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October 3, 2014 Volume 38, Issue 40

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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 2014

Issue#	Rules Due Date	Date of Issue
1	December 23, 2013	January 3, 2014
2	December 30, 2013	January 10, 2013
3	January 6, 2014	January 17, 2014
4	January 13, 2014	January 24, 2014
5	January 21, 2014	January 31, 2014
6	January 27, 2014	February 7, 2014
7	February 3, 2014	February 14, 2014
8	February 10, 2014	February 21, 2014
9	February 18, 2014	February 28, 2014
10	February 24, 2014	March 7, 2014
11	March 3, 2014	March 14, 2014
12	March 10, 2014	March 21, 2014
13	March 17, 2014	March 28, 2014
14	March 24, 2014	April 4, 2014
15	March 31, 2014	April 11, 2014
16	April 7, 2014	April 18, 2014
17	April 14, 2014	April 25, 2014
18	April 21, 2014	May 2, 2014

19	April 28, 2014	May 9, 2014
20	May 5, 2014	May 16, 2014
21	May 12, 2014	May 23, 2014
22	May 19, 2014	May 30, 2014
23	May 27, 2014	June 6, 2014
24	June 2, 2014	June 13, 2014
25	June 9, 2014	June 20, 2014
26	June 16, 2014	June 27, 2014
27	June 23, 2014	July 7, 2014
28	June 30, 2014	July 11, 2014
29	July 7, 2014	July 18, 2014
30	July 14, 2014	July 25, 2014
31	July 21, 2014	August 1, 2014
32	July 28, 2014	August 8, 2014
33	August 4, 2014	August 15, 2014
34	August 11, 2014	August 22, 2014
35	August 18, 2014	August 29, 2014
36	August 25, 2014	September 5, 2014
37	September 2, 2014	September 12, 2014
38	September 8, 2014	September 19, 2014
39	September 15, 2014	September 26, 2014
40	September 22, 2014	October 3, 2014
41	September 29, 2014	October 10, 2014
42	October 6, 2014	October 17, 2014
43	October 14, 2014	October 24, 2014
44	October 20, 2014	October 31, 2014
45	October 27, 2014	November 7, 2014
46	November 3, 2014	November 14, 2014
47	November 10, 2014	November 21, 2014
48	November 17, 2014	December 1, 2014
49	November 24, 2014	December 5, 2014
50	December 1, 2014	December 12, 2014
51	December 8, 2014	December 19, 2014
52	December 15, 2014	December 26, 2014

CONCEALED CARRY LICENSING REVIEW BOARD

NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Concealed Carry Licensing Review
- 2) Code Citation: 20 Ill. Adm. Code 2900
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
2900.100	New Section
2900.110	New Section
2900.120	New Section
2900.130	New Section
2900.140	New Section
2900.150	New Section
2900.160	New Section
2900.170	New Section
- 4) Statutory Authority: Implements the Firearm Concealed Carry Act [430 ILCS 66] and authorized by Section 20 of that Act
- 5) A Complete Description of the Subjects and Issues Involved: The purpose of this Part is to provide procedures and requirements of the Concealed Carry Licensing Review Board (CCLRB) to include meetings of the CCLRB, conflicts of interest, department liaison, consideration of objections, hearings, decisions, and reporting.
- 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 proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: These rules will not require a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Within 45 days after the publication of this Notice, any interested person

CONCEALED CARRY LICENSING REVIEW BOARD

NOTICE OF PROPOSED RULES

may submit comments, data, views or argument regarding the proposed rules. The submissions must be in writing and directed to:

Ms. Robinzina Bryant
Chair, Concealed Carry Licensing Review Board
Illinois State Police
801 South 7th Street, Suite 1200-A
Springfield IL 62703

217/782-7658

- 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 rule was not included on either of the 2 most recent agendas because: This board was newly created by 430 ILCS 66, and the members were not aware of the requirement to file a regulatory agenda.

The full text of the Proposed Rules is identical to that of the emergency version of this rulemaking and can be found in this issue on page 19571.

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Water Quality Standards
- 2) Code Citation: 35 Ill. Adm. Code 302
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
302.101	Amendment
302.102	Amendment
302.401	Amendment
302.402	Amendment
302.404	Amendment
302.405	Amendment
302.407	Amendment
302.408	Amendment
302.409	Amendment
302.410	Amendment
302.412	New Section
302.601	Amendment
302.648	Amendment
302.657	Amendment
- 4) Statutory Authority: Implementing Section 13 and authorized by Sections 11(b) and 27 of the Environmental Protection Act [415 ILCS 5/13, 11(b) and 27]
- 5) A Complete Description of the Subjects and Issues Involved: For a more detailed description, please see the Board's opinion and order of September 18, 2014 in R08-9(D). The Board proposes water quality standards for the Chicago Area Waterways System (CAWS) and the Lower Des Plaines River (LDPR) that are necessary to meet the aquatic life uses for those waterways. The Board is proposing the standards for many constituents as recommended by the Illinois Environmental Protection Agency (IEPA), with two notable exceptions. The Board finds that the 500 mg/L chloride standard must be adapted for the Chicago Sanitary and Ship Canal (CSSC) from December 1 until April 30. Therefore the Board proposes for the CSSC a numeric standard of 620 mg/L as an acute water quality standard and 990 mg/L as a chronic water quality standard for chloride from December 1 until April 30. The Board also finds that the temperature water quality standards proposed by IEPA as well as those suggested by other participants are not appropriate. Therefore, the Board proposes that the General Use temperature standards apply to the waterways.

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

6) Published studies or reports, and sources of underlying data, used to compose this rulemaking:

- Lower Des Plaines River Use Attainability Analysis Final Report. AquaNova International, Ltd. and Hey & Associates, Inc., prepared for Illinois EPA (December 2003).
- Chicago Area Waterway System Use Attainability Analysis Final Report. Camp, Dresser and McKee, prepared for Illinois EPA (August 2007).
- Interim Economic Guidance for Water Quality Standards Workbook (Appendix M to the Water Quality Standards Handbook—Second Edition, EPA-823-B-94-005b). U.S. EPA Office of Water (EPA-823-B-95-002) (March 1995).
- Illinois Sanitary Water Board Rules and Regulations SWB-8 Water Quality Standards, Interstate Waters, Illinois River and Lower Section of Des Plaines River (REF. 348.025 ISWB SWB-8 C.2) (Criteria Adopted December 1, 1966; Implementation Plan Submitted August 10, 1967; Approved by U.S. Dept. of Interior January 27, 1968; Sanitary Water Board Reapproved March 5, 1968).
- Illinois Sanitary Water Board Rules and Regulations SWB-15 Water Quality Standards, Interstate Waters, Chicago River and Calumet River System and Calumet Harbor Basin (REF. 348.025 ISWB SWB-15 C.2) (Adopted by Board June 28, 1967; Approved by U.S. Dept. of Interior January 27, 1968; Sanitary Water Board reapproval March 5, 1968).
- Ordinance: Code of Forest Preserve District of Cook County, Title 2: Forest Preserve District Lands and Properties, Chapter 4: Recreation in the Forest Preserve.
- Inventory of Public Access Locations along the Chicago Area Waterway System. Illinois EPA, Bureau of Water (May 15, 2007).
- Description of the Chicago Waterway System: Use Attainability Analysis Study Conducted by Illinois EPA Bureau of Water in Cooperation with MWRDGC. MWRDGC, Research and Development (May 2002).
- Minutes from the June 23, 2005 Dispersal Barrier Advisory Panel. Philip B. Moy, University of Wisconsin Sea Grant Institute (June 23, 2005).

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NOTICE OF PROPOSED AMENDMENTS

- Chicago Area Waterways Health Precautions Pamphlet. MWRDGC, Illinois Department of Public Health, U.S. EPA, Illinois EPA (October 2003).
- Ambient Water Quality Criteria for Bacteria – 1986. U.S. EPA Office of Water (EPA440/5-84-002) (January 1986).
- Analysis of Physical Habitat Quality and Limitations to Waterways in the Chicago Area. Center for Applied Bioassessment and Biocriteria, prepared for U.S. EPA Region 5 (2004).
- Aquatic Life and Habitat Data Collected in 2006 on the Illinois and Des Plaines Rivers. Midwest Biodiversity Institute, prepared for U.S. EPA Region 5 (2006).
- Biological Criteria for the Protection of Aquatic Life: Volume II: Users Manual for Biological and Field Assessment of Ohio Surface Waters. Ohio Environmental Protection Agency, Surface Water Section (Updated January 1, 1988).
- Interpreting Illinois Fish-IBI Scores, DRAFT: January 2005. Illinois EPA, Bureau of Water (January 2005).
- Quality Criteria for Water 1986 (gold book). U.S. EPA Office of Water (EPA 440/5-86-001) pp. 17-21, 34, 76-79, 168-171 and 253-261 (May 1, 1986).
- 2001-2006 Effluent Sample Results for Temperature at Water Reclamation Plants, 2005 and 2006 Water Quality Sample Results for Temperature, pH, Alkalinity and Chloride, and Calculations of H₂CO₃ (soluble CO₂) in Chicago Area Waterways in 2005 and 2006. MWRDGC, Research and Development (June 4, 2007).
- Ambient Water Quality Criteria for Dissolved Oxygen. U.S. EPA Office of Water Regulations and Standards. Criteria and Standards Division. Washington, D.C (EPA 440/5-86-003) (April 1986).
- 1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water. U.S. EPA Office of Water 4301 (EPA-820-B-96-001) (September 1996).

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- The Metals Translator: Guidance for Calculating A Total Recoverable Permit Limit From A Dissolved Criterion. U.S. EPA Office of Water 4305 (EPA-823-B-96-007) (June 1996).
- 2001 Update of Ambient Water Quality Criteria for Cadmium. U.S. EPA Office of Water 4304 (EPA-822-R-01-001) (April 2001).
- 2005 and 2006 Water Quality Sample Results for Hardness, Cadmium, Nickel and Zinc and Calculated Compliance Rates with Proposed Chronic Standards for the Respective Metals. MWRDGC, Research and Development (April 25, 2007).
- 2005 and 2006 Effluent Sample Results for Hardness and Cadmium at Calumet, North Side, and Stickney Water Reclamation Plants. MWRDGC, Research and Development (May 1, 2007).
- Quality Criteria for Water. U.S. EPA (PB-263 943) pp. 152-159 (1976).
- Ambient Water Quality for Silver. U.S. EPA Office of Water (EPA 440/5-80-071) (October 1980).
- Derivation of a Colorado State Manganese Table Value Standard for the Protection of Aquatic Life. William A. Stubblefield and James R. Hockett. ENSR Corporation (July 2000).
- Temperature Criteria Options for the Lower Des Plaines River. Chris O. Yoder, Research Director. Midwest Biodiversity Institute, Columbus, Ohio (October 11, 2005).
- Letter from Chris Yoder, Midwest Biodiversity Institute, to Toby Frevert, Illinois EPA Bureau of Water (July 11, 2007).
- 1999 Update of Ambient Water Quality Criteria for Ammonia. U.S. EPA Office of Water (EPA-822-R-99-014) (December 1999).
- The Upper Illinois Waterway Study Interim Report. 1994 Ichthyoplankton Investigation RM 276.2-321.7. EA Engineering, Science, and Technology, prepared for Commonwealth Edison Co. (April 1995).

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- 2004 Lower Des Plaines River Fisheries Investigation RM 274.4-285.5. EA Engineering, Science, and Technology, prepared for Midwest Generation, EME, LLC (November 2005).
- Master Plan North Side Water Reclamation Plant and Surrounding Chicago Waterways, Technical Memorandum 1WQ: Disinfection Evaluation. Consoer Townsend Envirodyne Engineers, Inc., prepared for MWRDGC (August 26, 2005).
- Technical Memorandum 4WQ Supplemental Aeration of the North and South Branches of the Chicago River MWRDGC North Side Water Reclamation Plant, Project No. 04-014-2P. Consoer Townsend Envirodyne Engineers, Inc., prepared for MWRDGC (January 12, 2007).
- Technical Memorandum 5WQ Flow Augmentation of the Upper North Shore Channel MWRDGC North Side Water Reclamation Plant, Project No. 04-014-2P. Consoer Townsend Envirodyne Engineers, Inc., prepared for MWRDGC (January 12, 2007).
- Technical Memorandum 6WQ Flow Augmentation and Supplemental Aeration of the South Fork of the South Branch of the Chicago River MWRDGC North Side Water Reclamation Plant, Project No. 04-014-2P. Consoer Townsend Envirodyne Engineers, Inc., prepared for MWRDGC (January 12, 2007).
- Memorandum of Understanding By and Between Midwest Generation LLC and Illinois Environmental Protection Agency, Revised 12/10/2006 3:21:06 PM.
- A River is Reborn - Use Attainability Analysis for the Lower Des Plaines River, Illinois. Vladimir Novotny, Neal O'Reilly, Timothy Ehlinger, Toby Frevert and Scott Twait. Water Environment Research, Volume 79, Number 1, pp. 68-80.
- Chicago Area Waterway System Habitat Evaluation And Improvement Study: Habitat Evaluation Report And Habitat Improvement Report, Prepared for the Metropolitan Water Reclamation District of Greater Chicago by LimnoTech

Statutes and Regulations

Federal Water Pollution Control Act (Clean Water Act) 33 USC 1251

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Beaches Environmental Assessment and Coastal Health Act 2000 (Beach Act), 33 USC 1313

Illinois Environmental Protection Act [415 ILCS 5/1]

40 CFR Part 131 (Water Quality Standards)

U.S. EPA Guidance Documents

Water Quality Standards Handbook: Second Edition, EPA-823-B-94-005a, U.S. EPA Office of Water (4305) (August 1994)

Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses, PB85-227049, U.S. EPA Office of Research and Development, Environmental Research Laboratories (1985) (reproduced by National Technical Information Service, U.S. Department of Commerce).

Board Opinions

In the Matter of: Petition of Commonwealth Edison Company for an Adjusted Standard from 35 Ill. Adm. Code 302.211(d) and (e), AS 96-10 (October 3, 1996) and (March 16, 2000).

Commonwealth Edison Company v. Illinois EPA, PCB 91-29 (Variance – Water) (November 21, 1991).

In the Matter of: Proposed Determination of No Significant Ecological Damage for the Joliet Generating Station, PCB 87-93 (November 15, 1989).

In the Matter of: Water Quality and Effluent Standards Applicable to the Chicago River System and Calumet River System, R 87-27 (May 19, 1988).

Commonwealth Edison Company v. Illinois EPA, PCB 84-33 (Variance – Water) (December 20, 1984).

Commonwealth Edison Company v. Illinois EPA, PCB 78-79 (Variance – Water) (May 25, 1978).

In the Matter of: Water Quality Standards Revisions, R72-4 (November 8, 1973).

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NOTICE OF PROPOSED AMENDMENTS

In the Matter of: Water Quality Standards Revisions, R71-14 (Consolidated with R70-8 and R71-20) (March 7, 1972).

Petition of Commonwealth Edison Company for Adjusted Standard from 35 Ill. Adm. Code 302.211(d) and (e), AS 96-10 (Oct. 3, 1996).

- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: These proposed amendments do not create or enlarge a State mandate as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3].
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may download copies of the Board's opinion and order in R08-09(D) from the Board's Web site at <http://www.ipcb.state.il.us> and may also request copies by calling the Clerk's office at 312/814-3620.

The Board will accept written public comment on this proposal for 45 days after the date of publication in the *Illinois Register*. Comments should refer to Docket R08-08(D) and be addressed to:

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

- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not-for-profit corporations affected: This rulemaking establishes water quality standards for the Chicago Area Waterways System and Lower Des Plaines River; any small business, small

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

municipalities and not-for-profit corporation that discharges to those waterways will be impacted.

- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of Professional skills necessary for compliance: Wastewater treatment plant staff; possibly an environmental engineer.

- 14) Regulatory Agenda on which this rulemaking was summarized: January 2014

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

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE C: WATER POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD

PART 302
WATER QUALITY STANDARDS

SUBPART A: GENERAL WATER QUALITY PROVISIONS

Section	
302.100	Definitions
302.101	Scope and Applicability
302.102	Allowed Mixing, Mixing Zones and ZIDs
302.103	Stream Flows
302.104	Main River Temperatures
302.105	Antidegradation

SUBPART B: GENERAL USE WATER QUALITY STANDARDS

Section	
302.201	Scope and Applicability
302.202	Purpose
302.203	Offensive Conditions
302.204	pH
302.205	Phosphorus
302.206	Dissolved Oxygen
302.207	Radioactivity
302.208	Numeric Standards for Chemical Constituents
302.209	Fecal Coliform
302.210	Other Toxic Substances
302.211	Temperature
302.212	Total Ammonia Nitrogen
302.213	Effluent Modified Waters (Ammonia) (Repealed)

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Section	
302.301	Scope and Applicability
302.302	Algicide Permits

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302.303	Finished Water Standards
302.304	Chemical Constituents
302.305	Other Contaminants
302.306	Fecal Coliform
302.307	Radium 226 and 228

SUBPART D: CHICAGO AREA WATERWAY SYSTEM AND LOWER DES PLAINES RIVER WATER QUALITY~~SECONDARY CONTACT~~ AND INDIGENOUS AQUATIC LIFE STANDARDS

Section	
302.401	Scope and Applicability
302.402	Purpose
302.403	Unnatural Sludge
302.404	pH
302.405	Dissolved Oxygen
302.406	Fecal Coliform (Repealed)
302.407	Chemical Constituents
302.408	Temperature
302.409	Cyanide <u>for the South Fork of the South Branch of the Chicago River (Bubbly Creek)</u>
302.410	Substances Toxic to Aquatic Life
<u>302.412</u>	<u>Total Ammonia Nitrogen</u>

SUBPART E: LAKE MICHIGAN BASIN WATER QUALITY STANDARDS

Section	
302.501	Scope, Applicability, and Definitions
302.502	Dissolved Oxygen
302.503	pH
302.504	Chemical Constituents
302.505	Fecal Coliform
302.506	Temperature
302.507	Thermal Standards for Existing Sources on January 1, 1971
302.508	Thermal Standards for Sources Under Construction But Not In Operation on January 1, 1971
302.509	Other Sources
302.510	Incorporations by Reference
302.515	Offensive Conditions

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NOTICE OF PROPOSED AMENDMENTS

- 302.520 Regulation and Designation of Bioaccumulative Chemicals of Concern (BCCs)
302.521 Supplemental Antidegradation Provisions for Bioaccumulative Chemicals of Concern (BCCs)
302.525 Radioactivity
302.530 Supplemental Mixing Provisions for Bioaccumulative Chemicals of Concern (BCCs)
302.535 Ammonia Nitrogen
302.540 Other Toxic Substances
302.545 Data Requirements
302.550 Analytical Testing
302.553 Determining the Lake Michigan Aquatic Toxicity Criteria or Values – General Procedures
302.555 Determining the Tier I Lake Michigan Acute Aquatic Toxicity Criterion (LMAATC): Independent of Water Chemistry
302.560 Determining the Tier I Lake Michigan Basin Acute Aquatic Life Toxicity Criterion (LMAATC): Dependent on Water Chemistry
302.563 Determining the Tier II Lake Michigan Basin Acute Aquatic Life Toxicity Value (LMAATV)
302.565 Determining the Lake Michigan Basin Chronic Aquatic Life Toxicity Criterion (LMCATC) or the Lake Michigan Basin Chronic Aquatic Life Toxicity Value (LMCATV)
302.570 Procedures for Deriving Bioaccumulation Factors for the Lake Michigan Basin
302.575 Procedures for Deriving Tier I Water Quality Criteria and Values in the Lake Michigan Basin to Protect Wildlife
302.580 Procedures for Deriving Water Quality Criteria and Values in the Lake Michigan Basin to Protect Human Health – General
302.585 Procedures for Determining the Lake Michigan Basin Human Health Threshold Criterion (LMHHTC) and the Lake Michigan Basin Human Health Threshold Value (LMHHTV)
302.590 Procedures for Determining the Lake Michigan Basin Human Health Nonthreshold Criterion (LMHHNC) or the Lake Michigan Basin Human Health Nonthreshold Value (LMHHNV)
302.595 Listing of Bioaccumulative Chemicals of Concern, Derived Criteria and Values

SUBPART F: PROCEDURES FOR DETERMINING WATER QUALITY CRITERIA

- Section
302.601 Scope and Applicability
302.603 Definitions

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302.604	Mathematical Abbreviations
302.606	Data Requirements
302.612	Determining the Acute Aquatic Toxicity Criterion for an Individual Substance – General Procedures
302.615	Determining the Acute Aquatic Toxicity Criterion – Toxicity Independent of Water Chemistry
302.618	Determining the Acute Aquatic Toxicity Criterion – Toxicity Dependent on Water Chemistry
302.621	Determining the Acute Aquatic Toxicity Criterion – Procedure for Combinations of Substances
302.627	Determining the Chronic Aquatic Toxicity Criterion for an Individual Substance – General Procedures
302.630	Determining the Chronic Aquatic Toxicity Criterion – Procedure for Combinations of Substances
302.633	The Wild and Domestic Animal Protection Criterion
302.642	The Human Threshold Criterion
302.645	Determining the Acceptable Daily Intake
302.648	Determining the Human Threshold Criterion
302.651	The Human Nonthreshold Criterion
302.654	Determining the Risk Associated Intake
302.657	Determining the Human Nonthreshold Criterion
302.658	Stream Flow for Application of Human Nonthreshold Criterion
302.660	Bioconcentration Factor
302.663	Determination of Bioconcentration Factor
302.666	Utilizing the Bioconcentration Factor
302.669	Listing of Derived Criteria
302.APPENDIX A	References to Previous Rules
302.APPENDIX B	Sources of Codified Sections
302.APPENDIX C	Maximum total ammonia nitrogen concentrations allowable for certain combinations of pH and temperature
302.TABLE A	pH-Dependent Values of the AS (Acute Standard)
302.TABLE B	Temperature and pH-Dependent Values of the CS (Chronic Standard) for Fish Early Life Stages Absent
302.TABLE C	Temperature and pH-Dependent Values of the CS (Chronic Standard) for Fish Early Life Stages Present
302.APPENDIX D	Section 302.206(d): Stream Segments for Enhanced Dissolved Oxygen Protection

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NOTICE OF PROPOSED AMENDMENTS

AUTHORITY: Implementing Section 13 and authorized by Sections 11(b) and 27 of the Environmental Protection Act [415 ILCS 5/13, 11(b), and 27].

