individuals to become eligible for an initial foster family home license.

"Petty offense" means any offense for which a fine only is provided and a sentence

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~~of imprisonment is not an authorized disposition to a fine only is provided.~~ [730 ILCS 5/5-1-17]

"Relative", for purposes of placement of children for whom the Department is legally responsible, *means any person, 21 years of age or over, other than the parent, who:*

~~is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin,~~ is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin~~second cousin~~ (children of first cousins are second cousins to each other), godparent~~godparent~~ (as defined in this Section), great-uncle or great-aunt, ~~or great-uncle or great-aunt, or~~

is the spouse, or party to a civil union, of such a relative, or

is the child's step-father, step-mother, or adult step-brother or step-sister,
or

is the partner, or adult child of a partner, in a civil union with the child's mother or father, or

is a fictive kin as defined in this Section.

Relative also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. For children who have been in the guardianship of the Department, have been adopted, and are subsequently returned to the temporary custody or guardianship of the Department, a "relative" may also include any person who would have qualified as a relative under this definition prior to the adoption, but only if the Department determines that it would be in the best interests of the child to consider this person a relative. [20 ILCS 505/7(b)]

"Reputable character" means there is satisfactory evidence that the moral character of the applicant is trustworthy.

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"Respite foster care" means temporary (not to exceed 30 days), full-time care in a licensed foster family home, group home, or child care institution, or in a license exempt relative home, when such temporary, full-time care is provided to foster children. Respite foster care is provided to foster children in order to give the full-time caregivers a rest from caregiving responsibilities.

"Responsible" means trustworthy performance of expected duties that serves the best interests of the foster children as evidenced by established child welfare standards, State and federal law, and the rules of the Department.

"SACWIS" means the Statewide Automated Child Welfare Information System operated by the Illinois Department of Children and Family Services that replaced the Child Abuse and Neglect Tracking System (CANTS).

"Specialized care" or "specialized foster care services" means care provided to a child in the custody or guardianship of the Department who requires such services due to emotional, behavioral, developmental or medical needs, or any combination thereof, or any other needs which require special intervention services, the primary goal being to maintain the child in foster care or in a permanency setting. [20 ILCS 505/5.30(a)] Specialized foster care services are further described in 89 Ill. Adm. Code 301.90 (Foster Family Home Care).~~a child who has developmental, emotional, behavioral, or medical needs and who has been determined to require specialized care. The need for specialized care shall be redetermined once every six months.~~

"Supervising agency", for the purpose of this Part, means a licensed child welfare agency, a license-exempt agency, or the Department of Children and Family Services.

"Universal precautions" means an approach to infection control. According to the concept of universal precautions, all human blood and certain body fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Sulfur Limitations
- 2) Code Citation: 35 Ill. Adm. Code 214
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
214.101	Amendment
214.102	Amendment
214.103	Amendment
214.104	Amendment
214.121	Amendment
214.122	Amendment
214.161	Amendment
214.162	Amendment
214.201	Amendment
214.300	Amendment
214.301	Amendment
214.305	New Section
214.421	Amendment
214.600	New Section
214.601	New Section
214.602	New Section
214.603	New Section
214.604	New Section
214.605	New Section
- 4) Statutory Authority: Sections 4, 10, 27, 28, and 28.2 of the Illinois Environmental Protection Act [415 ILCS 5/4, 10, 27, 28, 28.2]
- 5) A Complete Description of the Subjects and Issues Involved: The Agency proposes revisions to Part 214 to satisfy Illinois' obligation to submit a State Implementation Plan to the United States Environmental Protection Agency to address requirements under Sections 172, 191, and 192 of the Clean Air Act for areas designated as nonattainment with respect to the sulfur dioxide National Ambient Air Quality Standard.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: Consistent with proposed amendments to 35 Ill. Adm. Code 217 and 225; and 42 USC 7502, 7514, 7515a.
- 7) Will this rulemaking replace an emergency rule currently in effect? No

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- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b)]
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of 45 days after the date of publication in the *Illinois Register*. Public comments must be filed with the Clerk of the Board. Public comments should reference Docket R15-21 and be addressed to:

Clerk's Office
Illinois Pollution Control Board
JRTC
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us.

Interested persons may request copies of the Board's opinion and order in R15-21 by calling the Clerk's office at 312/814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us.

For more information, contact hearing officer Daniel Robertson at 312/814-6931 or by e-mail at Daniel.Robertson@illinois.gov.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business, small municipality, or not-for-profit corporation that is regulated by the Illinois Environmental Protection Agency for sulfur dioxide emissions

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- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on a regulatory agenda.

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

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: EMISSION STANDARDS AND LIMITATIONS
FOR STATIONARY SOURCESPART 214
SULFUR LIMITATIONS

SUBPART A: GENERAL PROVISIONS

Section	
214.100	Scope and Organization
214.101	Measurement Methods
214.102	Abbreviations and Units
214.103	Definitions
214.104	Incorporations by Reference

SUBPART B: NEW FUEL COMBUSTION EMISSION SOURCES

Section	
214.120	Scope
214.121	Large Sources
214.122	Small Sources

SUBPART C: EXISTING SOLID FUEL COMBUSTION EMISSION SOURCES

Section	
214.140	Scope
214.141	Sources Located in Metropolitan Areas
214.142	Small Sources Located Outside Metropolitan Areas
214.143	Large Sources Located Outside Metropolitan Areas

SUBPART D: EXISTING LIQUID OR MIXED FUEL
COMBUSTION EMISSION SOURCES

Section	
214.161	Liquid Fuel Burned Exclusively
214.162	Combination of Fuels

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SUBPART E: AGGREGATION OF SOURCES OUTSIDE METROPOLITAN AREAS

Section	
214.181	Dispersion Enhancement Techniques
214.182	Prohibition
214.183	General Formula
214.184	Special Formula
214.185	Alternative Emission Rate
214.186	New Operating Permits

SUBPART F: ALTERNATIVE STANDARDS FOR
SOURCES INSIDE METROPOLITAN AREAS

Section	
214.201	Alternative Standards for Sources in Metropolitan Areas
214.202	Dispersion Enhancement Techniques

SUBPART K: PROCESS EMISSION SOURCES

Section	
214.300	Scope
214.301	General Limitation
214.302	Exception for Air Pollution Control Equipment
214.303	Use of Sulfuric Acid
214.304	Fuel Burning Process Emission Source
214.305	Fuel Sulfur Content Limitations

SUBPART O: PETROLEUM REFINING, PETROCHEMICAL
AND CHEMICAL MANUFACTURING

Section	
214.380	Scope
214.381	Sulfuric Acid Manufacturing
214.382	Petroleum and Petrochemical Processes
214.383	Chemical Manufacturing
214.384	Sulfate and Sulfite Manufacturing

SUBPART P: STONE, CLAY, GLASS AND CONCRETE PRODUCTS

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Section	
214.400	Scope
214.401	Glass Melting and Heat Treating
214.402	Lime Kilns

SUBPART Q: PRIMARY AND SECONDARY METAL MANUFACTURING

Section	
214.420	Scope
214.421	Combination of Fuels at Steel Mills in Metropolitan Areas
214.422	Secondary Lead Smelting in Metropolitan Areas
214.423	Slab Reheat Furnaces in St. Louis Area

SUBPART V: ELECTRIC POWER PLANTS

Section	
214.521	Winnetka Power Plant

SUBPART X: UTILITIES

Section	
214.560	Scope
214.561	E. D. Edwards Electric Generating Station
214.562	Coffeen Generating Station

SUBPART AA: REQUIREMENTS FOR CERTAIN SO₂ SOURCES

<u>Section</u>	
<u>214.600</u>	<u>Definitions</u>
<u>214.601</u>	<u>Applicability</u>
<u>214.602</u>	<u>Compliance Deadline</u>
<u>214.603</u>	<u>Emission Limitations</u>
<u>214.604</u>	<u>Monitoring and Testing</u>
<u>214.605</u>	<u>Recordkeeping and Reporting</u>

214.APPENDIX A	Rule into Section Table
214.APPENDIX B	Section into Rule Table
214.APPENDIX C	Method used to Determine Average Actual Stack Height and Effective

POLLUTION CONTROL BOARD

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214.APPENDIX D Height of Effluent Release
 Past Compliance Dates

AUTHORITY: Implementing Section 10 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/10 and 27].

SOURCE: Adopted as Chapter 2: Air Pollution, Rule 204: Sulfur Emission Standards and Limitations, R71-23, 4 PCB 191, filed and effective April 14, 1972; amended in R74-2 and R75-5, 32 PCB 295, at 3 Ill. Reg. 5, p. 777, effective February 3, 1979; amended in R74-2, R75-5, 38 PCB 129, at 4 Ill. Reg. 28, p. 417, effective June 26, 1980; amended in R78-17, 40 PCB 291, at 5 Ill. Reg. 1892, effective February 17, 1981; amended in R77-15, 44 PCB 267, at 6 Ill. Reg. 2146, effective January 28, 1982; amended and renumbered in R80-22(A) at 7 Ill. Reg. 4220, effective March 28, 1983; codified at 7 Ill. Reg. 13597; amended in R80-22(B) at 8 Ill. Reg. 6172, effective April 24, 1984; amended in R84-28 at 10 Ill. Reg. 9806, effective May 20, 1986; amended in R86-31 at 12 Ill. Reg. 17387, effective October 14, 1988; amended in R86-30 at 12 Ill. Reg. 20778, effective December 5, 1988; amended in R87-31 at 15 Ill. Reg. 1017, effective January 15, 1991; amended in R02-21 at 27 Ill. Reg. 12101, effective July 11, 2003; amended in R04-12/20 at 30 Ill. Reg. 9671, effective May 15, 2006; amended in R15-21 at 39 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 214.101 Measurement Methods

A determination of non-compliance based on any subsection of this Section shall not be refuted by evidence of compliance with any other subsection.

- a) Sulfur Dioxide Measurement. Measurement of sulfur dioxide emissions from stationary sources shall be made according to an applicable method specified in 40 CFR 60, ~~appendix~~Appendix A, Method 6, 6A, 6B, or 6C, incorporated by reference in Section 214.104(a), or by measurement procedures established pursuant to 40 CFR 60.8(b), incorporated by reference in Section 214.104(b), or by an installed certified continuous emissions monitoring system, or by an alternative monitoring method available under 40 CFR 75, incorporated by reference in Section 214.10(e). (Ill. Rev. Stat. 1989, ch. 111½, par. 1010.)
- b) Sulfuric Acid Mist and Sulfur Trioxide Measurement. Measurement of sulfuric acid mist and sulfur trioxide shall be according to the barium-thorin titration method specified in 40 CFR 60, ~~appendix~~Appendix A, Method 8, incorporated by

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reference in Section 214.104(a), or a controlled condensate method approved in writing by the Agency.

- c) Solid Fuel Averaging Measurement Daily Analysis Method. This subsection applies to sources at plants with total solid fuel-fired heat input capacity exceeding 439.5 MW (1500 ~~mm~~millionBtu/hr). If daily fuel analysis is used to demonstrate compliance or non-compliance with Sections 214.122, 214.141, 214.142(a) 214.162, 214.186 and 214.421, the sulfur dioxide emission rate to be compared to the emission limit shall be considered to be the result of averaging daily samples taken over any consecutive two-month period provided no more than 5 percent of the sample values are greater than 20 percent above the sample average. If samples from a source cannot meet this statistical criterion, each individual daily sample analysis for such source shall be compared to the source's emission limit to determine compliance. The specific ASTM procedures, incorporated by reference in Section 214.104(c), shall be used for solid fuel sampling, sulfur, and heating value determinations.
- d) Weekly Analysis Method. This subsection applies to sources at plants with total solid fuel-fired heat input capacity exceeding 146.5 MW (500 ~~mm~~millionBtu/hr) but not exceeding 439.5 MW (1500 ~~mm~~millionBtu/hr). These plants shall demonstrate compliance or non-compliance with Sections 214.122, 214.141, 214.142(a), 214.162, 214.186 and 214.421 by either an analysis of calendar weekly composites of daily fuel samples or by compliance with subsection (c)~~above~~, at the option of the plant. The specific ASTM procedures incorporated by reference in Section 214.104(c), shall be used for sulfur and heating value determinations.
- e) Monthly Analysis Method. This subsection applies to sources at plants with total fuel-fired heat input capacity exceeding 14.65 MW (50 ~~mm~~millionsBtu/hr) but not exceeding 146.5 MW (500 ~~mm~~millionBtu/hr). These plants shall demonstrate compliance or non-compliance with Sections 214.122, 214.141, 214.142(a), 214.162, 214.186 and 214.421 by either an analysis of calendar monthly composites of daily fuel samples or by compliance with subsection (c)~~above~~, at the option of the plant. ASTM procedures incorporated by reference in Section 214.104(c), shall be used for sulfur and heating value determinations.
- f) Small Source Alternative Method. This subsection applies to sources at plants with total solid fuel-fired heat input capacity not exceeding 14.65 MW (50 ~~mm~~millionBtu/hr). Compliance or non-compliance with Sections 214.122,

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214.141, 214.142(a), 214.162, 214.186 and 214.421 shall be demonstrated by a calendar month average sulfur dioxide emission rate.

- g) Exemptions. Subsections (c) through (f) shall not apply to sources controlling sulfur dioxide emissions by flue gas desulfurization equipment or by sorbent injection.
- h) Hydrogen Sulfide Measurement. For purposes of determining compliance with Section 214.382(c), the concentration of hydrogen sulfide in petroleum refinery fuel gas shall be measured using the Tutwiler Procedure specified in 40 CFR 60.648, incorporated by reference in Section 214.104(d).

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 214.102 Abbreviations and Units

- a) The following abbreviations are used in this Part:

<u>BTU</u> or btu	British thermal units (60° F)
ft	foot
gr	grains
J	Joule
kg	kilogram
kg/MW-hr	kilograms per megawatt-hour
km	kilometer
lbs	pounds
lbs/mm B btu	pounds per million B btu
m	meter
mg	milligram
Mg	megagram, metric ton or tonne
mi	mile
mm B btu	million British thermal units
mm B btu/hr	million British thermal units per hour
MW	megawatt; one million watts
MW-hr	megawatt-hour
ng	nanogram; one billionth of a gram by volume
ng/J	nanograms per Joule
ppm	parts per million

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scf	standard cubic foot
scm	standard cubic meter
T	English ton

- b) The following conversion factors have been used in this Part:

English	Metric
2.205 lb	1 kg
1 T	0.907 Mg
1 lb/T	0.500 kg/Mg
mm B tu/hr	0.293 MW
1	1.548 kg/MW-hr
lb/mm B tu	
1 mi	1.61 km
1 gr/scf	2289 mg/scm

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 214.103 Definitions

Unless otherwise indicated, the~~The~~ definitions of 35 Ill. Adm. Code 201 and 211 apply to this Part.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 214.104 Incorporations by Reference

The following materials are incorporated by reference. These incorporations do not include any later amendments or editions.

- a) 40 CFR 60, Appendix A (~~2014~~1989):
- 1) Method 1: Sample and Velocity Traverses for Stationary Sources;
 - 2) Method 2: Determination of Stack Gas Velocity and Volumetric Flow Rate;
 - 3) Method 3: Gas Analysis for the Determination of Dry Molecular Weight;

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- 4) [Method 4: Determination of Moisture Content in Stack Gases;](#)
 - 5) Method 6: Determination of Sulfur Dioxide Emissions From Stationary Sources;
 - 6) Method 6A: Determination of Sulfur Dioxide, Moisture, and Carbon Dioxide Emissions From Fossil Fuel Combustion Sources;
 - 7) Method 6B: Determination of Sulfur Dioxide and Carbon Dioxide Daily Average Emissions From Fossil Fuel Combustion Sources;
 - 8) Method 6C: Determination of Sulfur Dioxide Emissions From Stationary Sources (Instrumental Analyzer Procedure);
 - 9) Method 8: Determination of Sulfuric Acid Mist and Sulfur Dioxide Emissions From Stationary Sources;:-
 - 10) [Method 19: Determination of Sulfur Dioxide Removal Efficiency and Particulate Matter, Sulfur Dioxide, and Nitrogen Oxide Emission Rates.](#)
- b) 40 CFR 60.8(b) (~~2014~~1989), Performance Tests.
- c) American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103:
- 1) For solid fuel sampling:
 - ASTM D-2234 (1989)
 - ASTM D-2013 (1986)
 - 2) For sulfur determinations:
 - ASTM D-3177 (1984)
 - ASTM D-2622 (1987)
 - ASTM D-3180 (1984)

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ASTM D-4239 (1985)

- 3) For heating value determinations:

ASTM D-2015 (1985)

ASTM D-3286 (1985)

- d) Tutwiler Procedure for hydrogen sulfide, 40 CFR 60.648 ([20141989](#)).
- e) [40 CFR 75 \(2014\)](#).
- f) [USEPA's Emission Measurement Center Guideline Document \(GD-042\), Preparation and Review of Site-Specific Emission Test Plans, Revised March 1999](#).

(Source: Amended at 39 Ill. Reg. _____, effective _____)

SUBPART B: NEW FUEL COMBUSTION EMISSION SOURCES

Section 214.121 Large Sources

This ~~Section~~ applies to new fuel combustion emission sources with actual heat input greater than 73.2 MW (250 mm~~B~~tu/hr).

- a) Solid Fuel Burned Exclusively. No person shall cause or allow the emission of sulfur dioxide into the atmosphere in any one hour period from any new fuel combustion emission source greater than 73.2 MW (250 mm~~B~~tu/hr), burning solid fuel exclusively, to exceed 1.86 kg of sulfur dioxide per MW-hr of actual heat input (1.2 lbs/mm~~B~~tu).

~~(BOARD NOTE~~Board Note: This ~~Section~~ was invalidated in Commonwealth Edison v. PCB, 25 Ill. App.3d 271, 62 Ill.2d 494, 43 N.E.2d 459, 323 N.E.2d 84, Ashland Chemical Corp. v. PCB, 64 Ill. App.3d 169, and Illinois State Chamber of Commerce v. PCB, 67 Ill. App.3d 839, 384 N.E.2d 922, 78 Ill.2d 1, 398 N.E.2d 9.)

- b) Liquid Fuel Burned Exclusively.

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- 1) Prior to January 1, 2017, no~~No~~ person shall cause or allow the emission of sulfur dioxide into the atmosphere in any one hour period from any new fuel combustion emission source with actual heat input greater than 73.2 MW (250 mm~~B~~Btu/hr), burning liquid fuel exclusively, to exceed the following:
 - A1) ~~To exceed~~ 1.2 kg of sulfur dioxide per MW-hr of actual heat input when residual fuel oil is burned (0.8 lbs/mm~~B~~Btu); and
 - B2) ~~To exceed~~ 0.46 kg of sulfur dioxide per MW-hr of actual heat input when distillate fuel oil is burned (0.3 lbs/mm~~B~~Btu);

- 2) On and after January 1, 2017, the owner or operator of a new fuel combustion emission source with actual heat input greater than 73.2 MW (250 mmBtu/hr), burning liquid fuel exclusively, must comply with the following:
 - A) The sulfur content of all residual fuel oil used by the fuel combustion emission source must not exceed 1000 ppm;

 - B) The sulfur content of all distillate fuel oil used by the fuel combustion emission source must not exceed 15 ppm; and

 - C) The owner or operator must:
 - i) Maintain records demonstrating that the fuel oil used by the fuel combustion emission source complies with the requirements in subsections (b)(2)(A) and (b)(2)(B), including records from the fuel supplier indicating the sulfur content of the fuel oil and the method used to determine sulfur content;

 - ii) Retain the records for at least 5 years, and provide copies of the records to the Agency within 30 days after receipt of a request by the Agency; and

 - iii) Notify the Agency within 30 days after discovery of deviations from any of the requirements in this subsection (b)(2). At minimum, and in addition to any permitting

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obligations, the notification must include a description of the deviations, a discussion of the possible cause of the deviations, any corrective actions taken, and any preventative measures taken.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 214.122 Small Sources

This ~~Section~~ applies to new fuel combustion emission sources with actual heat input smaller than, or equal to, 73.2 MW (250 mmBtu/hr).

- a) Solid Fuel Burned Exclusively. No person shall cause or allow the emission of sulfur dioxide into the atmosphere in any one hour period from any new fuel combustion source with actual heat input smaller than, or equal to, 73.2 MW (250 mmBtu/hr), burning solid fuel exclusively, to exceed 2.79 kg of sulfur dioxide per MW-hr of actual heat input (1.8 lbs/mmBtu).
- b) Liquid Fuel Burned Exclusively.
 - 1) Prior to January 1, 2017, no person shall cause or allow the emission of sulfur dioxide into the atmosphere in any one hour period from any new fuel combustion emission source with actual heat input smaller than, or equal to, 73.2 MW (250 mmBtu/hr), burning liquid fuel exclusively, to exceed the following:
 - A1) ~~To exceed~~ 1.55 kg of sulfur dioxide per MW-hr of actual heat input when residential fuel oil is burned (0.8 lbs/mmBtu); and
 - B2) ~~To exceed~~ 0.46 kg of sulfur dioxide per MW-hr of actual heat input when distillate fuel oil is burned (0.3 lbs/mmBtu).
 - 2) On and after January 1, 2017, the owner or operator of a new fuel combustion emission source with actual heat input smaller than, or equal to, 73.2 MW (250 mmBtu/hr), burning liquid fuel exclusively, must comply with the following:
 - A) The sulfur content of all residual fuel oil used by the fuel combustion emission source must not exceed 1000 ppm;

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- B) The sulfur content of all distillate fuel oil used by the fuel combustion emission source must not exceed 15 ppm; and
- C) The owner or operator must:
- i) Maintain records demonstrating that the fuel oil used by the fuel combustion emission source complies with the requirements in subsections (b)(2)(A) and (b)(2)(B), including records from the fuel supplier indicating the sulfur content of the fuel oil and the method used to determine sulfur content;
 - ii) Retain the records for at least 5 years, and provide copies of the records to the Agency within 30 days after receipt of a request by the Agency; and
 - iii) Notify the Agency within 30 days after discovery of deviations from any of the requirements in this subsection (b)(2). At minimum, and in addition to any permitting obligations, the notification must include a description of the deviations, a discussion of the possible cause of the deviations, any corrective actions taken, and any preventative measures taken.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

SUBPART D: EXISTING LIQUID OR MIXED FUEL
COMBUSTION EMISSION SOURCES

Section 214.161 Liquid Fuel Burned Exclusively

- a) Prior to January 1, 2017, no ~~No~~ person shall cause or allow the emission of sulfur dioxide into the atmosphere in any one hour period from any existing fuel combustion emission source, burning liquid fuel exclusively, to exceed the following:
- 1a) ~~To exceed~~ 1.55 kg of sulfur dioxide per MW-hr of actual heat input when residual fuel oil is burned (1.0 lbs/mmBtu); and

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- 2b) ~~To exceed~~ 0.46 kg of sulfur dioxide per MW-hr of actual heat input when distillate fuel oil is burned (0.3 lbs/mm³Btu).
- b) Except as provided in subsections (c), (d), and (e), on and after January 1, 2017, the owner or operator of an existing fuel combustion emission source, burning liquid fuel exclusively, must comply with the following:
- 1) The sulfur content of all residual fuel oil used by the fuel combustion emission source must not exceed 1000 ppm;
 - 2) The sulfur content of all distillate fuel oil used by the fuel combustion emission source must not exceed 15 ppm; and
 - 3) The owner or operator must:
 - A) Maintain records demonstrating that the fuel oil used by the fuel combustion emission source complies with the requirements in subsections (b)(1) and (b)(2), including records from the fuel supplier indicating the sulfur content of the fuel oil and the method used to determine sulfur content;
 - B) Retain the records for at least 5 years, and provide copies of the records to the Agency within 30 days after receipt of a request by the Agency; and
 - C) Notify the Agency within 30 days after discovery of deviations from any of the requirements in this subsection (b). At minimum, and in addition to any permitting obligations, the notification must include a description of the deviations, a discussion of the possible cause of the deviations, any corrective actions taken, and any preventative measures taken.
- c) The sulfur content limitation for distillate fuel oil in subsection (b)(2) does not apply to existing electric generating units at Midwest Generation's Joliet station (located at or near 1800 Channahon Road, Joliet IL), Powerton station (located at or near 13082 E. Manito Road, Pekin IL), Waukegan station (located at or near 401 E. Greenwood Avenue, Waukegan IL), and Will County station (located at or

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near 529 E. 135th, Romeoville IL). The owner or operator of such electric generating units must instead comply with the following:

- 1) From January 1, 2016 through December 31, 2018, the sulfur content of all distillate fuel oil purchased for use by such electric generating units must not exceed 15 ppm;
- 2) From January 1, 2017 through December 31, 2018, the sulfur content of all distillate fuel oil used by such electric generating units must not exceed 500 ppm;
- 3) On and after January 1, 2019, the sulfur content of all distillate fuel oil used by such electric generating units must not exceed 15 ppm;
- 4) The owner or operator must:
 - A) Maintain records demonstrating that the distillate fuel oil purchased from January 1, 2016 through December 31, 2018 for use by the electric generating units complies with the requirements in subsection (c)(1), including the date of purchase and records from the fuel supplier indicating the sulfur content of the fuel oil and the method used to determine sulfur content;
 - B) Maintain records demonstrating that the distillate fuel oil used from January 1, 2017 through December 31, 2018 by the electric generating units, complies with the requirements in subsection (c)(2), including records from the fuel supplier indicating the sulfur content of the fuel oil and the method used to determine sulfur content;
 - C) On and after January 1, 2019, maintain records demonstrating that the distillate fuel oil used by the electric generating units complies with the requirements in subsection (c)(3), including records from the fuel supplier indicating the sulfur content of the fuel oil and the method used to determine sulfur content;
 - D) Retain all records required by this subsection (c) for at least 5 years, and provide copies of the records to the Agency within 30 days after receipt of a request by the Agency; and

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- E) Notify the Agency within 30 days after discovery of deviations from any of the requirements in this subsection (c). At minimum, and in addition to any permitting obligations, the notification must include a description of the deviations, a discussion of the possible cause of the deviations, any corrective actions taken, and any preventative measures taken;
- 5) Maintain records indicating the amount of distillate fuel oil used by the fuel combustion emission sources each calendar year for purposes of research and development or testing of equipment for sale outside of Illinois, as well as records demonstrating that such fuel oil complies with the requirements in this subsection (c), including records from the fuel supplier indicating the sulfur content of the fuel oil and the method used to determine sulfur content;
- 6) Retain the records for at least 5 years, and provide copies of the records to the Agency within 30 days after receipt of a request by the Agency; and
- 7) Notify the Agency within 30 days after discovery of deviations from any of the requirements in this subsection (c). At minimum, and in addition to any permitting obligations, the notification must include a description of the deviations, a discussion of the possible cause of the deviations, any corrective actions taken, and any preventative measures taken.
- d) The sulfur content limitation for distillate fuel oil in subsection (b)(2) does not apply to existing fuel combustion emission sources at Caterpillar's Montgomery facility (located at or near 325 South Route 31, Montgomery IL). The owner or operator of the fuel combustion emission sources must instead comply with the following:
- 1) On and after January 1, 2016:
- A) The sulfur content of all distillate fuel oil purchased for use by the fuel combustion emission sources must not exceed 15 ppm; and
- B) The sulfur content of all distillate fuel oil used by the fuel combustion emission sources must not exceed 500 ppm;

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- 2) The owner or operator must:
- A) Maintain records demonstrating that the distillate fuel oil purchased on and after January 1, 2016 for use by the fuel combustion emission sources complies with the requirements in subsection (d)(1)(A), including the date of purchase and records from the fuel supplier indicating the sulfur content of the fuel oil and the method used to determine sulfur content;
 - B) Maintain records demonstrating that the distillate fuel oil used on and after January 1, 2016 by the fuel combustion emission sources complies with the requirements in subsection (d)(1)(B), including records from the fuel supplier indicating the sulfur content of the fuel oil and the method used to determine sulfur content;
 - C) Retain all records required by this subsection (d) for at least 5 years, and provide copies of the records to the Agency within 30 days after receipt of a request by the Agency; and
 - D) Notify the Agency within 30 days after discovery of deviations from any of the requirements in this subsection (d). At minimum, and in addition to any permitting obligations, the notification must include a description of the deviations, a discussion of the possible cause of the deviations, any corrective actions taken, and any preventative measures taken.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 214.162 Combination of Fuels

- a) No person shall cause or allow the emission of sulfur dioxide into the atmosphere in any one hour period from any fuel combustion emission source burning simultaneously any combination of solid, liquid and gaseous fuels to exceed the allowable emission rate determined by the following equation:

$$E = S_s H_s + S_d H_d + S_R H_R$$

- b) Symbols in the equation mean the following:

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- E = allowable sulfur dioxide emission rate;
 S_S = solid fuel sulfur dioxide emission standard which is applicable;
 S_d = distillate oil sulfur dioxide emission standard determined from the table in subsection (d);
 S_R = residual fuel oil sulfur dioxide emission standard;
 H_S = actual heat input from solid fuel;
 H_d = actual heat input from distillate fuel oil;
 H_R = actual heat input from residual fuel oil.

- c) That portion of the actual heat input that is derived:
- 1) From the burning of gaseous fuels produced by the gasification of solid fuels shall be included in H_S ;
 - 2) From the burning of gaseous fuels produced by the gasification of distillate fuel oil shall be included in H_d ;
 - 3) From the burning of gaseous fuels produced by the gasification of residual fuel oil shall be included in H_R ;
 - 4) From the burning of gaseous fuels produced by the gasification of any other liquid fuel shall be included in H_R ; and
 - 5) From the burning of by-product gases such as those produced from a blast furnace or a catalyst regeneration unit in a petroleum refinery shall be included in H_R .