SOURCE: Filed with the Secretary of State January 1, 1978; amended at 2 Ill. Reg. 44, p. 151, effective November 2, 1978; amended at 3 Ill. Reg. 20, p. 95, effective May 17, 1979; amended at 3 Ill. Reg. 25, p. 190, effective June 21, 1979; codified at 6 Ill. Reg. 7818; amended at 6 Ill. Reg. 11161, effective September 7, 1982; amended at 6 Ill. Reg. 13750, effective October 26, 1982; amended at 8 Ill. Reg. 1629, effective January 18, 1984; peremptory amendments at 10 Ill. Reg. 461, effective December 23, 1985; amended at R87-27 at 12 Ill. Reg. 9911, effective May 27, 1988; amended at R85-29 at 12 Ill. Reg. 12082, effective July 11, 1988; amended in R88-1 at 13 Ill. Reg. 5998, effective April 18, 1989; amended in R88-21(A) at 14 Ill. Reg. 2899, effective February 13, 1990; amended in R88-21(B) at 14 Ill. Reg. 11974, effective July 9, 1990; amended in R94-1(A) at 20 Ill. Reg. 7682, effective May 24, 1996; amended in R94-1(B) at 21 Ill. Reg. 370, effective December 23, 1996; expedited correction at 21 Ill. Reg. 6273, effective December 23, 1996; amended in R97-25 at 22 Ill. Reg. 1356, effective December 24, 1997; amended in R99-8 at 23 Ill. Reg. 11249, effective August 26, 1999; amended in R01-13 at 26 Ill. Reg. 3505, effective February 22, 2002; amended in R02-19 at 26 Ill. Reg. 16931, effective November 8, 2002; amended in R02-11 at 27 Ill. Reg. 166, effective December 20, 2002; amended in R04-21 at 30 Ill. Reg. 4919, effective March 1, 2006; amended in R04-25 at 32 Ill. Reg. 2254, effective January 28, 2008; amended in R07-9 at 32 Ill. Reg. 14978, effective September 8, 2008; amended in R11-18 at 36 Ill. Reg. 18871, effective December 12, 2012; amended in R11-18(B) at 37 Ill. Reg. 7493, effective May 16, 2013; amended in R08-09(D) at 38 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL WATER QUALITY PROVISIONS

Section 302.101 Scope and Applicability

- a) This Part contains schedules of water quality standards which are applicable throughout the State as designated in 35 Ill. Adm. Code 303. Site specific water quality standards are found with the water use designations in 35 Ill. Adm. Code 303.
- b) Subpart B contains general use water quality standards which must be met in waters of the State for which there is no specific designation (35 Ill. Adm. Code 303.201).
- c) Subpart C contains the public and food processing water supply standards. These are cumulative with Subpart B and must be met by all designated waters at the

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point at which water is drawn for treatment and distribution as a potable supply or for food processing (35 Ill. Adm. Code 303.202).

- d) Subpart D contains the [Chicago Area Waterway System and the Lower Des Plaines River water quality secondary contact and indigenous aquatic life standards](#). These standards must be met only by certain waters designated in 35 Ill. Adm. Code 303.204, [303.220](#), [303.225](#), [303.227](#), [303.230](#), [303.235](#) and [303.240](#)~~303.441~~. [Subpart D also contains water quality standards applicable to indigenous aquatic life waters found only in the South Fork of the South Branch of the Chicago River \(Bubbly Creek\)](#).
- e) Subpart E contains the Lake Michigan Basin water quality standards. These must be met in the waters of the Lake Michigan Basin as designated in 35 Ill. Adm. Code 303.443.
- f) Subpart F contains the procedures for determining each of the criteria designated in ~~Sections~~[Section](#) 302.210 [and 302.410](#).
- g) Unless the contrary is clearly indicated, all references to "Parts" or "Sections" are to Ill. Adm. Code, Title 35: Environmental Protection. For example, "Part 309" is 35 Ill. Adm. Code 309, and "Section 309.101" is 35 Ill. Adm. Code 309.101.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 302.102 Allowed Mixing, Mixing Zones and ZIDs

- a) Whenever a water quality standard is more restrictive than its corresponding effluent standard, or where there is no corresponding effluent standard specified at 35 Ill. Adm. Code 304, an opportunity shall be allowed for compliance with 35 Ill. Adm. Code 304.105 by mixture of an effluent with its receiving waters, provided the discharger has made every effort to comply with the requirements of 35 Ill. Adm. Code 304.102.
- b) The portion, volume and area of any receiving waters within which mixing is allowed pursuant to subsection (a) shall be limited by the following:
 - 1) Mixing must be confined in an area or volume of the receiving water no larger than the area or volume which would result after incorporation of outfall design measures to attain optimal mixing

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efficiency of effluent and receiving waters. ~~These~~Such measures may include, but are not limited to, use of diffusers and engineered location and configuration of discharge points.

- 2) Mixing is not allowed in waters which include a tributary stream entrance if ~~thesueh~~ mixing occludes the tributary mouth or otherwise restricts the movement of aquatic life into or out of the tributary.
- 3) Mixing is not allowed in water adjacent to bathing beaches, bank fishing areas, boat ramps or dockages or any other public access area.
- 4) Mixing is not allowed in waters containing mussel beds, endangered species habitat, fish spawning areas, areas of important aquatic life habitat, or any other natural features vital to the well being of aquatic life in such a manner that the maintenance of aquatic life in the body of water as a whole would be adversely affected.
- 5) Mixing is not allowed in waters ~~that~~which contain intake structures of public or food processing water supplies, points of withdrawal of water for irrigation, or watering areas accessed by wild or domestic animals.
- 6) Mixing must allow for a zone of passage for aquatic life in which water quality standards are met. However, a zone of passage is not required in receiving streams that have zero flow for at least seven consecutive days recurring on average in nine years out of ~~10~~ten.
- 7) The area and volume in which mixing occurs, alone or in combination with other areas and volumes of mixing, must not intersect any area of any body of water in such a manner that the maintenance of aquatic life in the body of water as a whole would be adversely affected.
- 8) The area and volume in which mixing occurs, alone or in combination with other areas and volumes of mixing, must not contain more than 25% of the cross-sectional area or volume of

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flow of a stream except for those streams ~~for which~~^{where} the dilution ratio is less than 3:1. In streams where the dilution ratio is less than 3:1, the volume in which mixing occurs, alone or in combination with other volumes of mixing, must not contain more than 50% of the volume flow unless an applicant for an NPDES permit demonstrates, pursuant to subsection (d) ~~of this section~~, that an adequate zone of passage is provided for pursuant to ~~subsection~~^{Section} (b)(6).

- 9) No mixing is allowed ~~when~~^{where} the water quality standard for the constituent in question is already violated in the receiving water.
 - 10) No body of water may be used totally for mixing of single outfall or combination of outfalls, except as provided in ~~subsection~~^{Section 302.102}(b)(6).
 - 11) Single sources of effluents ~~that~~^{which} have more than one outfall shall be limited to a total area and volume of mixing no larger than that allowable if a single outfall were used.
 - 12) The area and volume in which mixing occurs must be as small as is practicable under the limitations prescribed in this subsection (b), and in no circumstances may the mixing encompass a surface area larger than 26 acres.
- c) All water quality standards of this Part must be met at every point outside of the area and volume of the receiving water within which mixing is allowed. The acute toxicity standards of ~~this Part Sections 302.208 and 302.210~~ must be met within the area and volume within which mixing is allowed, except as provided in subsection (e).
- d) Pursuant to the procedures of Section 39 of the Act and 35 Ill. Adm. Code 309, a person may apply to the Agency to include as a condition in an NPDES permit formal definition of the area and volume of the waters of the State within which mixing is allowed for the NPDES discharge in question. ~~The~~^{Such formally} defined area and volume of allowed mixing shall constitute a "mixing zone" for the purposes of 35 Ill. Adm. Code: Subtitle C. Upon proof by the applicant that a proposed mixing zone conforms with the requirements of Section 39 of the Act, this Section and any additional limitations as may be imposed by the Clean Water

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Act (CWA) (33 USC 1251 et seq.), the Act or Board regulations, the Agency shall, pursuant to Section 39(b) of the Act, include within the NPDES permit a condition defining the mixing zone.

- e) Pursuant to the procedures of Section 39 of the Act and 35 Ill. Adm. Code 309, a person may apply to the Agency to include as a condition in an NPDES permit a ZID as a component portion of a mixing zone. ~~The~~Such ZID shall, at a minimum, be limited to waters within which effluent dispersion is immediate and rapid. For the purposes of this subsection, "immediate" dispersion means an effluent's merging with receiving waters without delay in time after its discharge and within close proximity of the end of the discharge pipe, so as to minimize the length of exposure time of aquatic life to undiluted effluent, and "rapid" dispersion means an effluent's merging with receiving waters so as to minimize the length of exposure time of aquatic life to undiluted effluent. Upon proof by the applicant that a proposed ZID conforms with the requirements of Section 39 of the Act and this Section, the Agency shall, pursuant to Section 39(b) of the Act, include within the NPDES permit a condition defining the ZID.
- f) Pursuant to Section 39 of the Act and 35 Ill. Adm. Code 309.103, an applicant for an NPDES permit shall submit data to allow the Agency to determine that the nature of any mixing zone or mixing zone in combination with a ZID conforms with the requirements of Section 39 of the Act and of this Section. A permittee may appeal Agency determinations concerning a mixing zone or ZID pursuant to the procedures of Section 40 of the Act and 35 Ill. Adm. Code 309.181.
- g) ~~When~~Where a mixing zone is defined in an NPDES permit, the waters within that mixing zone, for the duration of that NPDES permit, shall constitute the sole waters within which mixing is allowed for the permitted discharge. It shall not be a defense in any action brought pursuant to 35 Ill. Adm. Code 304.105 that the area and volume of waters within which mixing may be allowed pursuant to subsection (b) is less restrictive than the area or volume or waters encompassed in the mixing zone.
- h) ~~When~~Where a mixing zone is explicitly denied in a NPDES permit, no waters may be used for mixing by the discharge to which the NPDES permit applies, all other provisions of this Section notwithstanding.
- i) Where an NPDES permit is silent on the matter of a mixing zone, or ~~when~~where no NPDES permit is in effect, the burden of proof shall be on the discharger to

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demonstrate compliance with this Section in any action brought pursuant to 35 Ill. Adm. Code 304.105.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART D: CHICAGO AREA WATERWAY SYSTEM AND LOWER DES PLAINES RIVER WATER QUALITY STANDARDS~~SECONDARY CONTACT AND~~
INDIGENOUS AQUATIC LIFE STANDARDS

Section 302.401 Scope and Applicability

- a) Subpart D contains the ~~secondary contact and~~ indigenous aquatic life standards. These must be met only by the South Fork of the South Branch of the Chicago River (Bubbly Creek)~~certain waters specifically designated in Part 303~~. The Subpart B general use and Subpart C public and food processing water supply standards of this Part do not apply to Bubbly Creek~~waters designated for secondary contact and indigenous aquatic life (Section 303.204)~~.
- b) Subpart D also contains the Chicago Area Waterway System and Lower Des Plaines River water quality standards. These must be met only by waters specifically designated in 35 Ill. Adm. Code 303. The Subpart B general use and Subpart C public and food processing water supply standards of this Part do not apply to waters described in 35 Ill. Adm. Code 303.204 as the Chicago Area Waterway System or Lower Des Plaines River and listed in 35 Ill. Adm. Code 303.220 through 303.240, except that waters designated as Primary Contact Recreation Waters in 35 Ill. Adm. Code 303.220 must meet the numeric water quality standard for bacteria applicable to protected waters in Section 302.209 of this Part.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 302.402 Purpose

The Chicago Area Waterway System and Lower Des Plaines River standards shall protect primary contact, incidental contact or non-contact recreational uses (except when designated as non-recreational waters); commercial activity, including navigation and industrial water supply uses; and the highest quality aquatic life and wildlife that is attainable, limited only by the physical condition of these waters and hydrologic modifications to these waters. The numeric and narrative standards contained in this Part will assure the protection of the aquatic life and

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recreational uses of the Chicago Area Waterway System and Lower Des Plaines River as those uses are defined in 35 Ill. Adm. Code 301 and designated in 35 Ill. Adm. Code 303. IndigenousSecondary contact and indigenous aquatic life standards are intended for the South Fork of the South Branch of the Chicago River (Bubbly Creek), which isfor those waters not suited for general use activities but which will be appropriate for all secondary contact uses and which will be capable of supporting an indigenous aquatic life limited only by the physical configuration of the body of water, characteristics and origin of the water and the presence of contaminants in amounts that do not exceed the water quality standards listed in this Subpart D.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 302.404 pH

pH (~~STORET number 00400~~) shall be within the range of ~~6.56-0~~ to 9.0 except for natural causes, except for the South Fork of the South Branch of the Chicago River (Bubbly Creek) for which pH shall be within the range of 6.0 to 9.0 except for natural causes.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 302.405 Dissolved Oxygen

Dissolved oxygen concentrations(~~STORET number 00300~~) shall not be less than the applicable values in subsections (a), (b), (c) and (d)~~4.0 mg/l at any time except that the Calumet Sag Channel shall not be less than 3.0 mg/l at any time.~~

- a) For the South Fork of the South Branch of the Chicago River (Bubbly Creek), dissolved oxygen concentrations shall not be less than 4.0 mg/L at any time.
- b) For the Upper Dresden Island Pool Aquatic Life Use waters listed in 35 Ill. Adm. Code 303.230:
 - 1) during the period of March through July:
 - A) 6.0 mg/L as a daily mean averaged over 7 days; and
 - B) 5.0 mg/L at any time; and
 - 2) during the period of August through February:

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- A) 5.5 mg/L as a daily mean averaged over 30 days;
 - B) 4.0 mg/L as a daily minimum averaged over 7 days; and
 - C) 3.5 mg/L at any time.
- c) For the Chicago Area Waterway System Aquatic Life Use A waters listed in 35 Ill. Adm. Code 303.235:
- 1) during the period of March through July, 5.0 mg/L at any time; and
 - 2) during the period of August through February:
 - A) 4.0 mg/L as a daily minimum averaged over 7 days; and
 - B) 3.5 mg/L at any time.
- d) For the Chicago Area Waterway System and Brandon Pool Aquatic Life Use B waters listed in 35 Ill. Adm. Code 303.240:
- 1) 4.0 mg/L as a daily minimum averaged over 7 days; and
 - 2) 3.5 mg/L at any time.
- e) Assessing attainment of dissolved oxygen mean and minimum values.
- 1) Daily mean is the arithmetic mean of dissolved oxygen concentrations in 24 consecutive hours.
 - 2) Daily minimum is the minimum dissolved oxygen concentration in 24 consecutive hours.
 - 3) The measurements of dissolved oxygen used to determine attainment or lack of attainment with any of the dissolved oxygen standards in this Section must assure daily minima and daily means that represent the true daily minima and daily means.
 - 4) The dissolved oxygen concentrations used to determine a daily mean or daily minimum should not exceed the air-equilibrated concentration.

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- 5) "Daily minimum averaged over 7 days" means the arithmetic mean of daily minimum dissolved oxygen concentrations in 7 consecutive 24-hour periods.
- 6) "Daily mean averaged over 7 days" means the arithmetic mean of daily mean dissolved oxygen concentrations in 7 consecutive 24-hour periods.
- 7) "Daily mean averaged over 30 days" means the arithmetic mean of daily mean dissolved oxygen concentrations in 30 consecutive 24-hour periods.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 302.407 Chemical Constituents

- a) The acute standard (AS) for the chemical constituents listed in subsection (e) shall not be exceeded at any time except as provided in subsection (d).
- b) The chronic standard (CS) for the chemical constituents listed in subsection (e) shall not be exceeded by the arithmetic average of at least four consecutive samples collected over any period of at least four days, except as provided in subsection (d). The samples used to demonstrate attainment or lack of attainment with a CS must be collected in a manner that assures an average representative of the sampling period. For the chemical constituents that have water quality based standards dependent upon hardness, the chronic water quality standard will be calculated according to subsection (e) using the hardness of the water body at the time the sample was collected. To calculate attainment status of chronic standards, the concentration of the chemical constituent in each sample is divided by the calculated water quality standard for the sample to determine a quotient. The water quality standard is attained if the mean of the sample quotients is less than or equal to one for the duration of the averaging period.
- c) The human health standard (HHS) for the chemical constituents listed in subsection (f) shall not be exceeded, on a 12-month rolling average based on at least eight samples, collected in a manner representative of the sampling period, except as provided in subsection (d).
- d) In waters where mixing is allowed pursuant to Section 302.102, the following apply:

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- 1) The AS shall not be exceeded in any waters except for those waters for which a zone of initial dilution (ZID) applies pursuant to Section 302.102.
- 2) The CS shall not be exceeded outside of waters in which mixing is allowed pursuant to Section 302.102.
- 3) The HHS shall not be exceeded outside of waters in which mixing is allowed pursuant to Section 302.102.

e) Numeric Water Quality Standards for the Protection of Aquatic Organisms

<u>Constituent</u>	<u>AS</u> <u>(µg/L)</u>	<u>CS</u> <u>(µg/L)</u>
<u>Arsenic</u> <u>(trivalent,</u> <u>dissolved)</u>	<u>340 X 1.0*=340</u>	<u>150 X 1.0*=150</u>
<u>Benzene</u>	<u>4200</u>	<u>860</u>
<u>Cadmium</u> <u>(dissolved)</u>	<u>exp[A+Bln(H)] X {1.138672-</u> <u>[(lnH)(0.041838)]}* , where A=-</u> <u>2.918 and B=1.128</u>	<u>exp[A+Bln(H)] X {1.101672-</u> <u>[(lnH)(0.041838)]}* , where</u> <u>A= -3.490 and B=0.7852</u>
<u>Chromium</u> <u>(hexavalent,</u> <u>total)</u>	<u>16</u>	<u>11</u>
<u>Chromium</u> <u>(trivalent,</u> <u>dissolved)</u>	<u>exp[A+Bln(H)] X 0.316* ,</u> <u>where A=3.7256 and</u> <u>B=0.8190</u>	<u>exp[A+Bln(H)] X 0.860* ,</u> <u>where A=0.6848 and</u> <u>B=0.8190</u>
<u>Copper</u> <u>(dissolved)</u>	<u>exp[A+Bln(H)] X 0.960* ,</u> <u>where A=-1.645 and</u> <u>B=0.9422</u>	<u>exp[A+Bln(H)] X 0.960* ,</u> <u>where A=-1.646 and</u> <u>B=0.8545</u>
<u>Cyanide**</u>	<u>22</u>	<u>10</u>
<u>Ethylbenzene</u>	<u>150</u>	<u>14</u>
<u>Flouride (total)</u>	<u>$e^{A+Bln(H)}$,</u> <u>where A=6.7319</u> <u>and B=0.5394</u>	<u>$e^{A+Bln(H)}$, but shall not exceed</u> <u>4.0 mg/L,</u> <u>where A=6.0445 and B=0.5394</u>
<u>Lead</u> <u>(dissolved)</u>	<u>exp[A+Bln(H)] X {1.46203-</u> <u>[(lnH)(0.145712)]}* ,</u> <u>where A=-1.301 and B=1.273</u>	<u>exp[A+Bln(H)] X {1.46203-</u> <u>[(lnH)(0.145712)]}* ,</u> <u>where A=-2.863 and</u> <u>B=1.273</u>

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<u>Manganese (dissolved)</u>	$\frac{e^{A+B\ln(H)}}{X} \times 0.9812^*$, where $A=4.9187$ and $B=0.7467$	$\frac{e^{A+B\ln(H)}}{X} \times 0.9812^*$, where $A=4.0635$ and $B=0.7467$
<u>Mercury (dissolved)</u>	$1.4 \times 0.85^*=1.2$	$0.77 \times 0.85^*=0.65$
<u>Nickel (dissolved)</u>	$\exp[A+B\ln(H)] \times 0.998^*$, where $A=0.5173$ and $B=0.8460$	$\exp[A+B\ln(H)] \times 0.997^*$, where $A=-2.286$ and $B=0.8460$
<u>Toluene</u>	<u>2000</u>	<u>600</u>
<u>TRC</u>	<u>19</u>	<u>11</u>
<u>Xylene(s)</u>	<u>920</u>	<u>360</u>
<u>Zinc (dissolved)</u>	$\exp[A+B\ln(H)] \times 0.978^*$, where $A=0.9035$ and $B=0.8473$	$\exp[A+B\ln(H)] \times 0.986^*$, where $A=-0.4456$ and $B=0.8473$

where:

$\mu\text{g/L}$ \equiv microgram per liter

$\exp[x]$ \equiv base of natural logarithms raised to the x- power

$\ln(H)$ \equiv natural logarithm of Hardness in milligrams per liter

$*$ \equiv conversion factor multiplier for dissolved metals

$**$ \equiv standard to be evaluated using either of the following USEPA approved methods, incorporated by reference at 35 Ill. Adm. Code 301.106: Method OIA-1677, DW: Available Cyanide by Flow Injection, Ligand Exchange, and Amperometry, January 2004, Document Number EPA-821-R-04-001 or Cyanide Amenable to Chlorination, Standard Methods 4500-CN-G (40 CFR 136.3)

f) Numeric Water Quality Standard for the Protection of Human Health

<u>Constituent</u>	<u>HHS in micrograms per liter ($\mu\text{g/L}$)</u>
<u>Benzene</u>	<u>310</u>
<u>Mercury (total)</u>	<u>0.012</u>
<u>Phenols</u>	<u>860,000</u>

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- g) Numeric Water Quality Standards for Other Chemical Constituents
Concentrations of the following chemical constituents shall not be exceeded
except in waters for which mixing is allowed pursuant to Section 302.102.

<u>Constituent</u>	<u>Unit</u>	<u>Standard</u>
<u>Chloride</u>	<u>mg/L</u>	<u>500</u>
<u>Iron (dissolved)</u>	<u>mg/L</u>	<u>1.0</u>
<u>Selenium (total)</u>	<u>mg/L</u>	<u>1.0</u>
<u>Silver (dissolved)</u>	<u>µg/L</u>	<u>$\exp[A+B\ln(H)] \times 0.85^*$, where $A=-6.52$ and $B=1.72$</u>
<u>Sulfate (where H is ≥ 100 but ≤ 500 and C is ≥ 25 but ≤ 500)</u>	<u>mg/L</u>	<u>$[1276.7+5.508(H)-1.457(C)] \times 0.65$</u>
<u>Sulfate (where H is ≥ 100 but ≤ 500 and C is ≥ 5 but < 25)</u>	<u>mg/L</u>	<u>$[-57.478 + 5.79(H) + 54.163(C)] \times 0.65$</u>
<u>Sulfate (where H > 500 and C ≥ 5)</u>	<u>mg/L</u>	<u>2,000</u>

where:

mg/L \equiv milligram per liter

µg/L \equiv microgram per liter

H \equiv Hardness concentration of receiving water in mg/L as CaCO₃

C \equiv Chloride concentration of receiving water in mg/L

exp[x] \equiv base of natural logarithms raised to the x-power

ln(H) \equiv natural logarithm of Hardness in milligrams per liter

* \equiv conversion factor multiplier for dissolved metals

- h) Concentrations of other chemical constituents in the South Fork of the South Branch of the Chicago River (Bubbly Creek) shall not exceed the following standards:

<u>CONSTITUENTS</u>	<u>STORET NUMBER</u>	<u>CONCENTRATION (mg/L)</u>

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Ammonia Un-ionized (as N*)	00612	0.1
Arsenic (total)	01002	1.0
Barium (total)	01007	5.0
Cadmium (total)	01027	0.15
Chromium (total hexavalent)	01032	0.3
Chromium (total trivalent)	01033	1.0
Copper (total)	01042	1.0
Cyanide (total)	00720	0.10
Fluoride (total)	00951	15.0
Iron (total)	01045	2.0
Iron (dissolved)	01046	0.5
Lead (total)	01051	0.1
Manganese (total)	01055	1.0
Mercury (total)	71900	0.0005
Nickel (total)	01067	1.0
Oil, fats and grease	00550, 00556 or 00560	15.0**
Phenols	32730	0.3
Selenium (total)	01147	1.0
Silver	01077	1.1
Zinc (total)	01092	1.0
Total Dissolved Solids	70300	1500

* For purposes of this [Section, section](#) the concentration of un-ionized ammonia shall be computed according to the following equation:

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$$U = \frac{N}{[0.94412(1 + 10^x) + 0.0559]}$$

where:

$$X = 0.09018 + \frac{2729.92 - pH}{(T + 273.16)}$$

U = Concentration of un-ionized ammonia as N in mg/L

N = Concentration of ammonia nitrogen as N in mg/L

T = Temperature in degrees Celsius

- ** Oil shall be analytically separated into polar and non-polar components if the total concentration exceeds 15 mg/L. In no case shall either of the components exceed 15 mg/L (i.e., 15 mg/L polar materials and 15 mg/L non-polar materials).