- d) Metric or English units may be used in the equation of subsection (a) as follows:

<u>Parameter</u>	<u>Metric</u>	<u>English</u>
E	kg/hr	lbs/hr
S_S, S_R	kg/MW-hr	lbs/mmBtu
S_d <u>prior to January 1, 2017</u>	0.46 kg/MW-hr	0.3 lbs/mmBtu
S_d <u>on and after January 1, 2017</u>	<u>0.023 kg/MW-hr</u>	<u>0.0015 lb/mmBtu</u>
H_S, H_d, H_R	MW	mmBtu

(Source: Amended at 39 Ill. Reg. _____, effective _____)

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SUBPART F: ALTERNATIVE STANDARDS FOR
SOURCES INSIDE METROPOLITAN AREAS**Section 214.201 Alternative Standards for Sources in Metropolitan Areas**

Any owner or operator of an existing fuel combustion emission source located in the Chicago, St. Louis (Illinois) or Peoria major metropolitan areas may petition the Board for approval of an alternate emission rate specified in emissions of pounds of sulfur dioxide per mmBtu or actual heat input for any such fuel combustion emission source, up to a maximum of 6.8 pounds of sulfur dioxide per mmBtu of actual heat input (10.5 kg/MW-hr). Such person shall prove in an adjudicative hearing before the Board that the proposed emission rate will not, under predictable worst case conditions cause or contribute to a violation of any applicable primary or secondary sulfur dioxide ambient air quality standard or of any applicable prevention of significant deterioration increment. An emission rate approved pursuant to this Section shall be a substitute for that standard otherwise required by this Part. Nothing in this Section, however, excuses a source subject to Subpart AA from complying with the requirements set forth in that Subpart.

- a) Every owner or operator of an existing fuel combustion emission source so petitioning the Board for approval of an emission standard shall follow the applicable procedures described in 35 Ill. Adm. Code, Subtitle A, Chapter I.
- b) Any emission standard so approved shall be included as a condition in operating permits issued pursuant to 35 Ill. Adm. Code 201. Any owner or operator of a fuel combustion emission source who receives Board approval of such an emission standard shall apply to the Agency within 30 days ~~after~~ approval of ~~that~~ ~~such~~ standard for a revision of its operating permit for ~~the~~ ~~such~~ source.
- c) No owner or operator of an existing fuel combustion emission source shall seek ~~such~~ an exemption or comply with the emission standard so granted by the use of dispersion enhancement techniques referred to in Section 214.202.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

SUBPART K: PROCESS EMISSION SOURCES

Section 214.300 Scope

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Subpart K contains general rules for sulfur emissions from process sources. These may be modified by industry and site specific rules in other Subparts of this Part ~~et seq.~~ Subpart K also contains sulfur content limitations for fuel oil used by process emission sources. These sulfur content limitations apply regardless of industry and site specific rules set forth in other Subparts of this Part.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 214.301 General Limitation

Except as further provided by this Part, no person shall cause or allow the emission of sulfur dioxide into the atmosphere from any process emission source to exceed 2000 ppm on a dry basis, when averaged over a one-hour period.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 214.305 Fuel Sulfur Content Limitations

- a) Except as provided in subsections (b), (c), and (d), on and after January 1, 2017 the owner or operator of a process emission source must comply with the following:
- 1) The sulfur content of all residual fuel oil used by the process emission source must not exceed 1000 ppm;
 - 2) The sulfur content of all distillate fuel oil used by the process emission source must not exceed 15 ppm; and
 - 3) The owner or operator must:
 - A) Maintain records demonstrating that the fuel oil used by the process emission source complies with the requirements in subsections (a)(1) and (a)(2), including records from the fuel supplier indicating the sulfur content of the fuel oil and the method used to determine sulfur content;
 - B) Retain the records for at least 5 years, and provide copies of the records to the Agency within 30 days after receipt of a request by the Agency; and

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- C) Notify the Agency within 30 days after discovery of deviations from any of the requirements in this subsection (a). At minimum, and in addition to any permitting obligations, such notification must include a description of the deviations, a discussion of the possible cause of the deviations, any corrective actions taken, and any preventative measures taken.
- b) The sulfur content limitation for distillate fuel oil in subsection (a)(2) does not apply to distillate fuel oil used by "TC-F/TC-L/TCL Wing 5" and "TC-F/TC-L Alternative" at Caterpillar Technical Center (located at or near 1311 E. Cedar Hills Dr., Mossville IL) for purposes of research and development or testing of equipment intended for sale outside of Illinois. This exemption is limited to a combined total of 150,000 gallons of distillate fuel oil per calendar year. The sulfur content of the fuel oil must not exceed 500 ppm. The owner or operator of the process emission sources described in this subsection must also comply with the following:
- 1) Maintain records indicating the amount of distillate fuel oil used by the process emission sources each calendar year for purposes of research and development or testing of equipment for sale outside of Illinois, as well as records demonstrating that fuel oil complies with the requirements in this subsection (b), including records from the fuel supplier indicating the sulfur content of the fuel oil and the method used to determine sulfur content;
 - 2) Retain the records for at least 5 years, and provide copies of the records to the Agency within 30 days after receipt of a request by the Agency; and
 - 3) Notify the Agency within 30 days after discovery of deviations from any of the requirements in this subsection (b). At minimum, and in addition to any permitting obligations, the notification must include a description of the deviations, a discussion of the possible cause of the deviations, any corrective actions taken, and any preventative measures taken.
- c) The sulfur content limitation for distillate fuel oil in subsection (a)(2) does not apply to existing process emission sources at Caterpillar's Montgomery facility (located at or near 325 South Route 31, Montgomery IL). The owner or operator of the process emission sources must instead comply with the following:

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- 1) On and after January 1, 2016:
 - A) The sulfur content of all distillate fuel oil purchased for use by the process emission sources must not exceed 15 ppm; and
 - B) The sulfur content of all distillate fuel oil used by the process emission sources must not exceed 500 ppm;
- 2) The owner or operator must:
 - A) Maintain records demonstrating that the distillate fuel oil purchased on and after January 1, 2016 for use by the process emission sources complies with the requirements in subsection (c)(1)(A) of this Section, including the date of purchase and records from the fuel supplier indicating the sulfur content of the fuel oil and the method used to determine sulfur content;
 - B) Maintain records demonstrating that the distillate fuel oil used on and after January 1, 2016 by the process emission sources complies with the requirements in subsection (c)(1)(B), including records from the fuel supplier indicating the sulfur content of the fuel oil and the method used to determine sulfur content;
 - C) Retain all records required by this subsection (c) for at least 5 years, and provide copies of the records to the Agency within 30 days after receipt of a request by the Agency; and
 - D) Notify the Agency within 30 days after discovery of deviations from any of the requirements in this subsection (c). At minimum, and in addition to any permitting obligations, the notification must include a description of the deviations, a discussion of the possible cause of the deviations, any corrective actions taken, and any preventative measures taken.
- d) The sulfur content limitation for distillate fuel oil in subsection (a)(2) does not apply to existing electric generating units at Midwest Generation's Fisk station (located at or near 1111 W. Cermak Road, Chicago IL) or Waukegan station (located at or near 401 E. Greenwood Avenue, Waukegan IL). The owner or

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operator of these electric generating units must instead comply with the following:

- 1) From January 1, 2016 through December 31, 2018, the sulfur content of all distillate fuel oil purchased for use by the electric generating units must not exceed 15 ppm;
- 2) From January 1, 2017 through December 31, 2018, the sulfur content of all distillate fuel oil used by the electric generating units must not exceed 500 ppm;
- 3) On and after January 1, 2019, the sulfur content of all distillate fuel oil used by the electric generating units must not exceed 15 ppm;
- 4) The owner or operator must:
 - A) Maintain records demonstrating that the distillate fuel oil purchased from January 1, 2016 through December 31, 2018 for use by the electric generating units complies with the requirements in subsection (d)(1), including the date of purchase and records from the fuel supplier indicating the sulfur content of the fuel oil and the method used to determine sulfur content;
 - B) Maintain records demonstrating that the distillate fuel oil used from January 1, 2017 through December 31, 2018 by the electric generating units complies with the requirements in subsection (d)(2), including records from the fuel supplier indicating the sulfur content of the fuel oil and the method used to determine sulfur content;
 - C) On and after January 1, 2019, maintain records demonstrating that the distillate fuel oil used by the electric generating units complies with the requirements in subsection (d)(3), including records from the fuel supplier indicating the sulfur content of the fuel oil and the method used to determine sulfur content;
 - D) Retain all records required by this subsection (d) for at least 5 years, and provide copies of the records to the Agency within 30 days of receipt after a request by the Agency; and

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- E) Notify the Agency within 30 days after discovery of deviations from any of the requirements in this subsection (d). At minimum, and in addition to any permitting obligations, the notification must include a description of the deviations, a discussion of the possible cause of the deviations, any corrective actions taken, and any preventative measures taken.

(Source: Added at 39 Ill. Reg. _____, effective _____)

SUBPART Q: PRIMARY AND SECONDARY
METAL MANUFACTURING

Section 214.421 Combination of Fuels at Steel Mills in Metropolitan Areas

- a) Section 214.162 notwithstanding, no person shall cause or allow the emission of sulfur dioxide into the atmosphere in any one hour period from any existing fuel combustion emission source at a steel mill located in the Chicago or St. Louis (Illinois) major metropolitan area burning any solid, liquid or gaseous fuel, or any combination thereof, to exceed the allowable emission rate determined by the following equation:

$$E = S_S H_S + S_d H_d + S_R H_R + S_G H_G$$

- b) Symbols in the equation mean the following:

E	=	allowable sulfur dioxide emission rate;
S _S	=	solid fuel sulfur dioxide emission standard which is applicable;
S _d	=	distillate oil sulfur dioxide emission standard determined from the table in subsection (d);
S _R	=	residual oil sulfur dioxide emission standard which is applicable;
S _G	=	maximum by-product gas sulfur dioxide emissions which would result if the applicable by-product gas which was burned had been burned alone at any time during the 12 months preceding the latest operation, on or before March 28, 1983, of an emission source using any by-product gas;
H _S	=	actual heat input from solid fuel;
H _d	=	actual heat input from distillate fuel oil;
H _R	=	actual heat input from residual fuel oil;

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H_G = actual heat input from by-product gases, such as those produced from a blast furnace.

- c) That portion of the actual heat input that is derived:
- 1) From the burning of gaseous fuels produced by the gasification of solid fuels shall be included in H_S ;
 - 2) From the burning of gaseous fuels produced by the gasification of distillate fuel oil shall be included in H_d ;
 - 3) From the burning of gaseous fuels produced by the gasification of residual fuel oil shall be included in H_R ; and
 - 4) From the burning of gaseous fuels produced by the gasification of any other liquid fuel shall be included in H_G .
- d) Metric or English units may be used in the equation of subsection (a) as follows:

<u>Parameter</u>	<u>Metric</u>	<u>English</u>
E	kg/hr	lbs/hr
S_S, S_R, S_G	kg/MW-hr	lbs/mmBtu
S_d <u>prior to January 1, 2017</u>	0.46 kg/MW-hr	0.3 lbs/mmBtu
S_d <u>on and after January 1, 2017</u>	<u>0.023 kg/MW-hr</u>	<u>0.0015 lb/mmBtu</u>
H_S, H_d, H_R, H_G	MW	mmBtu

(Source: Amended at 39 Ill. Reg. _____, effective _____)

SUBPART AA: REQUIREMENTS FOR CERTAIN SO₂ SOURCES

Section 214.600 Definitions

For purposes of this Subpart, the following definitions apply. Unless a different meaning for a term is clear from its context, all terms not defined in this Section have the meanings given to them in the Illinois Environmental Protection Act and in 35 Ill. Adm. Code 201 and 211.

"Agency" means the Illinois Environmental Protection Agency.

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"Aventine Renewable Energy" means the ethanol production source located at or near 1300 S. 2nd Street, Pekin IL.

"Illinois Power Holdings E.D. Edwards" means the electrical power generation source located at or near 7800 S. Cilco Lane, Bartonville IL.

"Ingredion Bedford Park" means the corn wet milling source located at or near 6400 S. Archer Road, Bedford Park IL.

"Midwest Generation Joliet" means the electrical power generation source located at or near 1800 Channahon Road, Joliet IL.

"Midwest Generation Powerton" means the electrical power generation source located at or near 13082 E. Manito Road, Pekin IL.

"Midwest Generation Will County" means the electrical power generation source located at or near 529 E. 135th, Romeoville IL.

"Owens Corning" means the asphalt and roofing products manufacturing source located at or near 5824 S. Archer Road, Summit IL.

"Oxbow Midwest Calcining" means the petroleum coke product source located at or near 12308 S. New Avenue, Lemont IL.

(Source: Added at 39 Ill. Reg. _____, effective _____)

Section 214.601 Applicability

- a) This Subpart applies to the following sources:
- 1) Aventine Renewable Energy;
 - 2) Illinois Power Holdings E.D. Edwards;
 - 3) Ingredion Bedford Park;
 - 4) Midwest Generation Joliet;
 - 5) Midwest Generation Powerton;

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- 6) Midwest Generation Will County;
 - 7) Owens Corning; and
 - 8) Oxbow Midwest Calcining.
- b) Once a source is subject to this Subpart, it is always subject to this Subpart, regardless of change in ownership or unit designation, or any other modification at the source.
 - c) Nothing in this Subpart relieves a source of the obligation to comply with the air quality standards set forth in 35 Ill. Adm. Code 243, or with any other applicable requirement set forth in this Part.

(Source: Added at 39 Ill. Reg. _____, effective _____)

Section 214.602 Compliance Deadline

On and after January 1, 2017, the owner or operator of a source identified in Section 214.601(a) must comply with the provisions in this Subpart.

(Source: Added at 39 Ill. Reg. _____, effective _____)

Section 214.603 Emission Limitations

The owner or operator of a source must comply with the following emission limitations, as applicable, expressed in terms of pounds of SO₂ emitted per clock hour.

a)	<u>Aventine Renewable Energy</u>	<u>lb/hr</u>
1)	<u>Cyclone East controlling First Germ Drying System</u>	<u>0.27</u>
2)	<u>Cyclone West controlling First Germ Drying System</u>	<u>0.37</u>
3)	<u>Second Germ Drying System</u>	<u>0.01</u>

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4)	<u>Gluten Dryer 4</u>	<u>3.12</u>
5)	<u>Gluten Dryer 9</u>	<u>10.50</u>
6)	<u>Germ Dryer 1</u>	<u>4.98</u>
7)	<u>Germ Dryer 3</u>	<u>4.26</u>
8)	<u>Yeast Dryer</u>	<u>1.50</u>
9)	<u>Scrubber controlling Steep Acid Tower</u>	<u>1.79</u>
10)	<u>Biogas Flare</u>	<u>0.001</u>
11)	<u>Boiler A</u>	<u>0.00</u>
12)	<u>Boiler B</u>	<u>0.00</u>
13)	<u>Boiler C</u>	<u>0.00</u>
b)	<u>Illinois Power Holdings E.D. Edwards</u>	<u>lb/hr</u>
1)	<u>Units 1 and 2 combined</u>	<u>2100.00</u>
2)	<u>Unit 3</u>	<u>2756.00</u>
3)	<u>Unit 3, if both Units 1 and 2 permanently shut down</u>	<u>4000.00</u>
c)	<u>Ingredion Bedford Park</u>	<u>lb/hr</u>
1)	<u>Feed Transport System</u>	<u>24.38</u>
2)	<u>Wet Milling: Inside In-Process Tanks</u>	<u>107.26</u>
3)	<u>Wet Milling: Molten Sulfur Burner and Absorption System</u>	<u>7.01</u>

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4)	<u>Wet Milling: Outside In-Process Tanks</u>	<u>2.69</u>
5)	<u>Germ Processing Facility Channel 1 System</u>	<u>13.3</u>
6)	<u>Germ Processing Facility Channel 2 System</u>	<u>7.07</u>
7)	<u>Germ Processing Facility Channel 3 System</u>	<u>7.07</u>
8)	<u>Germ Processing Facility Channel 4 System</u>	<u>7.07</u>
d)	<u>Midwest Generation Joliet</u>	<u>lb/hr</u>
1)	<u>Joliet 9: Unit 6</u>	<u>189.82</u>
2)	<u>Joliet 29: Unit 7</u>	<u>323.29</u>
3)	<u>Joliet 29: Unit 8</u>	<u>342.15</u>
e)	<u>Midwest Generation Powerton</u>	<u>lb/hr</u>
1)	<u>Boilers 51, 52 (Unit 5) and 61, 62 (Unit 6) combined</u>	<u>3452.00</u>
2)	<u>The owner or operator must comply with the emission limitation set forth in subsection (e)(1) on a 30-operating day rolling average basis. For purposes of this Subpart, an operating day is a calendar day in which any emission unit addressed in subsection (e)(1) combusts any fuel;</u>	
3)	<u>Within 24 hours after the end of each averaging period, the owner or operator must use the following equation to determine the combined SO₂ emission rate of the emission units addressed in subsection (e)(1) for each averaging period, which concludes at the end of each operating day. The</u>	

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SO₂ emission rate must not exceed the limitation set forth in subsection (e)(1):

$$E_{avg} = \frac{\sum_{h=1}^n E_h}{n}$$

Where:

E_{avg} = SO₂ emission rate for the averaging period, in lb/hr.

E_h = SO₂ emission rate for stack operating hour "h" in the averaging period. For purposes of this Subpart, a stack operating hour is a clock hour in which valid data is obtained, and in which gases flow through the monitored stack or duct for the emission units addressed in subsection (e)(1) (either for part of the hour or for the entire hour) while at least one of the units is combusting fuel.

n = Number of stack operating hours in the averaging period in which valid data is obtained.

<u>f)</u>	<u>Midwest Generation Will County</u>	<u>lb/hr</u>
	1) <u>Unit 3</u>	<u>145.14</u>
	2) <u>Unit 4</u>	<u>6520.65</u>
<u>g)</u>	<u>Owens Corning</u>	<u>lb/hr</u>
	1) <u>Preheater Incinerator System 1, including emissions from: Storage Tanks 9, 9A, 10, 10A, 11, 17, 18, 19, 20, 40, 41, 42, and 43; Loading Racks 1, 2, and 9; and Convertors 10 and 11</u>	<u>44.69</u>
	2) <u>Preheater Incinerator System 3, including emissions from: Converters 8, 9, 12,</u>	<u>27.23</u>

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13, 14, and 15; and Loading Racks 1, 2, and 9

3)	<u>Regenerative Thermal Oxidizer 3 controlling: Storage Tanks 27, 28, 31, 32, 33, 34, 35, and 36</u>	<u>4.33</u>
4)	<u>Regenerative Thermal Oxidizer 4 controlling: Storage Tank 98; Loading Rack PV1</u>	<u>6.38</u>
5)	<u>Coating Operations combined</u>	<u>0.15</u>
h)	<u>Oxbow Midwest Calcining</u>	<u>lb/hr</u>
	<u>All Calcining Units combined</u>	<u>187.00</u>

(Source: Added at 39 Ill. Reg. _____, effective _____)

Section 214.604 Monitoring and Testing

- a) The owner or operator of a source must, for each emission unit at the source that is addressed in Section 214.603, demonstrate compliance with the applicable emission limitations in Section 214.603 via the monitoring and testing requirements set forth in this Section.
- b) The owners or operators of the following sources must, for each emission unit at the source that is addressed in Section 214.603, install, calibrate, maintain, and operate a continuous emissions monitoring system for the measurement of SO₂ emissions in accordance with 40 CFR 75 (except 40 CFR 75.31 through 34), incorporated by reference in Section 214.104, and subsection (d), or utilize an alternative monitoring method available to the emission unit under 40 CFR 75:
- 1) Illinois Power Holdings E.D. Edwards;
 - 2) Midwest Generation Joliet;
 - 3) Midwest Generation Powerton; and

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- 4) Midwest Generation Will County.
- c) The owner or operator of all sources not addressed in subsection (b) must, for each emission unit at the source that is addressed in Section 214.603, either conduct performance testing in accordance with subsection (e) of this Section or install, calibrate, maintain, and operate a continuous emissions monitoring system for the measurement of SO₂ emissions in accordance with 40 CFR 60 or 40 CFR 75 (except 40 CFR 75.31 through 34), incorporated by reference in Section 214.104, and subsection (d) of this Section.
- d) The owner or operator of a source with an emission unit demonstrating compliance through the use of a continuous emissions monitoring system must comply with the following for each those unit:
- 1) If two or more of the emission units addressed in Section 214.603 are served by a common stack, the owner or operator may utilize a single continuous emissions monitoring system for those units;
 - 2) If the owner or operator of an emission unit subject to Section 214.604(c) changes the method of demonstrating compliance for that unit from performance testing to use of a continuous emissions monitoring system, the owner or operator must install, calibrate, and begin operating the continuous emissions monitoring system on or before the performance testing deadline determined in accordance with subsection (e)(2); and
 - 3) The provisions in 40 CFR 75.31 through 34 regarding missing data substitution must not be used for purposes of demonstrating compliance with the requirements set forth in this Subpart.
- e) The owner or operator of a source with an emission unit demonstrating compliance through performance testing must comply with the following for each such unit. All testing done pursuant to this Section must be conducted at the owner's or operator's own expense:
- 1) Conduct an initial performance test after January 1, 2015 and prior to January 1, 2017. If the owner or operator of an emission unit subject to Section 214.604(c) changes the method of demonstrating compliance for that unit from use of a continuous emissions monitoring system to performance testing, the owner or operator must demonstrate compliance

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by conducting an initial performance test prior to discontinuing the continuous emissions monitoring system;

- 2) Conduct subsequent performance tests at least once every 5 years from the date of the last performance test. The date of the initial performance test conducted pursuant to subsection (e)(1) begins the 5-year period;
- 3) Conduct additional performance testing when, in the opinion of the Agency or USEPA, that testing is necessary to demonstrate compliance with the requirements in Section 214.603. The test must be conducted within 90 days after receipt of a notice to test from the Agency or USEPA, unless the notice specifies an alternative testing deadline;
- 4) Submit a testing protocol as described in USEPA's Emission Measurement Center Guideline Document (GD-042), incorporated by reference in Section 214.104, to the Agency at least 45 days prior to a scheduled emissions test, unless that deadline is waived in writing by the Agency;
- 5) Submit a written notification of a scheduled emissions test to the Agency at least 30 days prior to the test date and again 5 days prior to testing, unless those deadlines are waived in writing by the Agency. If, after the 30 days' notice of a test is sent, there is a delay in conducting the test as scheduled (e.g., due to operational problems), the owner or operator must notify the Agency as soon as practicable of the delay, either by providing at least 7 days' notice of the rescheduled test date or by arranging a new test date with the Agency by mutual agreement;
- 6) Conduct each performance test using Method 1, 2, 3, 4, 6, 6A, 6B, 6C, or 19, incorporated by reference in Section 214.104, or other alternative USEPA methods approved by the Agency. Each test must consist of at least 3 separate runs, each lasting a minimum of 60 minutes, and must be conducted during conditions representative of maximum SO₂ emissions. Compliance with the applicable limitation in Section 214.603 must be determined in accordance with 35 Ill. Adm. Code 283;
- 7) If the unit has combusted more than one type of fuel in the prior year, a separate performance test is required for each fuel; and

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- 8) Subsequent to each performance test used to demonstrate compliance, continue operating the emission unit within the parameters enumerated in the testing results submitted to the Agency for each test, and monitor the parameters regularly to ensure ongoing compliance.

(Source: Added at 39 Ill. Reg. _____, effective _____)

Section 214.605 Recordkeeping and Reporting

- a) By January 1, 2017, the owner or operator of a source must submit to the Agency the following:
- 1) A certification that the source will be in compliance with the provisions in this Subpart by January 1, 2017;
 - 2) For a source with an emission unit demonstrating compliance through performance testing:
 - A) The results of the initial performance test conducted pursuant to Section 214.604(e)(1);
 - B) The calculations necessary to demonstrate that the emission unit will be in initial compliance; and
 - C) A description of the measures the source will take to ensure the emission unit continues to operate within the parameters enumerated in the testing results submitted to the Agency for each test used to demonstrate compliance, including how those parameters will ensure ongoing compliance with the applicable limitation in Section 214.603 and the specific monitoring procedures that will be implemented for each parameter;
 - 3) For a source with an emission unit demonstrating compliance through the use of a continuous emissions monitoring system, a certification of the installation and operation of the continuous emissions monitoring system and the monitoring data necessary to demonstrate that the emission unit will be in initial compliance;

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- 4) For a source with an emission unit demonstrating compliance through the use of an alternative monitoring method under 40 CFR 75, a description of the alternative monitoring method being used and the monitoring data necessary to demonstrate that the emission unit will be in initial compliance; and
 - 5) A description of the method or methods the source will use to comply with all applicable emission limitations in Section 214.603, including a description of all control devices used and, for sources with emission units demonstrating compliance through performance testing, the operating parameters for those devices.
- b) The owner or operator of a source must keep and maintain records that demonstrate ongoing compliance with the requirements of this Subpart. The records must include the following:
- 1) The calendar date of the record;
 - 2) Reports for all performance tests conducted pursuant to Section 214.604(e), including the date of the test and the results;
 - 3) A log of the date, time, nature, and results of all parametric monitoring conducted pursuant to Section 214.604(e)(8);
 - 4) For each SO₂ continuous emissions monitoring system, a log indicating any periods when the device was not in service, maintenance and inspection activities performed on the device, and all information necessary to demonstrate compliance with the monitoring requirements in Section 214.604;
 - 5) The date, time, and duration of any malfunction in the operation of an emission unit addressed in Section 214.603 or any SO₂ control equipment for that unit, if the malfunction causes an exceedance of any applicable emission limitation in Section 214.603, and the date, time, and duration of any malfunction in the operation of any SO₂ emissions monitoring equipment for that unit. The records must include a description of the malfunction, the probable cause of the malfunction, the date and nature of the corrective action taken, and any preventative action taken to avoid future malfunctions;

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- 6) A log of all inspections, cleaning, maintenance, and repair activities performed on SO₂ control equipment for an emission unit addressed in Section 214.603, including the date and nature of those activities. The log must indicate any changes made to the control equipment, including removal or replacement of the equipment; and
- 7) For emission units subject to the emission limitation in Section 214.603(e), the SO₂ emission rate of the units for each averaging period and supporting calculations.
- c) Except as otherwise indicated in this Subpart, the owner or operator of a source with an emission unit demonstrating compliance through performance testing must submit the results of all tests conducted pursuant to Section 214.604(e) within 60 days after completion of the test.
- d) The owner or operator of a source must notify the Agency at least 30 days prior to changing the method of demonstrating compliance for an emission unit addressed in Section 214.603. The owner or operator must also comply with the following, as applicable:
 - 1) For an emission unit changing the method of demonstrating compliance from performance testing to use of a continuous emissions monitoring system, submit to the Agency a certification of the installation and operation of the continuous emissions monitoring system and the monitoring data necessary to demonstrate compliance. The submittal must be made within 30 days after beginning operation of the continuous emissions monitoring system, and on or before the performance testing deadline determined in accordance with Section 214.604(e)(2);
 - 2) For an emission unit changing the method of demonstrating compliance from use of a continuous emissions monitoring system to performance testing, submit to the Agency the following. The submittal must be made prior to discontinuing operation of the continuous emissions monitoring system:
 - A) The results of the initial performance test conducted pursuant to Section 214.604(e)(1);

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- B) The calculations necessary to demonstrate compliance; and
- C) A description of the measures the source will take to ensure the emission unit continues to operate within the parameters enumerated in the testing results submitted to the Agency for each test used to demonstrate compliance, including how the parameters will ensure ongoing compliance with the applicable limitation in Section 214.603 and the specific monitoring procedures that will be implemented for each parameter;
- 3) For an emission unit changing the method of demonstrating compliance from use of a continuous emissions monitoring system to an alternative monitoring method under 40 CFR 75, submit to the Agency a description of the alternative monitoring method being used and the monitoring data necessary to demonstrate compliance. The submittal must be made prior to discontinuing operation of the continuous emissions monitoring system.
- e) The owner or operator of a source must notify the Agency within 30 days after discovery of deviations from any of the requirements in this Subpart or any exceedance of an applicable emission limitation in Section 214.603. At minimum, and in addition to any permitting obligations, the notification must include a description of the deviations, a discussion of the possible cause of the deviations, any corrective actions taken, and any preventative measures taken.
- f) The owner or operator of a source must maintain all records required by this Section at the source for a minimum of 5 years, and provide copies of the records to the Agency within 30 days after receipt of a request by the Agency.

(Source: Added at 39 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Nitrogen Oxides Emissions
- 2) Code Citation: 35 Ill. Adm. Code 217
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
217.342	Amendment
217.394	Amendment
- 4) Statutory Authority: Sections 4, 10, 27, 28, and 28.2 of the Illinois Environmental Protection Act [415 ILCS 5/4, 10, 27, 28, 28.2]
- 5) A Complete Description of the Subjects and Issues Involved: The Agency proposes revisions to Part 217 that electric generating units subject to the combined pollutant standard are exempt from the nitrogen oxide emission limitations in Subpart M of Part 217, regardless of the type of fuel combusted. The Agency also proposes an alternate testing deadline regarding the initial performance testing provisions in Section 217.394(a)(3).
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: Consistent with proposed amendments to 35 Ill. Adm. Code 214 and 225; and 42 USC 7502, 7514, 7515a.
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b)]
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of 45 days after the date of publication in the *Illinois Register*. Public comments must be filed with the Clerk of the Board. Public comments should reference Docket R15-21 and be addressed to:

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Clerk's Office
Illinois Pollution Control Board
JRTC
100 W. Randolph St., Suite 11-500
Chicago IL 60601

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us.

Interested persons may request copies of the Board's opinion and order in R15-21 by calling the Clerk's office at 312/814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us.

For more information, contact hearing officer Daniel Robertson at 312/814-6931 or by e-mail at Daniel.Robertson@illinois.gov.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business, small municipality or not-for-profit corporation that is an electric generating unit subject to the combined pollutant standard.
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of Professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on a regulatory agenda.