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 302.408 Temperature

- a) For the South Fork of the South Branch of the Chicago River (Bubbly Creek), temperature ~~Temperature~~ (STORET number (°F) 00011 and (°C) 00010) shall not exceed 34° C (93° F) more than 5% of the time, or 37.8° C (100° F) at any time.
- b) Water temperature shall not exceed the maximum limits in the applicable table in subsections (b), (c) and (d) during more than one percent of the hours in the 12-month period ending with any month. Moreover, at no time shall the water temperature exceed the maximum limits in the applicable table that follows by more than 1.7°C (3.0°F).
- c) Water temperature in the Chicago Area Waterway System Aquatic Life Use A waters listed in 35 Ill. Adm. Code 303.230 shall not exceed the limits in the following table in accordance with subsection (a):

<u>Months</u>	<u>Daily Maximum (°F)</u>
<u>January</u>	<u>60</u>

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<u>February</u>	<u>60</u>
<u>March</u>	<u>60</u>
<u>April</u>	<u>90</u>
<u>May</u>	<u>90</u>
<u>June</u>	<u>90</u>
<u>July</u>	<u>90</u>
<u>August</u>	<u>90</u>
<u>September</u>	<u>90</u>
<u>October</u>	<u>90</u>
<u>November</u>	<u>90</u>
<u>December</u>	<u>60</u>

- d) Water temperature in the Chicago Area Waterway System and Brandon Pool Aquatic Life Use B waters listed in 35 Ill. Adm. Code 303.325 shall not exceed the limits in the following table in accordance with subsection (a):

<u>Months</u>	<u>Daily Maximum (°F)</u>
<u>January</u>	<u>60</u>
<u>February</u>	<u>60</u>
<u>March</u>	<u>60</u>
<u>April</u>	<u>90</u>
<u>May</u>	<u>90</u>
<u>June</u>	<u>90</u>
<u>July</u>	<u>90</u>
<u>August</u>	<u>90</u>
<u>September</u>	<u>90</u>
<u>October</u>	<u>90</u>
<u>November</u>	<u>90</u>
<u>December</u>	<u>60</u>

- e) Water temperature for the Upper Dresden Island Pool Aquatic Life Use waters, as defined in 35 Ill. Adm. Code 303.237, shall not exceed the limits in the following table in accordance with subsection (a):

<u>Months</u>	<u>Daily</u>
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	<u>Maximum</u> <u>(°F)</u>
<u>January</u>	<u>60</u>
<u>February</u>	<u>60</u>
<u>March</u>	<u>60</u>
<u>April</u>	<u>90</u>
<u>May</u>	<u>90</u>
<u>June</u>	<u>90</u>
<u>July</u>	<u>90</u>
<u>August</u>	<u>90</u>
<u>September</u>	<u>90</u>
<u>October</u>	<u>90</u>
<u>November</u>	<u>90</u>
<u>December</u>	<u>60</u>

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 302.409 Cyanide for the South Fork of the South Branch of the Chicago River (Bubbly Creek)

Cyanide (total) shall not exceed 0.10 mg/L in the South Fork of the South Branch of the Chicago River (Bubbly Creek).

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 302.410 Substances Toxic to Aquatic Life

Any substance or combination of substances toxic to aquatic life not listed in Section 302.407 shall not be present in amounts toxic or harmful to human health, aquatic life or wildlife; except for the South Fork of the South Branch of the Chicago River (Bubbly Creek) where the substance shall not exceed one-half of the 96-hour median tolerance limit (96-hour TL_m) for native fish or essential fish food organisms.

- a) Any substance or combination of substances shall be deemed to be toxic or harmful to aquatic life if present in concentrations that exceed the following:
- 1) An Acute Aquatic Toxicity Criterion (AATC) validly derived and correctly applied pursuant to procedures set forth in Sections 302.612 through 302.618 or in Section 302.621; or

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- 2) A Chronic Aquatic Toxicity Criterion (CATC) validly derived and correctly applied pursuant to procedures set forth in Section 302.627 or 302.630.
- b) Any substance or combination of substances shall be deemed to be toxic or harmful to wild or domestic animal life if present in concentrations that exceed any Wild and Domestic Animal Protection Criterion (WDAPC) validly derived and correctly applied pursuant to Section 302.633.
- c) Any substance or combination of substances shall be deemed to be toxic or harmful to human health if present in concentrations that exceed criteria, validly derived and correctly applied, based on either of the following:
 - 1) Disease or functional impairment due to a physiological mechanism for which there is a threshold dose below which no damage occurs calculated pursuant to Sections 302.642 through 302.648 (Human Threshold Criterion); or
 - 2) Disease or functional impairment due to a physiological mechanism for which any dose may cause some risk of damage calculated pursuant to Sections 302.651 through 302.658 (Human Nonthreshold Criterion).
- d) The most stringent criterion of subsections (a), (b) and (c) shall apply at all points outside of any waters within which mixing is allowed pursuant to Section 302.102. In addition, the AATC derived pursuant to subsection (a)(1) shall apply in all waters except that it shall not apply within a ZID that is prescribed in accordance with Section 302.102.
- e) The procedures of Subpart F set forth minimum data requirements, appropriate test protocols, and data assessment methods for establishing criteria pursuant to subsections (a), (b) and (c). No other procedures may be used to establish such criteria unless approved by the Board in a rulemaking or adjusted standard proceeding pursuant to Title VII of the Act. The validity and applicability of the Subpart F procedures may not be challenged in any proceeding brought pursuant to Title VIII or X of the Act, although the validity and correctness of application of the numeric criteria derived pursuant to Subpart F may be challenged in the proceedings pursuant to subsection (f).

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- f) Agency derived criteria may be challenged as follows:
- 1) A permittee may challenge the validity and correctness of application of a criterion derived by the Agency pursuant to this Section only at the time the criterion is first applied in an NPDES permit pursuant to 35 Ill. Adm. Code 309.152 or in an action pursuant to Title VIII of the Act for violation of the toxicity water quality standard. Failure of a person to challenge the validity of a criterion at the time of its first application shall constitute a waiver of the challenge in any subsequent proceeding involving application of the criterion to that person.
 - 2) Consistent with subsection (f)(1), if a criterion is included as, or is used to derive, a condition of an NPDES discharge permit, a permittee may challenge the criterion in a permit appeal pursuant to Section 40 of the Act and 35 Ill. Adm. Code 309.181. In any that action, the Agency shall include in the record all information upon which it has relied in developing and applying the criterion, whether that information was developed by the Agency or submitted by the Petitioner. THE BURDEN OF PROOF SHALL BE ON THE PETITIONER TO DEMONSTRATE THAT THE CRITERION-BASED CONDITION IS NOT NECESSARY TO ACCOMPLISH THE PURPOSES OF SUBSECTION (a) (see Section 40(a)(1) of the Act), but there is no presumption in favor of the general validity and correctness of the application of the criterion as reflected in the challenged condition.
 - 3) Consistent with subsection (f)(1), in an action in which alleged violation of the toxicity water quality standard is based on alleged excursion of a criterion, the person bringing the action shall have the burdens of going forward with proof and of persuasion regarding the general validity and correctness of application of the criterion.
- g) Subsections (a) through (e) do not apply to USEPA registered pesticides approved for aquatic application and applied pursuant to the following conditions:
- 1) Application shall be made in strict accordance with label directions;
 - 2) Applicator shall be properly certified under the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC 135 et seq. (1972)); and

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- 3) Applications of aquatic pesticides must be in accordance with the laws, regulations and guidelines of all state and federal agencies authorized by law to regulate, use or supervise pesticide applications.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 302.412 Total Ammonia Nitrogen

- a) This Section does not apply to the South Fork of the South Branch of the Chicago River (Bubbly Creek).
- b) For the Chicago Area Waterway System and the Lower Des Plaines River described in 35 Ill. Adm. Code 303.204 and listed in 35 Ill. Adm. Code 303.220 through 303.240, total ammonia nitrogen must in no case exceed 15 mg/L.
- c) The total ammonia nitrogen acute, chronic, and sub-chronic standards are determined in accordance with the equations in subsections (c)(1) and (c)(2). Attainment of each standard must be determined in accordance with subsections (d) and (e) in mg/L.

- 1) The acute standard (AS) is calculated using the following equation:

$$AS = \frac{0.411}{1 + 10^{7.204 - pH}} + \frac{58.4}{1 + 10^{pH - 7.204}}$$

- 2) The chronic standard (CS) is calculated using the following equations:

- A) During the Early Life Stage Present period, as defined in subsection (e):

- i) When water temperature is less than or equal to 14.51°C:

$$CS = \left\{ \frac{0.0577}{1 + 10^{7.688 - pH}} + \frac{2.487}{1 + 10^{pH - 7.688}} \right\} (2.85)$$

- ii) When water temperature is above 14.51°C:

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$$\underline{\underline{CS = \left\{ \frac{0.0577}{1 + 10^{7.688 - \text{pH}}} + \frac{2.487}{1 + 10^{\text{pH} - 7.688}} \right\} (1.45 * 10^{0.028 * (25 - T)})}}$$

where:

T ≡ Water Temperature, degrees Celsius

B) During the Early Life Stage Absent period, as defined in subsection (e):

i) When water temperature is less than or equal to 7°C:

$$\underline{\underline{CS = \left\{ \frac{0.0577}{1 + 10^{7.688 - \text{pH}}} + \frac{2.487}{1 + 10^{\text{pH} - 7.688}} \right\} (1.45 * 10^{0.504})}}$$

ii) When water temperature is greater than 7°C:

$$\underline{\underline{CS = \left\{ \frac{0.0577}{1 + 10^{7.688 - \text{pH}}} + \frac{2.487}{1 + 10^{\text{pH} - 7.688}} \right\} (1.45 * 10^{0.028 * (25 - T)})}}$$

where:

T ≡ Water Temperature, degrees Celsius

3) The sub-chronic standard is equal to 2.5 times the chronic standard.

d) Attainment of the Total Ammonia Nitrogen Water Quality Standards

1) The acute standard for total ammonia nitrogen (in mg/L) must not be exceeded at any time except in those waters for which the Agency has approved a ZID pursuant to Section 302.102.

2) The 30-day average concentration of total ammonia nitrogen (in mg/L) must not exceed the chronic standard (CS) except in those waters in which mixing is allowed pursuant to Section 302.102. Attainment of the chronic standard (CS) is determined in accordance with subsection (d) of this Section by averaging at least four samples collected at weekly intervals or

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at other sampling intervals that statistically represent a 30-day sampling period. The samples must be collected in a manner that assures a representative sampling period.

- 3) The 4-day average concentration of total ammonia nitrogen (in mg/L) must not exceed the sub-chronic standard except in those waters in which mixing is allowed pursuant to Section 302.102. Attainment of the sub-chronic standard is determined in accordance with subsection (d) by averaging daily sample results collected over a period of four consecutive days within the 30-day averaging period. The samples must be collected in a manner that assures a representative sampling period.
- e) The water quality standard for each water body must be calculated based on the temperature and pH of the water body measured at the time of each ammonia sample. The concentration of total ammonia in each sample must be divided by the calculated water quality standard for the sample to determine a quotient. The water quality standard is attained if the mean of the sample quotients is less than or equal to one for the duration of the averaging period.
- f) The Early Life Stage Present period occurs from March through October. All other periods are subject to the Early Life Stage Absent period, except that waters listed in 35 Ill. Adm. Code 303.240 are not subject to Early Life Stage Present ammonia limits at any time.

BOARD NOTE: Acute and chronic standard concentrations for total ammonia nitrogen (in mg/L) for different combinations of pH and temperature are shown in Appendix C.

(Source: Added at 38 Ill. Reg. _____ effective _____)

SUBPART F: PROCEDURES FOR DETERMINING WATER QUALITY CRITERIA

Section 302.601 Scope and Applicability

This Subpart contains the procedures for determining the water quality criteria set forth in Sections~~Section~~ 302.210(a), (b) and (c) and 302.410(a), (b) and (c).

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 302.648 Determining the Human Threshold Criterion

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The HTC is calculated according to the equation:

$$HTC = ADI/[W + (F \times BCF)]$$

where:

- HTC = Human health protection criterion in milligrams per liter (mg/L);
- ADI = Acceptable daily intake of substance in milligrams per day (mg/d) as specified in Section 302.645;
- W = Per capita daily water consumption equal to 2 liters per day (L/d) for surface waters at the point of intake of a public or food processing water supply, or equal to 0.01 liters per day (L/d) which represents incidental exposure through contact or ingestion of small volumes of water while swimming or during other recreational activities for areas which are determined to be public access areas pursuant to Section 302.102 (b)(3), or 0.001 liters per day (L/d) for other [General Use](#)-waters;
- F = Assumed daily fish consumption in the United States equal to 0.020 kilograms per day (kg/d); and
- BCF = Aquatic organism Bioconcentration Factor with units of liter per kilogram (L/kg) as derived in Sections 302.660 through 302.666.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 302.657 Determining the Human Nonthreshold Criterion

The HNC is calculated according to the equation:

$$HNC = RAI/[W + (F \times BCF)]$$

where:

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- HNC = Human Nonthreshold Protection Criterion in milligrams per liter (mg/L);
- RAI = Risk Associated Intake of a substance in milligrams per day (mg/d) which is associated with a lifetime cancer risk level equal to a ratio of one to 1,000,000 as derived in Section 302.654;
- W = Per capita daily water consumption equal to 2 liters per day (L/d) for surface waters at the point of intake of a public or food processing water supply, or equal to 0.01 liters per day (L/d) which represents incidental exposure through contact or ingestion of small volumes of water while swimming or during other recreational activities for areas which are determined to be public access areas pursuant to Section 302.102(b)(3), or 0.001 liters per day (L/d) for other ~~General Use~~ waters;
- F = Assumed daily fish consumption in the United States equal to 0.020 kilograms per day (kg/d); and
- BCF = Aquatic Life Bioconcentration Factor with units of liter per kilogram (L/kg) as derived in Section 302.663.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Water Use Designations and Site-Specific Water Quality Standards
- 2) Code Citation: 35 Ill. Adm. Code 303
- 3)

<u>Section Numbers</u> :	<u>Proposed Action</u> :
303.204	Amendment
303.235	Amendment
303.240	New Section
303.449	New Section
- 4) Statutory Authority: Implementing Section 13 and authorized by Sections 11(b) and 27 of the Environmental Protection Act [415 ILCS 5/13, 11(b) and 27]
- 5) A Complete Description of the Subjects and Issues Involved: For a more detailed description, please see the Board's opinion and order of September 18, 2014, in R08-9(D). The Board proposes water quality standards for the Chicago Area Waterways System (CAWS) and the Lower Des Plaines River (LDPR) that are necessary to meet the aquatic life uses for those waterways. The Board proposes the standards for many constituents as recommended by the Illinois Environmental Protection Agency (IEPA), with two notable exceptions. The Board finds that the 500 mg/L chloride standard must be adapted for the Chicago Sanitary and Ship Canal (CSSC) from December 1 until April 30. Therefore the Board proposes for the CSSC a numeric standard of 620 mg/L as an acute water quality standard and 990 mg/L as a chronic water quality standard for chloride from December 1 until April 30. The Board also finds that the temperature water quality standards proposed by IEPA as well as those suggested by other participants are not appropriate. Therefore, the Board proposes that the General Use temperature standards apply to the waterways.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking:
 - A. Lower Des Plaines River Use Attainability Analysis Final Report. AquaNova International, Ltd. and Hey & Associates, Inc., prepared for Illinois EPA (December 2003).
 - B. Chicago Area Waterway System Use Attainability Analysis Final Report. Camp, Dresser and McKee, prepared for Illinois EPA (August 2007).

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- C. Interim Economic Guidance for Water Quality Standards Workbook (Appendix M to the Water Quality Standards Handbook—Second Edition, EPA 823-B-94-005b). U.S. EPA Office of Water (EPA-823-B-95-002) (March 1995).
- D. Illinois Sanitary Water Board Rules and Regulations SWB-8 Water Quality Standards, Interstate Waters, Illinois River and Lower Section of Des Plaines River (REF. 348.025 ISWB SWB-8 C.2) (Criteria Adopted December 1, 1966; Implementation Plan Submitted August 10, 1967; Approved by U.S. Dept. of Interior January 27, 1968; Sanitary Water Board Reapproved March 5, 1968).
- Illinois Sanitary Water Board Rules and Regulations SWB-15 Water Quality Standards, Interstate Waters, Chicago River and Calumet River System and Calumet Harbor Basin (REF. 348.025 ISWB SWB-15 C.2) (Adopted by Board June 28, 1967; Approved by U.S. Dept. of Interior January 27, 1968; Sanitary Water Board reapproval March 5, 1968).
- E. Ordinance: Code of Forest Preserve District of Cook County, Title 2: Forest Preserve District Lands and Properties, Chapter 4: Recreation in the Forest Preserve.
- F. Inventory of Public Access Locations along the Chicago Area Waterway System. Illinois EPA, Bureau of Water (May 15, 2007).
- G. Description of the Chicago Waterway System: Use Attainability Analysis Study Conducted by Illinois EPA Bureau of Water in Cooperation with MWRDGC. MWRDGC, Research and Development (May 2002).
- H. Minutes from the June 23, 2005 Dispersal Barrier Advisory Panel. Philip B. Moy, University of Wisconsin Sea Grant Institute (June 23, 2005).
- I. Chicago Area Waterways Health Precautions Pamphlet. MWRDGC, Illinois Department of Public Health, U.S. EPA, Illinois EPA (October 2003).
- J. Ambient Water Quality Criteria for Bacteria – 1986. U.S. EPA Office of Water (EPA440/5-84-002) (January 1986).
- K. Analysis of Physical Habitat Quality and Limitations to Waterways in the Chicago Area. Center for Applied Bioassessment and Biocriteria, prepared for U.S. EPA Region 5 (2004).

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- L. Aquatic Life and Habitat Data Collected in 2006 on the Illinois and Des Plaines Rivers. Midwest Biodiversity Institute, prepared for U.S. EPA Region 5 (2006).
- M. Biological Criteria for the Protection of Aquatic Life: Volume II: Users Manual for Biological and Field Assessment of Ohio Surface Waters. Ohio Environmental Protection Agency, Surface Water Section (Updated January 1, 1988).
- N. Interpreting Illinois Fish-IBI Scores, DRAFT: January 2005. Illinois EPA, Bureau of Water (January 2005).
- O. Quality Criteria for Water 1986 (gold book). U.S. EPA Office of Water (EPA 440/5-86-001) pp. 17-21, 34, 76-79, 168-171 and 253-261 (May 1, 1986).
- P. 2001-2006 Effluent Sample Results for Temperature at Water Reclamation Plants, 2005 and 2006 Water Quality Sample Results for Temperature, pH, Alkalinity and Chloride, and Calculations of H₂CO₃ (soluble CO₂) in Chicago Area Waterways in 2005 and 2006. MWRDGC, Research and Development (June 4, 2007).
- Q. Ambient Water Quality Criteria for Dissolved Oxygen. U.S. EPA Office of Water Regulations and Standards. Criteria and Standards Division. Washington, D.C (EPA 440/5-86-003) (April 1986).
- R. 1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water. U.S. EPA Office of Water 4301 (EPA-820-B-96-001) (September 1996).
- S. The Metals Translator: Guidance for Calculating A Total Recoverable Permit Limit From A Dissolved Criterion. U.S. EPA Office of Water 4305 (EPA-823-B-96-007) (June 1996).
- T. 2001 Update of Ambient Water Quality Criteria for Cadmium. U.S. EPA Office of Water 4304 (EPA-822-R-01-001) (April 2001).
- U. 2005 and 2006 Water Quality Sample Results for Hardness, Cadmium, Nickel and Zinc and Calculated Compliance Rates with Proposed Chronic Standards for the Respective Metals. MWRDGC, Research and Development (April 25, 2007).

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- V. 2005 and 2006 Effluent Sample Results for Hardness and Cadmium at Calumet, North Side, and Stickney Water Reclamation Plants. MWRDGC, Research and Development (May 1, 2007).
- W. Quality Criteria for Water. U.S. EPA (PB-263 943) pp. 152-159 (1976).
- X. Ambient Water Quality for Silver. U.S. EPA Office of Water (EPA 440/5-80-071) (October 1980).
- Y. Derivation of a Colorado State Manganese Table Value Standard for the Protection of Aquatic Life. William A. Stubblefield and James R. Hockett. ENSR Corporation (July 2000).
- Z. Temperature Criteria Options for the Lower Des Plaines River. Chris O. Yoder, Research Director. Midwest Biodiversity Institute, Columbus, Ohio (October 11, 2005).
- AA. Letter from Chris Yoder, Midwest Biodiversity Institute, to Toby Frevert, Illinois EPA Bureau of Water (July 11, 2007).
- BB. 1999 Update of Ambient Water Quality Criteria for Ammonia. U.S. EPA Office of Water (EPA-822-R-99-014) (December 1999).
- CC. The Upper Illinois Waterway Study Interim Report. 1994 Ichthyoplankton Investigation RM 276.2-321.7. EA Engineering, Science, and Technology, prepared for Commonwealth Edison Co. (April 1995).
- DD. 2004 Lower Des Plaines River Fisheries Investigation RM 274.4-285.5. EA Engineering, Science, and Technology, prepared for Midwest Generation, EME, LLC (November 2005).
- EE. Master Plan North Side Water Reclamation Plant and Surrounding Chicago Waterways, Technical Memorandum 1WQ: Disinfection Evaluation. Consoer Townsend Envirodyne Engineers, Inc., prepared for MWRDGC (August 26, 2005).
- FF. Technical Memorandum 4WQ Supplemental Aeration of the North and South Branches of the Chicago River MWRDGC North Side Water Reclamation Plant,

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Project No. 04-014-2P. Consoer Townsend Environdyne Engineers, Inc., prepared for MWRDGC (January 12, 2007).