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

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: EMISSION STANDARDS AND LIMITATIONS
FOR STATIONARY SOURCES

PART 217
NITROGEN OXIDES EMISSIONS

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- 217.101 Measurement Methods
- 217.102 Abbreviations and Units
- 217.103 Definitions
- 217.104 Incorporations by Reference

SUBPART B: NEW FUEL COMBUSTION EMISSION SOURCES

- Section
- 217.121 New Emission Sources (Repealed)

SUBPART C: EXISTING FUEL COMBUSTION EMISSION UNITS

- Section
- 217.141 Existing Emission Units in Major Metropolitan Areas

SUBPART D: NO_x GENERAL REQUIREMENTS

- Section
- 217.150 Applicability
- 217.152 Compliance Date
- 217.154 Performance Testing
- 217.155 Initial Compliance Certification
- 217.156 Recordkeeping and Reporting
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- 217.158 Emissions Averaging Plans

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- 217.160 Applicability
- 217.162 Exemptions
- 217.164 Emissions Limitations
- 217.165 Combination of Fuels
- 217.166 Methods and Procedures for Combustion Tuning

SUBPART F: PROCESS HEATERS

Section

- 217.180 Applicability
- 217.182 Exemptions
- 217.184 Emissions Limitations
- 217.185 Combination of Fuels
- 217.186 Methods and Procedures for Combustion Tuning

SUBPART G: GLASS MELTING FURNANCES

Section

- 217.200 Applicability
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- 217.204 Emissions Limitations

SUBPART H: CEMENT AND LIME KILNS

Section

- 217.220 Applicability
- 217.222 Exemptions
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SUBPART I: IRON AND STEEL AND ALUMINUM MANUFACTURING

Section

- 217.240 Applicability
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- 217.244 Emissions Limitations

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217.301 Industrial Processes

SUBPART M: ELECTRICAL GENERATING UNITS

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217.340 Applicability
217.342 Exemptions
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217.345 Combination of Fuels

SUBPART O: CHEMICAL MANUFACTURE

Section
217.381 Nitric Acid Manufacturing Processes

SUBPART Q: STATIONARY RECIPROCATING
INTERNAL COMBUSTION ENGINES AND TURBINES

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217.386 Applicability
217.388 Control and Maintenance Requirements
217.390 Emissions Averaging Plans
217.392 Compliance
217.394 Testing and Monitoring
217.396 Recordkeeping and Reporting

SUBPART T: CEMENT KILNS

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217.400 Applicability
217.402 Control Requirements
217.404 Testing
217.406 Monitoring
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217.452	Severability
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217.456	Compliance Requirements
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217.460	Subpart U NO _x Trading Budget
217.462	Methodology for Obtaining NO _x Allocations
217.464	Methodology for Determining NO _x Allowances from the New Source Set-Aside
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- 217.APPENDIX D Non-Electrical Generating Units
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217.APPENDIX G Existing Reciprocating Internal Combustion Engines Affected by the NO_x SIP Call
217.APPENDIX H Compliance Dates for Certain Emissions Units at Petroleum Refineries

Authority: Implementing Sections 9.9 and 10 and authorized by Sections 27 and 28.5 of the Environmental Protection Act [415 ILCS 5/9.9, 10, 27 and 28.5 (2004)].

SOURCE: Adopted as Chapter 2: Air Pollution, Rule 207: Nitrogen Oxides Emissions, R71-23, 4 PCB 191, April 13, 1972, filed and effective April 14, 1972; amended at 2 Ill. Reg. 17, p. 101, effective April 13, 1978; codified at 7 Ill. Reg. 13609; amended in R01-9 at 25 Ill. Reg. 128, effective December 26, 2000; amended in R01-11 at 25 Ill. Reg. 4597, effective March 15, 2001; amended in R01-16 and R01-17 at 25 Ill. Reg. 5914, effective April 17, 2001; amended in R07-18 at 31 Ill. Reg. 14271, effective September 25, 2007; amended in R07-19 at 33 Ill. Reg. 11999, effective August 6, 2009; amended in R08-19 at 33 Ill. Reg. 13345, effective August 31, 2009; amended in R09-20 at 33 Ill. Reg. 15754, effective November 2, 2009; amended in R11-17 at 35 Ill. Reg. 7391, effective April 22, 2011; amended in R11-24 at 35 Ill. Reg. 14627, effective August 22, 2011; amended in R11-08 at 35 Ill. Reg. 16600, effective September 27, 2011; amended in R09-19 at 35 Ill. Reg. 18801, effective October 25, 2011; amended in R15-21 at 39 Ill. Reg. _____, effective _____.

SUBPART M: ELECTRICAL GENERATING UNITS

Section 217.342 Exemptions

- a) Notwithstanding Section 217.340, the provisions of this Subpart do not apply to a fossil fuel-fired stationary boiler operating under a federally enforceable limit of NO_x emissions from such boiler to less than 15 tons per year and less than five tons per ozone season.
- b) Notwithstanding Section 217.340, the provisions of this Subpart do not apply to a coal-fired stationary boiler that commenced operation before January 1, 2008, that is complying with 35 Ill. Adm. Code 225.Subpart B through the multi-pollutant standard ~~or the combined pollutant standard~~.
- c) Notwithstanding Section 217.340, the provisions of this Subpart do not apply to a fossil fuel-fired stationary boiler that is subject to any of the requirements in the

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combined pollutant standard in 35 Ill. Adm. Code 225.Subpart B (Sections 225.291 through 225.299), regardless of the type of fossil fuel combusted.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

SUBPART Q: STATIONARY RECIPROCATING
INTERNAL COMBUSTION ENGINES AND TURBINES

Section 217.394 Testing and Monitoring

- a) An owner or operator must conduct an initial performance test pursuant to subsection (c)(1) or (c)(2) of this Section as follows:
- 1) By January 1, 2008, for affected engines listed in Appendix G. Performance tests must be conducted on units listed in Appendix G, even if the unit is included in an emissions averaging plan pursuant to Section 217.388(a)(2).
 - 2) By the applicable compliance date set forth in Section 217.392, or within the first 876 hours of operation per calendar year, whichever is later:
 - A) For affected units not listed in Appendix G that operate more than 876 hours per calendar year; and
 - B) For units that are not affected units that are included in an emissions averaging plan and operate more than 876 hours per calendar year.
 - 3) Once within the five-year period after the applicable compliance date as set forth in Section 217.392 or once within the five-year period following the date the unit commenced operation:
 - A) For affected units that operate fewer than 876 hours per calendar year; and
 - B) For units that are not affected units that are included in an emissions averaging plan and that operate fewer than 876 hours per calendar year.

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- b) An owner or operator of an engine or turbine must conduct subsequent performance tests pursuant to subsection (b)(1), (b)(2), and (b)(3) of this Section as follows:
- 1) For affected engines listed in Appendix G and all units included in an emissions averaging plan, once every five years. Testing must be performed in the calendar year by May 1 or within 60 days after starting operation, whichever is later;
 - 2) If the monitored data shows that the unit is not in compliance with the applicable emissions concentration or emissions averaging plan, the owner or operator must report the deviation to the Agency in writing within 30 days and conduct a performance test pursuant to subsection (c) of this Section within 90 days of the determination of noncompliance; and
 - 3) When, in the opinion of the Agency or USEPA, it is necessary to conduct testing to demonstrate compliance with Section 217.388, the owner or operator of a unit must, at his or her own expense, conduct the test in accordance with the applicable test methods and procedures specified in this Section within 90 days after receipt of a notice to test from the Agency or USEPA.
- c) Testing Procedures:
- 1) For an engine: The owner or operator must conduct a performance test using Method 7 or 7E of 40 CFR 60, appendix A, as incorporated by reference in Section 217.104. Each compliance test must consist of three separate runs, each lasting a minimum of 60 minutes. NO_x emissions must be measured while the affected unit is operating at peak load. If the unit combusts more than one type of fuel (gaseous or liquid), including backup fuels, a separate performance test is required for each fuel.
 - 2) For a turbine: The owner or operator must conduct a performance test using the applicable procedures and methods in 40 CFR 60.4400, as incorporated by reference in Section 217.104.
- d) Monitoring: Except for those years in which a performance test is conducted pursuant to subsection (a) or (b) of this Section, the owner or operator of an affected unit or a unit included in an emissions averaging plan must monitor NO_x

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concentrations annually, once between January 1 and May 1 or within the first 876 hours of operation per calendar year, whichever is later. If annual operation is less than 876 hours per calendar year, each affected unit must be monitored at least once every five years. Monitoring must be performed as follows:

- 1) A portable NO_x monitor utilizing method ASTM D6522-00, as incorporated by reference in Section 217.104, or a method approved by the Agency must be used. If the engine or turbine combusts both liquid and gaseous fuels as primary or backup fuels, separate monitoring is required for each fuel.
 - 2) NO_x and O₂ concentrations measurements must be taken three times for a duration of at least 20 minutes. Monitoring must be done at highest achievable load. The concentrations from the three monitoring runs must be averaged to determine whether the affected unit is in compliance with the applicable emissions concentration or emissions averaging plan, as specified in Section 217.388.
- e) Instead of complying with the requirements of subsections (a), (b), (c) and (d) of this Section, an owner or operator may install and operate a CEMS on an affected unit that meets the applicable requirements of 40 CFR 60, subpart A and appendix B, or 40 CFR 75, incorporated by reference in Section 217.104, and complies with the quality assurance procedures specified in 40 CFR 60, appendix F or 40 CFR 75, as incorporated by reference in Section 217.104, or an alternate procedure as approved by the Agency or USEPA in a federally enforceable permit. The CEMS must be used to demonstrate compliance with the applicable emissions concentration or emissions averaging plan only on an ozone season and annual basis.
- f) The testing and monitoring requirements of this Section do not apply to affected units in compliance with the requirements of the low usage limitations pursuant to Section 217.388(a)(3) or low usage units using NO_x allowances to comply with the requirements of this Subpart pursuant to Section 217.392(c), unless such units are included in an emissions averaging plan. Notwithstanding the above circumstances, when, in the opinion of the Agency or USEPA, it is necessary to conduct testing to demonstrate compliance with Section 217.388, the owner or operator of a unit must, at his or her own expense, conduct the test in accordance with the applicable test methods and procedures specified in this Section within 90 days after receipt of a notice to test from the Agency or USEPA.

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(Source: Amended at 39 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Control of Emissions from Large Combustion Sources
- 2) Code Citation: 35 Ill. Adm. Code 225
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
225.205	Amendment
225.210	Amendment
225.240	Amendment
225.265	Amendment
225.290	Amendment
225.291	Amendment
225.292	Amendment
225.293	Amendment
225.294	Amendment
225.295	Amendment
225.296	Amendment
225.298	Amendment
225.APPENDIX A	Amendment
- 4) Statutory Authority: Sections 4, 10, 27, 28, and 28.2 of the Illinois Environmental Protection Act [415 ILCS 5/4, 10, 27, 28, 28.2]
- 5) A Complete Description of the Subjects and Issues Involved: The Agency proposes amendments to address the potential conversion of specific electric generating units (EGUs) and specifying the nitrogen oxide limitations that will be applicable to these units. The proposal will require specified units to permanently cease combusting coal. The proposal also amends Part 225 to specify that EGUs that permanently cease combusting coal are no longer required to comply with the mercury or particulate matter control technology requirements set forth in the combined pollutant standard (CPS) or the mercury-related emission rates, monitoring, recordkeeping, notice, analysis, certification, or reporting requirements set forth in the Illinois Mercury Rule/CPS. The proposal also specifies that EGUs that convert to fuel other than coal are not subject to the CPS group average annual sulfur dioxide emission rate set forth in Section 225.295(b) of the CPS.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: Consistent with proposed amendments to 35 Ill. Adm. Code 214 and 217; and 42 USC 7502, 7514, 7515a.
- 7) Will these rulemaking replace an emergency rule currently in effect? No

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- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b)].
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of 45 days after the date of publication in the *Illinois Register*. Public comments must be filed with the Clerk of the Board. Public comments should reference Docket R15-21 and be addressed to:

Clerk's Office
Illinois Pollution Control Board
JRTC
100 W. Randolph St., Suite 11-500
Chicago IL 60601

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us.

Interested persons may request copies of the Board's opinion and order in R15-21 by calling the Clerk's office at 312/814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us.

For more information, contact hearing officer Daniel Robertson at 312/814-6931 or by e-mail at Daniel.Robertson@illinois.gov.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business, small municipality or not-for-profit corporation that is an electric generating unit subject to the combined pollutant standard

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- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on a regulatory agenda.

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

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: EMISSION STANDARDS AND LIMITATIONS
FOR STATIONARY SOURCES

PART 225

CONTROL OF EMISSIONS FROM LARGE COMBUSTION SOURCES

SUBPART A: GENERAL PROVISIONS

Section	
225.100	Severability
225.120	Abbreviations and Acronyms
225.130	Definitions
225.140	Incorporations by Reference
225.150	Commence Commercial Operation

SUBPART B: CONTROL OF MERCURY EMISSIONS
FROM COAL-FIRED ELECTRIC GENERATING UNITS

Section	
225.200	Purpose
225.202	Measurement Methods
225.205	Applicability
225.210	Compliance Requirements
225.220	Clean Air Act Permit Program (CAAPP) Permit Requirements
225.230	Emission Standards for EGUs at Existing Sources
225.232	Averaging Demonstrations for Existing Sources
225.233	Multi-Pollutant Standard (MPS)
225.234	Temporary Technology-Based Standard for EGUs at Existing Sources
225.235	Units Scheduled for Permanent Shut Down
225.237	Emission Standards for New Sources with EGUs
225.238	Temporary Technology-Based Standard for New Sources with EGUs
225.239	Periodic Emissions Testing Alternative Requirements
225.240	General Monitoring and Reporting Requirements
225.250	Initial Certification and Recertification Procedures for Emissions Monitoring
225.260	Out of Control Periods and Data Availability for Emission Monitors
225.261	Additional Requirements to Provide Heat Input Data

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225.263	Monitoring of Gross Electrical Output
225.265	Coal Analysis for Input Mercury Levels
225.270	Notifications
225.290	Recordkeeping and Reporting
225.291	Combined Pollutant Standard: Purpose
225.292	Applicability of the Combined Pollutant Standard
225.293	Combined Pollutant Standard: Notice of Intent
225.294	Combined Pollutant Standard: Control Technology Requirements and Emissions Standards for Mercury
225.295	Combined Pollutant Standard: Emissions Standards for NO _x and SO ₂
225.296	Combined Pollutant Standard: Control Technology Requirements for NO _x , SO ₂ , and PM Emissions
225.297	Combined Pollutant Standard: Permanent Shut-Downs
225.298	Combined Pollutant Standard: Requirements for NO _x and SO ₂ Allowances
225.299	Combined Pollutant Standard: Clean Air Act Requirements

SUBPART C: CLEAN AIR ACT INTERSTATE
RULE (CAIR) SO₂ TRADING PROGRAM

Section	
225.300	Purpose
225.305	Applicability
225.310	Compliance Requirements
225.315	Appeal Procedures
225.320	Permit Requirements
225.325	Trading Program

SUBPART D: CAIR NO_x ANNUAL TRADING PROGRAM

Section	
225.400	Purpose
225.405	Applicability
225.410	Compliance Requirements
225.415	Appeal Procedures
225.420	Permit Requirements
225.425	Annual Trading Budget
225.430	Timing for Annual Allocations
225.435	Methodology for Calculating Annual Allocations
225.440	Annual Allocations

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225.445	New Unit Set-Aside (NUSA)
225.450	Monitoring, Recordkeeping and Reporting Requirements for Gross Electrical Output and Useful Thermal Energy
225.455	Clean Air Set-Aside (CASA)
225.460	Energy Efficiency and Conservation, Renewable Energy, and Clean Technology Projects
225.465	Clean Air Set-Aside (CASA) Allowances
225.470	Clean Air Set-Aside (CASA) Applications
225.475	Agency Action on Clean Air Set-Aside (CASA) Applications
225.480	Compliance Supplement Pool

SUBPART E: CAIR NO_x OZONE SEASON TRADING PROGRAM

Section	
225.500	Purpose
225.505	Applicability
225.510	Compliance Requirements
225.515	Appeal Procedures
225.520	Permit Requirements
225.525	Ozone Season Trading Budget
225.530	Timing for Ozone Season Allocations
225.535	Methodology for Calculating Ozone Season Allocations
225.540	Ozone Season Allocations
225.545	New Unit Set-Aside (NUSA)
225.550	Monitoring, Recordkeeping and Reporting Requirements for Gross Electrical Output and Useful Thermal Energy
225.555	Clean Air Set-Aside (CASA)
225.560	Energy Efficiency and Conservation, Renewable Energy, and Clean Technology Projects
225.565	Clean Air Set-Aside (CASA) Allowances
225.570	Clean Air Set-Aside (CASA) Applications
225.575	Agency Action on Clean Air Set-Aside (CASA) Applications

SUBPART F: COMBINED POLLUTANT STANDARDS

225.600	Purpose (Repealed)
225.605	Applicability (Repealed)
225.610	Notice of Intent (Repealed)

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- 225.615 Control Technology Requirements and Emissions Standards for Mercury (Repealed)
- 225.620 Emissions Standards for NO_x and SO₂ (Repealed)
- 225.625 Control Technology Requirements for NO_x, SO₂, and PM Emissions (Repealed)
- 225.630 Permanent Shut-Downs (Repealed)
- 225.635 Requirements for CAIR SO₂, CAIR NO_x, and CAIR NO_x Ozone Season Allowances (Repealed)
- 225.640 Clean Air Act Requirements (Repealed)
- 225.APPENDIX A Specified EGUs for Purposes of the CPS (~~Midwest Generation's~~ Coal-Fired Boilers as of July 1, 2006)
- 225.APPENDIX B Continuous Emission Monitoring Systems for Mercury
- 225.EXHIBIT A Specifications and Test Procedures
- 225.EXHIBIT B Quality Assurance and Quality Control Procedures
- 225.EXHIBIT C Conversion Procedures
- 225.EXHIBIT D Quality Assurance and Operating Procedures for Sorbent Trap Monitoring Systems

AUTHORITY: Implementing and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/27].

SOURCE: Adopted in R06-25 at 31 Ill. Reg. 129, effective December 21, 2006; amended in R06-26 at 31 Ill. Reg. 12864, effective August 31, 2007; amended in R09-10 at 33 Ill. Reg. 10427, effective June 26, 2009; amended in R15-21 at 39 Ill. Reg. _____, effective _____.

SUBPART B: CONTROL OF MERCURY EMISSIONS
FROM COAL-FIRED ELECTRIC GENERATING UNITS

Section 225.205 Applicability

The following stationary coal-fired boilers and stationary coal-fired combustion turbines, and the stationary boilers listed in Appendix A, regardless of the type of fuel combusted, are EGUs and are subject to this Subpart B:

- a) Except as provided in subsection (b) of this Section, a unit serving, at any time since the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

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- b) For a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continues to qualify as a cogeneration unit, a cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MWe and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale. If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity but subsequently no longer qualifies as a cogeneration unit, the unit must be subject to subsection (a) of this Section starting on the day on which the unit first no longer qualifies as a cogeneration unit.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 225.210 Compliance Requirements

- a) Permit Requirements.
The owner or operator of each source with one or more EGUs subject to this Subpart B at the source must apply for a CAAPP permit that addresses the applicable requirements of this Subpart B.
- b) Monitoring and Testing Requirements.
- 1) Except as otherwise indicated in this Subpart, the~~The~~ owner or operator of each source and each EGU at the source must comply with either the monitoring requirements of Sections 225.240 through 225.290 of this Subpart B, the periodic emissions testing requirements of Section 225.239 of this Subpart B, or an alternative emissions monitoring system, alternative reference method for measuring emissions, or other alternative to the emissions monitoring and measurement requirements of Sections 225.240 through 225.290, if such alternative is submitted to the Agency in writing and approved in writing by the Manager of the Bureau of Air's Compliance Section.
 - 2) Except as otherwise indicated in this Subpart, the~~The~~ compliance of each EGU with the mercury requirements of Sections 225.230 and 225.237 of this Subpart B must be determined by the emissions measurements recorded and reported in accordance with either Sections 225.240 through 225.290 of this Subpart B, Section 225.239 of this Subpart B, or an

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alternative emissions monitoring system, alternative reference method for measuring emissions, or other alternative to the emissions monitoring and measurement requirements of Sections 225.240 through 225.290, if such alternative is submitted to the Agency in writing and approved in writing by the Manager of the Bureau of Air's Compliance Section.

- c) **Mercury Emission Reduction Requirements**
The owner or operator of any EGU subject to this Subpart B must comply with applicable requirements for control of mercury emissions of Section 225.230 or Section 225.237 of this Subpart B.

- d) **Recordkeeping and Reporting Requirements**
Unless otherwise provided, the owner or operator of a source with one or more EGUs at the source must keep on site at the source each of the documents listed in subsections (d)(1) through (d)(3) of this Section for a period of five years from the date the document is created. This period may be extended, in writing by the Agency, for cause, at any time prior to the end of five years.
 - 1) All emissions monitoring information gathered in accordance with Sections 225.240 through 225.290 and all periodic emissions testing information gathered in accordance with Section 225.239.
 - 2) Copies of all reports, compliance certifications, and other submissions and all records made or required or documents necessary to demonstrate compliance with the requirements of this Subpart B.
 - 3) Copies of all documents used to complete a permit application and any other submission under this Subpart B.

- e) **Liability.**
 - 1) The owner or operator of each source with one or more EGUs must meet the requirements of this Subpart B.
 - 2) Any provision of this Subpart B that applies to a source must also apply to the owner and operator of such source and to the owner or operator of each EGU at the source.

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- 3) Any provision of this Subpart B that applies to an EGU must also apply to the owner or operator of such EGU.
- f) Effect on Other Authorities. No provision of this Subpart B may be construed as exempting or excluding the owner or operator of a source or EGU from compliance with any other provision of an approved State Implementation Plan, a permit, the Act, or the CAA.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 225.240 General Monitoring and Reporting Requirements

Except as otherwise indicated in this Subpart, the~~The~~ owner or operator of an EGU must comply with the monitoring, recordkeeping, and reporting requirements as provided in this Section, Sections 225.250 through 225.290 of this Subpart B, and Sections 1.14 through 1.18 of Appendix B to this Part. If the EGU utilizes a common stack with units that are not EGUs and the owner or operator of the EGU does not conduct emissions monitoring in the duct to the common stack from each EGU, the owner or operator of the EGU must conduct emissions monitoring in accordance with Section 1.16(b)(2) of Appendix B to this Part and this Section, including monitoring in the duct to the common stack from each unit that is not an EGU, unless the owner or operator of the EGU counts the combined emissions measured at the common stack as the mass emissions of mercury for the EGUs for recordkeeping and compliance purposes.

- a) Requirements for installation, certification, and data accounting. The owner or operator of each EGU must:
 - 1) Install all monitoring systems required pursuant to this Section and Sections 225.250 through 225.290 for monitoring mercury mass emissions (including all systems required to monitor mercury concentration, stack gas moisture content, stack gas flow rate, and CO₂ or O₂ concentration, as applicable, in accordance with Sections 1.15 and 1.16 of Appendix B to this Part).
 - 2) Successfully complete all certification tests required pursuant to Section 225.250 and meet all other requirements of this Section, Sections 225.250 through 225.290, and Sections 1.14 through 1.18 of Appendix B to this Part applicable to the monitoring systems required under subsection (a)(1) of this Section.

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- 3) Record, report, and assure the quality of the data from the monitoring systems required under subsection (a)(1) of this Section.
 - 4) If the owner or operator elects to use the low mass emissions excepted monitoring methodology for an EGU that emits no more than 464 ounces (29 pounds) of mercury per year pursuant to Section 1.15(b) of Appendix B to this Part, it must perform emissions testing in accordance with Section 1.15(c) of Appendix B to this Part to demonstrate that the EGU is eligible to use this excepted emissions monitoring methodology, as well as comply with all other applicable requirements of Section 1.15(b) through (f) of Appendix B to this Part. Also, the owner or operator must submit a copy of any information required to be submitted to the USEPA pursuant to these provisions to the Agency. The initial emissions testing to demonstrate eligibility of an EGU for the low mass emissions excepted methodology must be conducted by the applicable of the following dates:
 - A) If the EGU has commenced commercial operation before July 1, 2008, at least by July 1, 2009, or 45 days prior to relying on the low mass emissions excepted methodology, whichever date is later.
 - B) If the EGU has commenced commercial operation on or after July 1, 2008, at least 45 days prior to the applicable date specified pursuant to subsection (b)(2) of this Section or 45 days prior to relying on the low mass emissions excepted methodology, whichever date is later.
- b) Emissions Monitoring Deadlines. The owner or operator must meet the emissions monitoring system certification and other emissions monitoring requirements of subsections (a)(1) and (a)(2) of this Section on or before the applicable of the following dates. The owner or operator must record, report, and quality-assure the data from the emissions monitoring systems required under subsection (a)(1) of this Section on and after the applicable of the following dates:
- 1) For the owner or operator of an EGU that commences commercial operation before July 1, 2008, by July 1, 2009, except that an EGU in an MPS Group for which an SO₂ scrubber or fabric filter is being installed to be in operation by December 31, 2009, as described in Section 225.233(c)(1)(A), shall have a date of January 1, 2010.

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- 2) For the owner or operator of an EGU that commences commercial operation on or after July 1, 2008, by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the EGU commences commercial operation.
 - 3) For the owner or operator of an EGU for which construction of a new stack or flue or installation of add-on mercury emission controls, a flue gas desulfurization system, a selective catalytic reduction system, a fabric filter, or a compact hybrid particulate collector system is completed after the applicable deadline pursuant to subsection (b)(1) or (b)(2) of this Section, by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue, add-on mercury emission controls, flue gas desulfurization system, selective catalytic reduction system, fabric filter, or compact hybrid particulate collector system.
 - 4) For an owner or operator of an EGU that originally elected to demonstrate compliance pursuant to the emissions testing requirements in Section 225.239, by the first day of the calendar quarter following the last emissions test demonstrating compliance with Section 225.239.
- c) The owner or operator of an EGU that does not meet the applicable emissions monitoring date set forth in subsection (b) of this Section for any emissions monitoring system required pursuant to subsection (a)(1) of this Section must begin periodic emissions testing in accordance with Section 225.239.
- d) Prohibitions.
- 1) No owner or operator of an EGU may use any alternative emissions monitoring system, alternative reference method for measuring emissions, or other alternative to the emissions monitoring and measurement requirements of this Section and Sections 225.250 through 225.290, unless such alternative is submitted to the Agency in writing and approved in writing by the Manager of the Bureau of Air's Compliance Section, or his or her designee.
 - 2) No owner or operator of an EGU may operate its EGU so as to discharge, or allow to be discharged, mercury emissions to the atmosphere without

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accounting for such emissions in accordance with the applicable provisions of this Section, Sections 225.250 through 225.290, and Sections 1.14 through 1.18 of Appendix B to this Part, unless demonstrating compliance pursuant to Section 225.239, as applicable.

- 3) No owner or operator of an EGU may disrupt the CEMS (or excepted monitoring system), any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording mercury mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this Section, Sections 225.250 through 225.290, and Sections 1.14 through 1.18 of Appendix B to this Part.
- 4) No owner or operator of an EGU may retire or permanently discontinue use of the CEMS (or excepted monitoring system) or any component thereof, or any other approved monitoring system pursuant to this Subpart B, except under any one of the following circumstances:
 - A) The owner or operator is monitoring emissions from the EGU with another certified monitoring system that has been approved, in accordance with the applicable provisions of this Section, Sections 225.250 through 225.290 of this Subpart B, and Sections 1.14 through 1.18 of Appendix B to this Part, by the Agency for use at that EGU and that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or
 - B) The owner or operator submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with Section 225.250(a)(3)(A).
 - C) The owner or operator is demonstrating compliance pursuant to the applicable subsections of Section 225.239.
- e) Long-term Cold Storage.
The owner or operator of an EGU that is in long-term cold storage is subject to the provisions of 40 CFR 75.4 and 40 CFR 75.64, incorporated by reference in

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Section 225.140, relating to monitoring, recordkeeping, and reporting for units in long-term cold storage.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 225.265 Coal Analysis for Input Mercury Levels

- a) The owner or operator of an EGU complying with this Subpart B by means of Section 225.230(a)(1)(B); using input mercury levels (I_i) and complying by means of Section 225.230(b) or (d) or Section 225.232; electing to comply with the emissions testing, monitoring, and recordkeeping requirements under Section 225.239; demonstrating compliance under Section 225.233, except an EGU in an MPS Group that elects to comply with the emission standard in Section 225.233(d)(1)(A) or (d)(2)(A); or demonstrating compliance under Sections 225.291 through 225.299, except an EGU in a CPS Group that elects to comply with the emission standard in Section 225.294(c)(1) or that opts into the emission standard in Section 225.294(c)(1) pursuant to Section 225.294(e)(1) or that has permanently ceased combusting coal must fulfill the following requirements:
- 1) Perform sampling of the coal combusted in the EGU for mercury content. The owner or operator of such EGU must collect a minimum of one 2-lb. grab sample from the belt feeders anywhere between the crusher house or breaker building and the boiler or, in cases in which a crusher house or breaker building is not present, at a reasonable point close to the boiler of a subject EGU, according to the schedule in subsections (a)(1)(A) through (C). The sample must be taken in a manner that provides a representative mercury content for the coal burned on that day. If multiple samples are tested, the owner or operator must average those tests to arrive at the final mercury content for that time period. The owner or operator of the EGU must perform coal sampling as follows:
 - A) EGUs complying by means of Section 225.233, except an EGU in an MPS Group that elects to comply with the control efficiency standard in Section 225.233(d)(1)(B) or (d)(2)(B) or elects to comply with Section 225.233(d)(4), or Sections 225.291 through 225.299, except an EGU in a CPS Group that elects to comply with the control efficiency standard in Section 225.294(c)(2) or that opts into the emission standard in Section 225.294(c)(2) pursuant to Section 225.294(e)(1), must perform such coal sampling at least

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once per month unless the boiler did not operate or combust coal at all during that month;

- B) EGUs complying by means of the emissions testing, monitoring, and recordkeeping requirements under Section 225.239 or Section 225.233(d)(4), or EGUs that opt into the emission standard in Section 225.294(c)(2) pursuant to Section 225.294(e)(1)(B), must perform such coal sampling according to the schedule provided in Section 225.239(e)(3) of this Subpart;
 - C) All other EGUs subject to this requirement, including EGUs in an MPS or CPS Group electing to comply with the control efficiency standard in Section 225.233(d)(1)(B) or (d)(2)(B), Section 225.294(c)(2), or Section 225.294(c)(2) pursuant to Section 225.294(e)(1)(A), must perform such coal sampling on a daily basis when the boiler is operating and combusting coal.
- 2) Analyze the grab coal sample for the following:
- A) Determine the heat content using ASTM D5865-04 or an equivalent method approved in writing by the Agency.
 - B) Determine the moisture content using ASTM D3173-03 or an equivalent method approved in writing by the Agency.
 - C) Measure the mercury content using ASTM D6414-01, ASTM D3684-01, ASTM D6722-01, or an equivalent method approved in writing by the Agency.
- 3) The owner or operator of multiple EGUs at the same source using the same crusher house or breaker building may take one sample per crusher house or breaker building, rather than one per EGU.
- 4) The owner or operator of an EGU must use the data analyzed pursuant to subsection (b) of this Section to determine the mercury content in terms of parts per million.

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- b) The owner or operator of an EGU that must conduct sampling and analysis of coal pursuant to subsection (a) of this Section must begin such activity by the following date:
- 1) If the EGU is in daily service, at least 30 days before the start of the month for which such activity will be required.
 - 2) If the EGU is not in daily service, on the day that the EGU resumes operation.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 225.290 Recordkeeping and Reporting

- a) General Provisions.
- 1) Except as otherwise indicated in this Subpart, the~~The~~ owner or operator of an EGU must comply with all applicable recordkeeping and reporting requirements in this Section and with all applicable recordkeeping and reporting requirements of Section 1.18 to Appendix B to this Part.
 - 2) The owner or operator of an EGU must maintain records for each month identifying the emission standard in Section 225.230(a) or 225.237(a) of this Section with which it is complying or that is applicable for the EGU and the following records related to the emissions of mercury that the EGU is allowed to emit:
 - A) For an EGU for which the owner or operator is complying with this Subpart B by means of Section 225.230(a)(1)(B) or 225.237(a)(1)(B) or using input mercury levels to determine the allowable emissions of the EGU, records of the daily mercury content of coal used (parts per million) and the daily and monthly input mercury (lbs), which must be kept in the file pursuant to Section 1.18(a) of Appendix B to this Part.
 - B) For an EGU for which the owner or operator of an EGU complying with this Subpart B by means of Section 225.230(a)(1)(A) or 225.237(a)(1)(A) or using electrical output to determine the allowable emissions of the EGU, records of the daily and monthly

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gross electrical output (GWh), which must be kept in the file required pursuant to Section 1.18(a) of Appendix B to this Part.

- 3) The owner or operator of an EGU must maintain records of the following data for each EGU:
 - A) Monthly emissions of mercury from the EGU.
 - B) For an EGU for which the owner or operator is complying by means of Section 225.230(b) or (d) of this Subpart B, records of the monthly allowable emissions of mercury from the EGU.
- 4) The owner or operator of an EGU that is participating in an Averaging Demonstration pursuant to Section 225.232 of this Subpart B must maintain records identifying all sources and EGUs covered by the Demonstration for each month and, within 60 days after the end of each calendar month, calculate and record the actual and allowable mercury emissions of the EGU for the month and the applicable 12-month rolling period.
- 5) The owner or operator of an EGU must maintain the following records related to quality assurance activities conducted for emissions monitoring systems:
 - A) The results of quarterly assessments conducted pursuant to Section 2.2 of Exhibit B to Appendix B to this Part; and
 - B) Daily/weekly system integrity checks pursuant to Section 2.6 of Exhibit B to Appendix B to this Part.
- 6) The owner or operator of an EGU must retain all records required by this Section at the source for a period of five years from the date the document is created unless otherwise provided in the CAAPP permit issued for the source and must make a copy of any record available to the Agency upon request. This period may be extended in writing by the Agency, for cause, at any time prior to the end of five years.

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- b) Quarterly Reports. The owner or operator of a source with one or more EGUs using CEMS or excepted monitoring systems at any time during a calendar quarter must submit quarterly reports to the Agency as follows:
- 1) Source information such as source name, source ID number, and the period covered by the report.
 - 2) A list of all EGUs at the source that identifies the applicable Part 225 monitoring and reporting requirements with which each EGU is complying for the reported quarter, including the following EGUs, which are excluded from subsection (b)(3) of this Section:
 - A) All EGUs using the periodic emissions testing provisions of Section 225.239, 225.233(d)(4), or Section 225.294(c) pursuant to Section 225.294(e)(1)(B) for the quarter.
 - B) All EGUs using the low mass emissions (LME) excepted monitoring methodology pursuant to Section 1.15(b) of Appendix B to this Part.
 - 3) For only those EGUs using CEMS or excepted monitoring systems at any time during a calendar quarter:
 - A) An indication of whether the identified EGUs were in compliance with all applicable monitoring, recordkeeping, and reporting requirements of Part 225 for the entire reporting period.
 - B) The total quarterly operating hours of each EGU.
 - C) The CEMS or excepted monitoring system QAMO hours on a quarterly basis and percentage data availability on a quarterly or rolling 12-month basis (for each concluding 12-month period in that quarter), as appropriate according to the schedule provided in Section 225.260(b). The data availability shall be determined in accordance with Section 1.8 (CEMS) or 1.9 (excepted monitoring system) of Appendix B to this Part.
 - D) The average monthly mercury concentration of the coal combusted in each EGU in parts per million (determined by averaging all

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analyzed coal samples in the month) and the quarterly total amount of mercury (calculated by multiplying the total amount of coal combusted each month by the average monthly mercury concentration and converting to ounces, then adding together for the quarter) of the coal combusted in each EGU. If the EGU is complying by means of Section 225.230(a)(1)(A), 225.233(d)(1)(A), 225.233(d)(2)(A), or 225.294(c)(1), reporting of the data in this subsection (b)(3)(D) is not required.

- E) The quarterly mercury mass emissions (in ounces), determined from the QAMO hours in accordance with Section 4.2 of Exhibit C to Appendix B to this Part. If the EGU is complying by means of Section 225.230(a)(1)(A), 225.233(d)(1)(A), 225.233(d)(2)(A), or 225.294(c)(1), reporting of the data in this subsection (b)(3)(E) is not required.
- F) The average monthly and quarterly mercury control efficiency. This is determined by dividing the mercury mass emissions recorded during QAMO hours, calculated each month and quarter, by the total amount of mercury in the coal combusted weighted by the monitor availability (total mercury content multiplied by the percent monitor availability, or QAMO hours divided by total hours) for each month and quarter. If the DAHS for the EGU has the ability to record the amount of coal combusted during QAMO hours, the average monthly and quarterly control efficiency shall be reported without the calculation in this subsection (b)(3)(F). If the EGU is complying by means of Section 225.230(a)(1)(A), 225.233(d)(1)(A), 225.233(d)(2)(A), or 225.294(c)(1), reporting of the data in this subsection (b)(3)(F) is not required.
- G) The average monthly and quarterly mercury emission rate (in lb/GWh) for each EGU, determined in accordance with Section 225.230(a)(2). Only those EGUs complying by means of Section 225.230(a)(1)(A), 225.233(d)(1)(A), 225.233(d)(2)(A), or 225.294(c)(1) are required to report the data in this subsection (b)(3)(G).
- H) The 12-month rolling average control efficiency (percentage) or emission rate (in lb/GWh) for each month in the reporting period,

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as applicable (or the rolling average control efficiency or emission rate for a lesser number of months if a full 12 months of data is not available). This applicable data is determined according to the following requirements:

- i) The 12-month rolling average control efficiency is required for those sources complying by means of Section 225.230(a)(1)(B), 225.233(d)(1)(B), 225.233(d)(2)(B), 225.294(c)(2), 225.230(b), 225.230(d), 225.232(b)(2), or 225.237(a)(1)(B).
 - ii) The 12-month rolling average emission rate is required for those sources complying by means of Section 225.230(a)(1)(A), 225.233(d)(1)(A), 225.233(d)(2)(A), or 225.294(c)(1), 225.230(b), 225.230(d), 225.232(b)(1), or 225.237(a)(1)(A).
- D) If the CEMS or excepted monitoring system percentage data availability was less than 95.0 percent of the total operating time for the EGU, the date and time identifying each period during which the CEMS was inoperative, except for routine zero and span checks; the nature of CEMS repairs or adjustments and a summary of quality assurance data consistent with Appendix B to this Part, i.e., the dates and results of the Linearity Tests and any RATAs during the quarter; a listing of any days when a required daily calibration was not performed; and the date and duration of any periods when the CEMS was unavailable or out-of-control as addressed by Section 225.260.
- 4) The owner or operator must submit each quarterly report to the Agency within 45 days following the end of the calendar quarter covered by the report, except that the owner or operator of an EGU that used an excepted monitoring system at any time during a calendar quarter must submit each quarterly report within 60 days following the end of the calendar quarter covered by the report.
- c) Compliance Certification. The owner or operator of a source with one or more EGUs must submit to the Agency a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary

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responsibility for ensuring that all of the EGUs' emissions are correctly and fully monitored. The certification must state:

- 1) That the monitoring data submitted were recorded in accordance with the applicable requirements of this Section, Sections 225.240 through 225.270 and Section 225.290 of this Subpart B, and Appendix B to this Part, including the quality assurance procedures and specifications; and
 - 2) For an EGU with add-on mercury emission controls, a flue gas desulfurization system, a selective catalytic reduction system, or a compact hybrid particulate collector system for all hours where mercury data is unavailable or out-of-control that:
 - A) The mercury add-on emission controls, flue gas desulfurization system, selective catalytic reduction system, or compact hybrid particulate collector system was operating within the range of parameters listed in the quality assurance/quality control program pursuant to Exhibit B to Appendix B to this Part; or
 - B) With regard to a flue gas desulfurization system or a selective catalytic reduction system, quality-assured SO₂ emission data recorded in accordance with the 40 CFR 75 document that the flue gas desulfurization system was operating properly, or quality-assured NO_x emission data recorded in accordance with the 40 CFR 75 document that the selective catalytic reduction system was operating properly, as applicable.
- d) Annual Certification of Compliance.
- 1) The owner or operator of a source with one or more EGUs subject to this Subpart B must submit to the Agency an Annual Certification of Compliance with this Subpart B no later than May 1 of each year and must address compliance for the previous calendar year. Such certification must be submitted to the Agency, Air Compliance Section, and the Air Regional Field Office.
 - 2) Annual Certifications of Compliance must indicate whether compliance existed for each EGU for each month in the year covered by the Certification and it must certify to that effect. In addition, for each EGU,

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the owner or operator must provide the following appropriate data as set forth in subsections (d)(2)(A) through (d)(2)(E) of this Section, together with the data set forth in subsection (d)(2)(F) of this Section:

- A) If complying with this Subpart B by means of Section 225.230(a)(1)(A) or 225.237(a)(1)(A):
 - i) Emissions rate during QAMO hours, in lb/GWh, for each 12-month rolling period ending in the year covered by the Certification;
 - ii) Emissions during QAMO hours, in lbs, and gross electrical output, in GWh, for each 12-month rolling period ending in the year covered by the Certification; and
 - iii) Emissions during QAMO hours, in lbs, and gross electrical output, in GWh, for each month in the year covered by the Certification and in the previous year.

- B) If complying with this Subpart B by means of Section 225.230(a)(1)(B) or 225.237(a)(1)(B):
 - i) Control efficiency for emissions during QAMO hours for each 12-month rolling period ending in the year covered by the Certification, expressed as a percent;
 - ii) Emissions during QAMO hours, in lbs, and mercury content in the fuel fired in such EGU, in lbs, for each 12-month rolling period ending in the year covered by the Certification; and
 - iii) Emissions during QAMO hours, in lbs, and mercury content in the fuel fired in such EGU, in lbs, for each month in the year covered by the Certification and in the previous year.

- C) If complying with this Subpart B by means of Section 225.230(b):

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- i) Emissions and allowable emissions during QAMO hours for each 12-month rolling period ending in the year covered by the Certification; and
 - ii) Emissions and allowable emissions during QAMO hours and which standard of compliance the owner or operator was utilizing for each month in the year covered by the Certification and in the previous year.
- D) If complying with this Subpart B by means of Section 225.230(d):
- i) Emissions and allowable emissions during QAMO hours for all EGUs at the source for each 12-month rolling period ending in the year covered by the Certification; and
 - ii) Emissions and allowable emissions during QAMO hours, and which standard of compliance the owner or operator was utilizing for each month in the year covered by the Certification and in the previous year.
- E) If complying with this Subpart B by means of Section 225.232:
- i) Emissions and allowable emissions during QAMO hours for all EGUs at the source in an Averaging Demonstration for each 12-month rolling period ending in the year covered by the Certification; and
 - ii) Emissions and allowable emissions during QAMO hours, with the standard of compliance the owner or operator was utilizing for each EGU at the source in an Averaging Demonstration for each month for all EGUs at the source in an Averaging Demonstration in the year covered by the Certification and in the previous year.
- F) Any deviations or exceptions each month and discussion of the reasons for such deviations or exceptions.
- 3) All Annual Certifications of Compliance required to be submitted must include the following certification by a responsible official:

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I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

- 4) The owner or operator of an EGU must submit its first Annual Certification of Compliance to address calendar year 2009 or the calendar year in which the EGU commences commercial operation, whichever is later. Notwithstanding subsection (d)(2) of this Section, in the Annual Certifications of Compliance that are required to be submitted by May 1, 2010, and May 1, 2011, to address calendar years 2009 and 2010, respectively, the owner or operator is not required to provide 12-month rolling data for any period that ends before June 30, 2010.
- e) Deviation Reports. For each EGU, the owner or operator must promptly notify the Agency of deviations from requirements of this Subpart B. At a minimum, these notifications must include a description of such deviations within 30 days after discovery of the deviations, and a discussion of the possible cause of such deviations, any corrective actions, and any preventative measures taken.
- f) Quality Assurance RATA Reports. The owner or operator of an EGU must submit to the Agency, Air Compliance and Enforcement Section, the quality assurance RATA report for each EGU or group of EGUs monitored at a common stack and each non-EGU pursuant to Section 1.16(b)(2)(B) of Appendix B to this Part, within 45 days after completing a quality assurance RATA.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 225.291 Combined Pollutant Standard: Purpose

The purpose of Sections 225.291 through 225.299 (hereinafter referred to as the Combined Pollutant Standard ("CPS")) is to allow an alternate means of compliance with the emissions standards for mercury in Section 225.230(a) for specified EGUs through permanent shut-down,

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installation of ACI, ~~and~~ the application of pollution control technology for NO_x, PM, and SO₂ emissions, or the conversion of an EGU to a fuel other than coal (such as natural gas or distillate fuel oil with sulfur content no greater than 15 ppm), that also reduce mercury emissions as a co-benefit and to establish permanent emissions standards for those specified EGUs. Unless otherwise provided for in the CPS, owners and operators of those specified EGUs are not excused from compliance with other applicable requirements of Subparts B, C, D, and E.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 225.292 Applicability of the Combined Pollutant Standard

- a) As an alternative to compliance with the emissions standards of Section 225.230(a), the owner or operator of specified EGUs in the CPS located at the Fisk, Crawford, Joliet, Powerton, Waukegan, and Will County power plants may elect for all of those EGUs as a group to demonstrate compliance pursuant to the CPS, which establishes control requirements and emissions standards for NO_x, PM, SO₂, and mercury. For this purpose, ownership of a specified EGU is determined based on direct ownership, by holding a majority interest in a company that owns the EGU or EGUs, or by the common ownership of the company that owns the EGU, whether through a parent-subsidiary relationship, as a sister corporation, or as an affiliated corporation with the same parent corporation, provided that the owner or operator has the right or authority to submit a CAAPP application on behalf of the EGU.
- b) A specified EGU is ana-coal-fired EGU listed in Appendix A, irrespective of any subsequent changes in ownership of the EGU or power plant, the operator, unit designation, or name of unit, or the type of fuel combusted (including natural gas or distillate fuel oil with sulfur content no greater than 15 ppm).
- c) The owner or operator of each of the specified EGUs electing to demonstrate compliance with Section 225.230(a) pursuant to the CPS must submit an application for a CAAPP permit modification to the Agency, as provided for in Section 225.220, that includes the information specified in Section 225.293 that clearly states the owner's or operator's election to demonstrate compliance with Section 225.230(a) pursuant to the CPS.
- d) If an owner or operator of one or more specified EGUs elects to demonstrate compliance with Section 225.230(a) pursuant to the CPS, then all specified EGUs owned or operated in Illinois by the owner or operator as of December 31, 2006,

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as defined in subsection (a) of this Section, are thereafter subject to the standards and control requirements of the CPS. Such EGUs are referred to as a Combined Pollutant Standard (CPS) group.

- e) If an EGU is subject to the requirements of this Section, then the requirements apply to all owners and operators of the EGU.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 225.293 Combined Pollutant Standard: Notice of Intent

The owner or operator of one or more specified EGUs that intends to comply with Section 225.230(a) by means of the CPS must notify the Agency of its intention on or before December 31, 2007. The following information must accompany the notification:

- a) The identification of each EGU that will be complying with Section 225.230(a) pursuant to the CPS, with evidence that the owner or operator has identified all specified EGUs that it owned or operated in Illinois as of December 31, 2006, and which commenced commercial operation on or before December 31, 2004;
- b) If an EGU identified in subsection (a) of this Section is also owned or operated by a person different than the owner or operator submitting the notice of intent, a demonstration that the submitter has the right to commit the EGU or authorization from the responsible official for the EGU submitting the application; ~~and~~
- c) A summary of the current control devices installed and operating on each EGU and identification of the additional control devices that will likely be needed for each EGU to comply with emission control requirements of the CPS;
- d) Additionally, the owner or operator of a specified EGU that, on or after January 1, 2015, changes the type of primary fuel combusted by the unit or the control device or devices installed and operating on the unit must notify the Agency of such change by January 1, 2017, or within 30 days after the completion of such change, whichever is later.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 225.294 Combined Pollutant Standard: Control Technology Requirements and Emissions Standards for Mercury

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- a) Control Technology Requirements for Mercury.
- 1) For each coal-fired EGU in a CPS group other than an EGU that is addressed by subsection (b) of this Section, the owner or operator of the EGU must install, if not already installed, and properly operate and maintain, by the dates set forth in subsection (a)(2) of this Section, ACI equipment complying with subsections (g), (h), (i), (j), and (k) of this Section, as applicable.
 - 2) By the following dates, for the EGUs listed in subsections (a)(2)(A) and (B), which include hot and cold side ESPs, the owner or operator must install, if not already installed, and begin operating ACI equipment or the Agency must be given written notice that the EGU will be shut down on or before the following dates:
 - A) Fisk 19, Crawford 7, Crawford 8, Waukegan 7, and Waukegan 8 on or before July 1, 2008; and
 - B) Powerton 5, Powerton 6, Will County 3, Will County 4, Joliet 6, Joliet 7, and Joliet 8 on or before July 1, 2009.
- b) Notwithstanding subsection (a) of this Section;~~;~~
- 1) ~~The~~the following EGUs are not required to install ACI equipment because they will be permanently shut down, as addressed by Section 225.297, by the date specified:
 - A~~1~~) EGUs that are required to permanently shut down:
 - i~~A~~) On or before December 31, 2007, Waukegan 6; and
 - ii~~B~~) On or before December 31, 2010, Will County 1 and Will County 2.
 - B~~2~~) Any other specified EGU that is permanently shut down by December 31, 2010; and~~;~~

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- 2) On and after the date an EGU permanently ceases combusting coal, it is not required to install, operate, or maintain ACI equipment.
- c) Beginning on January 1, 2015, and continuing thereafter, and measured on a rolling 12-month basis (the initial period is January 1, 2015, through December 31, 2015, and, then, for every 12-month period thereafter), each specified EGU that has not permanently ceased combusting coal, except Will County 3, shall achieve one of the following emissions standards:
- 1) An emissions standard of 0.0080 lbs mercury/GWh gross electrical output; or
 - 2) A minimum 90 percent reduction of input mercury.
- d) On and after April 16, 2015, Will County 3 must not combust coal. Beginning on January 1, 2016, and continuing thereafter, Will County 3 shall achieve the mercury emissions standards of subsection (e) of this Section measured on a rolling 12-month basis (the initial period is January 1, 2016, through December 31, 2016, and, then, for every 12-month period thereafter).
- e) Compliance with Emission Standards
- 1) At any time prior to the dates required for compliance in subsections (c) and (d) of this Section, the owner or operator of a specified EGU, upon notice to the Agency, may elect to comply with the emissions standards of subsection (c) of this Section measured on either:
 - A) a rolling 12-month basis; or
 - B) a quarterly calendar basis pursuant to the emissions testing requirements in Section 225.239(a)(4), (c), (d), (e), (f), (g), (h), (i), and (j) of this Subpart until June 30, 2012.
 - 2) Once an EGU is subject to the mercury emissions standards of subsection (c) of this Section, it shall not be subject to the requirements of subsections (g), (h), (i), (j) and (k) of this Section;

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- 3) On and after the date an EGU permanently ceases combusting coal, it shall not be subject to the requirements of subsections (g), (h), (i), (j) and (k) of this Section.
- f) Compliance with the mercury emissions standards or reduction requirement of this Section must be calculated in accordance with Section 225.230(a) or (b), or Section 225.232 until December 31, 2013.
- g) For each EGU for which injection of halogenated activated carbon is required by subsection (a)(1) of this Section, the owner or operator of the EGU must inject halogenated activated carbon in an optimum manner.:
- 1) Except as provided in subsection (h) of this Section, optimum manner is defined as all of the following:
- A) The use of an injection system for effective absorption of mercury, considering the configuration of the EGU and its ductwork;
- B) The injection of halogenated activated carbon manufactured by Alstom, Norit, or Sorbent Technologies, Calgon Carbon's FLUEPAC CF Plus, or Calgon Carbon's FLUEPAC MC Plus, or the injection of any other halogenated activated carbon or sorbent that the owner or operator of the EGU has demonstrated to have similar or better effectiveness for control of mercury emissions; and
- C) The injection of sorbent at the following minimum rates, as applicable:
- i) For an EGU firing subbituminous coal, 5.0 lbs per million actual cubic feet or, for any cyclone-fired EGU that will install a scrubber and baghouse by December 31, 2012, and which already meets an emission rate of 0.020 lb mercury/GWh gross electrical output or at least 75 percent reduction of input mercury, 2.5 lbs per million actual cubic feet;
- ii) For an EGU firing bituminous coal, 10.0 lbs per million actual cubic feet or, for any cyclone-fired EGU that will

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- install a scrubber and baghouse by December 31, 2012, and which already meets an emission rate of 0.020 lb mercury/GWh gross electrical output or at least 75 percent reduction of input mercury, 5.0 lbs per million actual cubic feet;
- iii) For an EGU firing a blend of subbituminous and bituminous coal, a rate that is the weighted average of the rates specified in subsections (g)(1)(C)(i) and (ii) based on the blend of coal being fired; or
 - iv) A rate or rates set lower by the Agency, in writing, than the rate specified in any of subsection (g)(1)(C)(i), (ii), or (iii) of this Section on a unit-specific basis, provided that the owner or operator of the EGU has demonstrated that such rate or rates are needed so that carbon injection will not increase particulate matter emissions or opacity so as to threaten noncompliance with applicable requirements for particulate matter or opacity.
- 2) For purposes of subsection (g)(1)(C) of this Section, the flue gas flow rate shall be the gas flow rate in the stack for all units except for those equipped with activated carbon injection prior to a hot-side electrostatic precipitator; for units equipped with activated carbon injection prior to a hot-side electrostatic precipitator, the flue gas flow rate shall be the gas flow rate at the inlet to the hot-side electrostatic precipitator, which shall be determined as the stack flow rate adjusted through the use of Charles' Law for the differences in gas temperatures in the stack and at the inlet to the electrostatic precipitator ($V_{\text{esp}} = V_{\text{stack}} \times T_{\text{esp}}/T_{\text{stack}}$, where V = gas flow rate in acf and T = gas temperature in Kelvin or Rankine).
- h) The owner or operator of an EGU that seeks to operate an EGU with an activated carbon injection rate or rates that are set on a unit-specific basis pursuant to subsection (g)(1)(C)(iv) of this Section must submit an application to the Agency proposing such rate or rates, and must meet the requirements of subsections (h)(1) and (h)(2) of this Section, subject to the limitations of subsections (h)(3) and (h)(4) of this Section:

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- 1) The application must be submitted as an application for a new or revised federally enforceable operation permit for the EGU, and it must include a summary of relevant mercury emissions data for the EGU, the unit-specific injection rate or rates that are proposed, and detailed information to support the proposed injection rate or rates;
 - 2) This application must be submitted no later than the date that activated carbon must first be injected. For example, the owner or operator of an EGU that must inject activated carbon pursuant to subsection (a)(1) of this Section must apply for unit-specific injection rate or rates by July 1, 2008. Thereafter, the owner or operator may supplement its application;
 - 3) Any decision of the Agency denying a permit or granting a permit with conditions that set a lower injection rate or rates may be appealed to the Board pursuant to Section 39 of the Act; and
 - 4) The owner or operator of an EGU may operate at the injection rate or rates proposed in its application until a final decision is made on the application including a final decision on any appeal to the Board.
- i) During any evaluation of the effectiveness of a listed sorbent, alternative sorbent, or other technique to control mercury emissions, the owner or operator of an EGU need not comply with the requirements of subsection (g) of this Section for any system needed to carry out the evaluation, as further provided as follows:
- 1) The owner or operator of the EGU must conduct the evaluation in accordance with a formal evaluation program submitted to the Agency at least 30 days prior to commencement of the evaluation;
 - 2) The duration and scope of the evaluation may not exceed the duration and scope reasonably needed to complete the desired evaluation of the alternative control techniques, as initially addressed by the owner or operator in a support document submitted with the evaluation program;
 - 3) The owner or operator of the EGU must submit a report to the Agency no later than 30 days after the conclusion of the evaluation that describes the evaluation conducted and which provides the results of the evaluation; and

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- 4) If the evaluation of alternative control techniques shows less effective control of mercury emissions from the EGU than was achieved with the principal control techniques, the owner or operator of the EGU must resume use of the principal control techniques. If the evaluation of the alternative control technique shows comparable effectiveness to the principal control technique, the owner or operator of the EGU may either continue to use the alternative control technique in a manner that is at least as effective as the principal control technique or it may resume use of the principal control technique. If the evaluation of the alternative control technique shows more effective control of mercury emissions than the control technique, the owner or operator of the EGU must continue to use the alternative control technique in a manner that is more effective than the principal control technique, so long as it continues to be subject to this Section.
- j) In addition to complying with the applicable recordkeeping and monitoring requirements in Sections 225.240 through 225.290, the owner or operator of an EGU that elects to comply with this Subpart B by means of Sections 225.291 through 225.299 must also comply with the following additional requirements:
- 1) For the first 36 months that injection of sorbent is required, it must maintain records of the usage of sorbent, the flue gas flow rate from the EGU (and, if the unit is equipped with activated carbon injection prior to a hot-side electrostatic precipitator, flue gas temperature at the inlet of the hot-side electrostatic precipitator and in the stack), and the sorbent feed rate, in pounds per million actual cubic feet of flue gas, on a weekly average;
 - 2) After the first 36 months that injection of sorbent is required, it must monitor activated sorbent feed rate to the EGU, gas flow rate in the stack, and, if the unit is equipped with activated carbon injection prior to a hot-side electrostatic precipitator, flue gas temperature at the inlet of the hot-side electrostatic precipitator and in the stack. It must automatically record this data and the sorbent carbon feed rate, in pounds per million actual cubic feet of flue gas, on an hourly average; and
 - 3) If a blend of bituminous and subbituminous coal is fired in the EGU, it must keep records of the amount of each type of coal burned and the required injection rate for injection of activated carbon on a weekly basis.

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- k) In addition to complying with the applicable reporting requirements in Sections 225.240 through 225.290, the owner or operator of an EGU that elects to comply with Section 225.230(a) by means of the CPS must also submit quarterly reports for the recordkeeping and monitoring conducted pursuant to subsection (j) of this Section.
- l) Until June 30, 2012, as an alternative to the CEMS (or excepted monitoring system) monitoring, recordkeeping, and reporting requirements in Sections 225.240 through 225.290, the owner or operator of an EGU may elect to comply with the emissions testing, monitoring, recordkeeping, and reporting requirements in Section 225.239(c), (d), (e), (f)(1) and (2), (h)(2), (i)(3) and (4), and (j)(1).
- m) Notwithstanding any other provision in this Subpart, the requirements in Sections 225.240 through 225.290 of this Subpart, and any other mercury-related monitoring, recordkeeping, notice, analysis, certification, and reporting requirements set forth in this Subpart, including in this CPS, will not apply to a specified EGU on and after the date the EGU permanently ceases combusting coal.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 225.295 Combined Pollutant Standard: Emissions Standards for NO_x and SO₂

- a) Emissions Standards for NO_x and Reporting Requirements.
- 1) Beginning with calendar year 2012 and continuing in each calendar year thereafter, the CPS group, which includes all specified EGUs, regardless of the type of fuel combusted, that have not been permanently shut down by December 31 before the applicable calendar year, must comply with a CPS group average annual NO_x emissions rate of no more than 0.11 lbs/mmBtu.
- 2) Beginning with ozone season control period 2012 and continuing in each ozone season control period (May 1 through September 30) thereafter, the CPS group, which includes all specified EGUs, regardless of the type of fuel combusted, that have not been permanently shut down by December 31 before the applicable ozone season, must comply with a CPS group

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average ozone season NO_x emissions rate of no more than 0.11 lbs/mmBtu.