- GG. Technical Memorandum 5WQ Flow Augmentation of the Upper North Shore Channel MWRDGC North Side Water Reclamation Plant, Project No. 04-014-2P. Consoer Townsend Environdyne Engineers, Inc., prepared for MWRDGC (January 12, 2007).
- HH. Technical Memorandum 6WQ Flow Augmentation and Supplemental Aeration of the South Fork of the South Branch of the Chicago River MWRDGC North Side Water Reclamation Plant, Project No. 04-014-2P. Consoer Townsend Environdyne Engineers, Inc., prepared for MWRDGC (January 12, 2007).
- II. Memorandum of Understanding By and Between Midwest Generation LLC and Illinois Environmental Protection Agency, Revised 12/10/2006 3:21:06 PM.
- JJ. A River is Reborn - Use Attainability Analysis for the Lower Des Plaines River, Illinois. Vladimir Novotny, Neal O'Reilly, Timothy Ehlinger, Toby Frevert and Scott Twait. Water Environment Research, Volume 79, Number 1, pp. 68-80.
- KK. Chicago Area Waterway System Habitat Evaluation And Improvement Study: Habitat Evaluation Report And Habitat Improvement Report, Prepared for the Metropolitan Water Reclamation District of Greater Chicago by LimnoTech

Statutes and Regulations

Federal Water Pollution Control Act (Clean Water Act) 33 USC 1251 et seq.

Beaches Environmental Assessment and Coastal Health Act 2000 (Beach Act), 33 USC 1313.

Illinois Environmental Protection Act, 415 ILCS 5/1.

40 CFR 131 (Water Quality Standards).

35 Illinois Administrative Code Subtitle C: Water Pollution.

U.S. EPA Guidance Documents

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Water Quality Standards Handbook: Second Edition, EPA-823-B-94-005a, U.S. EPA Office of Water (4305) (August 1994).

Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses, PB85-227049, U.S. EPA Office of Research and Development, Environmental Research Laboratories (1985) (reproduced by National Technical Information Service, U.S. Department of Commerce).

Board Opinions

In the Matter of: Petition of Commonwealth Edison Company for an Adjusted Standard from 35 Ill. Adm. Code 302.211(d) and (e), AS 96-10 (October 3, 1996) and (March 16, 2000).

Commonwealth Edison Company v. Illinois EPA, PCB 91-29 (Variance – Water) (November 21, 1991).

In the Matter of: Proposed Determination of No Significant Ecological Damage for the Joliet Generating Station, PCB 87-93 (November 15, 1989).

In the Matter of: Water Quality and Effluent Standards Applicable to the Chicago River System and Calumet River System, R 87-27 (May 19, 1988).

Commonwealth Edison Company v. Illinois EPA, PCB 84-33 (Variance – Water) (December 20, 1984).

Commonwealth Edison Company v. Illinois EPA, PCB 78-79 (Variance – Water) (May 25, 1978).

In the Matter of: Water Quality Standards Revisions, R72-4 (November 8, 1973).

In the Matter of: Water Quality Standards Revisions, R71-14 (Consolidated with R70-8 and R71-20) (March 7, 1972).

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Petition of Commonwealth Edison Company for Adjusted Standard from 35 Ill. Adm. Code 302.211(d) and (e), AS 96-10 (Oct. 3, 1996).

- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: These proposed amendments do not create or enlarge a State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3].
- 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*. Comments should reference Docket R08-09(D) and be addressed to:

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

Interested persons may request copies of the Board's opinion and order in R08-09(B) by calling the Clerk's office at 312/814-3620, or may download copies from the Board's Web site at <http://www.ipcb.state.il.us>.

For more information, contact hearing officer Marie Tipsord at 312/814-4925 or tipsorm@ipcb.state.il.us.

- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not for profit corporations affected: This rulemaking establishes water quality standards for the Chicago Area Waterways System and Lower Des Plaines River. Any small business, small municipalities and not for profit corporation that discharges to those waterways will be impacted.

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- B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of Professional skills necessary for compliance: Wastewater treatment plant staff; possibly an environmental engineer.
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2014

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

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE C: WATER POLLUTION
CHAPTER I: POLLUTION CONTROL BOARDPART 303
WATER USE DESIGNATIONS AND SITE-SPECIFIC
WATER QUALITY STANDARDS

SUBPART A: GENERAL PROVISIONS

Section

- 303.100 Scope and Applicability
303.101 Multiple Designations
303.102 Rulemaking Required (Repealed)

SUBPART B: NONSPECIFIC WATER USE DESIGNATIONS

Section

- 303.200 Scope and Applicability
303.201 General Use Waters
303.202 Public and Food Processing Water Supplies
303.203 Underground Waters
303.204 Chicago Area Waterway System and Lower Des Plaines River ~~Outstanding
Resource Waters~~
303.205 Outstanding Resource Waters
303.206 List of Outstanding Resource Waters
303.220 Primary Contact Recreation Waters
303.225 Incidental Contact Recreation Waters
303.227 Non-Contact Recreation Waters and Non-Recreational Waters
303.230 Upper Dresden Island Pool Aquatic Life Use Waters
303.235 Chicago Area Waterway System Aquatic Life Use A Waters ~~and Chicago Area
Waterway System and Brandon Pool Aquatic Life Use B Waters~~
303.240 Chicago Area Waterway System and Brandon Pool Aquatic Life Use B Waters

SUBPART C: SPECIFIC USE DESIGNATIONS AND SITE
SPECIFIC WATER QUALITY STANDARDS

Section

- 303.300 Scope and Applicability

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303.301	Organization
303.311	Ohio River Temperature
303.312	Waters Receiving Fluorspar Mine Drainage (Repealed)
303.321	Wabash River Temperature
303.322	Unnamed Tributary of the Vermilion River
303.323	Sugar Creek and Its Unnamed Tributary
303.326	Unnamed Tributary of Salt Creek, Salt Creek, and Little Wabash River
303.331	Mississippi River North Temperature
303.341	Mississippi River North Central Temperature
303.351	Mississippi River South Central Temperature
303.352	Unnamed Tributary of Wood River Creek
303.353	Schoenberger Creek; Unnamed Tributary of Cahokia Canal
303.361	Mississippi River South Temperature
303.400	Bankline Disposal Along the Illinois Waterway/River
303.430	Unnamed Tributary to Dutch Creek
303.431	Long Point Slough and Its Unnamed Tributary
303.441	Secondary Contact Waters (Repealed)
303.442	Waters Not Designated for Public Water Supply
303.443	Lake Michigan Basin
303.444	Salt Creek, Higgins Creek, West Branch of the DuPage River, Des Plaines River
303.445	Total Dissolved Solids Water Quality Standard for the Lower Des Plaines River
303.446	Boron Water Quality Standard for Segments of the Sangamon River and the Illinois River
303.447	Unnamed Tributary of the South Branch Edwards River and South Branch Edwards River
303.448	Mud Run Creek
<u>303.449</u>	<u>Chicago Sanitary and Ship Canal</u>

SUBPART D: THERMAL DISCHARGES

Section	
303.500	Scope and Applicability
303.502	Lake Sangchris Thermal Discharges
303.APPENDIX A	References to Previous Rules
303.APPENDIX B	Sources of Codified Sections

AUTHORITY: Implementing Section 13 and authorized by Sections 11(b) and 27 of the Environmental Protection Act [415 ILCS 5/13, 11(b) and 27].

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SOURCE: Filed with the Secretary of State January 1, 1978; amended at 2 Ill. Reg. 27, p. 221, effective July 5, 1978; amended at 3 Ill. Reg. 20, p. 95, effective May 17, 1979; amended at 5 Ill. Reg. 11592, effective October 19, 1981; codified at 6 Ill. Reg. 7818; amended at 6 Ill. Reg. 11161, effective September 7, 1982; amended at 7 Ill. Reg. 8111, effective June 23, 1983; amended in R87-27 at 12 Ill. Reg. 9917, effective May 27, 1988; amended in R87-2 at 13 Ill. Reg. 15649, effective September 22, 1989; amended in R87-36 at 14 Ill. Reg. 9460, effective May 31, 1990; amended in R86-14 at 14 Ill. Reg. 20724, effective December 18, 1990; amended in R89-14(C) at 16 Ill. Reg. 14684, effective September 10, 1992; amended in R92-17 at 18 Ill. Reg. 2981, effective February 14, 1994; amended in R91-23 at 18 Ill. Reg. 13457, effective August 19, 1994; amended in R93-13 at 19 Ill. Reg. 1310, effective January 30, 1995; amended in R95-14 at 20 Ill. Reg. 3534, effective February 8, 1996; amended in R97-25 at 22 Ill. Reg. 1403, effective December 24, 1997; amended in R01-13 at 26 Ill. Reg. 3517, effective February 22, 2002; amended in R03-11 at 28 Ill. Reg. 3071, effective February 4, 2004; amended in R06-24 at 31 Ill. Reg. 4440, effective February 27, 2007; amended in R09-8 at 33 Ill. Reg. 7903, effective May 29, 2009; amended in R09-11 at 33 Ill. Reg. 12258, effective August 11, 2009; amended in R08-9(A) at 35 Ill. Reg. 15078, effective August 23, 2011; amended in R11-18 at 36 Ill. Reg. 18898, effective December 12, 2012; amended in R08-9(C) at 38 Ill. Reg. 5517, effective February 13, 2014; amended in R08-09(D) at 38 Ill. Reg. _____, effective _____.

SUBPART B: NONSPECIFIC WATER USE DESIGNATIONS

Section 303.204 Chicago Area Waterway System and Lower Des Plaines River ~~Outstanding Resource Waters~~

The Chicago Area Waterway System and Lower Des Plaines River Waters are designated to protect for primary contact recreation, incidental contact or non-contact recreational uses (except where designated as non-recreational waters), commercial activity (including navigation and industrial water supply uses), and the highest quality aquatic life and wildlife attainable, limited only by the physical condition of these waters and hydrologic modifications to these waters. ~~Except for the Chicago River, these~~ These waters are required to meet ~~the secondary contact and indigenous~~ aquatic life standards contained in 35 Ill. Adm. Code 302, Subpart D, but are not required to meet the general use standards or the public and food processing water supply standards of 35 Ill. Adm. Code 302, Subpart B and C, except that the waters designated as Primary Contact Recreation Waters in Section 303.220 must meet the numeric water quality standard for fecal coliform bacteria applicable to protected waters in 35 Ill. Adm. Code 302.209. Designated recreational uses and aquatic life use for each segment of the Chicago Area Waterway System and Lower Des Plaines River are identified in this Subpart. [The Chicago](#)

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River must meet the general use standards for the protection of aquatic life as well as the numeric water quality standard for fecal coliform bacteria applicable to protected waters in 35 Ill. Adm. Code 302.209.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 303.235 Chicago Area Waterway System Aquatic Life Use A Waters ~~and Chicago Area Waterway System and Brandon Pool Aquatic Life Use B Waters~~

~~a)~~ ~~Chicago Area Waterways System Aquatic Life Use A Waters~~

~~a1)~~ Waters designated as Chicago Area Waterway System Aquatic Life Use A Waters are capable of maintaining, and shall have quality sufficient to protect, aquatic-life populations predominated by individuals of tolerant and intermediately tolerant types that are adaptive to the unique physical conditions, flow patterns, and operational controls necessary to maintain navigational use, flood control, and drainage functions of the waterway system. Such aquatic life may include, but is not limited to, fish species, such as channel catfish, largemouth bass, bluegill, black crappie, spotfin shiner, orangespotted sunfish, common carp, and goldfish.

~~b2)~~ Waters designated as Chicago Area Waterway System Aquatic Life Use A Waters are not capable of attaining an aquatic life use consistent with the section 101(a)(2) of the Clean Water Act goal (33 USC 1251(a)(2)).

~~c3)~~ The following waters are designated as Chicago Area Waterway System Aquatic Life Use A Waters and must meet the water quality standards of 35 Ill. Adm. Code 302.Subpart D:

~~1A)~~ Upper North Shore Channel from Wilmette Pumping Station to North Side Water Reclamation Plant;

~~2B)~~ Lower North Shore Channel from North Side Water Reclamation Plant to confluence with North Branch of the Chicago River;

~~3C)~~ North Branch of the Chicago River from its confluence with North Shore Channel to its confluence with South Branch of the Chicago River and Chicago River;

~~4D)~~ South Branch of the Chicago River;

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- ~~5E)~~ Calumet-Sag Channel;
 - ~~6F)~~ Calumet River from Lake Michigan to its confluence with Grand Calumet River and Little Calumet River;
 - ~~7G)~~ Little Calumet River from its confluence with Calumet River and Grand Calumet River to its confluence with Calumet-Sag Channel;
 - ~~8H)~~ Grand Calumet River;
 - ~~9I)~~ Lake Calumet; and
 - ~~10J)~~ Lake Calumet Connecting Channel.
- b) ~~Chicago Area Waterway System and Brandon Pool Aquatic Life Use B Waters~~
- ~~1) Waters designated as Chicago Area Waterway System and Brandon Pool Aquatic Life Use B Waters are capable of maintaining, and shall have quality sufficient to protect, aquatic life populations predominated by individuals of tolerant types that are adaptive to unique physical conditions and modifications of long duration, including artificially constructed channels consisting of vertical sheet pile, concrete and rip rap walls designed to support commercial navigation, flood control, and drainage functions in deep draft, steep-walled shipping channels. Such aquatic life may include, but is not limited to, fish species such as common carp, golden shiner, bluntnose minnow, yellow bullhead and green sunfish.~~
 - ~~2) Waters designated as Chicago Area Waterway System and Brandon Pool Aquatic Life Use B Waters are not capable of attaining an aquatic life use consistent with the section 101(a)(2) of the Clean Water Act goal (33 USC 1251(a)(2)).~~
 - ~~3) The following waters are designated as Chicago Area Waterway System and Brandon Pool Aquatic Life Use B Waters and must meet the water quality standards of 35 Ill. Adm. Code 302.Subpart D:~~
 - ~~A) Chicago Sanitary and Ship Canal; and~~

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- B) ~~Lower Des Plaines River from its confluence with Chicago Sanitary and Ship Canal to the Brandon Road Lock and Dam (Brandon Pool).~~

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 303.240 Chicago Area Waterway System and Brandon Pool Aquatic Life Use B Waters

- a) Waters designated as Chicago Area Waterway System and Brandon Pool Aquatic Life Use B Waters are capable of maintaining, and shall have quality sufficient to protect, aquatic life populations predominated by individuals of tolerant types that are adaptive to unique physical conditions and modifications of long duration, including artificially constructed channels consisting of vertical sheet-pile, concrete and rip-rap walls designed to support commercial navigation, flood control, and drainage functions in deep-draft, steep-walled shipping channels. Such aquatic life may include, but is not limited to, fish species such as common carp, golden shiner, bluntnose minnow, yellow bullhead and green sunfish.
- b) Waters designated as Chicago Area Waterway System and Brandon Pool Aquatic Life Use B Waters are not capable of attaining an aquatic life use consistent with the section 101(a)(2) of the Clean Water Act goal (33 USC 1251(a)(2)).
- c) The following waters are designated as Chicago Area Waterway System and Brandon Pool Aquatic Life Use B Waters and must meet the water quality standards of 35 Ill. Adm. Code 302. Subpart D:
- 1) Chicago Sanitary and Ship Canal; and
 - 2) Lower Des Plaines River from its confluence with Chicago Sanitary and Ship Canal to the Brandon Road Lock and Dam (Brandon Pool).

(Source: Added at 38 Ill. Reg. _____, effective _____)

SUBPART C: SPECIFIC USE DESIGNATIONS AND SITE
SPECIFIC WATER QUALITY STANDARDS

Section 303.449 Chicago Sanitary and Ship Canal

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The numeric water quality standard for chloride set forth at 35 Ill. Adm. Code 302.407(g) does not apply to the Chicago Sanitary and Ship Canal during the period of December 1 through April 30. Chloride levels in these waters must meet the numeric water quality standards for the protection of aquatic organisms of 620 mg/L as a chronic water quality standard and 990 mg/L as an acute water quality standard for chloride.

(Source: Added at 38 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Permits
- 2) Code Citation: 35 Ill. Adm. Code 309
- 3) Section Number: 309.141 Proposed Action:
Amendment
- 4) Statutory Authority: Implementing Sections 13 and 13.3 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/13, 13.3 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: For a more detailed description, please see the Board's opinion and order of September 18, 2014 in R08-9(D). The Board proposes water quality standards for the Chicago Area Waterways System (CAWS) and the Lower Des Plaines River (LDPR) that are necessary to meet the aquatic life uses for those waterways. The Board proposes a provision that will allow discharges to use best management practices for chloride in National Pollutant Discharge Elimination Permits.
- 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? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This proposed rule does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b) (2002)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal for 45 days after the date of publication in the *Illinois Register*. Comments should reference Docket R08-09(D) and be addressed to:

Clerk's Office

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Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago IL 60601

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

For more information contact hearing officer Marie Tipsord at 312/814-4925 or marie.tipsord@illinois.gov.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: This rulemaking establishes water quality standards for the Chicago Area Waterways System and Lower Des Plaines River; any small business, small municipalities and not-for-profit corporation that discharges to those waterways will be impacted.
 - B) Reporting, bookkeeping or other procedures required for compliance: The proposed amendments do not add any additional reporting or recordkeeping requirements beyond what is already established in the Board's rules.
 - C) Types of Professional skills necessary for compliance: Wastewater treatment plant staff; possibly an environmental engineer.
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2014

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

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE C: WATER POLLUTION
CHAPTER I: POLLUTION CONTROL BOARDPART 309
PERMITS

SUBPART A: NPDES PERMITS

Section	
309.101	Preamble
309.102	NPDES Permit Required
309.103	Application – General
309.104	Renewal
309.105	Authority to Deny NPDES Permits
309.106	Access to Facilities and Further Information
309.107	Distribution of Applications
309.108	Tentative Determination and Draft Permit
309.109	Public Notice
309.110	Contents of Public Notice of Application
309.111	Combined Notices
309.112	Agency Action After Comment Period
309.113	Fact Sheets
309.114	Notice to Other Governmental Agencies
309.115	Public Hearings on NPDES Permit Applications
309.116	Notice of Agency Hearing
309.117	Agency Hearing
309.118	Agency Hearing File
309.119	Agency Action After Hearing
309.120	Reopening the Record to Receive Additional Written Comment
309.141	Terms and Conditions of NPDES Permits
309.142	Water Quality Standards and Waste Load Allocation
309.143	Effluent Limitations
309.144	Federal New Source Standards of Performance
309.145	Duration of Permits
309.146	Authority to Establish Recording, Reporting, Monitoring and Sampling Requirements
309.147	Authority to Apply Entry and Inspection Requirements
309.148	Schedules of Compliance

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- 309.149 Authority to Require Notice of Introduction of Pollutants into Publicly Owned Treatment Works
- 309.150 Authority to Ensure Compliance by Industrial Users with Sections 204(b), 307 and 308 of the Clean Water Act
- 309.151 Maintenance and Equipment
- 309.152 Toxic Pollutants
- 309.153 Deep Well Disposal of Pollutants (Repealed)
- 309.154 Authorization to Construct
- 309.155 Sewage Sludge Disposal
- 309.156 Total Dissolved Solids Reporting and Monitoring
- 309.157 Permit Limits for Total Metals
- 309.181 Appeal of Final Agency Action on a Permit Application
- 309.182 Authority to Modify, Suspend or Revoke Permits
- 309.183 Revision of Schedule of Compliance
- 309.184 Permit Modification Pursuant to Variance
- 309.185 Public Access to Information
- 309.191 Effective Date

SUBPART B: OTHER PERMITS

- Section
- 309.201 Preamble
- 309.202 Construction Permits
- 309.203 Operating Permits; New or Modified Sources
- 309.204 Operating Permits; Existing Sources
- 309.205 Joint Construction and Operating Permits
- 309.206 Experimental Permits
- 309.207 Former Permits (Repealed)
- 309.208 Permits for Sites Receiving Sludge for Land Application
- 309.221 Applications – Contents
- 309.222 Applications – Signatures and Authorizations
- 309.223 Applications – Registered or Certified Mail
- 309.224 Applications – Time to Apply
- 309.225 Applications – Filing and Final Action By Agency
- 309.241 Standards for Issuance
- 309.242 Duration of Permits Issued Under Subpart B
- 309.243 Conditions
- 309.244 Appeals from Conditions in Permits
- 309.261 Permit No Defense

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309.262	Design, Operation and Maintenance Criteria
309.263	Modification of Permits
309.264	Permit Revocation
309.265	Approval of Federal Permits
309.266	Procedures
309.281	Effective Date
309.282	Severability

309.APPENDIX A References to Previous Rules

AUTHORITY: Implementing Sections 13 and 13.3 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/13, 13.3 and 27].

SOURCE: Adopted in R71-14, at 4 PCB 3, March 7, 1972; amended in R73-11, 12, at 14 PCB 661, December 5, 1974, at 16 PCB 511, April 24, 1975, and at 28 PCB 509, December 20, 1977; amended in R73-11, 12, at 29 PCB 477, at 2 Ill. Reg. 16, p. 20, effective April 20, 1978; amended in R79-13, at 39 PCB 263, at 4 Ill. Reg. 34, p. 159, effective August 7, 1980; amended in R77-12B, at 41 PCB 369, at 5 Ill. Reg. 6384, effective May 28, 1981; amended in R76-21, at 44 PCB 203, at 6 Ill. Reg. 563, effective December 24, 1981; codified at 6 Ill. Reg. 7818; amended in R82-5, 10, at 54 PCB 411, at 8 Ill. Reg. 1612, effective January 18, 1984; amended in R86-44 at 12 Ill. Reg. 2495, effective January 13, 1988; amended in R88-1 at 13 Ill. Reg. 5993, effective April 18, 1989; amended in R88-21(A) at 14 Ill. Reg. 2892, effective February 13, 1990; amended in R91-5 at 16 Ill. Reg. 7339, effective April 27, 1992; amended in R95-22 at 20 Ill. Reg. 5526, effective April 1, 1996; amended in R99-8 at 23 Ill. Reg. 11287, effective August 26, 1999; amended in R02-11 at 27 Ill. Reg. 202, effective December 20, 2002; amended in R03-19 at 28 Ill. Reg. 7310, effective May 7, 2004; amended in R07-9 at 32 Ill. Reg. 14995, effective September 8, 2008; amended in R08-09(D) at 38 Ill. Reg. _____, effective _____.