3) The owner or operator of the specified EGUs in the CPS group must file, not later than one year after startup of any selective SNCR on such EGU, a report with the Agency describing the NO_x emissions reductions that the SNCR has been able to achieve.

4) The specified EGUs are not subject to the requirements set forth in 35 Ill. Adm. Code 217, Subpart M, including without limitation the NO_x emission standards set forth in 35 Ill. Adm. Code 217.344.

b) Emissions Standards for SO₂. Beginning in calendar year 2013 and continuing in each calendar year thereafter, the CPS group must comply with the applicable CPS group average annual SO₂ emissions rate listed as follows. For purposes of this subsection (b) only, the CPS group includes only those specified EGUs that combust coal:

year	lbs/mmBtu
2013	0.44
2014	0.41
2015	0.28
2016	0.195
2017	0.15
2018	0.13
2019	0.11

c) Compliance with the NO_x and SO₂ emissions standards must be demonstrated in accordance with Sections 225.310, 225.410, and 225.510. The owner or operator of the specified EGUs must complete the demonstration of compliance pursuant to Section 225.298(c) before March 1 of the following year for annual standards and before November 30 of the particular year for ozone season control periods (May 1 through September 30) standards, by which date a compliance report must be submitted to the Agency.

d) The CPS group average annual SO₂ emission rate, annual NO_x emission rate and ozone season NO_x emission rates shall be determined as follows:

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$$ER_{avg} = \frac{\sum_{i=1}^n (SO_{2i} \text{ or } NO_{xi})}{\sum_{i=1}^n (HI_i)}$$

~~$$ER_{avg} = \frac{\sum_{i=1}^n (SO_{2i} \text{ or } NO_{xi} \text{ tons})}{\sum_{i=1}^n (HI_i)}$$~~

Where:

- ER_{avg} = average annual or ozone season emission rate in lbs/mmBtu of all EGUs in the CPS group.
- HI_i = heat input for the annual or ozone control period of each EGU, in mmBtu.
- SO_{2i} = actual annual SO₂ lbstons of each EGU in the CPS group.
- NO_{xi} = actual annual or ozone season NO_x lbstons of each EGU in the CPS group.
- n = number of EGUs that are in the CPS group.
- i = each EGU in the CPS group.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 225.296 Combined Pollutant Standard: Control Technology Requirements for NO_x, SO₂, and PM Emissions

- a) Control Technology Requirements for NO_x and SO₂.
- 1) On or before December 31, 2013, the owner or operator must either permanently shut down or install and have operational FGD equipment on Waukegan 7;
 - 2) On or before December 31, 2014, the owner or operator must either permanently shut down or install and have operational FGD equipment on Waukegan 8;
 - 3) On or before December 31, 2015, the owner or operator must either permanently shut down or install and have operational FGD equipment on Fisk 19;

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- 4) If Crawford 7 will be operated after December 31, 2018, and not permanently shut down by this date, the owner or operator must:
 - A) On or before December 31, 2015, install and have operational SNCR or equipment capable of delivering essentially equivalent NO_x reductions on Crawford 7; and
 - B) On or before December 31, 2018, install and have operational FGD equipment on Crawford 7;
- 5) If Crawford 8 will be operated after December 31, 2017 and not permanently shut down by this date, the owner or operator must:
 - A) On or before December 31, 2015, install and have operational SNCR or equipment capable of delivering essentially equivalent NO_x emissions reductions on Crawford 8; and
 - B) On or before December 31, 2017, install and have operational FGD equipment on Crawford 8.
- b) Other Control Technology Requirements for SO₂. On and after April 16, 2015, Will County 3 must not combust coal. On and after December 31, 2016, Joliet 6, 7, and 8 must not combust coal. Owners or operators of the other specified EGUs must either permanently shut down, permanently cease combusting coal at, or install FGD equipment on each specified EGU (except Will County 4~~Joliet 5~~), on or before December 31, 2018, unless an earlier date is specified in subsection (a) of this Section.
- c) Control Technology Requirements for PM. The owner or operator of the Waukegan 7 EGU~~two specified EGUs listed in this subsection~~ that is~~are~~ equipped with a hot-side ESP must replace the hot-side ESP with a cold-side ESP, install an appropriately designed fabric filter, or permanently shut down the EGU by December 31, 2014~~the dates specified~~. Hot-side ESP means an ESP on a coal-fired boiler that is installed before the boiler's air-preheater where the operating temperature is typically at least 550°F, as distinguished from a cold-side ESP that is installed after the air pre-heater where the operating temperature is typically no more than 350°F.
 - 1) Waukegan 7 on or before December 31, 2013; and

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- 2) ~~Will County 3 on or before December 31, 2015.~~
- d) Beginning on December 31, 2008, and annually thereafter up to and including December 31, 2015, the owner or operator of the Fisk power plant must submit in writing to the Agency a report on any technology or equipment designed to affect air quality that has been considered or explored for the Fisk power plant in the preceding 12 months. This report will not obligate the owner or operator to install any equipment described in the report.
- e) Notwithstanding 35 Ill. Adm. Code 201.146(hhh), until an EGU has complied with the applicable requirements of subsections 225.296(a), (b), and (c), the owner or operator of the EGU must obtain a construction permit for any new or modified air pollution control equipment that it proposes to construct for control of emissions of mercury, NO_x, PM, or SO₂.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 225.298 Combined Pollutant Standard: Requirements for NO_x and SO₂**Allowances**

- a) The following requirements apply to the owner and operator with respect to SO₂ and NO_x allowances, which mean, for the purposes of this Section 225.298, allowances necessary for compliance with Section 225.310, 225.410, or 225.510, 40 CFR 72, or subparts AA and AAAA of 40 CFR 96, or any future federal NO_x or SO₂ emissions trading programs that modify or replace these programs:
- 1) ~~The owner or operator of specified EGUs in a CPS group is permitted to sell, trade, or transfer SO₂ and NO_x emissions allowances of any vintage owned, allocated to, or earned by the specified EGUs (the "CPS allowances") to its affiliated Homer City, Pennsylvania generating station for as long as the Homer City Station needs the CPS allowances for compliance.~~
- 12) ~~When and if the Homer City Station no longer requires all of the CPS allowances, The~~ the owner or operator of specified EGUs in a CPS group may sell, trade, or transfer any and all SO₂ and NO_x emissions allowances of any vintage owned, allocated to, or earned by the specified EGUs (the "CPS allowances") ~~remaining CPS allowances,~~ without restriction, to any

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person or entity located anywhere, except that the owner or operator may not directly sell, trade, or transfer CPS allowances to a unit located in Ohio, Indiana, Illinois, Wisconsin, Michigan, Kentucky, Missouri, Iowa, Minnesota, or Texas.

- 3) In no event shall this subsection (a) require or be interpreted to require any restriction whatsoever on the sale, trade, or exchange of the CPS allowances by persons or entities who have acquired the CPS allowances from the owner or operator of specified EGUs in a CPS group.
- b) The owner or operator of EGUs in a specified CPS group is prohibited from purchasing or using SO₂ and NO_x allowances for the purposes of meeting the SO₂ and NO_x emissions standards set forth in Section 225.295.
- c) By March 1, 2010, and continuing each year thereafter, the owner or operator of the EGUs in a CPS group must submit a report to the Agency that demonstrates compliance with the requirements of this Section for the previous calendar year and ozone season control period (May 1 through September 30), and includes identification of any NO_x or SO₂ allowances that have been used for compliance with any NO_x or SO₂ trading programs, and any NO_x or SO₂ allowances that were sold, gifted, used, exchanged, or traded. A final report must be submitted to the Agency by August 31 of each year, providing either verification that the actions described in the initial report have taken place, or, if such actions have not taken place, an explanation of the changes that have occurred and the reasons for such changes.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

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Section 225.APPENDIX A Specified EGUs for Purposes of the CPS (Midwest Generation's Coal-Fired Boilers as of July 1, 2006)

Plant	Permit Number	Boiler	Permit designation	CPS Designation
Crawford	031600AIN	7	Unit 7 Boiler BLR1	Crawford 7
		8	Unit 8 Boiler BLR2	Crawford 8
Fisk	031600AMI	19	Unit 19 Boiler BLR19	Fisk 19
Joliet	197809AAO	71	Unit 7 Boiler BLR71	Joliet 7
		72	Unit 7 Boiler BLR72	Joliet 7
		81	Unit 8 Boiler BLR81	Joliet 8
		82	Unit 8 Boiler BLR82	Joliet 8
		5	Unit 6 Boiler BLR5	Joliet 6
Powerton	179801AAA	51	Unit 5 Boiler BLR51	Powerton 5
		52	Unit 5 Boiler BLR52	Powerton 5
		61	Unit 6 Boiler BLR61	Powerton 6
		62	Unit 6 Boiler BLR62	Powerton 6
Waukegan	097190AAC	17	Unit 6 Boiler BLR17	Waukegan 6
		7	Unit 7 Boiler BLR7	Waukegan 7
		8	Unit 8 Boiler BLR8	Waukegan 8
Will County	197810AAK	1	Unit 1 Boiler BLR1	Will County 1
		2	Unit 2 Boiler BLR2	Will County 2
		3	Unit 3 Boiler BLR3	Will County 3
		4	Unit 4 Boiler BLR4	Will County 4

(Source: Amended at 39 Ill. Reg. _____, effective _____)

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Trifecta
- 2) Code Citation: 11 Ill. Adm. Code 306
- 3) Section Number: 306.30 Proposed Action:
Amendment
- 4) Statutory Authority: 230 ILCS 5/9(b)
- 5) A Complete Description of the Subjects and Issues Involved: Decreasing field sizes in harness racing, due to the exodus of racehorses leaving the State of Illinois for higher purses in other states, puts Illinois at a competitive disadvantage for the wagering dollar. A survey of 11 racing jurisdictions that conduct harness racing revealed that Illinois requires the highest number of betting interests for trifecta wagering. Lowering the minimum field size requirement would keep wagering dollars in Illinois and benefit the horsemen, racetracks and State.

Six betting interests must currently be carded for trifecta wagering in harness racing and in the event of a scratch, five betting interests would allow trifecta wagering. This proposed rulemaking will reduce the number of minimum betting interests carded in harness racing to five, the same as thoroughbred racing.
- 6) Published studies or reports and sources of underlying data used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rule currently in effect? Yes
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending in this Part? No
- 11) Statement of Statewide Policy Objective: No local governmental units will be required to increase expenditures.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Written comments should be submitted, within 45 days after this Notice, to:

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENT

Mickey Ezzo
Illinois Racing Board
100 West Randolph
Suite 5-700
Chicago IL 60601

312/814-5017
Mickey.ezzo@illinois.gov

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: None
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda which this rulemaking was summarized: This rulemaking was not included on either of the two most recent regulatory agendas because: The Board did not anticipate the need for this rulemaking at that time.

The full text of the Proposed Amendment is identical to the Emergency Amendment that appears in this issue of the *Illinois Register* on page 7284.

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Superfecta
- 2) Code Citation: 11 Ill. Adm. Code 311
- 3) Section Number: 311.35 Proposed Action:
Amendment
- 4) Statutory Authority: 230 ILCS 5/9(b)
- 5) A Complete Description of the Subjects and Issues Involved: Decreasing field sizes in harness racing, due to the exodus of racehorses leaving the State of Illinois for higher purses in other states, puts Illinois at a competitive disadvantage for the wagering dollar. A survey of 11 racing jurisdictions that conduct harness racing revealed that Illinois requires the highest number of betting interests for superfecta wagering. Lowering the minimum field size requirement would keep wagering dollars in Illinois and benefit the horsemen, racetracks, and State.

Seven betting interests must currently be carded for superfecta wagering in harness racing and in the event of a scratch, six betting interests would allow superfecta wagering. This proposed rulemaking will reduce the number of minimum betting interests carded in harness racing to six, the same as thoroughbred racing.
- 6) Published studies or reports and sources of underlying data used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rule currently in effect? Yes
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending in this Part? No
- 11) Statement of Statewide Policy Objective: No local governmental units will be required to increase expenditures.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Written comments should be submitted, within 45 days after this Notice, to:

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENT

Mickey Ezzo
Illinois Racing Board
100 West Randolph
Suite 5-700
Chicago IL 60601

312/814-5017
Mickey.ezzo@illinois.gov

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: None
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda which this rulemaking was summarized: This rulemaking was not included on either of the two most recent regulatory agendas because: The Board did not anticipate the need for this rulemaking at that time.

The full text of the Proposed Amendment is identical to the Emergency Amendment that appears in this issue of the *Illinois Register* on page 7288.

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Pentafecta
- 2) Code Citation: 11 Ill. Adm. Code 324
- 3) Section Number: 324.50 Proposed Action:
Amendment
- 4) Statutory Authority: 230 ILCS 5/9(b)
- 5) A Complete Description of the Subjects and Issues Involved: Decreasing field sizes in harness racing, due to the exodus of racehorses leaving the State of Illinois for higher purses in other states, puts Illinois at a competitive disadvantage for the wagering dollar. A survey of 11 racing jurisdictions that conduct harness racing revealed that Illinois requires the highest number of betting interests for pentafecta wagering. Lowering the minimum field size requirement would keep wagering dollars in Illinois and benefit the horsemen, racetracks, and State.

Nine betting interests must currently be carded for pentafecta wagering in harness racing and in the event of a scratch, eight betting interests would allow pentafecta wagering. This proposed rulemaking will reduce the number of minimum betting interests carded in harness racing to eight, the same as thoroughbred racing.
- 6) Published studies or reports and sources of underlying data used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace any emergency rule currently in effect? Yes
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending in this Part? No
- 11) Statement of Statewide Policy Objective: No local governmental units will be required to increase expenditures.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Written comments should be submitted, within 45 days after this Notice, to:

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENT

Mickey Ezzo
Illinois Racing Board
100 West Randolph
Suite 5-700
Chicago IL 60601

312/814-5017
Mickey.ezzo@illinois.gov

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: None
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda which this rulemaking was summarized: This rulemaking was not included on either of the two most recent regulatory agendas because: The Board did not anticipate the need for this rulemaking at that time.

The full text of the Proposed Amendment is identical to the Emergency Amendment that appears in this issue of the *Illinois Register* on page 7292.

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Retailers' Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 130
- 3) Section Number: 130.2125 Proposed Action:
Amendment
- 4) Statutory Authority: 35 ILCS 120/12; 20 ILCS 2505/2505-795
- 5) A Complete Description of the Subjects and Issues Involved: This proposed rulemaking amends the Department's regulation governing "Trading Stamps, Discount Coupons, Automobile Rebates and Dealer Incentives" to clarify the tax liability of both retailers and purchasers utilizing coupons. The rule adds prefatory language explaining the statutory basis under both the Retailers' Occupation Tax and Use Tax Acts for determining the taxation of coupons, as well as citations to several court cases that have clarified the application of these statutes. In 2004, the Illinois Appellate Court for the Second District issued an important decision interpreting the meaning of "gross receipts" applied to payments received by auto dealers from a third party (manufacturer) upon the purchase of an automobile by an employee under a manufacturer employee new vehicle purchase program. See, *Ogden Chrysler Plymouth, Inc., v. Bower*, 348 Ill.App.3d 944 (2004). In response to *Ogden*, the Department amended its rules to specifically address incentive programs used by the automobile industry. Since that time, however, a number of issues have arisen regarding taxation of coupons, discounts and other types of incentive programs offered by other types of retailers. These amendments provide additional guidance to a larger segment of retailers. In addition, the rules delete a provision in subsection (b)(2)(A) describing coupon manufacturer transactions which has been the source of confusion for taxpayers.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? Yes

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

<u>Section Numbers:</u>	<u>Proposed Actions:</u>	<u>Illinois Register Citation:</u>
130.605	Amendment	39 Ill. Reg. 252, January 2, 2015
130.2055	Amendment	39 Ill. Reg. 252, January 2, 2015

- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:
- Jerilynn Troxell Gorden
Legal Services Office
Illinois Department of Revenue
101 West Jefferson
Springfield IL 62794
- 217/782-2844
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Small businesses acting as retailers or purchasers
- B) Reporting, bookkeeping or other procedures required for compliance: Basic bookkeeping
- C) Types of professional skills necessary for compliance: Bookkeeping
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2015

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

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

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

SUBPART A: NATURE OF TAX

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130.101	Character and Rate of Tax
130.105	Responsibility of Trustees, Receivers, Executors or Administrators
130.110	Occasional Sales
130.111	Sale of Used Motor Vehicles, Aircraft, or Watercraft by Leasing or Rental Business
130.115	Habitual Sales
130.120	Nontaxable Transactions

SUBPART B: SALE AT RETAIL

Section	
130.201	The Test of a Sale at Retail
130.205	Sales for Transfer Incident to Service
130.210	Sales of Tangible Personal Property to Purchasers for Resale
130.215	Further Illustrations of Sales for Use or Consumption Versus Sales for Resale
130.220	Sales to Lessors of Tangible Personal Property
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SUBPART C: CERTAIN STATUTORY EXEMPTIONS

Section	
130.305	Farm Machinery and Equipment
130.310	Food, Soft Drinks and Candy
130.311	Drugs, Medicines, Medical Appliances and Grooming and Hygiene Products
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130.320	Gasohol, Majority Blended Ethanol, Biodiesel Blends, and 100% Biodiesel
130.321	Fuel Used by Air Common Carriers in Flights Engaged in Foreign Trade or Engaged in Trade Between the United States and any of its Possessions
130.325	Graphic Arts Machinery and Equipment Exemption
130.330	Manufacturing Machinery and Equipment
130.331	Manufacturer's Purchase Credit

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

- 130.332 Automatic Vending Machines
- 130.335 Pollution Control Facilities and Low Sulfur Dioxide Emission Coal-Fueled Devices
- 130.340 Rolling Stock
- 130.341 Commercial Distribution Fee Sales Tax Exemption
- 130.345 Oil Field Exploration, Drilling and Production Equipment
- 130.350 Coal Exploration, Mining, Off Highway Hauling, Processing, Maintenance and Reclamation Equipment
- 130.351 Aggregate Exploration, Mining, Off Highway Hauling, Processing, Maintenance and Reclamation Equipment

SUBPART D: GROSS RECEIPTS

Section

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

SOURCE: Adopted July 1, 1933; amended at 2 Ill. Reg. 50, p. 71, effective December 10, 1978; amended at 3 Ill. Reg. 12, p. 4, effective March 19, 1979; amended at 3 Ill. Reg. 13, pp. 93 and 95, effective March 25, 1979; amended at 3 Ill. Reg. 23, p. 164, effective June 3, 1979; amended at 3 Ill. Reg. 25, p. 229, effective June 17, 1979; amended at 3 Ill. Reg. 44, p. 193, effective October 19, 1979; amended at 3 Ill. Reg. 46, p. 52, effective November 2, 1979; amended at 4 Ill. Reg. 24, pp. 520, 539, 564 and 571, effective June 1, 1980; amended at 5 Ill. Reg. 818, effective January 2, 1981; amended at 5 Ill. Reg. 3014, effective March 11, 1981; amended at 5 Ill. Reg. 12782, effective November 2, 1981; amended at 6 Ill. Reg. 2860, effective March 3, 1982; amended at 6 Ill. Reg. 6780, effective May 24, 1982; codified at 6 Ill. Reg. 8229; recodified at 6 Ill. Reg. 8999; amended at 6 Ill. Reg. 15225, effective December 3, 1982; amended at 7 Ill. Reg. 7990, effective June 15, 1983; amended at 8 Ill. Reg. 5319, effective April

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11, 1984; amended at 8 Ill. Reg. 19062, effective September 26, 1984; amended at 10 Ill. Reg. 1937, effective January 10, 1986; amended at 10 Ill. Reg. 12067, effective July 1, 1986; amended at 10 Ill. Reg. 19538, effective November 5, 1986; amended at 10 Ill. Reg. 19772, effective November 5, 1986; amended at 11 Ill. Reg. 4325, effective March 2, 1987; amended at 11 Ill. Reg. 6252, effective March 20, 1987; amended at 11 Ill. Reg. 18284, effective October 27, 1987; amended at 11 Ill. Reg. 18767, effective October 28, 1987; amended at 11 Ill. Reg. 19138, effective October 29, 1987; amended at 11 Ill. Reg. 19696, effective November 23, 1987; amended at 12 Ill. Reg. 5652, effective March 15, 1988; emergency amendment at 12 Ill. Reg. 14401, effective September 1, 1988, for a maximum of 150 days, modified in response to an objection of the Joint Committee on Administrative Rules at 12 Ill. Reg. 19531, effective November 4, 1988, not to exceed the 150 day time limit of the original rulemaking; emergency expired January 29, 1989; amended at 13 Ill. Reg. 11824, effective June 29, 1989; amended at 14 Ill. Reg. 241, effective December 21, 1989; amended at 14 Ill. Reg. 872, effective January 1, 1990; amended at 14 Ill. Reg. 15463, effective September 10, 1990; amended at 14 Ill. Reg. 16028, effective September 18, 1990; amended at 15 Ill. Reg. 6621, effective April 17, 1991; amended at 15 Ill. Reg. 13542, effective August 30, 1991; amended at 15 Ill. Reg. 15757, effective October 15, 1991; amended at 16 Ill. Reg. 1642, effective January 13, 1992; amended at 17 Ill. Reg. 860, effective January 11, 1993; amended at 17 Ill. Reg. 18142, effective October 4, 1993; amended at 17 Ill. Reg. 19651, effective November 2, 1993; amended at 18 Ill. Reg. 1537, effective January 13, 1994; amended at 18 Ill. Reg. 16866, effective November 7, 1994; amended at 19 Ill. Reg. 13446, effective September 12, 1995; amended at 19 Ill. Reg. 13568, effective September 11, 1995; amended at 19 Ill. Reg. 13968, effective September 18, 1995; amended at 20 Ill. Reg. 4428, effective March 4, 1996; amended at 20 Ill. Reg. 5366, effective March 26, 1996; amended at 20 Ill. Reg. 6991, effective May 7, 1996; amended at 20 Ill. Reg. 9116, effective July 2, 1996; amended at 20 Ill. Reg. 15753, effective December 2, 1996; expedited correction at 21 Ill. Reg. 4052, effective December 2, 1996; amended at 20 Ill. Reg. 16200, effective December 16, 1996; amended at 21 Ill. Reg. 12211, effective August 26, 1997; amended at 22 Ill. Reg. 3097, effective January 27, 1998; amended at 22 Ill. Reg. 11874, effective June 29, 1998; amended at 22 Ill. Reg. 19919, effective October 28, 1998; amended at 22 Ill. Reg. 21642, effective November 25, 1998; amended at 23 Ill. Reg. 9526, effective July 29, 1999; amended at 23 Ill. Reg. 9898, effective August 9, 1999; amended at 24 Ill. Reg. 10713, effective July 7, 2000; emergency amendment at 24 Ill. Reg. 11313, effective July 12, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 15104, effective October 2, 2000; amended at 24 Ill. Reg. 18376, effective December 1, 2000; amended at 25 Ill. Reg. 941, effective January 8, 2001; emergency amendment at 25 Ill. Reg. 1792, effective January 16, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 4674, effective March 15, 2001; amended at 25 Ill. Reg. 4950, effective March 19, 2001; amended at 25 Ill. Reg. 5398, effective April 2, 2001; amended at 25 Ill. Reg. 6515, effective May 3, 2001; expedited correction at 25 Ill. Reg. 15681, effective May 3, 2001; amended at 25 Ill. Reg. 6713, effective May 9, 2001; amended at 25 Ill. Reg. 7264,

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effective May 25, 2001; amended at 25 Ill. Reg. 10917, effective August 13, 2001; amended at 25 Ill. Reg. 12841, effective October 1, 2001; amended at 26 Ill. Reg. 958, effective January 15, 2002; amended at 26 Ill. Reg. 1303, effective January 17, 2002; amended at 26 Ill. Reg. 3196, effective February 13, 2002; amended at 26 Ill. Reg. 5369, effective April 1, 2002; amended at 26 Ill. Reg. 5946, effective April 15, 2002; amended at 26 Ill. Reg. 8423, effective May 24, 2002; amended at 26 Ill. Reg. 9885, effective June 24, 2002; amended at 27 Ill. Reg. 795, effective January 3, 2003; emergency amendment at 27 Ill. Reg. 11099, effective July 7, 2003, for a maximum of 150 days; emergency expired December 3, 2003; amended at 27 Ill. Reg. 17216, effective November 3, 2003; emergency amendment at 27 Ill. Reg. 18911, effective November 26, 2003, for a maximum of 150 days; emergency expired April 23, 2004; amended at 28 Ill. Reg. 9121, effective June 18, 2004; amended at 28 Ill. Reg. 11268, effective July 21, 2004; emergency amendment at 28 Ill. Reg. 15193, effective November 3, 2004, for a maximum of 150 days; emergency expired April 1, 2005; amended at 29 Ill. Reg. 7004, effective April 26, 2005; amended at 31 Ill. Reg. 3574, effective February 16, 2007; amended at 31 Ill. Reg. 5621, effective March 23, 2007; amended at 31 Ill. Reg. 13004, effective August 21, 2007; amended at 31 Ill. Reg. 14091, effective September 21, 2007; amended at 32 Ill. Reg. 4226, effective March 6, 2008; emergency amendment at 32 Ill. Reg. 8785, effective May 29, 2008, for a maximum of 150 days; emergency expired October 25, 2008; amended at 32 Ill. Reg. 10207, effective June 24, 2008; amended at 32 Ill. Reg. 17228, effective October 15, 2008; amended at 32 Ill. Reg. 17519, effective October 24, 2008; amended at 32 Ill. Reg. 19128, effective December 1, 2008; amended at 33 Ill. Reg. 1762, effective January 13, 2009; amended at 33 Ill. Reg. 2345, effective January 23, 2009; amended at 33 Ill. Reg. 3999, effective February 23, 2009; amended at 33 Ill. Reg. 15781, effective October 27, 2009; amended at 33 Ill. Reg. 16711, effective November 20, 2009; amended at 34 Ill. Reg. 9405, effective June 23, 2010; amended at 34 Ill. Reg. 12935, effective August 19, 2010; amended at 35 Ill. Reg. 2169, effective January 24, 2011; amended at 36 Ill. Reg. 6662, effective April 12, 2012; amended at 38 Ill. Reg. 12909, effective June 9, 2014; amended at 38 Ill. Reg. 17060, effective July 25, 2014; amended at 38 Ill. Reg. 17421, effective July 31, 2014; amended at 38 Ill. Reg. 17756, effective August 6, 2014; amended at 38 Ill. Reg. 19998, effective October 1, 2014; amended at 39 Ill. Reg. 1793, effective January 12, 2015; amended at 39 Ill. Reg. _____, effective _____.

SUBPART S: SPECIFIC APPLICATIONS

Section 130.2125 ~~Trading Stamps~~, Discount Coupons, Gift Situations, Trading Stamps, Automobile Rebates and Dealer Incentives**a) Application of Tax****1) Application of Retailers' Occupation Tax**

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A retailer incurs Retailers' Occupation Tax on its gross receipts from sales, which is defined as the total selling price of a gross sale. Under Section 1 of the Retailers' Occupation Tax, selling price means the consideration for a sale valued in money, whether received in money or otherwise, including cash, credits, property, other than as provided in the statutory definition, and services. [35 ILCS 120/1] The source of the consideration received by a retailer is immaterial in determining the gross receipts subject to tax. (See *Ogden Chrysler Plymouth, Inc. v. Bower*, 348 Ill.App.3d 944 (2004). In holding that the payments made by DaimlerChrysler Motor Corporation to an auto dealer as part of a purchase of an automobile by an employee under an employee vehicle purchase program were includable in gross receipts, the court stated that the definitions of gross receipts and selling price "do not limit gross receipts or consideration to that received only from the purchaser". See also *Keystone Chevrolet Co. v. Kirk*, 69 Ill.2d 483 (1978).) Consequently, if a retailer allows a purchaser a discount from the selling price on the basis of a discount coupon, the retailer's gross receipts subject to tax depends upon whether the retailer receives any reimbursement for the amount of the discount. (See subsection (b).)

- 2) Application of Complementary Use Tax
Use Tax is generally imposed on the selling price of tangible personal property purchased at retail. Since the ROTA and the Use Tax work together in a complementary manner (see 86 Ill. Adm. Code 150.130), Section 2 of the Use Tax Act contains the same definition of "selling price" as that found in Section 1 of ROTA (i.e., *selling price means the consideration for a sale valued in money, whether received in money or otherwise, including cash, credits, property, other than as provided in Section 2 of the Use Tax Act, and services. [35 ILCS 105/2]*). Whether discount coupons utilized by a purchaser for the purchase of tangible personal property constitute consideration for a sale depends upon whether the retailer receives any reimbursement for the amount of the discount. (See subsection (b).) If the retailer receives full or partial reimbursement for the amount of the discount, as explained in subsection (b), the amount of the discount that is reimbursed is considered to be part of the selling price of the sale. The purchaser incurs tax on the entire selling price, including the amount of the discount paid to the retailer by the issuer of the coupon.

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- a) ~~Trading Stamps~~
~~Persons who engage in the business of transferring tangible personal property upon the redemption of trading stamps shall be deemed to be engaged in the business of selling tangible personal property at retail and shall be liable for and shall pay the tax imposed by the Retailers' Occupation Tax Act on the basis of the retail value of the property transferred upon redemption of stamps. When merchandise is paid for partly in cash and partly by surrendering a trading stamp valued at a specific amount, the total amount (including the value of surrendered trading stamp) is subject to Retailers' Occupation Tax.~~
- b) Discount Coupons
- 1) Where the retailer receives no coupon reimbursement:
If a retailer allows a purchaser a discount from the selling price on the basis of a discount coupon for which the retailer receives no reimbursement from any source, the amount of the discount is not subject to Retailers' Occupation Tax liability. Only the receipts actually received by the retailer from the purchaser, other than the value of the coupon, are subject to the tax. For example, if a retailer sells an item for \$10 and the purchaser provides the retailer with a \$1 in-store coupon for which the retailer receives no reimbursement from the manufacturer of the item or any other source, the retailer's gross receipts of \$9 are subject to Retailer's Occupation Tax.
 - 2) Where the retailer receives full or partial coupon reimbursement:
 - A) If a retailer allows a purchaser a discount from the selling price on the basis of a discount coupon for which the retailer will receive full or partial reimbursement (from a manufacturer, distributor or other source), the retailer incurs Retailers' Occupation Tax liability on the receipts received from the purchaser and the amount of any coupon reimbursement. For example, if a retailer sells an item for \$15 and the purchaser provides the retailer with a \$5 manufacturer's coupon for which the retailer receives full reimbursement from the manufacturer of the item, the retailer's gross receipts of \$15 are subject to Retailers' Occupation Tax. The purchaser incurs tax on the \$15 selling price of the item, which includes the \$10 paid by the purchaser and the \$5 reimbursement paid to the retailer by the manufacturer of the item. ~~Technically, the~~

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~~coupon issuer (the manufacturer in this example) owes the corresponding Use Tax on the value of the coupon. However, in many cases, the coupon issuer incorporates language into the coupon that requires the bearer (the purchaser in this example) to assume this Use Tax liability.~~

- B) However, payments received by the retailer (from a manufacturer, distributor or other source) for handling charges or administrative expenses in processing coupons are not subject to the tax if those payments are clearly distinguished from coupon value reimbursement. In addition, if the retailer receives a discount from a manufacturer, distributor or other source when purchasing tangible personal property for resale, and, pursuant to a contract with that manufacturer, distributor or other source, the retailer issues discount coupons applicable to the sale of property, the coupons shall not be deemed to be reimbursed by the manufacturer, distributor or other source.
- c) Gift Situations
- 1) Where a retailer, manufacturer, distributor, or other person, issues a coupon that entitles the bearer to obtain an item of tangible personal property free of any charge whatever and not conditioned on the purchase of other property, the furnishing of the tangible personal property does not constitute a sale under the Retailers' Occupation Tax Act and the retailer does not incur Retailers' Occupation Tax liability with respect to the transfer. However, the retailer, manufacturer or distributor, or other person, issuing a coupon, as donor, incurs Use Tax liability on his cost price of all tangible personal property actually transferred as a result of the coupon. (See Subpart C of the Use Tax Regulations ([86 Ill. Adm. Code 150](#)).)
- 2) If a bearer (customer) presents a retailer with a coupon issued by the retailer that entitles the bearer to a free item and the coupon is not conditioned on a purchase, the retailer incurs Use Tax based upon its cost price of the item given away. However, if a bearer (customer) presents a retailer with a coupon issued by the manufacturer that entitles the bearer to a free item and the coupon is not conditioned on a purchase by the customer, the manufacturer incurs Use Tax based upon its cost price of the

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item given away. However, in many cases, the manufacturer incorporates language into the coupon that requires the bearer (customer) to assume this Use Tax liability.

d) Trading Stamps

Persons who engage in the business of transferring tangible personal property upon the redemption of trading stamps shall be deemed to be engaged in the business of selling tangible personal property at retail and shall be liable for and shall pay the tax imposed by the Retailers' Occupation Tax Act on the basis of the retail value of the property transferred upon redemption of stamps. When merchandise is paid for partly in cash and partly by surrendering a trading stamp valued at a specific amount, the total amount (including the value of the surrendered trading stamp) is subject to Retailers' Occupation Tax.

~~e)~~ Automobile Rebates

- 1) If an automobile dealer accepts a manufacturer's rebate provided by a customer as part of the payment for the retail sale of an automobile or other type of vehicle, the amount of the reimbursement or payment paid by the manufacturer to the dealer is part of the taxable gross receipts received by the dealer for the sale of that automobile or other type of vehicle.

- 2) Automobile Rebate Examples:

EXAMPLE 1 (taxable – customer applies rebate amount to purchase price): An automobile manufacturer offers a \$1,000 rebate to purchasers of certain automobiles at or near the end of a model year. The dealer sells one of the qualifying vehicles to a customer for \$30,000. The customer has the option of receiving the payment from the manufacturer for the rebate or assigning the rebate to the purchase price of the vehicle. The customer chooses to apply the \$1,000 rebate amount to the purchase price of the vehicle. Since the dealer will receive a payment from the manufacturer of \$1,000 and \$29,000 from the customer, the taxable gross receipts received by the dealer for this sale are \$30,000.

EXAMPLE 2 (not taxable – customer does not apply rebate amount to purchase price): An automobile manufacturer offers a \$1,000 rebate to purchasers of certain automobiles at or near the end of a model year. The

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dealer sells one of the qualifying vehicles to a customer for \$30,000. The customer has the option of receiving the payment from the manufacturer for the rebate or assigning the rebate to the purchase price of the vehicle. The customer does not choose to apply the \$1,000 rebate amount to the purchase price of the vehicle and instead chooses to keep the amount of the rebate. Since the dealer will receive \$30,000 from the customer and no payment from the manufacturer, the taxable gross receipts received by the dealer for this sale are \$30,000.

fe) Automobile Dealer Incentives

- 1) This subsection (fe) is effective for sales made on and after July 1, 2008. The taxation of automobile dealer incentives will depend upon whether the dealer receives a payment from a source other than the purchaser that is conditioned upon the retail sale of an automobile. If an automobile dealer receives a payment as an incentive for the retail sale of an automobile, the amount of that reimbursement or payment is part of the taxable gross receipts received by the dealer for the sale of that automobile. If a dealer receives payment in exchange for the purchase of an automobile from a supplier or manufacturer, and that payment is not conditioned upon the sale of that automobile to a retail consumer, the amount of that payment is not part of the taxable gross receipts received by the dealer for the retail sale of that automobile. The determination of taxability under the provisions of this subsection (fe)(1) is not dependent on whether the retailer is required to lower the selling price of the vehicle as a condition for receiving the incentive payment. Notwithstanding the provisions of this subsection (fe)(1), the payment is not part of the taxable gross receipts from a retail sale if, at the time of the retail sale, the payment is contingent on the dealer making or having made any additional retail sales. In addition, a dealer incentive or bonus contingent on the dealer meeting certain manufacturer required marketing standards, facility standards, or sales and service department satisfaction goals is not part of the taxable gross receipts from a retail sale of vehicles sold by that dealer, even if the incentive or bonus is calculated using the gross receipts, Manufacturer's Suggested Retail Price (MSRP), or a flat amount per vehicle.
- 2) Automobile Dealer Incentive Examples:

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EXAMPLE 1 (taxable incentive payments – payment conditioned on the retail sale): An automobile manufacturer offers a dealer incentive (sometimes referred to as "dealer cash") of \$1,000 for each of a specific type of automobile sold to a retail customer during the month of March. An automobile dealer sells that type of a vehicle to a retail customer for \$38,000 during the month of March. The retail sale of that vehicle qualifies the dealer for the manufacturer's dealer incentive payment of \$1,000 for the retail sale of that vehicle. The purchaser pays the dealer \$38,000 and the dealer receives \$1,000 from the manufacturer. Since the \$1,000 payment is conditioned only upon the sale of that vehicle and is not conditioned upon the sale of any other vehicle or vehicles, the taxable gross receipts received by the dealer for this sale are \$39,000.

EXAMPLE 2 (nontaxable incentive payments – payment conditioned on the retail sale, but only after a certain number of sales have been made): An automobile manufacturer offers a dealer incentive payment (sometimes referred to as "dealer cash") of \$1,000 for each of a specific type of automobile sold to a retail customer in the month of March, but only if the dealer sells at least 15 of that type of vehicle during that month. An automobile dealer sells that type of vehicle to a retail customer for \$38,000 on March 25. The dealer had sold 14 of that type of vehicle earlier that month and the sale on March 25 qualified the dealer for the \$1,000 manufacturer payment on that sale and each of the 14 previous sales. The gross receipts from the sale on March 25 are \$38,000 and the \$1,000 manufacturer's payment is not part of the dealer's gross receipts from that sale. In addition, the \$14,000 payment to the dealer for the sales of the previous 14 vehicles was contingent upon the sale of other vehicles and is not part of the gross receipts from the sales of those vehicles. If the dealer sold a vehicle on March 26 and qualified for another \$1,000 manufacturer payment for that sale, the \$1,000 manufacturer payment would not be part of the dealer's gross receipts from that sale.

EXAMPLE 3 (non-taxable dealer hold-backs – payment not conditioned on the retail sale): A manufacturer provides dealer hold-back payments to its automobile dealers of 3% of the invoice price of each vehicle purchased from that manufacturer. The dealer hold-back payments are paid to the dealer on a quarterly basis regardless of whether that dealer has sold at retail one or more of the vehicles it had purchased that quarter. The dealer purchases a vehicle from the manufacturer at the beginning of

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the month for an invoice price of \$39,000 and then sells that vehicle 10 days later at retail for \$40,000. The manufacturer of that vehicle pays an amount to the dealer of \$1,170 (3% of the invoice price of \$39,000) at the end of the quarter as a dealer hold-back for that vehicle. Since the \$1,170 hold-back payment to the dealer from the manufacturer is conditioned only on the purchase of the vehicle from the manufacturer (not on the subsequent retail sale of the vehicle), the taxable gross receipts received by the dealer for this sale are only \$40,000.

EXAMPLE 4 (non-taxable – payment not conditioned on the retail sale): An automobile dealer normally offers a specific type of vehicle for retail sale for \$40,000. The manufacturer of that vehicle agreed to pay an incentive to the dealer of \$3,000 for each of that type of vehicle that the dealer purchased for resale from the manufacturer during a specified promotional period. After purchasing the vehicle during the qualifying period, the dealer offered the vehicle for sale at a reduced or discounted price of \$37,000. A retail purchaser agrees to purchase the vehicle for \$37,000. Since the \$3,000 incentive provided to the dealer from the manufacturer is conditioned only on the dealer's purchase of the vehicle from the manufacturer (not on the subsequent retail sale of the vehicle), the taxable gross receipts received by the dealer for this sale are \$37,000.

EXAMPLE 5 (non-taxable performance bonus payments): An automobile manufacturer establishes a performance bonus program for automobile dealers who obtain a certain customer service index (CSI) score that demonstrates a substantial degree of satisfaction from their sales and service customers. Upon meeting the requirement, the automobile dealer will receive an incentive payment from the manufacturer calculated as 2% of the MSRP of the vehicles sold by that dealer during the incentive period. Because the bonus is contingent on the dealer meeting certain customer satisfaction goals as indicated by the CSI score, the manufacturer's performance bonus would not be part of the gross receipts received by that dealer for the sales of those vehicles.

EXAMPLE 6 (non-taxable marketing or facility incentive payments): An automobile manufacturer creates an incentive program for automobile dealers who meet certain marketing standards or facility standards designed to increase sales and brand loyalty. Upon meeting the standards, the automobile dealer will receive an incentive payment from the

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manufacturer calculated as a flat amount of \$500 per vehicle sold by the dealer during the incentive period. Because the incentive is contingent on the dealer meeting certain marketing or facility standards set by the manufacturer, the \$500 incentive payments would not be part of the gross receipts received by that dealer for the sales of those vehicles.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

DEPARTMENT OF AGRICULTURE

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of Part: General Operations of the State Fairs and Fairgrounds
- 2) Code Citation: 8 Ill. Adm. Code 270
- 3)

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
270.35	Amendment
270.40	Amendment
270.50	Repealed
270.135	Amendment
270.140	Amendment
270.165	Amendment
- 4) Statutory Authority: 20 ILCS 210/6
- 5) Effective Date of Rule: May 8, 2015
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rule contain incorporations by reference? No
- 8) A copy of the adopted rulemaking, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Date Notice of Proposal published in the *Illinois Register*: December 19, 2014; 38 Ill. Reg. 23525
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version:

In Section 270.35(b) deleted parts of added text and restored some of the stricken text within this paragraph.

In Section 270.150 the stricken text was restored.

In Section 270.165 (a) the stricken text was restored.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

DEPARTMENT OF AGRICULTURE

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- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: This rulemaking assists in the efficient running of the Illinois State Fair by establishing clear standards for applying, reapplying, and paying for space rentals. This rulemaking amends operational hours for outdoor concessionaires and payment of space rental contracts.
- 16) Information and questions regarding this adopted rule shall be directed to:

Susan Baatz
Illinois Department of Agriculture
P. O. Box 19281, State Fairgrounds
Springfield IL 62794-9281

217/524-6905
fax 217/785-4505

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

DEPARTMENT OF AGRICULTURE

NOTICE OF ADOPTED AMENDMENTS

TITLE 8: AGRICULTURE AND ANIMALS
CHAPTER I: DEPARTMENT OF AGRICULTURE
SUBCHAPTER j: FAIRS

PART 270

GENERAL OPERATIONS OF THE STATE FAIRS AND FAIRGROUNDS

SUBPART A: DEFINITIONS: POLICY: VIOLATION

Section	
270.10	Definitions
270.15	Policy
270.20	Violation of Rules; Administrative Hearings

SUBPART B: CONCESSIONS AND EXHIBITS AT THE STATE FAIR

Section	
270.25	Categories of Exhibits
270.30	Privilege to Operate a Concession or Exhibit
270.35	Application for Reassignment of Space
270.40	New Applications for Space Rental
270.45	Substitute Locations or Discontinuance of Contracts
270.50	Reassignment of Space by Department (Repealed)
270.55	Number of Stands Permitted
270.60	Policy Governing Exhibits/Concessions and Approval to Conduct Business
270.65	Policy of Permitting Space Without Monetary Charge
270.70	Exercising Constitutional Freedoms
270.75	Assignment of Contracts
270.80	Inspection of Premises
270.85	Removal or Denial of Acceptance
270.90	Concessions and Exhibits Prohibited
270.95	Liquified Petroleum Gas
270.100	Merchandising Permits
270.105	Measuring Space
270.110	Electricity
270.115	Broadcasting Devices
270.120	Display of Exhibit or Concession Number
270.125	Protection of the Public and Lessee's Property
270.130	Distributing Literature or Display Advertising

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270.135	Payment of Space Rental Contract
270.140	Operational Hours
270.145	Sales Prior to the State Fair
270.150	Sales During the State Fair
270.155	Property Shipped to the State Fair
270.160	Removal of Property
270.165	Gambling, Raffles, Prizes, Games of Chance, Intoxicating Beverages
270.170	Inside Exhibits
270.175	Posting Food Prices
270.180	Clean-Up
270.185	Public Health
270.190	Food and/or Drink Service Operations
270.195	Release Procedure
270.200	Security
270.205	Liability
270.210	Concessionaire's or Exhibitor's Trailers
270.215	Failure to Abide by Rules or Contract Provisions
270.220	Lessee's General Standard of Conduct
270.221	Emergency Closing

SUBPART C: HORSE RACING AT THE STATE FAIR

Section	
270.225	Categories of Horse Racing
270.230	State Fair Colt Stakes Races
270.235	Review Futurity Races
270.240	Illinois Trotting and Pacing Colt Races
270.245	Quarter Horse Races

SUBPART D: PREMIUMS AND RULES GOVERNING EXHIBITS OR EVENTS

Section	
270.250	Premiums Offered
270.255	Premium Books
270.260	Payment of Premiums
270.261	Land of Lincoln Breeders Awards for Purebred or Registered Livestock

SUBPART E: JUDGES: STATE FAIR

DEPARTMENT OF AGRICULTURE

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Section	
270.265	Professional and Artistic Contracts
270.270	Judge's Salary
270.275	Selection of Judges

SUBPART F: CERTIFICATES OF AWARD: STATE FAIR

Section	
270.280	Certificates, Ribbons and Trophies

SUBPART G: FEES FOR ADMISSION TO THE STATE FAIR

Section	
270.285	Daily Admission Charge
270.290	Special Events
270.295	Designated Days
270.300	Gate Admission Charge Waived
270.305	Schedule of Admission Charges and Fees
270.310	Admission of Motor Vehicles
270.315	Employees of Exhibitor/Concessionaire

SUBPART H: TRAFFIC CONTROL, PARKING AND CAMPING: STATE FAIR

Section	
270.320	Camping Location
270.325	Fee for Camping
270.330	Camping Sticker
270.335	Removal of Illegally Parked Vehicles
270.340	Extension Cords
270.345	Traffic Control and Parking; Spraying Livestock Trucks

SUBPART I: MISCELLANEOUS RULES GOVERNING
THE OPERATION OF THE STATE FAIR

Section	
270.350	Pets
270.355	Structures of Lessee
270.360	Restrictions
270.365	Intoxicating Beverages

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- 270.370 Tickets/Refunds
270.371 Leasing Facilities During the State Fair

SUBPART J: NON-FAIR SPACE RENTAL:
BASIC RULES APPLICABLE TO ALL RENTALS

Section

- 270.375 Non-Fair Availability Dates
270.380 Application for Space
270.385 Reassignment
270.390 Compliance with State Law and Regulations
270.395 Removal Rights or Denial of Acceptance
270.400 Assigned Space
270.405 Inspection
270.410 Payment
270.415 Tickets
270.420 Facility Availability
270.425 Parking
270.430 Security
270.435 Fire Regulations
270.440 Tables and Chairs
270.445 Clean-Up
270.450 Alterations
270.455 Insurance
270.460 Discrimination
270.465 Camping (Repealed)
270.470 Concessions
270.475 Delinquency
270.480 Gambling, Raffles, Prizes, Games of Chance, Intoxicating Beverages
270.485 Non-Exclusivity (Repealed)
270.490 Lessee's General Standard of Conduct
270.495 Criteria for Grant of Privileges
270.500 Waiver of Applicable Rules (Repealed)
270.505 Rate Schedules
270.510 Limit on Duration of Contract
270.515 Liquefied Petroleum Gas

SUBPART K: NON-FAIR CONCESSIONS

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Section	
270.520	Renter Rights (Repealed)
270.525	Contract
270.530	Interests of the Public
270.535	Liability
270.540	Health Laws
270.545	Rates
270.550	Inspection
270.555	Payment Due

SUBPART L: CAMPING: NON-FAIR

Section	
270.560	Who May Camp
270.565	Location
270.570	Fee
270.575	Camping Facilities
270.580	Permit
270.585	Penalty
270.590	Extension Cords

SUBPART M: BACKSTRETCH CAMPING: NON-FAIR

Section	
270.595	Eligibility
270.600	Misconduct
270.605	Liability
270.610	Rent and Rates for Other Services
270.615	Payment Method

SUBPART N: BACKSTRETCH STALL AND
TACK ROOM RENTAL: NON-FAIR

Section	
270.620	Horse Stabling Space Rental and Rates
270.625	Rent Payable
270.630	General Stabling Rules (Non-Contractual Events)
270.635	Reporting
270.640	Lessee Collection of Fees (Repealed)

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270.645	Stall Use
270.650	Restriction to Assigned Space
270.655	Trailer Storage
270.660	Inspection
270.665	Restrictions
270.670	Quarantine Provisions
270.675	Dogs
270.680	General Misconduct
270.685	Track Usage
270.690	Restrictions on Barn Use

AUTHORITY: Implementing and authorized by the State Fair Act [20 ILCS 210]; implementing Section 40.14 and authorized by Section 16 of the Civil Administrative Code of Illinois [20 ILCS 5/16 and 40.14].

SOURCE: Adopted at 4 Ill. Reg. 25, p. 34, effective June 11, 1980; amended at 5 Ill. Reg. 1332, effective January 29, 1981; codified at 5 Ill. Reg. 10532; amended at 6 Ill. Reg. 8958, effective July 9, 1982; amended at 8 Ill. Reg. 6103, effective April 25, 1984; emergency amendments at 10 Ill. Reg. 13370, effective July 28, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 14282, effective August 20, 1986; amended at 10 Ill. Reg. 20468, effective November 26, 1986; amended at 11 Ill. Reg. 2228, effective January 20, 1987; amended at 15 Ill. Reg. 455, effective January 2, 1991; amended at 18 Ill. Reg. 9400, effective June 12, 1994; amended at 19 Ill. Reg. 9400, effective June 29, 1995; amended at 21 Ill. Reg. 5530, effective April 22, 1997; amended at 22 Ill. Reg. 11374, effective June 22, 1998; amended at 34 Ill. Reg. 8996, effective July 1, 2010; amended at 35 Ill. Reg. 19143, effective December 1, 2011; amended at 37 Ill. Reg. 780, effective February 1, 2013; amended at 39 Ill. Reg. 7241, effective May 8, 2015.

SUBPART B: CONCESSIONS AND EXHIBITS AT THE STATE FAIR

Section 270.35 Application for Reassignment of Space

Application for reassignment of space will be provided in the following manner:

- a) Following the close of the most recent State Fair, all concessionaires/exhibitors will be evaluated with regard to performance (i.e., payment of fees, violation of public health rules (if applicable), appearance of concession/exhibit, revenue generated, compliance with State Fair rules (Subparts A through I of this Part, as applicable), and any formal written complaints from the public arising out of the performance of activities on the fairgrounds.

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- b) Those concessionaires/exhibitors that perform in an acceptable manner based on the criteria described in this Section shall be mailed an application to apply ~~reapply~~ for reassignment to the same space or relocation of space. ~~The An~~ application will be mailed to ~~by the Space Rental Office at~~ the address on file with the Department not later than December 15 ~~15~~ preceding the next year's State Fair. It shall be the responsibility of each concessionaire/exhibitor desiring reassignment or relocation of space to return its application to the Space Rental Office no later than February 1. Failure to receive the application for reassignment or relocation of space shall not relieve the concessionaire/exhibitor from its responsibility to request reassignment or relocation of space prior to the February 1 deadline.
- c) After evaluating reapplication for space submitted pursuant to subsection (a) of this Section, and after spaces have been assigned by the Director or a designated representative, all new applications for space rental will be evaluated.

(Source: Amended at 39 Ill. Reg. 7241, effective May 8, 2015)

Section 270.40 New Applications for Space Rental

Applications for new concessionaires will be available on-line or by contacting the Space Rental Office. These applications for new concessionaires will be considered after February 1 at the close of the reapplication process.~~New applications for space rental shall be filed no earlier than September 1 and shall be accepted no later than June 30. New applications for space rental will be considered after February 1 at the close of the reapplication period. New applications for space rental shall be processed in the following manner:~~

- a) All new applications for space rental shall be sent to the Division and shall be accompanied by a photograph or drawing of the concession/exhibit. If the proposed concession/exhibit differs significantly from the photograph or drawing submitted with the application, the Department reserves the right to reconsider the application for space. Factors that would affect the approval of the application would be physical limitations and restrictions, the general appearance of the structure, possible interference with existing structures, power sources, sewage, and water service.
- b) All new applications for space rental will be classified by the Department as to type of concession/exhibit that will be operated.

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- c) All new applications for space rental will be considered after all reapplications and relocations have been completed pursuant to Section 270.35.
- d) Granting the privilege to operate a concession/exhibit shall be based on the following criteria:
 - 1) the Department at all times shall attempt to promote the current theme of the State Fair;
 - 2) the current number of similar concessions/exhibits operating on the grounds;
 - 3) the general appearance of the concession/exhibit, revenue potential to the Department, stand design, structure, sanitation requirements and physical constraints.

(Source: Amended at 39 Ill. Reg. 7241, effective May 8, 2015)

Section 270.50 Reassignment of Space by Department (Repealed)

~~After a site is contracted for, there shall not be any change in location unless such change is necessary in accordance with Section 270.45 or this rule. In the event the same space is sold to two or more concessionaires/exhibitors, the space shall be reassigned by lottery. The lottery shall be conducted by the Director or a duly authorized designated representative.~~

(Source: Repealed at 39 Ill. Reg. 7241, effective May 8, 2015)

Section 270.135 Payment of Space Rental Contract

- a) Inside Concessionaires: The signed contract (front and back) must be accompanied by payment in full for space and electric, if applicable, no later than July 1. If a new concessionaire is approved later than July 1, the full payment is due at the time of contract submission.
- b) Outside Concessionaires: The signed contract (front and back) must be accompanied by $\frac{1}{3}$ space rental payment due and electrical, if applicable, no later than July 1. The remaining $\frac{2}{3}$ payment is due no later than the Monday of the Illinois State Fair. These figures and dates are shown on the front side of the

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contract. If a new concessionaire is approved later than July 1, 1/3 payment is due at the time of contract submission, with the remaining 2/3 due no later than Monday of the Illinois State Fair.

- c) Payment of fees shall be in the form of personal or business checks, cash, money orders, or certified or cashier checks. All fees for space rental shall be paid in full upon the signing of the contract. A signed contract and full payment must be returned to the Space Rental Office prior to July 1. Failure to return said contract and fees shall make the contract void. Payment of fees shall be in the form of cash, a money order, or a certified, cashier, or company check. No personal checks will be accepted.

(Source: Amended at 39 Ill. Reg. 7241, effective May 8, 2015)

Section 270.140 Operational Hours

All outdoor concessionaires (vendors and exhibitors)~~exhibits and concessions~~ shall be ready in Springfield by ~~10:00~~ 10:00 a.m. and in DuQuoin by 10:00 a.m. on the opening day of the annual State Fair. Buildings shall be open at 9:00 a.m. and shall close at 9:00 p.m. daily. If the situation warrants an earlier closing (e.g., electrical failure, natural disaster, adverse weather conditions), it may be allowed but permission to do so must be granted by the State Fair Manager~~Superintendent of the Division~~ or a duly authorized representative.

(Source: Amended at 39 Ill. Reg. 7241, effective May 8, 2015)

Section 270.165 Gambling, Raffles, Prizes, Games of Chance, Intoxicating Beverages

- a) No roving gambling, games of chance or skill, raffles, selling tickets or taking donations on a chance to win a prize will be permitted.
- b) The lessee will neither use nor permit to be used any games of chance or skill, raffles, selling tickets, taking donations, gambling devices, or intoxicating beverages, unless approved in writing by the Superintendent of the Division. Such approval shall be granted if the lessee's activities are not prohibited by Article 28 of the Criminal Code of ~~2012~~1961 (~~Ill. Rev. Stat. 1991, ch. 38, pars. 28-1 et seq.~~) [720 ILCS 5/Art. 28] and if the lessee agrees to abide by subsection ~~(b)(e)~~ of this Section. A raffle means when a person purchases a ticket for the purpose of winning a specific item. A drawing means when a person is entitled to win a specific item without purchasing a ticket for such purpose.

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- c) The lessee shall abide by the following requirements when permitted to solicit at the State Fair for prizes to be given through drawings:
- 1) The ~~drawings~~drawing(s) and solicitation must be approved in advance of the starting of the State Fair by the Superintendent of the Division or a duly authorized representative. Approval of the drawing time, place and date will be based on the fact that there is no conflict with nor a detrimental effect on other events or exhibits.
 - 2) The ~~prizes~~prize(s) shall be on display the entire length of the State Fair.
 - 3) The date and time of the drawing shall be advertised in advance so the participants and other interested persons may witness the drawing.
 - 4) In the event of inquiry by the public, the Department shall require the lessee who held the ~~drawings~~drawing(s) to furnish to the Space Rental Office, the name, address, and telephone number of the ~~winners~~winner(s).

(Source: Amended at 39 Ill. Reg. 7241, effective May 8, 2015)

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Confidentiality of Personal Information of Persons Served by the Department of Children and Family Services
- 2) Code Citation: 89 Ill. Adm. Code 431
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
431.20	Amendment
431.30	Amendment
431.55	New Section
431.80	Amendment
431.90	Amendment
431.100	Amendment
431.105	New Section
431.110	Amendment
431.120	Amendment
431.140	Amendment
- 4) Statutory Authority: Section 8 of the Children and Family Services Act [20 ILCS 505/8]
- 5) Effective Date of Rule: May 7, 2015
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rule, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 38 Ill. Reg. 10700; May 23, 2014
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: In Section 431.80: deleted "This includes those who are responsible for assisting in the early identification and treatment of habitual juvenile offenders subject to the provisions of the Serious Habitual Offender Comprehensive Action Program." from subsection (h).

In Section 431.80, added aa) "The state's attorney, law enforcement, courtroom personnel or treatment providers when that information pertains to juveniles subject to the

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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provisions of the Serious Habitual Offender Comprehensive Action Program and is used to assist in the early identification and treatment of habitual juvenile offenders".

In Section 431.90 removed entire subsection (a)(4)(C) "Release of mental health materials must be made in conformity with the Mental Health and Developmental Disabilities Confidentiality Act [740 ILCS 110].".

In Section 431.100, added "if he or she believes it to be in the best interest of the minor." after "release the records" to subsection (j).

In Section 431.110, reorganized all Sections to conform to the original draft Department submitted to JCAR; changed "AGENCY NOTE" language to new Section 431.110(a)(4): If Department, POS or Health Works (see subsection (a)(3)) staff experience difficulty in obtaining information to which the Department has a right from health care providers who are citing HIPAA as the reason to deny information, staff should then consult with their supervisor. The supervisor will consult with the Office of the DCFS Guardian if the problem persists."; removed all of subsection (b)(2)(F); and removed "Caseworkers should provide their local HealthWorks Lead Agency and medical case management agency with a copy of the Dispositional Order so that this information can be maintained on file in case a health care provider requests proof that DCFS has the legal right to authorize disclosure for the child or youth." from Section 431.110(d).

- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: The adopted rule reflects statutory changes. The proposed amendments are to revise the actions required in order to share information of a confidential nature due to HIPAA and other legislation, listed below.