SUBPART A: NPDES PERMITS

Section 309.141 Terms and Conditions of NPDES Permits

In establishing the terms and conditions of each issued NPDES Permit, the Agency shall apply and ensure compliance with all of the following, whenever applicable:

- a) Effluent limitations under ~~sections~~Sections 301 and 302 of the CWA;
- b) Standards of performance for new sources under ~~section~~Section 306 of the CWA;

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- c) Effluent standards, effluent prohibitions, and pretreatment standards under ~~section~~Section 307 of the CWA;
- d) Any more stringent limitation, including those:
 - 1) necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any Illinois statute or regulation (under authority preserved by ~~section~~Section 510 of the CWA),
 - 2) necessary to meet any other federal law or regulation, or
 - 3) required to implement any applicable water quality standards, such limitations to include any legally applicable requirements necessary to implement total maximum daily loads established pursuant to ~~section~~Section 303(d) of the CWA and incorporated in the continuing planning process approved under ~~section~~Section 303(e) of the CWA and any regulations or guidelines issued pursuant ~~to that statute~~thereto;
- e) Any more stringent legally applicable requirements necessary to comply with a plan approved pursuant to ~~section~~Section 208(b) of the CWA;
- f) Prior to promulgation by the Administrator of the U.S. Environmental Protection Agency of applicable effluent standards and limitations pursuant to ~~sections~~Sections 301, 302, 306 and 307 of the CWA, such conditions as the Agency determines are necessary to carry out the provisions of the CWA;
- g) If the NPDES Permit is for the discharge of pollutants into navigable waters from a vessel or other floating craft (except that no NPDES Permit shall be issued for the discharge of pollutants from a vessel or other floating craft into Lake Michigan), any applicable regulations promulgated by the Secretary of the Department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage and stowage of pollutants; and
- h) If the NPDES Permit is for the discharge of pollutants from other than wet weather point sources into the Lake Michigan Basin as defined at 35 Ill. Adm. Code 303.443:
 - 1) Total Maximum Daily Loads (TMDLs) and Waste Load Allocation

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(WLA) will be established through either the LaMP or a RAP for an Area of Concern. If a LaMP or RAP has not been completed and adopted, effluent limits shall be established consistent with the other provisions of this Section, including, but not limited to, Additivity, Intake Pollutants, Loading Limits, Level of Detection/Level of Quantification and Compliance Schedules. When calculation of TMDLs or a WLA is incomplete and it is expected that limits established through other provisions will be superseded upon completion of the TMDL or WLA process, those limits shall be identified as interim and the permit shall include a reopener clause triggered by completion of a TMDL or WLA determination. Any new limits brought about through exercise of the reopener clause shall be eligible for delayed compliance dates and compliance schedules consistent with Section 39(b) of the Act [415 ILCS 5/39(b)], ~~Section 35 Ill. Adm. Code~~ 309.148 [of this Part](#), and 35 Ill. Adm. Code 352.Subpart H.

- 2) 35 Ill. Adm. Code 302.590 establishes an acceptable additive risk level of one in 100,000 (10^5) for establishing Tier I criteria and Tier II values for combinations of substances exhibiting a carcinogenic or other nonthreshold toxic mechanism. For those discharges containing multiple nonthreshold substances application of this additive standard shall be consistent with [this](#) subsection (h).
- A) For discharges in the Lake Michigan Basin containing one or more 2,3,7,8-substituted chlorinated dibenzo-p-dioxins or 2,3,7,8-substituted dibenzofurans, the tetrachloro dibenzo-p-dioxin 2,3,7,8-TCDD toxicity equivalence concentration (TEC_{TCDD}) shall be determined as outlined in subsection (h)(2)(B).
- B) The values listed in the following Table shall be used to determine the 2,3,7,8-TCDD toxicity equivalence concentrations using the following equation:

$$(TEC)_{TCDD} = \sum (C)_x (TEF)_x (BEF)_x$$

WHERE:

$(TEC)_{TCDD}$ = 2,3,7,8-TCDD toxicity equivalence concentration
in effluent

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- (C)_x = Concentration of total chemical x in effluent
 (TEF)_x = TCDD toxicity equivalency factor for x
 (BEF)_x = TCDD bioaccumulation equivalency factor for x

TABLE

Congener	TEF	BEF
2,3,7,8-TCDD	1.0	1.0
1,2,3,7,8-PeCDD	0.5	0.9
1,2,3,4,7,8-HxCDD	0.1	0.3
1,2,3,6,7,8-HxCDD	0.1	0.1
1,2,3,7,8,9-HxCDD	0.1	0.1
1,2,3,4,6,7,8-HpCDD	0.01	0.0
OCDD	0.001	0.0
2,3,7,8-TCDF	0.1	0.8
1,2,3,7,8-PeCDF	0.05	0.2
2,3,4,7,8-PeCDF	0.5	1.6
1,2,3,4,7,8-HxCDF	0.1	0.0
1,2,3,6,7,8-HxCDF	0.1	0.2
2,3,4,6,7,8-HxCDF	0.1	0.7
1,2,3,7,8,9-HxCDF	0.1	0.6
1,2,3,4,6,7,8-HpCDF	0.01	0.0
1,2,3,4,7,8,9-HpCDF	0.01	0.4
OCDF	0.001	0.0

- C) Any combination of carcinogenic or otherwise nonthreshold toxic substances shall be assessed on a case-by-case basis. The Agency shall only consider such additivity for chemicals that exhibit the same type of effect and the same mechanism of toxicity, based on available scientific information that supports a reasonable [assumption of additive effects](#).
- 3) Reasonable potential to exceed.
- A) The first step in determining if a reasonable potential to exceed the water quality standard exists for any particular pollutant parameter is the estimation of the maximum expected effluent concentration for that substance. That estimation will be completed for both

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acute and chronic exposure periods and is termed the PEQ. The PEQ shall be derived from representative facility-specific data to reflect a 95 percent confidence level for the 95th percentile value. These data will be presumed to adhere to a lognormal distribution pattern unless the actual effluent data demonstrates a different distribution pattern. If facility-specific data in excess of 10 data values is available, a coefficient of variation that is the ratio of the standard deviation to the arithmetic average shall be calculated by the Agency. The PEQ is derived as the upper bound of a 95 percent confidence bracket around the 95th percentile value through a multiplier from the following table applied to the maximum value in the data set that has its quality assured consistent with 35 Ill. Adm. Code 352.410 as appropriate for acute and chronic data sets.

$$\text{PEQ} = (\text{maximum data point})(\text{statistical multiplier})$$

No. Samples	Coefficient of Variation												
	0.1	0.2	0.3	0.4	0.5	0.6	0.7	0.8	0.9	1.0	1.1	1.2	1.3
1	1.4	1.9	2.6	3.6	4.7	6.2	8.0	10.1	12.6	15.5	18.7	22.3	26.4
2	1.3	1.6	2.0	2.5	3.1	3.8	4.6	5.4	6.4	7.4	8.5	9.7	10.9
3	1.2	1.5	1.8	2.1	2.5	3.0	3.5	4.0	4.6	5.2	5.8	6.5	7.2
4	1.2	1.4	1.7	1.9	2.2	2.6	2.9	3.3	3.7	4.2	4.6	5.0	5.5
5	1.2	1.4	1.6	1.8	2.1	2.3	2.6	2.9	3.2	3.6	3.9	4.2	4.5
6	1.1	1.3	1.5	1.7	1.9	2.1	2.4	2.6	2.9	3.1	3.4	3.7	3.9
7	1.1	1.3	1.4	1.6	1.8	2.0	2.2	2.4	2.6	2.8	3.1	3.3	3.5
8	1.1	1.3	1.4	1.6	1.7	1.9	2.1	2.3	2.4	2.6	2.8	3.0	3.2
9	1.1	1.2	1.4	1.5	1.7	1.8	2.0	2.1	2.3	2.4	2.6	2.8	2.9
10	1.1	1.2	1.3	1.5	1.6	1.7	1.9	2.0	2.2	2.3	2.4	2.6	2.7
11	1.1	1.2	1.3	1.4	1.6	1.7	1.8	1.9	2.1	2.2	2.3	2.4	2.5
12	1.1	1.2	1.3	1.4	1.5	1.6	1.7	1.9	2.0	2.1	2.2	2.3	2.4
13	1.1	1.2	1.3	1.4	1.5	1.6	1.7	1.8	1.9	2.0	2.1	2.2	2.3
14	1.1	1.2	1.3	1.4	1.4	1.5	1.6	1.7	1.8	1.9	2.0	2.1	2.2
15	1.1	1.2	1.2	1.3	1.4	1.5	1.6	1.7	1.8	1.8	1.9	2.0	2.1
16	1.1	1.1	1.2	1.3	1.4	1.5	1.6	1.6	1.7	1.8	1.9	1.9	2.0
17	1.1	1.1	1.2	1.3	1.4	1.4	1.5	1.6	1.7	1.7	1.8	1.9	1.9
18	1.1	1.1	1.2	1.3	1.3	1.4	1.5	1.6	1.6	1.7	1.7	1.8	1.9
19	1.1	1.1	1.2	1.3	1.3	1.4	1.5	1.5	1.6	1.6	1.7	1.8	1.8

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20	1.1	1.1	1.2	1.2	1.3	1.4	1.4	1.5	1.5	1.6	1.6	1.7	1.7
30	1.0	1.1	1.1	1.1	1.2	1.2	1.2	1.3	1.3	1.3	1.3	1.4	1.4
40	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.2	1.2
50	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1
60 or greater	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0

- i) If the PEQ is less than or equal to the water quality standard, there is no reasonable potential and no limit will be established in the permit.
 - ii) If the PEQ is more than the water quality standard, the Agency will proceed to consideration of dilution and mixing pursuant to subsection (h)(4).
- B) If facility-specific data of 10 or less data values is available, an alternative PEQ shall be derived using the table in subsection (h)(3)(A) assuming a coefficient of variation of 0.6, applied to the maximum value in the data set that has its quality assured consistent with 35 Ill. Adm. Code 352.410.
- i) If the PEQ is less than or equal to the water quality standard, there is no reasonable potential and no limit will be established in the permit.
 - ii) If the PEQ exceeds the water quality standard, an alternative PEQ will be calculated using the maximum value in the data set and a multiplier of 1.4. If the alternative PEQ also exceeds the water quality standard, the Agency will proceed to consider dilution and mixing pursuant to subsection (h)(4).
 - iii) If the PEQ exceeds the water quality standard but the alternative PEQ is less than or equal to the standard, the Agency will either proceed to consider dilution and mixing pursuant to subsection (h)(4), or will incorporate a monitoring requirement and reopener clause to reassess the potential to exceed within a specified time schedule, not to exceed one year. In determining which of these options to

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use in any individual application, the Agency shall consider the operational and economic impacts on the permittee and the effect, if any, deferral of a final decision would have on an ultimate compliance schedule if a permit limit were subsequently determined to be necessary.

- C) The Agency shall compare monthly average effluent data values, when available, with chronic aquatic life, human health and wildlife standards to evaluate the need for monthly average water quality based effluent limitations (WQBELs). The Agency shall use daily effluent data values to determine whether a potential exists to exceed acute aquatic life water quality standards.
 - D) The Agency may apply other scientifically defensible statistical methods for calculating PEQ for use in the reasonable potential analysis as provided for in Procedure 5.b.2 of [appendix Appendix F](#) to 40 CFR 132, incorporated by reference at 35 Ill. Adm. Code 301.106.
 - E) Regardless of the statistical procedure used, if the PEQ for the parameter is less than or equal to the water quality standard for that parameter, the Agency shall deem the discharge not to have a reasonable potential to exceed, and a WQBEL shall not be required unless otherwise required under 35 Ill. Adm. Code 352.430.
- 4) If the PEQ for a parameter is greater than the particular water quality standard, criteria or value for that parameter, the Agency will assess the level of treatment being provided by the discharger. If the discharger is providing (or will be providing) a level of treatment consistent with the best degree of treatment required by 35 Ill. Adm. Code 304.102(a), the PEQ derived under subsection (h)(3) shall be compared to a preliminary effluent limitation (PEL) determined by applying an appropriate mixing zone or a default mixing zone to the discharge. Mixing opportunity and dilution credit will be considered as follows:
- A) Discharges to tributaries of the Lake Michigan Basin shall be considered to have no available dilution for either acute or chronic exposures, and the PEL will be set equivalent to the water quality standard unless dilution is documented through a mixing zone

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study.

- B) Bioaccumulative chemicals of concern (BCCs):
- i) No mixing shall be allowed for new discharges of BCCs commencing on or after December 24, 1997. The PEL will be set equivalent to the water quality standard.
 - ii) Mixing shall be allowed for discharges of BCCs ~~that~~which existed as of December 24, 1997 in accordance with the requirements of 35 Ill. Adm. Code 302.530.
- C) Direct discharges to the Open Waters of Lake Michigan shall have a default mixing allowance of 2:1 for acute standards, criteria or values and 10:1 for chronic standards, criteria or values if the discharge configuration indicates that the effluent readily and rapidly mixes with the receiving waters. If ready and rapid mixing is in doubt the Agency shall deny any default dilution or mixing allowance and require a mixing or dispersion study to determine the proper dilution allowance. If the discharger applies for more than the default dilution or mixing allowance, it must submit a mixing or dispersion study to justify its request. Whenever a mixing or dispersion study is available, it shall be used to determine dilution or mixing allowance in lieu of the default allowance.
- 5) Preliminary effluent limitations calculations.
- A) The preliminary effluent limitation (PEL) is calculated in a simple mass balance approach reflecting the dilution allowance established in subsection (h)(4):

$$WQS = [(Q_e)(PEL) + (Q_d)(C_d)] / [Q_e + Q_d]$$

or

$$PEL = [WQS(Q_e + Q_d) - (Q_d)(C_d)] / Q_e$$

WHERE:

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WQS = applicable water quality standard, criteria or value
Qe = effluent flowrate
Qd = allowable dilution flowrate
Cd = background pollutant concentration in dilution
water

- B) The representative background concentration of pollutants to develop TMDLs and WLAs calculated in the absence of a TMDL shall be established as follows:
- i) "Background" represents all pollutant loadings, specifically loadings that flow from upstream waters into the specified watershed, water body, or water body segment for which a TMDL or WLA in the absence of a TMDL is being developed and enter the specified watershed, water body, or water body segment through atmospheric deposition, chemical reaction, or sediment release or resuspension.
 - ii) When determining what available data are acceptable for use in calculating background, the Agency shall use its best professional judgment, including consideration of the sampling location and the reliability of the data through comparison, in part, to detection and quantification levels. When data in more than 1 of the data sets or categories described in subsection (h)(5)(B)(iii) exists, best professional judgment shall be used to select the data that most accurately reflects or estimates background concentrations. Pollutant degradation and transport information may be considered when using pollutant loading data to estimate a water column concentration.
 - iii) The representative background concentration for a pollutant in the specified watershed, water body, or water body segment shall be established on a case-by-case basis as the geometric mean of: acceptable water column data; water column concentrations estimated through use of acceptable caged or resident fish tissue data; or water column concentrations estimated through the use of acceptable or

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projected pollutant loading data. When determining the geometric mean of the data for a pollutant that includes values both above and below the detection level, commonly accepted statistical techniques shall be used to evaluate the data. If all of the acceptable data in a data set are below the detection level for a pollutant, then all the data for the pollutant in that data set shall be assumed to be zero.

- 6) Water quality based effluent limitations.
 - A) If the PEQ is less than or equal to the PEL, it will be concluded that there is no reasonable potential to exceed. Under such circumstances a permit limit for that contaminant will not be set unless otherwise justified under one or more provisions of 35 Ill. Adm. Code 352.430.
 - B) If the PEQ is equal to or greater than the PEL, and the PEQ was calculated using a data set of more than 10 values, a WQBEL will be included in the permit. If the PEQ was calculated using a data set of less than or equal to 10 values, and the alternative PEQ calculated under subsection (h)(3)(B) also exceeds the PEL, a WQBEL will be included in the permit.
 - C) If the PEQ was calculated using a data set of less than or equal to 10 values, and the PEQ is greater than the PEL but the alternative PEQ is less than the PEL, the Agency will either establish a WQBEL in the permit or incorporate a monitoring requirement and reopener clause to reassess potential to exceed within a specified time schedule, not to exceed one year. In determining which of these options to use in any individual application, the Agency shall consider the operational and economic impacts on the permittee and the effect, if any, deferral of a final decision would have on an ultimate compliance schedule if a permit limit were subsequently determined to be necessary.
 - D) The WQBEL will be set at the PEL, unless the PEL is appropriately modified to reflect credit for intake pollutants when the discharged water originates in the same water body to which it is being discharged. Consideration of intake credit will be limited

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to the provisions of 35 Ill. Adm. Code 352.425.

- E) The reasonable potential analysis shall be completed separately for acute and chronic aquatic life effects. When WQBELs are based on acute impacts, the limit will be expressed as a daily maximum. When the WQBEL is based on chronic effects, the limit will be expressed as a monthly average. Human health and wildlife based WQBELs will be expressed as monthly averages. If circumstances warrant, the Agency shall consider alternatives to daily and monthly limits.
- i) Best management practices (BMPs) to control or abate the discharge of chloride when:
- 1) Authorized under section 402(p) of the CWA for the control of storm water discharges;
 - 2) Numeric effluent limitations are infeasible; or
 - 3) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Hospital Licensing Requirements
- 2) Code Citation: 77 Ill. Adm. Code 250
- 3) Section Number: 250.330 Proposed Action:
Amendment
- 4) Statutory Authority: Hospital Licensing Act [210 ILCS 85]
- 5) A Complete Description of the Subjects and Issues Involved: This proposed amendment implements the statutory requirements of Public Act 98-271, which inserted language in the Hospital Licensing Act requiring that hospital procedures for administering pneumococcal vaccines be "in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention that are most recent to the time of vaccination," instead of just for patients aged 65 or older.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

The Department anticipates adoption of this rulemaking approximately six to nine months after publication of the Notice in the *Illinois Register*.

- 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 proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking may create a state mandate.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning this rulemaking within 45 days after this issue of the *Illinois Register* to:

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENT

Susan Meister
Division of Legal Services
Department of Public Health
535 W. Jefferson St., 5th Floor
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- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Hospitals
 - B) Reporting, bookkeeping or other procedures required for compliance: Yes
 - C) Types of professional skills necessary for compliance: Nursing
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2014

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

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENT

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER b: HOSPITALS AND AMBULATORY CARE FACILITIESPART 250
HOSPITAL LICENSING REQUIREMENTS

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250.100	Definitions
250.105	Incorporated and Referenced Materials
250.110	Application for and Issuance of Permit to Establish a Hospital
250.120	Application for and Issuance of a License to Operate a Hospital
250.130	Administration by the Department
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250.150	Definitions (Renumbered)
250.160	Incorporated and Referenced Materials (Renumbered)

SUBPART B: ADMINISTRATION AND PLANNING

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250.210	The Governing Board
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250.245	Failure to Initiate Criminal Background Checks
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250.260	Patients' Rights
250.265	Language Assistance Services
250.270	Manuals of Procedure
250.280	Agreement with Designated Organ Procurement Agencies
250.285	Smoking Restrictions
250.290	Safety Alert Notifications

SUBPART C: THE MEDICAL STAFF

Section	
250.310	Organization
250.315	House Staff Members

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- 250.320 Admission and Supervision of Patients
- 250.330 Orders for Medications and Treatments
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SUBPART D: PERSONNEL SERVICE

- Section
- 250.410 Organization
- 250.420 Personnel Records
- 250.430 Duty Assignments
- 250.435 Health Care Worker Background Check
- 250.440 Education Programs
- 250.450 Personnel Health Requirements
- 250.460 Benefits

SUBPART E: LABORATORY

- Section
- 250.510 Laboratory Services
- 250.520 Blood and Blood Components
- 250.525 Designated Blood Donor Program
- 250.530 Proficiency Survey Program (Repealed)
- 250.540 Laboratory Personnel (Repealed)
- 250.550 Western Blot Assay Testing Procedures (Repealed)

SUBPART F: RADIOLOGICAL SERVICES

- Section
- 250.610 General Diagnostic Procedures and Treatments
- 250.620 Radioactive Isotopes
- 250.630 General Policies and Procedures Manual

SUBPART G: GENERAL HOSPITAL EMERGENCY SERVICE

- Section
- 250.710 Classification of Emergency Services
- 250.720 General Requirements
- 250.725 Notification of Emergency Personnel
- 250.730 Community or Areawide Planning

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- 250.740 Disaster and Mass Casualty Program
- 250.750 Emergency Services for Sexual Assault Victims

SUBPART H: RESTORATIVE AND REHABILITATION SERVICES

- Section
- 250.810 Applicability of Other Parts of These Requirements
- 250.820 General
- 250.830 Classifications of Restorative and Rehabilitation Services
- 250.840 General Requirements for all Classifications
- 250.850 Specific Requirements for Comprehensive Physical Rehabilitation Services
- 250.860 Medical Direction
- 250.870 Nursing Care
- 250.880 Additional Allied Health Services
- 250.890 Animal-Assisted Therapy

SUBPART I: NURSING SERVICE AND ADMINISTRATION

- Section
- 250.910 Nursing Services
- 250.920 Organizational Plan
- 250.930 Role in hospital planning
- 250.940 Job descriptions
- 250.950 Nursing committees
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- 250.970 Nursing Care Plans
- 250.980 Nursing Records and Reports
- 250.990 Unusual Incidents
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- 250.1020 Licensure
- 250.1030 Policies and Procedures
- 250.1035 Domestic Violence Standards
- 250.1040 Patient Care Units
- 250.1050 Equipment for Bedside Care
- 250.1060 Drug Services on Patient Unit
- 250.1070 Care of Patients
- 250.1075 Use of Restraints
- 250.1080 Admission Procedures Affecting Care

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- 250.1090 Sterilization and Processing of Supplies
- 250.1100 Infection Control
- 250.1110 Mandatory Overtime Prohibition
- 250.1120 Staffing Levels
- 250.1130 Nurse Staffing by Patient Acuity

SUBPART J: SURGICAL AND RECOVERY ROOM SERVICES

Section

- 250.1210 Surgery
- 250.1220 Surgery Staff
- 250.1230 Policies & Procedures
- 250.1240 Surgical Privileges
- 250.1250 Surgical Emergency Care
- 250.1260 Operating Room Register and Records
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- 250.1300 Operating Room
- 250.1305 Visitors in Operating Room
- 250.1310 Cleaning of Operating Room
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SUBPART K: ANESTHESIA SERVICES

Section

- 250.1410 Anesthesia Service

SUBPART L: RECORDS AND REPORTS

Section

- 250.1510 Medical Records
- 250.1520 Reports

SUBPART M: FOOD SERVICE

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- 250.1610 Dietary Department Administration
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250.1630	Menus and Nutritional Adequacy
250.1640	Diet Orders
250.1650	Frequency of Meals
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250.1830	General Requirements for All Obstetric Departments
250.1840	Discharge of Newborn Infants from Hospital
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250.1860	Special Programs (Repealed)
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SUBPART P: ENGINEERING AND MAINTENANCE OF THE PHYSICAL PLANT, SITE, EQUIPMENT, AND SYSTEMS – HEATING, COOLING, ELECTRICAL, VENTILATION, PLUMBING, WATER, SEWER, AND SOLID WASTE DISPOSAL

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250.1910	Maintenance
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250.1940	Ventilation, Heating, Air Conditioning, and Air Changing Systems
250.1950	Grounds and Buildings Shall be Maintained

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250.1960	Sewage, Garbage, Solid Waste Handling and Disposal
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SUBPART Q: CHRONIC DISEASE HOSPITALS

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250.2010	Definition
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SUBPART S: PSYCHIATRIC SERVICES

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250.2210	Applicability of other Parts of these Regulations
250.2220	Establishment of a Psychiatric Service
250.2230	The Medical Staff
250.2240	Nursing Service
250.2250	Allied Health Personnel
250.2260	Staff and Personnel Development and Training
250.2270	Admission, Transfer and Discharge Procedures
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250.2290	Special Medical Record Requirements for Psychiatric Hospitals and Psychiatric Units of General Hospitals or General Hospitals Providing Psychiatric Care
250.2300	Diagnostic, Treatment and Physical Facilities and Services

SUBPART T: DESIGN AND CONSTRUCTION STANDARDS

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250.2410	Applicability of these Standards
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250.2430	Preparation of Drawings and Specifications – Submission Requirements
250.2440	General Hospital Standards
250.2442	Fees
250.2443	Advisory Committee
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250.2460	Finishes
250.2470	Structural
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SUBPART U: CONSTRUCTION REQUIREMENTS FOR EXISTING HOSPITALS

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SUBPART V: SPECIAL CARE AND/OR SPECIAL SERVICE UNITS

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250.2710	Special Care and/or Special Service Units
250.2720	Day Care for Mildly Ill Children

SUBPART W: ALCOHOLISM AND INTOXICATION TREATMENT SERVICES

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250.2810	Applicability of Other Parts of These Requirements
250.2820	Establishment of an Alcoholism and Intoxication Treatment Service
250.2830	Classification and Definitions of Service and Programs
250.2840	General Requirements for all Hospital Alcoholism Program Classifications
250.2850	The Medical and Professional Staff
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250.2880 Client Legal and Human Rights

250.APPENDIX A Codes and Standards (Repealed)

250.EXHIBIT A Codes (Repealed)

250.EXHIBIT B Standards (Repealed)

250.EXHIBIT C Addresses of Sources (Repealed)

250.ILLUSTRATION A Seismic Zone Map

250.TABLE A Measurements Essential for Level I, II, III Hospitals

250.TABLE B Sound Transmission Limitations in General Hospitals

250.TABLE C Filter Efficiencies for Central Ventilation and Air Conditioning Systems in General Hospitals (Repealed)

250.TABLE D General Pressure Relationships and Ventilation of Certain Hospital Areas (Repealed)

250.TABLE E Piping Locations for Oxygen, Vacuum and Medical Compressed Air

250.TABLE F General Pressure Relationships and Ventilation of Certain Hospital Areas

250.TABLE G Insulation/Building Perimeter

AUTHORITY: Implementing and authorized by the Hospital Licensing Act [210 ILCS 85].

SOURCE: Rules repealed and new rules adopted August 27, 1978; emergency amendment at 2 Ill. Reg. 31, p. 73, effective July 24, 1978, for a maximum of 150 days; amended at 2 Ill. Reg. 21, p. 49, effective May 16, 1978; emergency amendment at 2 Ill. Reg. 31, p. 73, effective July 24, 1978, for a maximum of 150 days; amended at 2 Ill. Reg. 45, p. 85, effective November 6, 1978; amended at 3 Ill. Reg. 17, p. 88, effective April 22, 1979; amended at 4 Ill. Reg. 22, p. 233, effective May 20, 1980; amended at 4 Ill. Reg. 25, p. 138, effective June 6, 1980; amended at 5 Ill. Reg. 507, effective December 29, 1980; amended at 6 Ill. Reg. 575, effective December 30, 1981; amended at 6 Ill. Reg. 1655, effective January 27, 1982; amended at 6 Ill. Reg. 3296, effective March 15, 1982; amended at 6 Ill. Reg. 7835 and 7838, effective June 17, 1982; amended at 7 Ill. Reg. 962, effective January 6, 1983; amended at 7 Ill. Reg. 5218 and 5221, effective April 4, 1983 and April 5, 1983; amended at 7 Ill. Reg. 6964, effective May 17, 1983; amended at 7 Ill. Reg. 8546, effective July 12, 1983; amended at 7 Ill. Reg. 9610, effective August 2, 1983; codified at 8 Ill. Reg. 19752; amended at 8 Ill. Reg. 24148, effective November 29, 1984; amended at 9 Ill. Reg. 4802, effective April 1, 1985; amended at 10 Ill. Reg. 11931, effective September 1, 1986; amended at 11 Ill. Reg. 10283, effective July 1, 1987; amended at 11 Ill. Reg. 10642, effective July 1, 1987; amended at 12 Ill. Reg. 15080, effective October 1, 1988; amended at 12 Ill. Reg. 16760, effective October 1, 1988; amended at 13 Ill. Reg. 13232, effective September 1, 1989; amended at 14 Ill. Reg. 2342, effective February 15, 1990; amended at 14 Ill. Reg. 13824, effective September 1, 1990; amended at 15 Ill. Reg. 5328, effective May 1, 1991; amended at 15 Ill. Reg. 13811, effective October 1, 1991; amended at 17

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Ill. Reg. 1614, effective January 25, 1993; amended at 17 Ill. Reg. 17225, effective October 1, 1993; amended at 18 Ill. Reg. 11945, effective July 22, 1994; amended at 18 Ill. Reg. 15390, effective October 10, 1994; amended at 19 Ill. Reg. 13355, effective September 15, 1995; emergency amendment at 20 Ill. Reg. 474, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 3234, effective February 15, 1996; amended at 20 Ill. Reg. 10009, effective July 15, 1996; amended at 22 Ill. Reg. 3932, effective February 13, 1998; amended at 22 Ill. Reg. 9342, effective May 20, 1998; amended at 23 Ill. Reg. 1007, effective January 15, 1999; emergency amendment at 23 Ill. Reg. 3508, effective March 4, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 9513, effective August 1, 1999; amended at 23 Ill. Reg. 13913, effective November 15, 1999; amended at 24 Ill. Reg. 6572, effective April 11, 2000; amended at 24 Ill. Reg. 17196, effective November 1, 2000; amended at 25 Ill. Reg. 3241, effective February 15, 2001; amended at 27 Ill. Reg. 1547, effective January 15, 2003; amended at 27 Ill. Reg. 13467, effective July 25, 2003; amended at 28 Ill. Reg. 5880, effective March 29, 2004; amended at 28 Ill. Reg. 6579, effective April 15, 2004; amended at 29 Ill. Reg. 12489, effective July 27, 2005; amended at 31 Ill. Reg. 4245, effective February 20, 2007; amended at 31 Ill. Reg. 14530, effective October 3, 2007; amended at 32 Ill. Reg. 3756, effective February 27, 2008; amended at 32 Ill. Reg. 4213, effective March 10, 2008; amended at 32 Ill. Reg. 7932, effective May 12, 2008; amended at 32 Ill. Reg. 14336, effective August 12, 2008; amended at 33 Ill. Reg. 8306, effective June 2, 2009; amended at 34 Ill. Reg. 2528, effective January 27, 2010; amended at 34 Ill. Reg. 3331, effective February 24, 2010; amended at 34 Ill. Reg. 19031, effective November 17, 2010; amended at 34 Ill. Reg. 19158, effective November 23, 2010; amended at 35 Ill. Reg. 4556, effective March 4, 2011; amended at 35 Ill. Reg. 6386, effective March 31, 2011; amended at 35 Ill. Reg. 13875, effective August 1, 2011; amended at 36 Ill. Reg. 17413, effective December 3, 2012; amended at 38 Ill. Reg. 13280, effective June 10, 2014; amended at 38 Ill. Reg. _____, effective _____.

SUBPART C: THE MEDICAL STAFF

Section 250.330 Orders for Medications and Treatments

- a) No medication, treatment or diagnostic test shall be administered to a patient except on the written order of a member of the medical staff, a house staff member under the supervision of a member of the medical staff, or allied health personnel with clinical privileges recommended by the hospital medical staff and granted by the hospital governing board, with the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per medical staff-approved hospital policy that includes an assessment for contraindications.

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- 1) The staff-approved *influenza and pneumococcal immunization policy shall include, but not be limited to, the following:*
 - A) *Procedures for identifying patients age 65 or older and, at the discretion of the hospital, other patients at risk;*
 - B) *Procedures for offering immunization against influenza virus when available between September 1 and April 1, and against pneumococcal disease upon admission or discharge, to patients in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention that are most recent to the time of vaccination~~age 65 or older~~, unless contraindicated; and*
 - C) *Procedures for ensuring that patients offered immunization, or their guardians, receive information regarding the risks and benefits of vaccination.*
 - 2) *The hospital shall provide a copy of its influenza and pneumococcal immunization policy to the Department upon request. (Section 6.26 of the Act)*
- b) Verbal orders shall be signed before the member of the medical staff, the house staff member or allied health personnel with clinical privileges recommended by the hospital medical staff and granted by the hospital governing board leaves the area. Telephone orders shall be used sparingly and countersigned by the ordering practitioner or another practitioner who is responsible for the care of the patient as soon as practicable pursuant to a hospital policy approved by the medical staff, but no later than 72 hours after the order was given.
 - c) Members of the medical staff, house staff members or allied health personnel with clinical privileges recommended by the hospital medical staff and granted by the hospital governing board shall give orders for medication and treatment only to the licensed, registered or certified professional persons who are authorized by law to administer or dispense the medication or treatment in the course of practicing their identified specific discipline.
 - d) The medical directors of the laboratory, radiology or other diagnostic services may respectively authorize the performance of diagnostic tests and procedures at

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the request of other than members of the medical staff in accordance with policies approved by the medical staff and governing board.

- e) The medical director of the physical therapy or rehabilitation department may authorize the provision of physical therapy or rehabilitation services or treatments at the request of other than members of the medical staff in accordance with policies approved by the medical staff and governing board.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Skilled Nursing and Intermediate Care Facilities Code
- 2) Code Citation: 77 Ill. Adm. Code 300
- 3) Section Number: 300.1060 Proposed Action: Amendment
- 4) Statutory Authority: Nursing Home Care Act [210 ILCS 45]
- 5) A Complete Description of the Subjects and Issues Involved: This proposed amendment implements the statutory requirements of PA 98-271, which removed language from the Nursing Home Care Act that limited the administration of pneumococcal vaccination to residents aged 65 or older.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

The Department anticipates adoption of this rulemaking approximately six to nine months after publication of this Notice in the *Illinois Register*.

- 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 proposed rulemakings pending on this Part? Yes

<u>SectionNumbers:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
300.6000	Repeal	38 Ill. Reg. 11666; June 6, 2014
300.6005	Repeal	38 Ill. Reg. 11666; June 6, 2014
300.6010	Repeal	38 Ill. Reg. 11666; June 6, 2014
300.6020	Repeal	38 Ill. Reg. 11666; June 6, 2014
300.6030	Repeal	38 Ill. Reg. 11666; June 6, 2014
300.6040	Repeal	38 Ill. Reg. 11666; June 6, 2014
300.6045	Repeal	38 Ill. Reg. 11666; June 6, 2014

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300.6047	Repeal	38 Ill. Reg. 11666; June 6, 2014
300.6049	Repeal	38 Ill. Reg. 11666; June 6, 2014
300.6050	Repeal	38 Ill. Reg. 11666; June 6, 2014
300.6060	Repeal	38 Ill. Reg. 11666; June 6, 2014
300.6070	Repeal	38 Ill. Reg. 11666; June 6, 2014
300.6080	Repeal	38 Ill. Reg. 11666; June 6, 2014
300.6090	Repeal	38 Ill. Reg. 11666; June 6, 2014
300.6095	Repeal	38 Ill. Reg. 11666; June 6, 2014

11) Statement of Statewide Policy Objectives: This rulemaking may create a State mandate.

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning this rulemaking within 45 days after this issue of the *Illinois Register* to:

Susan Meister
Division of Legal Services
Department of Public Health
535 W. Jefferson St., 5th Floor
Springfield IL 62761

dph.rules@illinois.gov

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: Skilled nursing and intermediate care facilities

B) Reporting, bookkeeping or other procedures required for compliance: Yes

C) Types of Professional skills necessary for compliance: Nursing

14) Regulatory Agenda on which this rulemaking was summarized: July 2014

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

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENT

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIESPART 300
SKILLED NURSING AND INTERMEDIATE CARE FACILITIES CODE

SUBPART A: GENERAL PROVISIONS

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300.110	General Requirements
300.120	Application for License
300.130	Licensee
300.140	Issuance of an Initial License for a New Facility
300.150	Issuance of an Initial License Due to a Change of Ownership
300.160	Issuance of a Renewal License
300.163	Alzheimer's Special Care Disclosure
300.165	Criteria for Adverse Licensure Actions
300.170	Denial of Initial License
300.175	Denial of Renewal of License
300.180	Revocation of License
300.190	Experimental Program Conflicting With Requirements
300.200	Inspections, Surveys, Evaluations and Consultation
300.210	Filing an Annual Attested Financial Statement
300.220	Information to Be Made Available to the Public By the Department
300.230	Information to Be Made Available to the Public By the Licensee
300.240	Municipal Licensing
300.250	Ownership Disclosure
300.260	Issuance of Conditional Licenses
300.270	Monitor and Receivership
300.271	Presentation of Findings
300.272	Determination to Issue a Notice of Violation or Administrative Warning
300.274	Determination of the Level of a Violation
300.276	Notice of Violation
300.277	Administrative Warning
300.278	Plans of Correction
300.280	Reports of Correction
300.282	Conditions for Assessment of Penalties
300.284	Calculation of Penalties (Repealed)

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300.286	Notice of Penalty Assessment; Response by Facility
300.287	Consideration of Factors for Assessing Penalties
300.288	Reduction or Waiver of Penalties
300.290	Quarterly List of Violators (Repealed)
300.300	Alcoholism Treatment Programs In Long-Term Care Facilities
300.310	Department May Survey Facilities Formerly Licensed
300.315	Supported Congregate Living Arrangement Demonstration
300.320	Waivers
300.330	Definitions
300.340	Incorporated and Referenced Materials

SUBPART B: ADMINISTRATION

Section	
300.510	Administrator

SUBPART C: POLICIES

Section	
300.610	Resident Care Policies
300.615	Determination of Need Screening and Request for Resident Criminal History Record Information
300.620	Admission, Retention and Discharge Policies
300.624	Criminal History Background Checks for Persons Who Were Residents on May 10, 2006 (Repealed)
300.625	Identified Offenders
300.626	Discharge Planning for Identified Offenders
300.627	Transfer of an Identified Offender
300.630	Contract Between Resident and Facility
300.640	Residents' Advisory Council
300.650	Personnel Policies
300.651	Whistleblower Protection
300.655	Initial Health Evaluation for Employees
300.660	Nursing Assistants
300.661	Health Care Worker Background Check
300.662	Resident Attendants
300.663	Registry of Certified Nursing Assistants
300.665	Student Interns
300.670	Disaster Preparedness

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300.680	Restraints
300.682	Nonemergency Use of Physical Restraints
300.684	Emergency Use of Physical Restraints
300.686	Unnecessary, Psychotropic, and Antipsychotic Drugs
300.690	Incidents and Accidents
300.695	Contacting Local Law Enforcement
300.696	Infection Control

SUBPART D: PERSONNEL

Section	
300.810	General
300.820	Categories of Personnel
300.830	Consultation Services
300.840	Personnel Policies

SUBPART E: MEDICAL AND DENTAL CARE OF RESIDENTS

Section	
300.1010	Medical Care Policies
300.1020	Communicable Disease Policies
300.1025	Tuberculin Skin Test Procedures
300.1030	Medical Emergencies
300.1035	Life-Sustaining Treatments
300.1040	Care and Treatment of Sexual Assault Survivors
300.1050	Dental Standards
300.1060	Vaccinations

SUBPART F: NURSING AND PERSONAL CARE

Section	
300.1210	General Requirements for Nursing and Personal Care
300.1220	Supervision of Nursing Services
300.1230	Direct Care Staffing
300.1240	Additional Requirements

SUBPART G: RESIDENT CARE SERVICES

Section

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300.1410	Activity Program
300.1420	Specialized Rehabilitation Services
300.1430	Work Programs
300.1440	Volunteer Program
300.1450	Language Assistance Services

SUBPART H: MEDICATIONS

Section	
300.1610	Medication Policies and Procedures
300.1620	Compliance with Licensed Prescriber's Orders
300.1630	Administration of Medication
300.1640	Labeling and Storage of Medications
300.1650	Control of Medications

SUBPART I: RESIDENT AND FACILITY RECORDS

Section	
300.1810	Resident Record Requirements
300.1820	Content of Medical Records
300.1830	Records Pertaining to Residents' Property
300.1840	Retention and Transfer of Resident Records
300.1850	Other Resident Record Requirements
300.1860	Staff Responsibility for Medical Records
300.1870	Retention of Facility Records
300.1880	Other Facility Record Requirements

SUBPART J: FOOD SERVICE

Section	
300.2010	Director of Food Services
300.2020	Dietary Staff in Addition to Director of Food Services
300.2030	Hygiene of Dietary Staff
300.2040	Diet Orders
300.2050	Meal Planning
300.2060	Therapeutic Diets (Repealed)
300.2070	Scheduling Meals
300.2080	Menus and Food Records
300.2090	Food Preparation and Service

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- 300.2100 Food Handling Sanitation
- 300.2110 Kitchen Equipment, Utensils, and Supplies

SUBPART K: MAINTENANCE, HOUSEKEEPING, AND LAUNDRY

- Section
- 300.2210 Maintenance
- 300.2220 Housekeeping
- 300.2230 Laundry Services

SUBPART L: FURNISHINGS, EQUIPMENT, AND SUPPLIES

- Section
- 300.2410 Furnishings
- 300.2420 Equipment and Supplies
- 300.2430 Sterilization of Equipment and Supplies

SUBPART M: WATER SUPPLY AND SEWAGE DISPOSAL

- Section
- 300.2610 Codes
- 300.2620 Water Supply
- 300.2630 Sewage Disposal
- 300.2640 Plumbing

SUBPART N: DESIGN AND CONSTRUCTION STANDARDS
FOR NEW INTERMEDIATE CARE AND SKILLED NURSING FACILITIES

- Section
- 300.2810 Applicability of these Standards
- 300.2820 Codes and Standards
- 300.2830 Preparation of Drawings and Specifications
- 300.2840 Site
- 300.2850 Administration and Public Areas
- 300.2860 Nursing Unit
- 300.2870 Dining, Living, Activities Rooms
- 300.2880 Therapy and Personal Care
- 300.2890 Service Departments
- 300.2900 General Building Requirements

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300.2910	Structural
300.2920	Mechanical Systems
300.2930	Plumbing Systems
300.2940	Electrical Systems

SUBPART O: DESIGN AND CONSTRUCTION STANDARDS
FOR EXISTING INTERMEDIATE CARE AND SKILLED NURSING FACILITIES

Section	
300.3010	Applicability
300.3020	Codes and Standards
300.3030	Preparation of Drawings and Specifications
300.3040	Site
300.3050	Administration and Public Areas
300.3060	Nursing Unit
300.3070	Living, Dining, Activities Rooms
300.3080	Treatment and Personal Care
300.3090	Service Departments
300.3100	General Building Requirements
300.3110	Structural
300.3120	Mechanical Systems
300.3130	Plumbing Systems
300.3140	Electrical Requirements

SUBPART P: RESIDENT'S RIGHTS

Section	
300.3210	General
300.3220	Medical Care
300.3230	Restraints (Repealed)
300.3240	Abuse and Neglect
300.3250	Communication and Visitation
300.3260	Resident's Funds
300.3270	Residents' Advisory Council
300.3280	Contract With Facility
300.3290	Private Right of Action
300.3300	Transfer or Discharge
300.3310	Complaint Procedures
300.3320	Confidentiality

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300.3330 Facility Implementation

SUBPART Q: SPECIALIZED LIVING FACILITIES FOR THE MENTALLY ILL

Section

300.3410 Application of Other Sections of These Minimum Standards (Repealed)
300.3420 Administrator (Repealed)
300.3430 Policies (Repealed)
300.3440 Personnel (Repealed)
300.3450 Resident Living Services Medical and Dental Care (Repealed)
300.3460 Resident Services Program (Repealed)
300.3470 Psychological Services (Repealed)
300.3480 Social Services (Repealed)
300.3490 Recreational and Activities Services (Repealed)
300.3500 Individual Treatment Plan (Repealed)
300.3510 Health Services (Repealed)
300.3520 Medical Services (Repealed)
300.3530 Dental Services (Repealed)
300.3540 Optometric Services (Repealed)
300.3550 Audiometric Services (Repealed)
300.3560 Podiatric Services (Repealed)
300.3570 Occupational Therapy Services (Repealed)
300.3580 Nursing and Personal Care (Repealed)
300.3590 Resident Care Services (Repealed)
300.3600 Record Keeping (Repealed)
300.3610 Food Service (Repealed)
300.3620 Furnishings, Equipment and Supplies (New and Existing Facilities) (Repealed)
300.3630 Design and Construction Standards (New and Existing Facilities) (Repealed)

SUBPART R: DAYCARE PROGRAMS

Section

300.3710 Day Care in Long-Term Care Facilities

SUBPART S: PROVIDING SERVICES TO PERSONS WITH SERIOUS MENTAL ILLNESS

Section

300.4000 Applicability of Subpart S
300.4010 Comprehensive Assessments for Residents with Serious Mental Illness Residing

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- in Facilities Subject to Subpart S
- 300.4020 Reassessments for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S
- 300.4030 Individualized Treatment Plan for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S
- 300.4040 General Requirements for Facilities Subject to Subpart S
- 300.4050 Psychiatric Rehabilitation Services for Facilities Subject to Subpart S
- 300.4060 Discharge Plans for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S
- 300.4070 Work Programs for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S
- 300.4080 Community-Based Rehabilitation Programs for Residents with Serious Mental Illness Residing in Facilities Subject to Subpart S
- 300.4090 Personnel for Providing Services to Persons with Serious Mental Illness for Facilities Subject to Subpart S

SUBPART T: FACILITIES PARTICIPATING IN ILLINOIS DEPARTMENT OF
HEALTHCARE AND FAMILY SERVICES'
DEMONSTRATION PROGRAM FOR PROVIDING
SERVICES TO PERSONS WITH SERIOUS MENTAL ILLNESS

Section

- 300.6000 Applicability of Subpart T
- 300.6005 Quality Assessment and Improvement for Facilities Subject to Subpart T
- 300.6010 Comprehensive Assessments for Residents of Facilities Subject to Subpart T
- 300.6020 Reassessments for Residents of Facilities Subject to Subpart T
- 300.6030 Individualized Treatment Plan for Residents of Facilities Subject to Subpart T
- 300.6040 General Requirements for Facilities Subject to Subpart T
- 300.6045 Serious Incidents and Accidents in Facilities Subject to Subpart T
- 300.6047 Medical Care Policies for Facilities Subject to Subpart T
- 300.6049 Emergency Use of Restraints for Facilities Subject to Subpart T
- 300.6050 Psychiatric Rehabilitation Services for Facilities Subject to Subpart T
- 300.6060 Discharge Plans for Residents of Facilities Subject to Subpart T
- 300.6070 Work Programs for Residents of Facilities Subject to Subpart T
- 300.6080 Community-Based Rehabilitation Programs for Residents of Facilities Subject to Subpart T
- 300.6090 Personnel for Providing Services to Residents of Facilities Subject to Subpart T
- 300.6095 Training and Continuing Education for Facilities Subject to Subpart T

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SUBPART U: ALZHEIMER'S SPECIAL CARE UNIT OR CENTER PROVIDING
CARE TO PERSONS WITH ALZHEIMER'S DISEASE OR OTHER DEMENTIA

Section

300.7000	Applicability
300.7010	Admission Criteria
300.7020	Assessment and Care Planning
300.7030	Ability-Centered Care
300.7040	Activities
300.7050	Staffing
300.7060	Environment
300.7070	Quality Assessment and Improvement
300.7080	Variances to Enhance Residents' Quality of Life
300.APPENDIX A	Interpretation, Components, and Illustrative Services for Intermediate Care Facilities and Skilled Nursing Facilities (Repealed)
300.APPENDIX B	Classification of Distinct Part of a Facility for Different Levels of Service (Repealed)
300.APPENDIX C	Federal Requirements Regarding Patients'/Residents' Rights (Repealed)
300.APPENDIX D	Forms for Day Care in Long-Term Care Facilities
300.APPENDIX E	Criteria for Activity Directors Who Need Only Minimal Consultation (Repealed)
300.APPENDIX F	Guidelines for the Use of Various Drugs
300.APPENDIX G	Facility Report
300.TABLE A	Sound Transmission Limitations in New Skilled Nursing and Intermediate Care Facilities
300.TABLE B	Pressure Relationships and Ventilation Rates of Certain Areas for New Intermediate Care Facilities and Skilled Nursing Facilities
300.TABLE C	Construction Types and Sprinkler Requirements for Existing Skilled Nursing Facilities/Intermediate Care Facilities
300.TABLE D	Heat Index Table/Apparent Temperature

AUTHORITY: Implementing and authorized by the Nursing Home Care Act [210 ILCS 45].