Revised title of Sections 431.100 and 431.110

Added language on HIPAA Release of Information, HIPAA Section 164.512(b)(1)(ii), including language from Policy Guide 2003.05

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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Added language on Release of Mental Health records, Illinois Mental Health and Developmental Disabilities Confidentiality Act [740 ILCS 110/9(5) and 110/11(i)]

Added language about who has access to records as found in 325 ILCS 5/11.1, 325 ILCS 5/11.2 and 325 ILCS 5/4

Added Section 431.105 Disclosure of Alcoholism and Other Drug Abuse Records including language from Alcoholism and Other Drug Abuse and Dependency Act [20 ILCS 301/30-5]

Added language on file retention from 325 ILCS 5/7.7

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

Jeff Osowski
Office of Child and Family Policy
Department of Children and Family Services
406 E. Monroe, Station #65
Springfield IL 62701-1498

217/524-1983
TDD: 217/524-3715
email: cfpolicy@idcfs.state.il.us

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

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER f: GENERAL ADMINISTRATIONPART 431
CONFIDENTIALITY OF PERSONAL INFORMATION OF PERSONS SERVED
BY THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Section	
431.15	Purpose
431.20	Definitions
431.30	Maintenance of Records
431.40	Required Consents Prior to Disclosure of Personal Information
431.50	Client Access to Records Which Contain Personal Information
<u>431.55</u>	<u>Redaction</u>
431.60	Subject Access to Records of Child Abuse and Neglect Investigations
431.70	Denial of Requests to Access Information
431.80	Disclosure of Records of Child Abuse and Neglect Investigations
431.85	Public Disclosure of Information Regarding the Abuse or Neglect of a Child
431.90	Disclosure of Personal Information Without Consent
431.100	Disclosure of Information of a Mental Health <u>and Developmental Disabilities</u> <u>Information</u> Nature
<u>431.105</u>	<u>Disclosure of Alcoholism and Other Drug Abuse Records</u>
431.110	Disclosure of <u>Physical Health Information</u> Information Regarding Acquired Immunodeficiency Syndrome (AIDS)
431.120	Removal of Records Prohibited
431.130	Impoundment of Records by the Office of the Inspector General (Repealed)
431.140	Applicability of This Part

AUTHORITY: Implementing Section 35.1 of the Children and Family Services Act [20 ILCS 505/35.1], the Mental Health and Developmental Disabilities Confidentiality Act [740 ILCS 110], Sections 11 and 11.1 of the Abused and Neglected Child Reporting Act [325 ILCS 5/11 and 11.1], the AIDS Confidentiality Act [410 ILCS 305], and the Protection and Advocacy for Mentally Ill Persons Act [405 ILCS 45]; and authorized by Section 5 of the Children and Family Services Act [20 ILCS 505/5] and Section 11.1 of the Abused and Neglected Child Reporting Act [325 ILCS 5/11.1].

SOURCE: Adopted and codified at 5 Ill. Reg. 7815, effective August 3, 1981; amended at 6 Ill. Reg. 15517, effective January 1, 1983; amended at 10 Ill. Reg. 21647, effective December 31,

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1986; amended at 11 Ill. Reg. 12613, effective August 1, 1987; amended at 13 Ill. Reg. 2407, effective March 1, 1989; amended at 15 Ill. Reg. 24, effective December 31, 1990; recodified at 18 Ill. Reg. 7951; amended at 19 Ill. Reg. 17082, effective December 15, 1995; amended at 23 Ill. Reg. 677, effective January 15, 1999; amended at 27 Ill. Reg. 1130, effective January 15, 2003; amended at 28 Ill. Reg. 317, effective December 31, 2003; amended at 32 Ill. Reg. 7088, effective May 1, 2008; amended at 37 Ill. Reg. 14868, effective August 30, 2013; amended at 39 Ill. Reg. 7253, effective May 7, 2015.

Section 431.20 Definitions

"ANCRA" means the Abused and Neglected Child Reporting Act [325 ILCS 5].

"Case record or record" means the record maintained for a family service case, a child service case, or a payment/monitoring-only case, which may include the child abuse/neglect (CA/N) investigative file. The term "case record" applies to records maintained by the Department or a purchase of service agency responsible for case management regardless of whether the services were provided directly by Department staff or purchased from a private provider. The confidentiality of case record information and access to ~~that~~ information may differ, depending on the type of information sought.

"Case transfer" means the conveying of information from one Department region, site or field office to another; from one purchase of service agency to the Department or to another; from the Department to a purchase of service agency. A different worker is assigned when a case is transferred and those activities necessary to transfer case management responsibility for service delivery to a family and/or child from worker to worker or Department office to Department office or Department office to purchase of service agency or purchase of service agency to purchase of service agency are completed. Transfer includes physical delivery of the case record as necessary for service provision.

"Children for whom the Department is legally responsible" means children for whom the Department has temporary protective custody or custody or guardianship via court order, or children whose parents have signed an adoptive surrender or voluntary placement agreement with the Department.

"Court appointed special advocate" means a person appointed by a court to protect the minor's best interests and insure the proper delivery of child welfare services.

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"Disclose" and "permit access to" means to release, transfer, permit examination of, or otherwise communicate information orally, in writing, by electronic means or in any other manner.

"Department" or "DCFS" means the Illinois Department of Children and Family Services.

"HIPAA" means the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104-191, which amends the Internal Revenue Service Code of 1986 and includes a section on Administrative Simplification requiring the protection of confidentiality and security of health data through setting and enforcing standards that protect the confidentiality and integrity of "individually identifiable health information".

"Impound" means to seize and retain in legal custody during the pendency of an investigation and any disciplinary, civil or criminal actions ~~that~~^{which} result from an investigation conducted pursuant to the authority of the DCFS-Office of the Inspector General.

"Indicated Report" means any report of child abuse or neglect made to the Department for which it is determined, after an investigation, that credible evidence of the alleged abuse or neglect exists.

"Mental health information" means records, reports or other information about the provision of mental health or developmental disability services as defined in the Mental Health and Developmental Disabilities Confidentiality Act [740 ILCS 110].

"Minor" means any individual who has not reached his or her 18th birthday.

"Person served by the Department" or "client~~Client~~" means any person who receives services or applies for services from the Department through its various offices. The term includes children for whom the Department is legally responsible, persons who involuntarily are investigated by the Department concerning allegations of child abuse or neglect and who may receive Department services during the course of, or subsequent to, ~~thesueh-an~~ investigation, persons who are receiving Department services through an order of the court, and persons who voluntarily request services from the Department.

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"Personal information" means any identifying information, excluding work products, that is a part of the permanent record and that describes, locates or indexes anything about an individual including, but not limited to, education, financial transactions, medical history, criminal or employment records, registration or membership in an organization or activity, or admission to an institution. Personal information may be classified as mental health information, child abuse or neglect information, medical information, or other types of sensitive information and may be governed by different access, consent and disclosure requirements.

"Serious physical injury", for purposes of this Part, includes but is not limited to brain damage, skull fractures, subdural hematomas, internal injuries, wounds, third degree burns, multiple or spiral fractures, poisoning, or physical injury when evidence indicates the child has been tortured.

"State Central Register" means the specialized Department unit that receives and transmits reports of alleged child abuse and neglect.

"Subject of a report" means any child reported to the child abuse/neglect State Central Register and his or her parent, personal guardian or other person responsible for the child's welfare who is named in the report.

"Unfounded report" means any report of child abuse or neglect for which it is determined, after an investigation, that no credible evidence of the alleged abuse or neglect exists.

"Work product", for the purposes of this Part, means a worker's notes that are not part of the permanent record and concern interviewing technique, strategies for working with a person served by the Department and personal observations; these notes are kept for the worker's own personal use and are not disclosed to any other person except the worker's supervisor or attorney.

(Source: Amended at 39 Ill. Reg. 7253, effective May 7, 2015)

Section 431.30 Maintenance of Records

- a) The Department, through its institutions, facilities and various offices shall maintain a record on all persons receiving services from the Department, either

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directly or through the purchase of services, and on all persons for whom a child abuse or neglect report has been indicated or unfounded, or for whom a decision about the report has not yet been made. Upon request from the subjects of the report, the Department may keep records of unfounded reports of child abuse or neglect to prevent future harassment of the subjects. Additionally, in accordance with [ANCRA](#) Section 7.17 ~~of the Abused and Neglected Child Reporting Act [325 ILCS 5/7.17]~~, the Department may maintain case records containing identifying information related to child abuse or neglect reports.

- b) The retention schedule for indicated, unfounded, undetermined and pending child abuse and neglect records is based on the seriousness of the allegations described in 89 Ill. Adm. Code 300, Appendix B, as follows:

1) 50 Years

All reports where allegations regarding the death of the child subject (Allegation #1/#51) or sexual penetration (Allegation #19) were indicated shall be retained for 50 years after the report was indicated.

2) 20 Years

A) The following allegations involving the serious physical injury, sexual molestation or sexual exploitation of the child subject shall be retained for 20 years.

#2/#52	Head Injuries
#4/#54	Internal Injuries
#5/#55	Burns/Scalding (Third Degree Burns Only)
#7/#57	Wounds
#9/#59	Bone Fractures (Multiple or Spiral Fractures Only)
#16	Torture
#18	Diseases Transmitted Sexually
#20	Sexual Exploitation
#21	Sexual Molestation
#81	Failure to Thrive
#83	Malnutrition
#85	Medical Neglect of Disabled Infants

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- B) The following allegations may be retained for 20 years, depending on the seriousness of the injury.

#6/#56	Poison/Noxious Substances
#9/#59	Bone Fractures (Other than Multiple or Spiral Fractures)
#11/#61	Cuts, Bruises, Welts, Abrasions and Oral Injuries
#12/#62	Human Bites
#13/#63	Sprains, Dislocations
#14	Tying Typing/Close Confinement
#15/#65	Substance Misuse
#75	Abandonment/Desertion
#79	Medical Neglect

- C) The following factors shall be used to determine whether to retain any of the allegations in subsection (b)(2)(B) for 20 years:

- i) Extent of the injuries. Are the injuries limited to one spot on the child's body or are there multiple injuries on many parts of the child's body?
- ii) Long-term effects of the injuries. Will the child be left with scars, deformities or permanent disabilities?
- iii) Medical treatment required. Does the child require hospitalization, surgery, emergency medical treatment or other major medical treatment as a result of the injuries?
- iv) Pattern or chronicity of injuries. Is there an ongoing history or pattern of harsh punishment or neglect that resulted in injury? Are there severe injuries at different stages of healing?

- D) If none of the factors in subsection (b)(2)(C) are present, the allegations shall be retained for 5 years.

- 3) 5 Years
The following indicated allegations shall be retained for 5 years.

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#17/#67	Mental Injury
#10/#60	Substantial Risk of Physical Injury
#22	Substantial Risk of Sexual Injury
#74	Inadequate Supervision
#76	Inadequate Food
#77	Inadequate Shelter
#78	Inadequate Clothing
#82	Environmental Neglect
#84	Lock-Out

- 4) Subsequent Indicated Reports
All subsequent indicated reports involving any of the same subjects or the sibling or offspring shall be maintained after the last report was indicated in accordance with retention periods specified in this Section.
- 5) Unfounded Allegations
- A) All identifying information concerning records of unfounded reports involving the death (Allegation #1/#51), sexual abuse (Allegations #18, #19, #20, #21) or serious physical injury (e.g., Allegations #2/#52, #4/#54, #5/#55, #7/#57, #9/#59) of a child shall be maintained in the State Central Register for 3 years after the date the final finding report is entered. All identifying information about all other unfounded reports made by mandated reporters involving Allegations #6/#56, #11/#61, #12/#62, #13/#63, #14, #15/#56, #75 and #79 shall be retained by the SCR for 12 months after the date the final finding report is entered. Notwithstanding anything in this subsection (b)(5)(A), whenever a subsequent report is received concerning a subject of an existing unfounded report, the unfounded report shall be retained until the new investigation is completed or for 12 months, whichever is later. Additionally, those unfounded reports of physical injury made by mandated reporters not retained by the State Central Register for 3 years shall be retained for 12 months after the date the final finding report is entered.
- B) ~~All identifying information concerning unfounded reports involving Allegations #17/#67, #10/#60, #22, #74, #76, #77, #78,~~

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~~#82 and #84 made by a mandated reporter shall be maintained by the SCR for 60 days after the final finding report is entered. All identifying information concerning unfounded reports not retained for 3 years made by non-mandated reporters shall be retained by the SCR for 12 months after the final finding report is entered. All identifying information concerning any unfounded report involving Department wards shall be retained for 12 months regardless of reporting source.~~

- BⒸ) If the alleged perpetrator or caretaker requests, in writing, within 10 days after the date on the SCR-generated notice, that a record of the unfounded report be retained as evidence of false reporting, the SCR computer and hard copy files and the local index shall be maintained. Written requests postmarked more than 10 days after the date on the SCR notice and oral requests, that are not confirmed in writing, shall not be honored. The child abuse and neglect investigative file shall also be maintained. SCR will notify the local investigative unit when to destroy records of these unfounded false reports.
- 6) Pending and Undetermined Reports
Child abuse and neglect reports that are pending or undetermined shall remain in the SCR computer and hard copy files, the local index, and the child abuse and neglect investigative file until a decision is reached.
- c) The retention schedule for indicated child abuse and neglect records involving juvenile perpetrators (persons under the age of 18 years) is as follows:
- 1) If, after an investigation, reports are indicated and children between the ages of 10 and 18 are determined to be the perpetrator, reports that carry a 5 year retention schedule will be expunged from the State Central Register after 5 years or at the perpetrator's 21st birthday, whichever is sooner.
 - 2) In the event that the same child between the ages of 10 and 18 is determined to be an indicated perpetrator of another report that requires a 5 year retention schedule, the information concerning the previous reports and the subsequent report will be maintained at the State Central Register for a period of 5 years after the date of the subsequent report or until the perpetrator's 21st birthday, whichever is sooner.

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- 3) Reports that carry a 20 or 50 year retention schedule will be expunged from the State Central Register after 5 years or at the perpetrator's 23rd birthday, whichever is sooner.
 - 4) In the event that same child between the ages of 10 and 18 is subsequently determined to be an indicated perpetrator of an allegation carrying a 20 or 50 year retention schedule, the information concerning the previous reports and the subsequent report will be maintained at the State Central Register for a period of 5 years after the date of the subsequent report or until the perpetrator's 23rd birthday, whichever is sooner.
- d) All retained records shall be of a confidential nature and shall not be made available to the general public, except as provided for in Section 431.85.

(Source: Amended at 39 Ill. Reg. 7253, effective May 7, 2015)

Section 431.55 Redaction

All records that are released shall be redacted in accordance with this Part and applicable laws, including but not limited to the Abused and Neglected Child Reporting Act, the Mental Health and Developmental Disabilities Confidentiality Act, the Alcoholism and Other Drug Abuse and Dependency Act [20 ILCS 301], the Children and Family Services Act [20 ILCS 505], the AIDS Confidentiality Act [410 ILCS 305] and any other applicable law.

(Source: Added at 39 Ill. Reg. 7253, effective May 7, 2015)

Section 431.80 Disclosure of Records of Child Abuse and Neglect Investigations

Record information about child abuse and neglect investigations may be shared with the following individuals without the consent of the subjects of the report.

- a) Department staff in the furtherance of their responsibilities under ~~ANCRA~~the Abused and Neglected Child Reporting Act or for the purpose of completing background investigations on persons or agencies licensed by the Department or through whom the Department provides child welfare services, and on court appointed special advocates, or for purposes of an investigation conducted by the DCFS-Office of the Inspector General under Section 35.5 of the Children and Family Services Act. Unfounded reports may be made available to the child

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protective service unit only when an investigator in the unit is investigating a subsequent report of suspected abuse ~~or~~ neglect involving a ~~subject~~ child named in the unfounded report;

- b) Department and purchase of service provider staff assessing children and families in which abuse or neglect has occurred or providing services to these children and families;
- c) Department staff verifying whether a child care facility subject to Department licensing is owned or operated by known perpetrators of child abuse or neglect or whether members of the household of a family home in which a child care facility operates, or employees or volunteers who have access to children have been found to be the perpetrators of child abuse or neglect;
- d) Law enforcement officers investigating a report of suspected child abuse or neglect, known or suspected involvement with child pornography, known or suspected criminal sexual assault, known or suspected criminal sexual abuse, or any other sexual offense when children are alleged to be involved;
- e) *The Department of State Police when administering the provisions of the Intergovernmental Missing Child Recovery Act of 1984* [\[325 ILCS 5/11.1\(a\)\(30\)\]](#)~~[325 ILCS 40]~~;
- f) State's Attorneys who need access to child abuse or neglect information in the course of their assigned duties;
- g) Physicians examining a child where abuse or neglect is suspected;
- h) A court, upon its finding that access is necessary to determine an issue before the court. Unless the court determines that disclosure of the information in open court is necessary, ~~this~~ access is limited to an inspection by the judge in his ~~or her~~ chambers or in a courtroom free of spectators;
- i) A grand jury ~~that~~ ~~which~~ determines that access is necessary to conduct its official business;
- j) Persons who have been authorized by the Director, in writing, to review the records for audit or research purposes or to review ~~the~~ records in the regular course of the Department's business. ~~This~~ access shall be time limited or

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limited to specific staff functions;

- k) Persons authorized to take temporary protective custody ~~only~~ if the information is needed to determine whether to take the child into temporary protective custody;
- l) A person who has legal responsibility or authorization to care for, treat, or supervise a child or a parent, foster parent, guardian, or other person responsible for the welfare of a child who is the subject of a report;
- m) Federal, state or local law enforcement officers, coroners or medical examiners, physicians, courts, school superintendents and child welfare agencies in other states who are responsible for child abuse or neglect investigations or background investigations. ~~This Such~~ information shall be requested only for the purpose of aiding the investigation, assessment or service provision or background investigation in the requesting state;
- n) The Illinois Department of Financial and Professional Regulation, when determining whether a mandated reporter (as detailed in ANCRA Section 4) who failed to report child abuse or neglect should be subject to license suspension or revocation, or when determining whether to refuse to issue, suspend or revoke a State-issued the license ~~of the following classes of persons~~ due to the person having been named a perpetrator in an indicated report of child abuse or neglect:
 - 1) ~~Physicians,~~
 - 2) ~~Physician Assistants,~~
 - 3) ~~Dentists,~~
 - 4) ~~Registered and Practical Nurses,~~
 - 5) ~~Optometrists,~~
 - 6) ~~Physical Therapists,~~
 - 7) ~~Podiatrists,~~
 - 8) ~~Psychologists,~~

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- 9) ~~Social Workers,~~
- 10) ~~Athletic Trainers,~~
- 11) ~~Acupuncturists,~~
- 12) ~~Dietitians and Nutrition Counselors,~~
- 13) ~~Hearing Care Professionals,~~
- 14) ~~Marriage and Family Therapists,~~
- 15) ~~Naprapaths (therapist of ligaments and connective tissue),~~
- 16) ~~Respiratory Therapists,~~
- 17) ~~Professional Counselors and Clinical Professional Counselors, and~~
- 18) ~~Speech Language Pathologists and Audiologists;~~
- o) School superintendents and the State Board of Education when determining whether a teacher's certificate shall be suspended because the teacher has been named as a perpetrator in an indicated report of child abuse or neglect;
- p) *A coroner or medical examiner who has reason to believe that a child has died as the result of abuse or neglect* [\[325 ILCS 5/11.1\(a\)\(13\)\]](#);
- q) *The Director of a State-operated facility when an employee of that facility has been named as a perpetrator of an indicated report* [\[325 ILCS 5/11.1\(a\)\(14\)\]](#);
- r) *Members of a multidisciplinary team in the furtherance of its responsibilities under this Act* [\[325 ILCS 5/11.1\(a\)\(16\)\]](#);
- s) The operator of a licensed child care facility or a facility licensed by the Department of Human Services in which children reside when a current or prospective employee of that facility has been named as a perpetrator in an indicated child abuse or neglect report;

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- t) *A probation officer or other authorized representative of a probation or court services department conducting an investigation ordered by a court under the Juvenile Court Act of 1987 [325 ILCS 5/11.1(a)(8.1)];*
- u) *The Department of Human Services, as provided in Section 17 of the Disabled Person's Rehabilitation Act [325 ILCS 5/11.1(a)(17)];*
- v) *Any other agency or investigative body, including the Department of Public Health and a local board of health, authorized by State law to conduct an investigation into the quality of care provided to children in hospitals and other State regulated care facilities. The access to and release of information from child abuse records shall be subject to the approval of the Director of the Department or his or her designee [325 ILCS 5/11.1(a)(18)];*
- w) *The Department of Human Services, as provided in Section 10 of the Early Intervention Services System Act [325 ILCS 20], and the operator of a facility providing early intervention services pursuant to that Act, for the purpose of determining whether a current or prospective employee who provides or may provide direct services under that Act is the perpetrator in an indicated report of child abuse or neglect filed under ANCRA [325 ILCS 5/11.1(a)(20)];*
- x) *The guardian ad litem of a minor who is the subject of a report or records under ANCRA [325 ILCS 5/11.1(a)(19)];*
- y~~t~~) Child death review teams in accordance with 89 Ill. Adm. Code 300 (Reports of Child Abuse and Neglect), Section 300.165;~~or~~
- z~~u~~) The general public as specified in Section 431.85; ~~or of this Part.~~
- aa) *The state's attorney, law enforcement, courtroom personnel or treatment providers when that information pertains to juveniles subject to the provisions of the Serious Habitual Offender Comprehensive Action Program [705 ILCS 405/5-145] and is used to assist in the early identification and treatment of habitual juvenile offenders.*

(Source: Amended at 39 Ill. Reg. 7253, effective May 7, 2015)

Section 431.90 Disclosure of Personal Information Without Consent

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- a) **Persons Who May Receive Personal Information Without Consent**
The Department shall disclose personal information to the following persons or category of persons without the consent of the individual only in accordance with the provisions of the Children and Family Services Act ~~[20 ILCS 505]~~, Mental Health and Developmental Disabilities Confidentiality Act ~~[740 ILCS 110]~~, the AIDS Confidentiality Act ~~[410 ILCS 305]~~, or ANCRA the Abused and Neglected Child Reporting Act [325 ILCS 5], as applicable to the type of information being requested:
- 1) **Law Enforcement Officers**
 - A) Department child welfare staff, with approval of the immediate supervisor, shall release personal information to State's Attorneys, the Attorney General, municipal and sheriff's police (in Illinois or other jurisdictions), and the Department of State Police, when releasing the information is consistent with the best interests of the child or when the information is relevant to a pending investigation.
 - B) If personal information is requested by law enforcement officers other than listed in subsection (a)(1)(A), or if the information requested is not consistent with the best interests of the child served by the Department, the information may be released only by the Director of the Department or his or her designee.
 - 2) **Persons Who Have Subpoenas or Other Court Orders**
 - A) The Department shall disclose personal information when ordered to do so by a court order. The Department shall make a good faith effort to notify the person whose records are the subject of the order that the order exists and the nature of the proceedings, unless specifically ordered by the court to not contact the subjects. The Department shall notify the court or the person obtaining the court order of the confidential nature of the information and its policies regarding personal information. In addition, the Department may take any appropriate legal actions to limit or quash the court order.
 - B) In the event a subpoena has been issued by a court, the Department shall make a good faith effort to contact the subject of the order as

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explained in subsection (a)(2)(A). If a subpoena is issued by a Clerk of the Court without any judicial involvement, the Department shall notify the person who had the subpoena issued of its policies regarding personal information and shall make a good faith effort to promptly notify the person whose information is the subject of the subpoena. The Department shall not release the information for 14 days following the receipt of the subpoena unless the person consents to the release of the records or an earlier, reasonable return date is provided in the subpoena. After 14 days have passed from the receipt of the subpoena, the Department shall release the information if releasing it is consistent with the best interests of the child.

- C) When a person served by the Department is engaged in litigation against the Department, the Department shall release personal information concerning that individual or his or her children that is subject to discovery under the laws of the State of Illinois.
 - D) DCFS shall provide records to a court, other than juvenile court, party to a lawsuit or a party's attorney only after the Regional Counsel has reviewed the subpoena, request or order from the court and redacted confidential mental health, drug treatment and Human Immunodeficiency Virus (HIV)/Acquired Immunodeficiency Syndrome (AIDS) information and other records strictly protected by statute. The Department shall request that a protective order be entered if the court orders the release of confidential information.
- 3) **Legislators**
Only the Director of the Department shall authorize the release of the contents of case records to the Illinois legislature or its committees or commissions. Individual legislators shall not have access to case records unless they are acting under the authority given them by the law.
- 4) **Professionals or Other Service Providers**
Persons receiving services from the Department or its contractual agencies are to be informed that personal information (other than mental health information) may be shared without their consent with other service providers when it is necessary for the proper provision of services or the

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establishment of paternity or support for a dependent minor.

- A) With the exception of mental health records, as provided for in Section 431.100, personal information may be released by Department employees acting within their official capacity to professionals who are providing services to persons served by the Department. These professionals may include psychiatrists, psychologists, physicians, social workers, homemakers, contractors with the Department, social service agencies, foster parents, child care facilities and others providing services to persons served by the Department when ~~thesueh~~ information is necessary for the proper delivery of services to the persons served by the Department.
 - B) The Department, in releasing personal information, will limit the information released to that which is necessary to properly provide the service. The persons receiving the information shall be notified by the Department that the information is confidential and that the information is not to be further released except as is necessary for the proper delivery of service.
 - ~~C)~~ ~~Release of mental health materials must be made in conformity with the Mental Health and Developmental Disabilities Confidentiality Act [740 ILCS 110].~~
 - ~~C)~~ Department employees may release personal information needed to establish paternity or support for a dependent child or relative.
- 5) Prospective Adoptive Parents, Foster Parents and Other Caregivers
- A) Prospective adoptive parents, foster parents and caregivers in other licensed child care facilities may review documents and reports in the child's case record that support the information the caseworker provided at the time of the child's placement, or information that has been received or generated regarding the child since placement.
 - B) The information that will be available to caregivers for review will be limited to that which relates directly to a child in that person's

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care, specifically education records, health and insurance records, history of placements and reasons for changes (excluding identifying information about former caregivers), the child's portion of the client service plan including visitation arrangements and all amendments and revisions relating to the child, and any known social or behavioral information including but not limited to criminal background of the child, fire setting, perpetration of sexual abuse, destructive behavior and substance abuse. Personal information about the child's parents, siblings, relatives, previous caregivers or other individuals such as members of the household in a child's previous living arrangement shall be removed or redacted from the case record prior to the caregiver's review.

- C) The caregiver's review of the case record shall occur in the presence of casework staff. Once a caregiver has requested a review of a child's file, the Department or agency shall provide the opportunity to do so timely, without undue delay.
 - D) The supervisor shall examine the redacted record for accuracy and approve its review by the prospective adoptive parents, parents, foster parents or caregivers in other licensed facilities prior to the time the records are examined by the caregiver.
- 6) **Court Appointed Special Advocates**
Court appointed special advocates may attend the child's portion of administrative case reviews involving children for whom they are appointed as advocates and may review documents directly related to delivery of child welfare services that are in the best interests of the minor. However, court appointed special advocates are not allowed access to mental health or drug or alcohol assessment and treatment records, confidential medical records, or records of child abuse or neglect reports and investigations and may attend the parent's portion of the administrative case review only with the permission of the parents or their authorized representative.
- 7) **Research Purposes**
The release of personal information for research purposes to any source outside the agency shall only be allowed within the discretion of the Director of the Department or designee upon express written consent. The

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researcher shall ensure, in writing, the confidentiality of identifying information. The researcher shall not release any identifying information without the express written permission of the Director.

- 8) DCFS-Office of the Inspector General
Personal information shall be released to the DCFS-Office of the Inspector General when the records are pertinent to an investigation authorized under Section 35.5 of the Children and Family Services Act ~~[20 ILCS 505/35.5]~~ and involves allegations or incidents of possible misconduct, misfeasance, malfeasance, or violations of rules, procedures, or laws.
- 9) DCFS and Purchase of Service Agency (POS) Staff
Department and POS staff shall have access to child abuse and neglect and other case record information in the furtherance of their responsibilities under the Abused and Neglected Child Reporting Act, the Child Care Act, the Children and Family Services Act, the Juvenile Court Act and any other Act that governs child welfare. Any sharing of information between divisions of the Department or between the Department and purchase of service providers, or between purchase of service providers as necessary for case management is a transfer and not a disclosure of information.
- 10) Extended Family
An extended family member interviewed for relevant information during the course of an investigation by the Child Protective Service Unit may request and receive the following information about the findings and actions taken by the Child Protective Service Unit to ensure the safety of the child or children who were the subjects of the investigation:
 - A) name of the child who was the subject of the abuse or neglect report;
 - B) whether the report was indicated or unfounded;
 - C) whether the Department took protective custody;
 - D) whether a Department case has been opened for the family or children;

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- E) what Department services are being provided the family or children; and
 - F) whether a safety plan has been established.
- 11) **State's Attorneys**
State's Attorneys shall have access to child abuse or neglect and/or case record information when necessary for the discharge of their official duties during the investigation and prosecution of the abuse or neglect of a child or termination of parental rights pursuant to the Criminal Code of [2012](#) [720 ILCS 5] or another penal statute, the Juvenile Court Act of 1987 [705 ILCS 405], the Child Care Act of 1969 [225 ILCS 5] or ANCRA [~~325 ILCS 5~~].
- 12) **Protection and Advocacy for Mentally Ill Persons**
Personal information, with the exception of mental health information, may be released to the agency designated by the Governor for administering the protection and advocacy system for mentally ill persons, in accordance with the provisions of the Protection and Advocacy for Mentally Ill Persons Act [405 ILCS 45].
- 13) **Mandated Reporters**
A mandated reporter is allowed to receive appropriate information about the findings and actions taken by the Child Protective Service Unit in response to his/her report. The information shall include the actions taken by the Child Protective Service Unit to ensure a child's safety. [325 ILCS 5/11.2]
- 1413) **Others Not Cited in this Section**~~Above~~
Personal information may be released for the purposes and to persons other than those listed in this Section upon the written authorization of the Director when ~~that such~~ authorization is not prohibited by State or federal law, ~~or~~ regulation or rule.
- b) **Law Enforcement Agencies Data System (LEADS) Information in Child Protection Records**
- 1) In accordance with Section 2605-315 of the Civil Administrative Code of Illinois [20 ILCS 2605/2605-315], the Department of Children and Family

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Services shall have access to LEADS information and underlying *criminal history record information as defined in the Illinois Uniform Conviction Act when necessary for the Department to perform its duties under the Abused and Neglected Child Reporting Act, the Child Care Act of 1969 and the Children and Family Services Act.* [20 ILCS 2605/2605-315]

- 2) LEADS [printouts may not be shared outside the Department. Summaries of criminal history](#) information included in the child protection investigation file may be forwarded to the child welfare worker as part of the investigative file. Child protection investigators and child welfare workers shall share underlying public documents on a "need to know" basis with other persons providing services when it is relevant to child protection or service decisions to be made on behalf of the child or family. (See Section 35.1 of the Child and Family Services Act ~~of 1969~~ [\[20 ILCS 505/35.1\]](#).)
- c) Responses to Requests for Information
 - 1) Written Requests
 - A) The Department shall accept written requests for the disclosure of personal information without the consent of the concerned individuals only when the requestor has provided a notary public's attestation as to his or her identity and has included the names of the individuals about whom the information is requested. Information shall only be released in compliance with this Part.
 - B) The Department will provide a written response to each written request via certified mail deliverable only to the requestor.
 - 2) Telephone Requests
 - A) The Department shall accept telephone requests for child abuse and neglect information only when the request comes from Department staff investigating a report of child abuse or neglect, law enforcement officials investigating a report of child abuse or neglect or determining whether a child should be taken into temporary child protective custody, physicians examining a child and the information is needed to determine whether a child is

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abused or neglected or to determine whether a child should be taken into temporary protective custody, and out-of-state agencies involved in a child abuse or neglect report.