SOURCE: Emergency rules adopted at 4 Ill. Reg. 10, p. 1066, effective March 1, 1980, for a maximum of 150 days; adopted at 4 Ill. Reg. 30, p. 311, effective July 28, 1980; emergency amendment at 6 Ill. Reg. 3229, effective March 8, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 5981, effective May 3, 1982; amended at 6 Ill. Reg. 6454, effective May 14, 1982; amended at 6 Ill. Reg. 8198, effective June 29, 1982; amended at 6 Ill. Reg. 11631, effective September 14, 1982; amended at 6 Ill. Reg. 14550 and 14554, effective November 8, 1982;

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amended at 6 Ill. Reg. 14684, effective November 15, 1982; amended at 7 Ill. Reg. 285, effective December 22, 1982; amended at 7 Ill. Reg. 1972, effective January 28, 1983; amended at 7 Ill. Reg. 8579, effective July 11, 1983; amended at 7 Ill. Reg. 15831, effective November 10, 1983; amended at 7 Ill. Reg. 15864, effective November 15, 1983; amended at 7 Ill. Reg. 16992, effective December 14, 1983; amended at 8 Ill. Reg. 15599, 15603, and 15606, effective August 15, 1984; amended at 8 Ill. Reg. 15947, effective August 17, 1984; amended at 8 Ill. Reg. 16999, effective September 5, 1984; codified at 8 Ill. Reg. 19766; amended at 8 Ill. Reg. 24186, effective November 29, 1984; amended at 8 Ill. Reg. 24668, effective December 7, 1984; amended at 8 Ill. Reg. 25102, effective December 14, 1984; amended at 9 Ill. Reg. 132, effective December 26, 1984; amended at 9 Ill. Reg. 4087, effective March 15, 1985; amended at 9 Ill. Reg. 11049, effective July 1, 1985; amended at 11 Ill. Reg. 16927, effective October 1, 1987; amended at 12 Ill. Reg. 1052, effective December 24, 1987; amended at 12 Ill. Reg. 16811, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18477, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 4684, effective March 24, 1989; amended at 13 Ill. Reg. 5134, effective April 1, 1989; amended at 13 Ill. Reg. 20089, effective December 1, 1989; amended at 14 Ill. Reg. 14950, effective October 1, 1990; amended at 15 Ill. Reg. 554, effective January 1, 1991; amended at 16 Ill. Reg. 681, effective January 1, 1992; amended at 16 Ill. Reg. 5977, effective March 27, 1992; amended at 16 Ill. Reg. 17089, effective November 3, 1992; emergency amendment at 17 Ill. Reg. 2420, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 8026, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; amended at 17 Ill. Reg. 15106, effective September 3, 1993; amended at 17 Ill. Reg. 16194, effective January 1, 1994; amended at 17 Ill. Reg. 19279, effective October 26, 1993; amended at 17 Ill. Reg. 19604, effective November 4, 1993; amended at 17 Ill. Reg. 21058, effective November 20, 1993; amended at 18 Ill. Reg. 1491, effective January 14, 1994; amended at 18 Ill. Reg. 15868, effective October 15, 1994; amended at 19 Ill. Reg. 11600, effective July 29, 1995; emergency amendment at 20 Ill. Reg. 567, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 10142, effective July 15, 1996; amended at 20 Ill. Reg. 12208, effective September 10, 1996; amended at 21 Ill. Reg. 15000, effective November 15, 1997; amended at 22 Ill. Reg. 4094, effective February 13, 1998; amended at 22 Ill. Reg. 7218, effective April 15, 1998; amended at 22 Ill. Reg. 16609, effective September 18, 1998; amended at 23 Ill. Reg. 1103, effective January 15, 1999; amended at 23 Ill. Reg. 8106, effective July 15, 1999; amended at 24 Ill. Reg. 17330, effective November 1, 2000; amended at 25 Ill. Reg. 4911, effective April 1, 2001; amended at 26 Ill. Reg. 3113, effective February 15, 2002; amended at 26 Ill. Reg. 4846, effective April 1, 2002; amended at 26 Ill. Reg. 10523, effective July 1, 2002; emergency amendment at 27 Ill. Reg. 2181, effective February 1, 2003, for a maximum of 150 days; emergency expired June 30, 2003; emergency amendment at 27 Ill. Reg. 5452, effective March 25, 2003, for a maximum of 150 days; emergency expired August 21, 2003; amended at

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27 Ill. Reg. 5862, effective April 1, 2003; emergency amendment at 27 Ill. Reg. 14204, effective August 15, 2003, for a maximum of 150 days; emergency expired January 11, 2004; amended at 27 Ill. Reg. 15855, effective September 25, 2003; amended at 27 Ill. Reg. 18105, effective November 15, 2003; expedited correction at 28 Ill. Reg. 3528, effective November 15, 2003; amended at 28 Ill. Reg. 11180, effective July 22, 2004; amended at 28 Ill. Reg. 14623, effective October 20, 2004; amended at 29 Ill. Reg. 876, effective December 22, 2004; emergency amendment at 29 Ill. Reg. 11824, effective July 12, 2005, for a maximum of 150 days; emergency rule modified in response to JCAR Recommendation at 29 Ill. Reg. 15101, effective September 23, 2005, for the remainder of the maximum 150 days; emergency amendment expired December 8, 2005; amended at 29 Ill. Reg. 12852, effective August 2, 2005; amended at 30 Ill. Reg. 1425, effective January 23, 2006; amended at 30 Ill. Reg. 5213, effective March 2, 2006; amended at 31 Ill. Reg. 6044, effective April 3, 2007; amended at 31 Ill. Reg. 8813, effective June 6, 2007; amended at 33 Ill. Reg. 9356, effective June 17, 2009; amended at 34 Ill. Reg. 19182, effective November 23, 2010; amended at 35 Ill. Reg. 3378, effective February 14, 2011; amended at 35 Ill. Reg. 11419, effective June 29, 2011; expedited correction at 35 Ill. Reg. 17468, effective June 29, 2011; amended at 36 Ill. Reg. 14090, effective August 30, 2012; amended at 37 Ill. Reg. 2298, effective February 4, 2013; amended at 37 Ill. Reg. 4954, effective March 29, 2013; amended at 38 Ill. Reg. _____, effective _____.

SUBPART E: MEDICAL AND DENTAL CARE OF RESIDENTS

Section 300.1060 Vaccinations

- a) *A facility shall annually administer a vaccination against influenza to each resident, in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention that are most recent to the time of vaccination, unless the vaccination is medically contraindicated or the resident has refused the vaccine. Influenza vaccinations for all residents age 65 and over shall be completed by November 30 of each year or as soon as practicable if vaccine supplies are not available before November 1. Residents admitted after November 30, during the flu season, and until February 1 shall, as medically appropriate, receive an influenza vaccination prior to or upon admission or as soon as practicable if vaccine supplies are not available at the time of the admission, unless the vaccine is medically contraindicated or the resident has refused the vaccine. (Section 2-213 of the Act)*
- b) *A facility shall document in the resident's medical record that an annual vaccination against influenza was administered, refused or medically contraindicated. (Section 2-213 of the Act)*

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- c) *A facility shall provide or arrange for administration of a pneumococcal vaccination to each resident ~~who is age 65 or over~~, in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, who has not received this immunization prior to or upon admission to the facility unless the resident refuses the offer for vaccination or the vaccination is medically contraindicated. (Section 2-213 of the Act)*
- d) *A facility shall document in each resident's medical record that a vaccination against pneumococcal pneumonia was offered and administered, refused, or medically contraindicated. (Section 2-213 of the Act)*

(Source: Amended at 38 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Sheltered Care Facilities Code
- 2) Code Citation: 77 Ill. Adm. Code 330
- 3) Section Number: 330.1160 Proposed Action:
Amendment
- 4) Statutory Authority: Nursing Home Care Act [210 ILCS 45]
- 5) A Complete Description of the Subjects and Issues Involved: This proposed amendment implements the statutory requirements of Public Act 98-0271, which removed language from the Nursing Home Care Act that limited the administration of pneumococcal vaccination to residents aged 65 or older.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

The Department anticipates adoption of this rulemaking approximately six to nine months after publication of the Notice in the *Illinois Register*.

- 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 proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not create a state mandate.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning this rulemaking within 45 days after this issue of the *Illinois Register* to:

Susan Meister

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Division of Legal Services
Department of Public Health
535 W. Jefferson St., 5th Floor
Springfield IL 62761

dph.rules@illinois.gov

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Skilled nursing and intermediate care facilities
 - B) Reporting, bookkeeping or other procedures required for compliance: Yes
 - C) Types of professional skills necessary for compliance: Nursing
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2014

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

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NOTICE OF PROPOSED AMENDMENT

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIESPART 330
SHELTERED CARE FACILITIES CODE

SUBPART A: GENERAL PROVISIONS

Section	
330.110	General Requirements
330.120	Application for License
330.130	Licensee
330.140	Issuance of an Initial License For a New Facility
330.150	Issuance of an Initial License Due to a Change of Ownership
330.160	Issuance of a Renewal License
330.163	Alzheimer's Special Care Disclosure
330.165	Criteria for Adverse Licensure Actions
330.170	Denial of Initial License
330.175	Denial of Renewal of License
330.180	Revocation of License
330.190	Experimental Program Conflicting With Requirements
330.200	Inspections, Surveys, Evaluations and Consultation
330.210	Filing an Annual Attested Financial Statement
330.220	Information to be Made Available to the Public By the Department
330.230	Information to be Made Available to the Public By the Licensee
330.240	Municipal Licensing
330.250	Ownership Disclosure
330.260	Issuance of Conditional Licenses
330.270	Monitoring and Receivership
330.271	Presentation of Findings
330.272	Determination to Issue a Notice of Violation or Administrative Warning
330.274	Determination of the Level of a Violation
330.276	Notice of Violation
330.277	Administrative Warning
330.278	Plans of Correction
330.280	Reports of Correction
330.282	Conditions for Assessment of Penalties
330.284	Calculation of Penalties (Repealed)

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330.286	Notice of Penalty Assessment; Response by Facility
330.287	Consideration of Factors for Assessing Penalties
330.288	Reduction or Waiver of Penalties
330.290	Quarterly List of Violators (Repealed)
330.300	Alcoholism Treatment Programs In Long-Term Care Facilities
330.310	Department May Survey Facilities Formerly Licensed
330.315	Supported Congregate Living Arrangement Demonstration
330.320	Waivers
330.330	Definitions
330.340	Incorporated and Referenced Materials

SUBPART B: ADMINISTRATION

Section	
330.510	Administrator

SUBPART C: POLICIES

Section	
330.710	Resident Care Policies
330.715	Request for Resident Criminal History Record Information
330.720	Admission and Discharge Policies
330.724	Criminal History Background Checks for Persons Who Were Residents on May 10, 2006 (Repealed)
330.725	Identified Offenders
330.726	Discharge Planning for Identified Offenders
330.727	Transfer of an Identified Offender
330.730	Contract Between Resident and Facility
330.740	Residents' Advisory Council
330.750	General Policies
330.760	Personnel Policies
330.761	Whistleblower Protection
330.765	Initial Health Evaluation for Employees
330.770	Disaster Preparedness
330.780	Incidents and Accidents
330.785	Contacting Local Law Enforcement
330.790	Infection Control
330.795	Language Assistance Services

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SUBPART D: PERSONNEL

Section

- 330.910 Personnel
- 330.911 Health Care Worker Background Check
- 330.913 Nursing and Personal Care Assistants (Repealed)
- 330.916 Student Interns (Repealed)
- 330.920 Consultation Services
- 330.930 Personnel Policies

SUBPART E: HEALTH SERVICES AND MEDICAL CARE OF RESIDENTS

Section

- 330.1110 Medical Care Policies
- 330.1120 Personal Care
- 330.1125 Life Sustaining Treatments
- 330.1130 Communicable Disease Policies
- 330.1135 Tuberculin Skin Test Procedures
- 330.1140 Care and Treatment of Sexual Assault Survivors
- 330.1145 Restraints
- 330.1150 Emergency Use of Physical Restraints
- 330.1155 Unnecessary, Psychotropic, and Antipsychotic Drugs
- 330.1160 Vaccinations

SUBPART F: RESTORATIVE SERVICES

Section

- 330.1310 Activity Program
- 330.1320 Work Programs
- 330.1330 Written Policies for Restorative Services
- 330.1340 Volunteer Program

SUBPART G: MEDICATIONS

Section

- 330.1510 Medication Policies
- 330.1520 Administration of Medication
- 330.1530 Labeling and Storage of Medications

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SUBPART H: RESIDENT AND FACILITY RECORDS

Section

- 330.1710 Resident Record Requirements
- 330.1720 Content of Medical Records
- 330.1730 Records Pertaining to Residents' Property
- 330.1740 Retention and Transfer of Resident Records
- 330.1750 Other Resident Record Requirements
- 330.1760 Retention of Facility Records
- 330.1770 Other Facility Record Requirements

SUBPART I: FOOD SERVICE

Section

- 330.1910 Director of Food Services
- 330.1920 Dietary Staff in Addition to Director of Food Services
- 330.1930 Hygiene of Dietary Staff
- 330.1940 Diet Orders
- 330.1950 Meal Planning
- 330.1960 Therapeutic Diets (Repealed)
- 330.1970 Scheduling of Meals
- 330.1980 Menus and Food Records
- 330.1990 Food Preparation and Service
- 330.2000 Food Handling Sanitation
- 330.2010 Kitchen Equipment, Utensils, and Supplies

SUBPART J: MAINTENANCE, HOUSEKEEPING AND LAUNDRY

Section

- 330.2210 Maintenance
- 330.2220 Housekeeping
- 330.2230 Laundry Services

SUBPART K: FURNISHINGS, EQUIPMENT, AND SUPPLIES

Section

- 330.2410 Furnishings
- 330.2420 Equipment and Supplies

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SUBPART L: WATER SUPPLY AND SEWAGE DISPOSAL

Section

330.2610	Codes
330.2620	Water Supply
330.2630	Sewage Disposal
330.2640	Plumbing

SUBPART M: DESIGN AND CONSTRUCTION STANDARDS FOR
NEW SHELTERED CARE FACILITIES

Section

330.2810	Applicable Requirements (Repealed)
330.2820	Applicability of These Standards
330.2830	Submission of a Program Narrative
330.2840	New Constructions, Additions, Conversions, and Alterations
330.2850	Preparation and Submission of Drawings and Specifications
330.2860	First Stage Drawings
330.2870	Second Stage Drawings
330.2880	Architectural Drawings
330.2890	Structural Drawings
330.3000	Mechanical Drawings
330.3010	Electrical Drawings
330.3020	Additions to Existing Structures
330.3030	Specifications
330.3040	Building Codes
330.3050	Site
330.3060	General Building Requirements
330.3070	Administration
330.3080	Corridors
330.3090	Bath and Toilet Rooms
330.3100	Living, Dining, Activity Rooms
330.3110	Bedrooms
330.3120	Special Care Room
330.3130	Kitchen
330.3140	Laundry
330.3150	Housekeeping, Service, and Storage
330.3160	Plumbing
330.3170	Heating and Cooling

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330.3180 Electrical

SUBPART N: FIRE PROTECTION STANDARDS FOR
NEW SHELTERED CARE FACILITIES

Section

330.3310 Applicable Requirements (Repealed)
330.3320 Applicability of These Standards
330.3330 Fire Protection
330.3340 Fire Department Service and Water Supply
330.3350 General Building Requirements
330.3360 Exit Facilities and Subdivision of Floor Areas
330.3370 Stairways, Vertical Openings, and Doorways
330.3380 Corridors
330.3390 Exit Lights and Directional Signs
330.3400 Hazardous Areas and Combustible Storage
330.3410 Fire Alarm and Detection System
330.3420 Fire Extinguishers, Electric Wiring, and Miscellaneous
330.3430 Use of Fire Extinguishers, Evacuation Plan, and Fire Drills

SUBPART O: DESIGN AND CONSTRUCTION STANDARDS FOR
EXISTING SHELTERED CARE FACILITIES

Section

330.3610 Site
330.3620 General Building Requirements
330.3630 Administration
330.3640 Corridors
330.3650 Bath and Toilet Rooms
330.3660 Living, Dining, and Activity Rooms
330.3670 Bedrooms
330.3680 Special Care Room
330.3690 Kitchen
330.3700 Laundry Room
330.3710 Housekeeping and Service Rooms and Storage Space
330.3720 Plumbing and Heating
330.3730 Electrical

SUBPART P: FIRE PROTECTION STANDARDS FOR

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EXISTING SHELTERED CARE FACILITIES

Section

330.3910	Fire Protection
330.3920	Fire Department Service and Water Supply
330.3930	Occupancy and Fire Areas
330.3940	Exit Facilities and Subdivision of Floor Areas
330.3950	Stairways, Vertical Openings, and Doorways
330.3960	Exit and Fire Escape Lights and Directional Signs
330.3970	Hazardous Areas and Combustible Storage
330.3980	Fire Alarm and Detection System
330.3990	Fire Extinguishers, Electric Wiring, and Miscellaneous
330.4000	Use of Fire Extinguishers, Evacuation Plan, and Fire Drills

SUBPART Q: RESIDENT'S RIGHTS

Section

330.4210	General
330.4220	Medical Care
330.4230	Restraints (Repealed)
330.4240	Abuse and Neglect
330.4250	Communication and Visitation
330.4260	Resident's Funds
330.4270	Residents' Advisory Council
330.4280	Contract With Facility
330.4290	Private Right of Action
330.4300	Transfer or Discharge
330.4310	Complaint Procedures
330.4320	Confidentiality
330.4330	Facility Implementation

SUBPART R: DAY CARE PROGRAMS

Section

330.4510	Day Care in Long-Term Care Facilities
330.APPENDIX A	Interpretation, Components, and Illustrative Services for Sheltered Care Facilities (Repealed)
330.APPENDIX B	Classification of Distinct Part of a Facility For Different Levels of Service

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	(Repealed)
330.APPENDIX C	Forms for Day Care in Long-Term Care Facilities
330.APPENDIX D	Criteria for Activity Directors Who Need Only Minimal Consultation (Repealed)
330.APPENDIX E	Guidelines for the Use of Various Drugs
330.TABLE A	Heat Index Table/Apparent Temperature

AUTHORITY: Implementing and authorized by the Nursing Home Care Act [210 ILCS 45].

SOURCE: Emergency rules adopted at 4 Ill. Reg. 10, p. 807, effective March 1, 1980, for a maximum of 150 days; adopted at 4 Ill. Reg. 30, p. 933, effective July 28, 1980; amended at 6 Ill. Reg. 5981, effective May 3, 1982; amended at 6 Ill. Reg. 8198, effective June 29, 1982; amended at 6 Ill. Reg. 14547, effective November 8, 1982; amended at 6 Ill. Reg. 14681, effective November 15, 1982; amended at 7 Ill. Reg. 1963, effective January 28, 1983; amended at 7 Ill. Reg. 6973, effective May 17, 1983; amended at 7 Ill. Reg. 15825, effective November 15, 1983; amended at 8 Ill. Reg. 15596, effective August 15, 1984; amended at 8 Ill. Reg. 15941, effective August 17, 1984; codified at 8 Ill. Reg. 19790; amended at 8 Ill. Reg. 24241, effective November 28, 1984; amended at 8 Ill. Reg. 24696, effective December 7, 1984; amended at 9 Ill. Reg. 2952, effective February 25, 1985; amended at 9 Ill. Reg. 10974, effective July 1, 1985; amended at 11 Ill. Reg. 16879, effective October 1, 1987; amended at 12 Ill. Reg. 1017, effective December 24, 1987; amended at 12 Ill. Reg. 16870, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18939, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 6562, effective April 17, 1989; amended at 13 Ill. Reg. 19580, effective December 1, 1989; amended at 14 Ill. Reg. 14928, effective October 1, 1990; amended at 15 Ill. Reg. 516, effective January 1, 1991; amended at 16 Ill. Reg. 651, effective January 1, 1992; amended at 16 Ill. Reg. 14370, effective September 3, 1992; emergency amendment at 17 Ill. Reg. 2405, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 8000, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; amended at 17 Ill. Reg. 15089, effective September 3, 1993; amended at 17 Ill. Reg. 16180, effective January 1, 1994; amended at 17 Ill. Reg. 19258, effective October 26, 1993; amended at 17 Ill. Reg. 19576, effective November 4, 1993; amended at 17 Ill. Reg. 21044, effective November 20, 1993; amended at 18 Ill. Reg. 1475, effective January 14, 1994; amended at 18 Ill. Reg. 15851, effective October 15, 1994; amended at 19 Ill. Reg. 11567, effective July 29, 1995; emergency amendment at 20 Ill. Reg. 552, effective January 1, 1996, for a maximum of 150 days; emergency expired on May 29, 1996; amended at 20 Ill. Reg. 10125, effective July 15, 1996; amended at 20 Ill. Reg. 12160, effective September 10, 1996; amended at 22 Ill. Reg. 4078, effective February 13, 1998; amended at 22 Ill. Reg. 7203, effective April 15, 1998; amended at 22 Ill. Reg. 16594, effective September 18, 1998; amended at 23 Ill. Reg. 1085,

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effective January 15, 1999; amended at 23 Ill. Reg. 8064, effective July 15, 1999; amended at 24 Ill. Reg. 17304, effective November 1, 2000; amended at 25 Ill. Reg. 4901, effective April 1, 2001; amended at 26 Ill. Reg. 4859, effective April 1, 2002; amended at 26 Ill. Reg. 10559, effective July 1, 2002; emergency amendment at 27 Ill. Reg. 2202, effective February 1, 2003, for a maximum of 150 days; emergency expired June 30, 2003; emergency amendment at 27 Ill. Reg. 5473, effective March 25, 2003, for a maximum of 150 days; emergency expired August 21, 2003; amended at 27 Ill. Reg. 5886, effective April 1, 2003; emergency amendment at 27 Ill. Reg. 14218, effective August 15, 2003, for a maximum of 150 days; emergency expired January 11, 2004; amended at 27 Ill. Reg. 15880, effective September 25, 2003; amended at 27 Ill. Reg. 18130, effective November 15, 2003; expedited correction at 28 Ill. Reg. 3541, effective November 15, 2003; amended at 28 Ill. Reg. 11195, effective July 22, 2004; emergency amendment at 29 Ill. Reg. 11879, effective July 12, 2005, for a maximum of 150 days; emergency rule modified in response to JCAR Recommendation at 29 Ill. Reg. 15156, effective September 23, 2005, for the remainder of the maximum 150 days; emergency amendment expired December 8, 2005; amended at 29 Ill. Reg. 12891, effective August 2, 2005; amended at 30 Ill. Reg. 1439, effective January 23, 2006; amended at 30 Ill. Reg. 5260, effective March 2, 2006; amended at 31 Ill. Reg. 6072, effective April 3, 2007; amended at 31 Ill. Reg. 8828, effective June 6, 2007; amended at 33 Ill. Reg. 9371, effective June 17, 2009; amended at 34 Ill. Reg. 19199, effective November 23, 2010; amended at 35 Ill. Reg. 3415, effective February 14, 2011; amended at 35 Ill. Reg. 11513, effective June 29, 2011; amended at 37 Ill. Reg. 2315, effective February 4, 2013; amended at 37 Ill. Reg. 4970, effective March 29, 2013; amended at 38 Ill. Reg. _____, effective _____