- B) The Department shall accept telephone requests for other personal information without the consent of the concerned individuals only if the requesting person or agency is authorized by this Part to receive the information ~~that~~which they are requesting.
 - C) The Department shall not provide information to unknown requestors at the time of the initial inquiry. Instead, Department staff shall obtain the requestor's name, type of business, an official business phone number through which his or her identity and authority to receive the information can be verified, and the phone number at his or her current location. The Department shall verify the requestor's identity and authority to receive the information by checking an official telephone listing or checking with a third party at the business office.
- 3) In-Person Requests
- A) The Department shall accept in-person requests for the disclosure of personal information without the consent of the concerned individuals only when the requestors produce positive identification and proof of their legal authority to receive the requested information.
 - B) The Department will recognize only those guardians, custodians, court appointed special advocates or guardians ad litem who produce a court order appointing them to their positions. The Department will recognize only those attorneys or personal representatives who produce a written consent to release the requested information. The consent must be signed by the concerned individual and it must be notarized.

(Source: Amended at 39 Ill. Reg. 7253, effective May 7, 2015)

Section 431.100 Disclosure of ~~Information of a~~ Mental Health and Developmental Disabilities Information ~~Nature~~

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Release of and access to clinical, social work, psychological, psychiatric or other information of a mental health nature shall be governed by Section 4 of the Mental Health and Developmental Disabilities Confidentiality Act ~~[740 ILCS 110/4]~~. Significant portions of that Act are as follows:

- a) *The following persons shall be entitled, upon request, to inspect and copy a recipient's record or any part thereof:*
 - 1) *the parent or guardian of a recipient who is under 12 years of age;*
 - 2) *the recipient if he or she is 12 years of age or older;*
 - 3) *the parent or guardian of a recipient who is at least 12 but under 18 years, if the recipient is informed and does not object or if the therapist does not find that there are compelling reasons for denying such access. The parent or guardian who is denied access by either the recipient or the therapist may petition a court for access to the record;*
 - 4) *the guardian of a recipient who is 18 years or older; or*
 - 5) *an attorney or guardian ad litem who represents a minor 12 years of age or older in any judicial or administrative proceeding, provided that the court or administrative hearing officer has entered an order granting the attorney this right. [740 ILCS 110/4]*
- b) Except as otherwise provided in the Mental Health and Developmental Disabilities Confidentiality ~~(MH/DD) Act [740 ILCS 110]~~, records and communications as defined in that Act may be disclosed only with the written consent of the persons identified in subsection (a).
- c) Information disclosed with the written consent of those described in subsection (a) may not be redisclosed to any other person without the express written consent of those described in subsection (a). Those persons authorized to give consent may revoke their consent at any time.
- d) ~~When~~Where the Department has legal guardianship of a child under 12 years, the Department may deny access of the biological parents to information pertaining to the child's mental health only if two professional social workers (Master of Social Work degree) employed by the Department certify in writing that denial of ~~such~~

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access is in the best interests of the child and/or parents.

- e) Mental health information can be shared within the Department and purchase of service providers, with traditional and home of relative foster parents, and adoptive parents, when relevant to the Department's discharge of its duties under the Child and Family Services Act, Adoption Act [\[750 ILCS 50\]](#) or [ANCRA Abused and Neglected Child Reporting Act](#).
- f) Mental health information can be shared with a juvenile court judge, guardian ad litem or State's Attorney in an abuse or neglect temporary custody hearing, adjudicatory hearing, dispositional hearing or termination of parental rights hearing when the information is relevant to the juvenile court proceeding.
- g) [During a child abuse and neglect investigation, mental health and developmental disabilities records can be released to the Department pursuant to the Illinois Mental Health and Developmental Disabilities Confidentiality Act.](#)
- h) [Mental health records can be released to the Department's Inspector General when:](#)
 - 1) [*the recipient was either:*](#)
 - A) [*a parent, foster parent or caretaker who is an alleged perpetrator of abuse or neglect or the subject of a dependency investigation; or*](#)
 - B) [*a non-ward victim of alleged abuse or neglect; and*](#)
 - 2) [*available information demonstrates that the mental health of the recipient was or should have been an issue to the safety of the child. \[740 ILCS 110/9\(5\)\]*](#)
- i) [The parent or guardian of a recipient who is at least 12 but under 18 years can request and receive, consistent with Section 4 of the Consent by Minors to Medical Procedures Act \[410 ILCS 210\], the following information: current physical and mental condition, diagnosis, treatment needs, services provided, and services needed, including medication, if any.](#)
- j) [Consistent with Section 4 of the Consent by Minors to Medical Procedures Act, the therapist of a minor age 12-18 can release the records if he or she believes it to](#)

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be in the best interest of the minor. The therapist must notify the minor that the information was released.

- k) Anyone receiving a mental health record or information from a mental health record does not have the legal authority to disclose the information unless the re-release of information is specifically consented to by the client or otherwise permitted by this Section. Sharing of information between divisions of the Department or between the Department and purchase of service providers or between purchase of service providers as required for case management is a transfer and not a disclosure of information.
- l) Persons are entitled to review their own mental health records. Any competent adult recipient may consent to release of mental health records on the prescribed written form.

(Source: Amended at 39 Ill. Reg. 7253, effective May 7, 2015)

Section 431.105 Disclosure of Alcoholism and Other Drug Abuse Records

Records of the identity, diagnosis, prognosis or treatment of any patient maintained in connection with the performance of any program or activity related to alcohol or other drug abuse or dependency education, early intervention, intervention, training, treatment or rehabilitation that is regulated, authorized or directly or indirectly assisted by any Department or agency of this State or under any provision of the Alcoholism and Other Drug Abuse and Dependency Act shall be confidential and may be disclosed only with consent. The following are exempt from federal confidentiality provisions and can be disclosed without consent:

- a) Veteran's Administration records;
- b) Information obtained by the Armed Forces;
- c) Information given to qualified service organizations;
- d) Communications within a program or between a program and an entity having direct administrative control over that program;
- e) Information given to law enforcement personnel investigating a patient's commission of a crime on the program premises or against program personnel;
and

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- f) Reports under State law of incidents of suspected child abuse and neglect; however, confidentiality restrictions continue to apply to the records and any follow-up information for disclosure and use in civil or criminal proceedings arising from the report of suspected abuse or neglect. [20 ILCS 301/30-5]

AGENCY NOTE: Statements of observation of a person's demeanor or behavior that suggest they are under the influence of alcohol or a controlled substance are not protected.

(Source: Added at 39 Ill. Reg. 7253, effective May 7, 2015)

Section 431.110 Disclosure of Physical Health Information Regarding Acquired Immunodeficiency Syndrome (AIDS)

- a) Health Information Portability and Accountability Act (HIPAA)
- 1) HIPAA regulations (45 CFR 164.512(b)(1)(ii)) specifically permit use or disclosure of protected health information with a public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect. DCFS is a government authority authorized by law to receive reports of child abuse or neglect.
 - 2) In addition, HIPAA allows the release of personal health information to an individual's personal representative. Included in the definition of personal representative is a guardian or person acting in loco parentis with legal authority to make health care decisions on behalf of a minor child. When conflicts arise between HIPAA and other confidentiality rules, the stricter requirements apply.
 - 3) The Medical Patient Rights Act establishes the right of each patient to privacy and confidentiality in health care. Physical health information may be disclosed when relevant to a child protection investigation. The Children and Family Services Act permits any individual dealing with or providing services to a minor ward to share information with another individual dealing with or providing services to the minor for the purpose of coordination efforts on behalf of the minor. However, the Department shall not release information concerning any medical care to which the minor has the right of consent. (See the Consent by Minors to Medical

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Procedures Act [410 ILCS 210] for specifics on when a minor has the right to consent to his or her own medical care.)

- 4) If Department, POS or HealthWorks (see subsection (a)(3)) staff experience difficulty in obtaining information to which the Department has a right from healthcare providers who are citing HIPAA as the reason to deny information, staff shall consult with their supervisor. The supervisor will consult with the Office of the DCFS Guardian if the problem persists.
- b) Disclosure of Information Regarding Acquired Immunodeficiency Syndrome (AIDS)
- 1a) The Department shall be informed of the results of Human Immunodeficiency Virus (HIV) tests performed on and of all diagnoses of Acquired Immunodeficiency Syndrome (AIDS), as defined in the Department of Public Health's Health rules at, 77 Ill. Adm. Code 697 (AIDS Confidentiality and Testing Code), for children for whom the Department is legally responsible.
- 2b) The Department shall release information on children for whom it is legally responsible regarding HIV test results and diagnoses of AIDS to the child's legal parents and to persons who have the need to know this information. The categories of persons who have a need to know this information about a child may include, but are not limited to, the following as follows:
- A1) those persons who supervise or provide direct care to the child, such as:
- iA) foster parents;
- iiB) relative caretakers;
- iiiC) directors or operators of child care facilities, such as group homes, child care institutions, child welfare agencies, State operated facilities, day care homes, day care centers and the personnel of these facilities; who provide direct care for a child by feeding, diapering, or handling blood or

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bodily fluids; or ~~h~~) who provide direct care to a child who bites, spits, has a bleeding problem such as nose bleeds or hemophilia or who cannot control normal bodily functions;

- B2) physicians, nurses, dentists and other medical providers who will be providing direct care to the child;
- C3) other persons who provide direct care for a child for whom the information is necessary in order to provide Department approved services for the child, i.e., advocates and counselors;
- D4) prospective adoptive parents who have been licensed under 89 Ill. Adm. Code 402, who are willing to adopt a child with a terminal illness, and who have demonstrated an interest in a specific child who has tested positive for HIV infection or who has been diagnosed with ARC or AIDS;
- E5) Guardian ad litem~~juvenile court; or,~~
- 6) ~~the child's school. Notification given to the child's school shall be in accordance with the Communicable Disease Prevention Act [410 ILCS 315/2a] that states that whenever a child of school age is reported by a physician to the Illinois Department of Public Health or a local health department as diagnosed with AIDS or HIV positive, that department will give prompt and confidential notice of the identity of child to the principal of the school in which the child is enrolled.~~
- 3e) Persons to whom the Department has released information regarding HIV test results and diagnoses of AIDS shall keep this information confidential in accordance with the provisions of the AIDS Confidentiality Act ~~[410 ILCS 305]~~ and the AIDS Confidentiality and Testing Code ~~(77 Ill. Adm. Code 697)~~. The Such information shall not be disclosed to other persons except as authorized by the Department in accordance with subsection (b). The Such authorization shall be signed by the Department's Guardianship Administrator or designee as defined by 89 Ill. Adm. Code 327.2 and shall contain the names and respective positions of those individuals to whom the information will be disclosed. Education must accompany disclosure so that those persons receiving the information understand the HIV/AIDS

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diagnosis, treatment and precautions. This information may be provided by the DCFS AIDS Project or a Department Regional Nurse.

- d) HealthWorks
HealthWorks is not a covered function as defined in HIPAA regulations (45 CFR 164.103). HealthWorks functions to fulfill a legally mandated role to arrange for health care services for clients who are in protective custody or are wards of the Department. HealthWorks lead agencies and their medical case management agencies are authorized to receive medical information on children in protective custody or for children who are DCFS wards. HealthWorks staff may use consents signed by the Guardianship Administrator or an authorized agent to obtain information from health providers.
- e) Disclosing Information for Regulatory Review Purposes
Under HIPAA, covered entities may disclose protected health information for health oversight activities required by law. The Department's health oversight activities include State-run compliance reviews such as Medicaid Part 132 reviews, Agency Performance Team reviews, Independent Utilization Reviews, and Licensing reviews. Health oversight activities include a broad range of civil, administrative and criminal investigations or proceedings.

(Source: Amended at 39 Ill. Reg. 7253, effective May 7, 2015)

Section 431.120 Removal of Records Prohibited

Records of the Department may not be removed from Departmental facilities by non-~~Department~~~~Departmental~~ staff, except as provided in Section 431.130, but may be photocopied. The Department may charge for the cost of reproducing said records at the rate established in 2 Ill. Adm. Code 775; (Public Information, Rulemaking, and Organization).

(Source: Amended at 39 Ill. Reg. 7253, effective May 7, 2015)

Section 431.140 Applicability of This Part

This Part shall apply to personal information contained in all closed, active and future records of the Department, regardless of whether they are maintained in written, microfilm; or electronic (digital) storage.

(Source: Amended at 39 Ill. Reg. 7253, effective May 7, 2015)

ILLINOIS RACING BOARD

NOTICE OF EMERGENCY AMENDMENT

- 1) Heading of the Part: Trifecta
- 2) Code Citation: 11 Ill. Adm. Code 306
- 3) Section Number: 306.30 Emergency Action:
Amendment
- 4) Statutory Authority: 230 ILCS 5/9(b)
- 5) Effective Date of Emergency Rule: May 7, 2015
- 6) If this emergency rule is to expire before the end of the 150-day period, please specify the date on which they are to expire: The emergency rulemaking will expire at the end of the 150-day period, or upon adoption of permanent rules, whichever comes first.
- 7) Date Filed with the Index Department: May 7, 2015
- 8) A copy of the emergency rule, including any material incorporated by reference, is on file in the Illinois Racing Board's central office and is available for public inspection.
- 9) Reason for Emergency: Decreasing field sizes in harness racing, due to the exodus of racehorses leaving the State of Illinois for higher purses in other states, puts Illinois at a competitive disadvantage for the wagering dollar. A survey of 11 racing jurisdictions that conduct harness racing revealed that Illinois requires the highest number of betting interests for trifecta wagering. Lowering the minimum field size requirement would keep wagering dollars in Illinois and benefit the horsemen, racetracks, and State.
- 10) A Complete Description of the Subjects and Issues Involved: Six betting interests must currently be carded for trifecta wagering in harness racing and in the event of a scratch, five betting interests would allow trifecta wagering. This proposed rulemaking will reduce the number of minimum betting interests carded in harness racing to five, the same as thoroughbred racing.
- 11) Are there any proposed rulemakings pending on this Part? No
- 12) Statement of Statewide Policy Objective: No local governmental units will be required to increase expenditures.
- 13) Information and questions regarding this emergency rule shall be directed to:

ILLINOIS RACING BOARD

NOTICE OF EMERGENCY AMENDMENT

Mickey Ezzo
Illinois Racing Board
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The full text of the Emergency Amendment begins on the next page:

ILLINOIS RACING BOARD

NOTICE OF EMERGENCY AMENDMENT

TITLE 11: ALCOHOL, HORSE RACING, ~~AND LOTTERY~~, AND VIDEO GAMING
SUBTITLE B: HORSE RACING
CHAPTER I: ILLINOIS RACING BOARD
SUBCHAPTER a: GENERAL RULES

PART 306
TRIFECTA

Section

306.10	Definition
306.20	Entries (Repealed)
306.30	Minimum Fields
<u>EMERGENCY</u>	
306.40	Pool Distribution
306.50	Dead Heats
306.60	Scratches

AUTHORITY: Authorized by Section 9(b) of the Illinois Horse Racing Act of 1975 [230 ILCS 5/9(b)].

SOURCE: Adopted at 19 Ill. Reg. 15225, effective November 1, 1995; amended at 24 Ill. Reg. 7397, effective May 1, 2000; amended at 26 Ill. Reg. 4900, effective March 20, 2002; amended at 26 Ill. Reg. 12355, effective August 1, 2002; amended at 27 Ill. Reg. 5024, effective March 7, 2003; amended at 30 Ill. Reg. 2651, effective February 21, 2006; amended at 30 Ill. Reg. 10459, effective June 1, 2006; amended at 31 Ill. Reg. 8518, effective June 1, 2007; amended at 32 Ill. Reg. 10139, effective July 1, 2008; amended at 34 Ill. Reg. 11436, effective July 22, 2010; emergency amendment at 39 Ill. Reg. 7284, effective May 7, 2015, for a maximum of 150 days.

Section 306.30 Minimum FieldsEMERGENCY

a) Trifecta wagering shall not be scheduled on a thoroughbred or standardbred race unless at least five betting interests are carded. In the event of a scratch, trifecta wagering on a thoroughbred or standardbred race in which four betting interests remain is permissible.

- b) ~~Trifecta wagering shall not be scheduled on a standardbred race unless at least six betting interests are carded. In the event of a scratch, trifecta wagering on a standardbred race in which five betting interests remain is permissible.~~

ILLINOIS RACING BOARD

NOTICE OF EMERGENCY AMENDMENT

(Source: Amended by emergency rulemaking at 39 Ill. Reg. 7284, effective May 7, 2015, for a maximum of 150 days)

ILLINOIS RACING BOARD

NOTICE OF EMERGENCY AMENDMENT

- 1) Heading of the Part: Superfecta
- 2) Code Citation: 11 Ill. Adm. Code 311
- 3) Section Number: 311.35 Emergency Action: Amendment
- 4) Statutory Authority: 230 ILCS 5/9(b)
- 5) Effective Date of Rule: May 7, 2015
- 6) If this emergency rule is to expire before the end of the 150-day period, please specify the date on which they are to expire: The emergency rulemaking will expire at the end of the 150-day period, or upon adoption of permanent rules, whichever comes first.
- 7) Date Filed with the Index Department: May 7, 2015
- 8) A copy of the emergency rule, including any material incorporated by reference, is on file in the Illinois Racing Board's central office and is available for public inspection.
- 9) Reason for Emergency: Decreasing field sizes in harness racing, due to the exodus of racehorses leaving the State of Illinois for higher purses in other states, puts Illinois at a competitive disadvantage for the wagering dollar. A survey of 11 racing jurisdictions that conduct harness racing revealed that Illinois requires the highest number of betting interests for superfecta wagering. Lowering the minimum field size requirement would keep wagering dollars in Illinois and benefit the horsemen, racetracks and State.
- 10) A Complete Description of the Subjects and Issues Involved: Seven betting interests must currently be carded for superfecta wagering in harness racing and in the event of a scratch, six betting interests would allow superfecta wagering. This proposed rulemaking will reduce the number of minimum betting interests carded in harness racing to six, the same as thoroughbred racing.
- 11) Are there any proposed rulemakings pending on this Part? No
- 12) Statement of Statewide Policy Objective: No local governmental units will be required to increase expenditures.
- 13) Information and questions regarding this emergency rule shall be directed to:

ILLINOIS RACING BOARD

NOTICE OF EMERGENCY AMENDMENT

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

ILLINOIS RACING BOARD

NOTICE OF EMERGENCY AMENDMENT

TITLE 11: ALCOHOL, HORSE RACING, ~~AND LOTTERY~~, AND VIDEO GAMING

SUBTITLE B: HORSE RACING

CHAPTER I: ILLINOIS RACING BOARD

SUBCHAPTER a: GENERAL RULES

PART 311
SUPERFECTA

Section

311.10	Superfecta
311.20	Pool Distribution
311.25	Scratches
311.30	Dead Heats
311.35	Minimum Fields
<u>EMERGENCY</u>	
311.40	Entries (Repealed)

AUTHORITY: Authorized by Section 9(b) of the Illinois Horse Racing Act of 1975 [230 ILCS 5/9(b)].

SOURCE: Adopted at 18 Ill. Reg. 7440, effective May 8, 1994; amended at 19 Ill. Reg. 6663, effective May 1, 1995; amended at 26 Ill. Reg. 4903, effective March 20, 2002; amended at 26 Ill. Reg. 12357, effective August 1, 2002; emergency amendment at 26 Ill. Reg. 14702, effective September 16, 2002, for a maximum of 150 days; emergency expired February 12, 2003; emergency amendment at 26 Ill. Reg. 16854, effective November 15, 2002, for a maximum of 150 days; emergency expired April 13, 2003; amended at 28 Ill. Reg. 7121, effective May 10, 2004; amended at 29 Ill. Reg. 14024, effective September 1, 2005; amended at 30 Ill. Reg. 2654, effective February 21, 2006; amended at 30 Ill. Reg. 10463, effective June 1, 2006; amended at 31 Ill. Reg. 8522, effective June 1, 2007; amended at 32 Ill. Reg. 13525, effective August 1, 2008; amended at 34 Ill. Reg. 2320, effective January 27, 2010; amended at 34 Ill. Reg. 11440, effective July 22, 2010; emergency amendment at 39 Ill. Reg. 7288, effective May 7, 2015, for a maximum of 150 days.

Section 311.35 Minimum FieldsEMERGENCY

a) Superfecta wagering shall not be scheduled on a thoroughbred or standardbred race unless at least six betting interests are carded. In the event of a scratch, superfecta wagering on a thoroughbred or standardbred race in which five betting interests remain is permissible.

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- b) ~~Superfecta wagering shall not be scheduled on a standardbred race unless at least seven betting interests are carded. In the event of a scratch, superfecta wagering on a standardbred race in which six betting interests remain is permissible.~~

(Source: Amended by emergency rulemaking at 39 Ill. Reg. 7288, effective May 7, 2015, for a maximum of 150 days)

ILLINOIS RACING BOARD

NOTICE OF EMERGENCY AMENDMENT

- 1) Heading of the Part: Pentafecta
- 2) Code Citation: 11 Ill. Adm. Code 324
- 3) Section Number: 324.50 Emergency Action: Amendment
- 4) Statutory Authority: 230 ILCS 5/9(b)
- 5) Effective Date of Emergency Rule: May 7, 2015
- 6) If this emergency rule is to expire before the end of the 150-day period, please specify the date on which they are to expire: The emergency rulemaking will expire at the end of the 150-day period, or upon adoption of permanent rules, whichever comes first.
- 7) Date Filed with the Index Department: May 7, 2015
- 8) A copy of the emergency rule, including any material incorporated by reference, is on file in the Illinois Racing Board's central office and is available for public inspection.
- 9) Reason for Emergency: Decreasing field sizes in harness racing, due to the exodus of racehorses leaving the State of Illinois for higher purses in other states, puts Illinois at a competitive disadvantage for the wagering dollar. A survey of 11 racing jurisdictions that conduct harness racing revealed that Illinois requires the highest number of betting interests for pentafecta wagering. Lowering the minimum field size requirement would keep wagering dollars in Illinois and benefit the horsemen, racetracks, and State.
- 10) A Complete Description of the Subjects and Issues Involved: Nine betting interests must currently be carded for pentafecta wagering in harness racing and in the event of a scratch, eight betting interests would allow pentafecta wagering. This proposed rulemaking will reduce the number of minimum betting interests carded in harness racing to eight, the same as thoroughbred racing.
- 11) Are there any other proposed rulemakings pending on this Part? No
- 12) Statement of Statewide Policy Objective: No local governmental units will be required to increase expenditures.
- 13) Information and questions regarding this emergency rule shall be directed to:

ILLINOIS RACING BOARD

NOTICE OF EMERGENCY AMENDMENT

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

ILLINOIS RACING BOARD

NOTICE OF EMERGENCY AMENDMENT

TITLE 11: ALCOHOL, HORSE RACING, LOTTERY, AND VIDEO GAMING
SUBTITLE B: HORSE RACING
CHAPTER I: ILLINOIS RACING BOARD
SUBCHAPTER a: GENERAL RULES

PART 324
PENTAFACTA

Section

324.10	Pentafecta
324.20	Pool Distribution
324.30	Scratches
324.40	Dead Heats
324.50	Minimum Fields
<u>EMERGENCY</u>	
324.60	Entries (Repealed)
324.70	Mandatory Distribution

AUTHORITY: Authorized by Section 9(b) of the Illinois Horse Racing Act of 1975 [230 ILCS 5/9(b)].

SOURCE: Adopted by emergency rulemaking at 32 Ill. Reg. 7429, effective May 1, 2008, for a maximum of 150 days; adopted at 32 Ill. Reg. 10153, effective July 1, 2008; amended at 35 Ill. Reg. 13898, effective July 28, 2011; amended at 36 Ill. Reg. 15144, effective October 1, 2012; emergency amendment at 39 Ill. Reg. 7292, effective May 7, 2015, for a maximum of 150 days.

Section 324.50 Minimum FieldsEMERGENCY

- a) ~~Pentafecta wagering shall not be scheduled on a harness race unless at least nine betting interests are carded. In the event of a scratch, Pentafecta wagering on a race in which eight betting interests remain is permissible.~~
- ab) Pentafecta wagering shall not be scheduled on a thoroughbred or standardbred race unless at least eight betting interests are carded. In the event of a scratch, Pentafecta wagering on a race in which seven betting interests remain is permissible.
- be) This Section shall not be applicable to stakes races.

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c) Upon the approval of the Stewards, this Section shall not be applicable on the closing day of a meet to ensure the payout of the carryover.

(Source: Amended by emergency rulemaking at 39 Ill. Reg. 7292, effective May 7, 2015, for a maximum of 150 days)

POLLUTION CONTROL BOARD

NOTICE OF WITHDRAWAL OF PROPOSED AMENDMENTS

- 1) Heading of the Part: General Rules
- 2) Code Citation: 35 Ill. Adm. Code 101
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
101.100	Amendment
101.202	Amendment
101.300	Amendment
101.302	Amendment
101.304	Amendment
101.400	Amendment
101.1060	Amendment
101.APPENDIX A	
101.ILLUSTRATION I	Amendment
101. ILLUSTRATION J	Renumbered/New Section
101. ILLUSTRATION K	Renumbered
101. ILLUSTRATION L	Renumbered
101.APPENDIX E	
101. ILLUSTRATION A	Amendment
101. ILLUSTRATION B	Amendment
- 4) Date Notice of Proposed published in the *Illinois Register*: March 6, 2015; 39 Ill. Reg. 3276
- 5) Reason for the Withdrawal: Agency is proposing additional substantive amendments.

POLLUTION CONTROL BOARD

NOTICE OF WITHDRAWAL OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Enforcement
- 2) Code Citation: 35 Ill. Adm. Code 103
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
103.204	Amendment
103.206	Amendment
103.404	Amendment
- 4) Date Notice of Proposed published in the *Illinois Register*: March 6, 2015; 39 Ill. Reg. 3329
- 5) Reason for the Withdrawal: Agency is proposing additional substantive amendments.

POLLUTION CONTROL BOARD

NOTICE OF WITHDRAWAL OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Proceedings Pursuant to Specific Rules or Statutory Provisions
- 2) Code Citation: 35 Ill. Adm. Code 106
- 3) Section Number: Proposed Action:
106.708 Amendment
- 4) Date Notice of Proposed Amendments published in the *Illinois Register*: March 6, 2015,
39 Ill. Reg. 3336
- 5) Reason for the Withdrawal: Agency is proposing additional substantive amendments.

POLLUTION CONTROL BOARD

NOTICE OF WITHDRAWAL OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Administrative Citations
- 2) Code Citation: 35 Ill. Adm. Code 108
- 3)

<u>Section Numbers</u> :	<u>Proposed Actions</u> :
108.100	Amendment
108.200	Amendment
108.202	Amendment
108.204	Amendment
108.206	Amendment
108.300	Amendment
108.402	Amendment
108.500	Amendment
- 4) Date Notice of Proposed published in the *Illinois Register*: March 6, 2015; 39 Ill. Reg. 3344
- 5) Reason for the Withdrawal: Agency is proposing additional substantive amendments.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received during the period of May 5, 2015 through May 11, 2015. Rulemaking are scheduled for review at the Committee's June 16, 2015 meeting. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rulemaking should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

<u>Second Notice Expires</u>	<u>Agency and Rule</u>	<u>Start Of First Notice</u>	<u>JCAR Meeting</u>
6/20/15	<u>Illinois Emergency Management Agency</u> , Training and Education Program (Repealer) (29 Ill. Adm. Code 110)	3/13/15 39 Ill. Reg. 3450	6/16/15
6/20/15	<u>Secretary of State</u> , Cancellation, Revocation or Suspension of Licenses of Permits (92 Ill. Adm. Code 1040)	3/13/15 39 Ill. Reg. 3457	6/16/15
6/21/15	<u>Illinois Racing Board</u> , Medication (11 Ill. Adm. Code 603)	12/1/14 38 Ill. Reg. 22022	6/16/15
6/17/15	<u>Illinois Racing Board</u> , Entries, Subscriptions, and Declarations (11 Ill. Adm. Code 1413)	3/6/15 39 Ill. Reg. 3415	6/16/15

ILLINOIS ADMINISTRATIVE CODE
Issue Index - With Effective Dates

Rules acted upon in Volume 39, Issue 21 are listed in the Issues Index by Title number, Part number, Volume and Issue. Inquiries about the Issue Index may be directed to the Administrative Code Division at (217) 782-7017/18.

PROPOSED RULES

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