SUBPART E: HEALTH SERVICES AND MEDICAL CARE OF RESIDENTS

Section 330.1160 Vaccinations

- a) *A facility shall annually administer a vaccination against influenza to each resident, in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention that are most recent to the time of vaccination, unless the vaccination is medically contraindicated or the resident has refused the vaccine. Influenza vaccinations for all residents age 65 and over shall be completed by November 30 of each year or as soon as practicable if vaccine supplies are not available before November 1. Residents admitted after November 30, during the flu season, and until February 1 shall, as medically appropriate, receive an influenza vaccination prior to or upon admission or as soon as practicable if vaccine supplies are not available at the time of the admission, unless the vaccine is medically contraindicated or the resident has refused the vaccine. (Section 2-213 of the Act)*

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- b) *A facility shall document in the resident's medical record that an annual vaccination against influenza was administered, refused or medically contraindicated. (Section 2-213 of the Act)*
- c) *A facility shall provide or arrange for administration of a pneumococcal vaccination to each resident ~~who is age 65 or over~~, in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, who has not received this immunization prior to or upon admission to the facility unless the resident refuses the offer for vaccination or the vaccination is medically contraindicated. (Section 2-213 of the Act)*
- d) *A facility shall document in each resident's medical record that a vaccination against pneumococcal pneumonia was offered and administered, refused, or medically contraindicated. (Section 2-213 of the Act)*

(Source: Amended at 38 Ill. Reg. _____, effective _____)

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Illinois Veterans' Homes Code
- 2) Code Citation: 77 Ill. Adm. Code 340
- 3) Section Number: 340.1640 Proposed Action: Amendment
- 4) Statutory Authority: Nursing Home Care Act [210 ILCS 45]
- 5) A Complete Description of the Subjects and Issues Involved: This proposed amendment implements the statutory requirements of PA 98-271, which removed language from the Nursing Home Care Act that limited the administration of pneumococcal vaccination to residents aged 65 or older.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

The Department anticipates adoption of this rulemaking approximately six to nine months after publication of this Notice in the *Illinois Register*.
- 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 proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning this rulemaking within 45 days after this issue of the *Illinois Register* to:

Susan Meister

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENT

Division of Legal Services
Department of Public Health
535 W. Jefferson St., 5th Floor
Springfield IL 62761

dph.rules@illinois.gov

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Skilled nursing and intermediate care facilities
 - B) Reporting, bookkeeping or other procedures required for compliance: Yes
 - C) Types of Professional skills necessary for compliance: Nursing
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2014

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

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENT

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIES

PART 340
ILLINOIS VETERANS' HOMES CODE

SUBPART A: GENERAL PROVISIONS

Section	
340.1000	Definitions
340.1010	Incorporated and Referenced Materials
340.1110	General Requirements
340.1115	Federal Veterans' Regulations
340.1120	Application for License
340.1125	Alzheimer's Special Care Disclosure
340.1130	Criteria for Adverse Licensure Actions
340.1140	Denial of Initial License
340.1150	Revocation or Denial of Renewal of License
340.1160	Inspections, Surveys, Evaluations, and Consultations
340.1170	Presentation of Findings by the Department
340.1190	Ownership Disclosure
340.1200	Monitor and Receivership
340.1210	Determination of a Violation
340.1220	Determination of the Level of a Violation
340.1225	Administrative Warning
340.1230	Plans of Correction and Reports of Correction
340.1240	Calculation of Penalties (Repealed)
340.1245	Conditions for Assessment of Penalties
340.1250	Reduction or Waiver of Penalties
340.1255	Supported Congregate Living Arrangement Demonstration
340.1260	Waivers

SUBPART B: POLICIES AND FACILITY RECORDS

Section	
340.1300	Facility Policies
340.1305	Request for Resident Criminal History Record Information
340.1310	Admission, Retention and Discharge Policies

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340.1314	Criminal History Background Checks for Persons Who Were Residents on May 10, 2006 (Repealed)
340.1315	Identified Offenders
340.1316	Discharge Planning for Identified Offenders
340.1317	Transfer of an Identified Offender
340.1320	Disaster Preparedness
340.1330	Incidents and Accidents
340.1335	Infection Control
340.1340	Facility Record Requirements
340.1350	Personnel Policies
340.1351	Whistleblower Protection
340.1360	Initial Health Evaluation for Employees
340.1370	Administrator
340.1375	Personnel Requirements
340.1376	Registry of Certified Nursing Assistants
340.1377	Health Care Worker Background Check
340.1378	Resident Attendants
340.1380	Contacting Local Law Enforcement

SUBPART C: RESIDENT RIGHTS

Section	
340.1400	Implementation of Resident Rights and Facility Responsibilities
340.1410	General
340.1420	Contract Between Resident and Facility
340.1430	Residents' Advisory Council
340.1440	Abuse and Neglect
340.1450	Communication and Visitation
340.1460	Resident's Funds
340.1470	Transfer or Discharge
340.1480	Complaint Procedures
340.1490	Private Right of Action

SUBPART D: HEALTH SERVICES

Section	
340.1500	Medical Care Policies
340.1505	Medical, Nursing and Restorative Services
340.1510	Communicable Disease Policies

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340.1520	Tuberculin Skin Test Procedures
340.1530	Physician Services
340.1535	Dental Programs
340.1540	Life-Sustaining Treatments
340.1550	Obstetrical and Gynecological Care
340.1560	Nursing Personnel
340.1570	Personal Care
340.1575	Care and Treatment of Sexual Assault Survivors
340.1580	Restraints
340.1590	Nonemergency Use of Physical Restraints
340.1600	Emergency Use of Physical Restraints
340.1610	Unnecessary, Psychotropic, and Antipsychotic Drugs
340.1620	Medication Administration (Repealed)
340.1630	Self-Administration of Medication (Renumbered)
340.1640	Vaccinations
340.1645	Language Assistance Services

SUBPART E: MEDICATIONS

Section	
340.1650	Medication Policies and Procedures
340.1655	Compliance with Licensed Prescriber's Orders
340.1660	Administration of Medication
340.1665	Control of Medication
340.1670	Labeling and Storage of Medication
340.1675	Self-Administration of Medication

SUBPART F: RESIDENT LIVING SERVICES

Section	
340.1700	Recreational and Activity Programs
340.1710	Social Services
340.1720	Work Programs
340.1730	Volunteer Program

SUBPART G: RESIDENT RECORDS

Section	
340.1800	Resident Record Requirements

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340.1810	Content of Medical Records
340.1820	Records Pertaining to Resident's Property
340.1830	Retention, Transfer, and Inspection of Records
340.1840	Confidentiality of Resident's Records

SUBPART H: FOOD SERVICE

Section

340.1900	Food Service Staff
340.1910	Diet Orders
340.1920	Meal Planning
340.1930	Therapeutic Diets (Repealed)
340.1940	Menus and Food Records
340.1950	Food Preparation and Service
340.1960	Kitchen Equipment, Utensils and Supplies

SUBPART I: PHYSICAL PLANT SERVICES,
FURNISHINGS, EQUIPMENT AND SUPPLIES

Section

340.2000	Maintenance
340.2010	Water Supply, Sewage Disposal and Plumbing
340.2020	Housekeeping
340.2030	Laundry Services
340.2040	Furnishings
340.2050	Equipment and Supplies

340.TABLE A	Heat Index Table/Apparent Temperature
340.TABLE B	Guidelines for the Use of Various Drugs

AUTHORITY: Implementing and authorized by the Nursing Home Care Act [210 ILCS 45].

SOURCE: Emergency rule adopted at 18 Ill. Reg. 10391, effective June 21, 1994, for a maximum of 150 days; emergency rule expired November 18, 1994; adopted at 19 Ill. Reg. 5679, effective April 3, 1995; emergency amendment at 20 Ill. Reg. 496, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 10045, effective July 15, 1996; amended at 20 Ill. Reg. 12013, effective September 10, 1996; amended at 22 Ill. Reg. 3959, effective February 13, 1998; amended at 22 Ill. Reg. 7162, effective April 15, 1998; amended at 23 Ill. Reg. 1038, effective January 15, 1999; amended at

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23 Ill. Reg. 7931, effective July 15, 1999; amended at 24 Ill. Reg. 17225, effective November 1, 2000; amended at 25 Ill. Reg. 4869, effective April 1, 2001; amended at 26 Ill. Reg. 4870, effective April 1, 2002; amended at 26 Ill. Reg. 10589, effective July 1, 2002; emergency amendment at 27 Ill. Reg. 2222, effective February 1, 2003, for a maximum of 150 days; emergency expired June 30, 2003; amended at 27 Ill. Reg. 5903, effective April 1, 2003; emergency amendment at 27 Ill. Reg. 14230, effective August 15, 2003, for a maximum of 150 days; emergency expired January 11, 2004; amended at 27 Ill. Reg. 15904, effective September 25, 2003; amended at 27 Ill. Reg. 18148, effective November 15, 2003; amended at 28 Ill. Reg. 11209, effective July 22, 2004; emergency amendment at 29 Ill. Reg. 11931, effective July 12, 2005, for a maximum of 150 days; emergency rule modified in response to JCAR Recommendation at 29 Ill. Reg. 15208, effective September 23, 2005, for the remainder of the maximum 150 days; emergency amendment expired December 8, 2005; amended at 29 Ill. Reg. 12924, effective August 2, 2005; amended at 30 Ill. Reg. 1452, effective January 23, 2006; amended at 30 Ill. Reg. 5303, effective March 2, 2006; amended at 31 Ill. Reg. 6098, effective April 3, 2007; amended at 31 Ill. Reg. 8841, effective June 6, 2007; amended at 33 Ill. Reg. 9384, effective June 17, 2009; amended at 34 Ill. Reg. 19214, effective November 23, 2010; amended at 35 Ill. Reg. 3442, effective February 14, 2011; amended at 35 Ill. Reg. 11596, effective June 29, 2011; amended at 37 Ill. Reg. 2330, effective February 4, 2013; amended at 37 Ill. Reg. 4983, effective March 29, 2013; amended at 38 Ill. Reg. _____, effective _____.

SUBPART D: HEALTH SERVICES

Section 340.1640 Vaccinations

- a) *A facility shall annually administer a vaccination against influenza to each resident, in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention that are most recent to the time of vaccination, unless the vaccination is medically contraindicated or the resident has refused the vaccine. Influenza vaccinations for all residents age 65 and over shall be completed by November 30 of each year or as soon as practicable if vaccine supplies are not available before November 1. Residents admitted after November 30, during the flu season, and until February 1 shall, as medically appropriate, receive an influenza vaccination prior to or upon admission or as soon as practicable if vaccine supplies are not available at the time of the admission, unless the vaccine is medically contraindicated or the resident has refused the vaccine. (Section 2-213 of the Act)*

DEPARTMENT OF PUBLIC HEALTH

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- b) *A facility shall document in the resident's medical record that an annual vaccination against influenza was administered, refused or medically contraindicated. (Section 2-213 of the Act)*
- c) *A facility shall provide or arrange for administration of a pneumococcal vaccination to each resident ~~who is age 65 or over,~~ in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, who has not received this immunization prior to or upon admission to the facility unless the resident refuses the offer for vaccination or the vaccination is medically contraindicated. (Section 2-213 of the Act)*
- d) *A facility shall document in each resident's medical record that a vaccination against pneumococcal pneumonia was offered and administered, refused, or medically contraindicated. (Section 2-213 of the Act)*

(Source: Amended at 38 Ill. Reg. _____, effective _____)

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Intermediate Care for the Developmentally Disabled Facilities Code
- 2) Code Citation: 77 Ill. Adm. Code 350
- 3) Section Number: 350.1260 Proposed Action: Amendment
- 4) Statutory Authority: ID/DD Community Care Act [210 ILCS 47]
- 5) A Complete Description of the Subjects and Issues Involved: This proposed amendment implements the statutory requirements of PA 98-271, which removed language from ID/DD Community Care Act that limited the administration of pneumococcal vaccination to residents aged 65 or older.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

The Department anticipates adoption of this rulemaking approximately six to nine months after publication of this Notice in the *Illinois Register*.
- 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 proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning this rulemaking within 45 days after this issue of the *Illinois Register* to:

Susan Meister

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENT

Division of Legal Services
Department of Public Health
535 W. Jefferson St., 5th Floor
Springfield IL 62761

dph.rules@illinois.gov

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Skilled nursing and intermediate care facilities
 - B) Reporting, bookkeeping or other procedures required for compliance: Yes
 - C) Types of Professional skills necessary for compliance: Nursing
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2014

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

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENT

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIES

PART 350

INTERMEDIATE CARE FOR THE DEVELOPMENTALLY DISABLED FACILITIES CODE

SUBPART A: GENERAL PROVISIONS

Section	
350.110	General Requirements
350.120	Application for License
350.130	Licensee
350.140	Issuance of an Initial License for a New Facility
350.150	Issuance of an Initial License Due to a Change of Ownership
350.160	Issuance of a Renewal License
350.165	Criteria for Adverse Licensure Actions
350.170	Denial of Initial License
350.175	Denial of Renewal of License
350.180	Revocation of License
350.190	Experimental Program Conflicting With Requirements
350.200	Inspections, Surveys, Evaluations and Consultation
350.210	Filing an Annual Attested Financial Statement
350.220	Information to Be Made Available to the Public By the Department
350.230	Information to Be Made Available to the Public By the Licensee
350.240	Municipal Licensing
350.250	Ownership Disclosure
350.260	Issuance of Conditional Licenses
350.270	Monitor and Receivership
350.271	Presentation of Findings
350.272	Determination to Issue a Notice of Violation or Administrative Warning
350.274	Determination of the Level of a Violation
350.276	Notice of Violation
350.277	Administrative Warning
350.278	Plans of Correction
350.280	Reports of Correction
350.282	Conditions for Assessment of Penalties
350.284	Calculation of Penalties
350.286	Determination to Assess Penalties

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350.288	Reduction or Waiver of Penalties
350.290	Quarterly List of Violators (Repealed)
350.300	Alcoholism Treatment Programs In Long-Term Care Facilities
350.310	Department May Survey Facilities Formerly Licensed
350.315	Supported Congregate Living Arrangement Demonstration
350.320	Waivers
350.330	Definitions
350.340	Incorporated and Referenced Materials

SUBPART B: ADMINISTRATION

Section	
350.510	Administrator

SUBPART C: POLICIES

Section	
350.610	Management Policies
350.620	Resident Care Policies
350.625	Determination of Need Screening and Request for Resident Criminal History Record Information
350.630	Admission, Retention and Discharge Policies
350.634	Criminal History Background Checks for Persons Who Were Residents on May 10, 2006
350.635	Identified Offenders
350.636	Discharge Planning for Identified Offenders
350.637	Transfer of an Identified Offender
350.640	Contract Between Resident and Facility
350.650	Residents' Advisory Council
350.660	General Policies
350.670	Personnel Policies
350.675	Initial Health Evaluation for Employees
350.680	Developmental Disabilities Aides
350.681	Health Care Worker Background Check
350.682	Resident Attendants
350.683	Registry of Developmental Disabilities Aides
350.685	Student Interns
350.690	Disaster Preparedness
350.700	Incidents and Accidents

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NOTICE OF PROPOSED AMENDMENT

350.750 Contacting Local Law Enforcement
350.760 Infection Control

SUBPART D: PERSONNEL

Section
350.810 Personnel
350.820 Consultation Services
350.830 Personnel Policies (Repealed)

SUBPART E: RESIDENT LIVING SERVICES

Section
350.1010 Service Programs
350.1020 Psychological Services
350.1030 Social Services
350.1040 Speech Pathology and Audiology Services
350.1050 Recreational and Activities Services
350.1055 Volunteer Program
350.1060 Training and Habilitation Services
350.1070 Training and Habilitation Staff
350.1080 Restraints
350.1082 Nonemergency Use of Physical Restraints
350.1084 Emergency Use of Physical Restraints
350.1086 Unnecessary, Psychotropic, and Antipsychotic Drugs
350.1088 Language Assistance Services

SUBPART F: HEALTH SERVICES

Section
350.1210 Health Services
350.1220 Physician Services
350.1223 Communicable Disease Policies
350.1225 Tuberculin Skin Test Procedures
350.1230 Nursing Services
350.1235 Life-Sustaining Treatments
350.1240 Dental Services
350.1250 Physical and Occupational Therapy Services
350.1260 Vaccinations

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SUBPART G: MEDICATIONS

Section

- 350.1410 Medication Policies and Procedures
- 350.1420 Compliance with Licensed Prescriber's Orders
- 350.1430 Administration of Medication
- 350.1440 Labeling and Storage of Medications
- 350.1450 Control of Medications

SUBPART H: RESIDENT AND FACILITY RECORDS

Section

- 350.1610 Resident Record Requirements
- 350.1620 Content of Medical Records
- 350.1630 Confidentiality of Resident's Records
- 350.1640 Records Pertaining to Residents' Property
- 350.1650 Retention and Transfer of Resident Records
- 350.1660 Other Resident Record Requirements
- 350.1670 Staff Responsibility for Medical Records
- 350.1680 Retention of Facility Records
- 350.1690 Other Facility Record Requirements

SUBPART I: FOOD SERVICE

Section

- 350.1810 Director of Food Services
- 350.1820 Dietary Staff in Addition to Director of Food Services
- 350.1830 Hygiene of Dietary Staff
- 350.1840 Diet Orders
- 350.1850 Meal Planning
- 350.1860 Therapeutic Diets (Repealed)
- 350.1870 Scheduling Meals
- 350.1880 Menus and Food Records
- 350.1890 Food Preparation and Service
- 350.1900 Food Handling Sanitation
- 350.1910 Kitchen Equipment, Utensils, and Supplies

SUBPART J: MAINTENANCE, HOUSEKEEPING AND LAUNDRY

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Section

350.2010 Maintenance
350.2020 Housekeeping
350.2030 Laundry Services

SUBPART K: FURNISHINGS, EQUIPMENT, AND SUPPLIES

Section

350.2210 Furnishings
350.2220 Equipment and Supplies

SUBPART L: WATER SUPPLY AND SEWAGE DISPOSAL

Section

350.2410 Codes
350.2420 Water Supply
350.2430 Sewage Disposal
350.2440 Plumbing

SUBPART M: CONSTRUCTION STANDARDS FOR NEW INTERMEDIATE CARE
FACILITIES FOR THE DEVELOPMENTALLY DISABLED

Section

350.2610 Applicability of These Standards
350.2620 Codes and Standards
350.2630 Preparation of Drawings and Specifications
350.2640 Site
350.2650 Administration and Public Areas
350.2660 Nursing Unit
350.2670 Dining, Living, Activities Rooms
350.2680 Therapy and Personal Care
350.2690 Service Departments
350.2700 General Building Requirements
350.2710 Structural
350.2720 Mechanical Systems
350.2730 Plumbing Systems
350.2740 Electrical Systems

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SUBPART N: CONSTRUCTION STANDARDS FOR EXISTING INTERMEDIATE CARE
FACILITIES FOR THE DEVELOPMENTALLY DISABLED

Section

350.2910	Applicability
350.2920	Codes and Standards
350.2930	Preparation of Drawings and Specifications
350.2940	Site
350.2950	Administration and Public Areas
350.2960	Nursing Unit
350.2970	Living, Dining, Activities Rooms
350.2980	Treatment and Personal Care
350.2990	Service Department
350.3000	General Building Requirements
350.3010	Structural
350.3020	Mechanical Systems
350.3030	Plumbing Systems
350.3040	Electrical Requirements

SUBPART O: RESIDENT'S RIGHTS

Section

350.3210	General
350.3220	Medical and Personal Care Program
350.3230	Restraints (Repealed)
350.3240	Abuse and Neglect
350.3250	Communication and Visitation
350.3260	Resident's Funds
350.3270	Residents' Advisory Council
350.3280	Contract With Facility
350.3290	Private Right of Action
350.3300	Transfer or Discharge
350.3310	Complaint Procedures
350.3320	Confidentiality
350.3330	Facility Implementation

SUBPART P: SPECIAL STANDARDS FOR INTERMEDIATE CARE FACILITIES FOR
THE DEVELOPMENTALLY DISABLED OF 16 BEDS OR LESS

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350.3710	Applicability of Other Provisions of this Part
350.3720	Administration
350.3730	Admission and Discharge Policies
350.3740	Personnel
350.3750	Consultation Services and Nursing Services
350.3760	Medication Policies
350.3770	Food Services
350.3780	Codes and Standards
350.3790	Administration and Public Areas
350.3800	Bedrooms
350.3810	Nurses Station
350.3820	Bath and Toilet Rooms
350.3830	Utility Rooms
350.3840	Living, Dining, Activity Rooms
350.3850	Therapy and Personal Care
350.3860	Kitchen
350.3870	Laundry Room
350.3880	General Building Requirements
350.3890	Corridors
350.3900	Special Care Room
350.3910	Exit Facilities and Subdivision of Floor Areas
350.3920	Stairways, Vertical Openings and Doorways
350.3930	Hazardous Areas and Combustible Storage
350.3940	Mechanical Systems
350.3950	Heating, Cooling, and Ventilating Systems
350.3960	Plumbing Systems
350.3970	Electrical Systems
350.3980	Fire Alarm and Detection System
350.3990	Emergency Electrical System
350.4000	Fire Protection
350.4010	Construction Types
350.4020	Equivalencies
350.4030	New Construction Requirements

SUBPART Q: DAY CARE PROGRAMS

Section

350.4210	Day Care in Long-Term Care Facilities
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350.APPENDIX A	Classification of Distinct Part of a Facility for Different Levels of Service (Repealed)
350.APPENDIX B	Federal Requirements Regarding Residents' Rights (Repealed)
350.APPENDIX C	Seismic Zone Map
350.APPENDIX D	Forms For Day Care in Long-Term Care Facilities
350.APPENDIX E	Guidelines for the Use of Various Drugs
350.TABLE A	Sound Transmission Limitations in New Intermediate Care Facilities for the Developmentally Disabled
350.TABLE B	Pressure Relationships and Ventilation Rate of Certain Areas for the New Intermediate Care Facilities for the Developmentally Disabled
350.TABLE C	Construction Types and Sprinkler Requirements for Existing Intermediate Care Facilities for the Developmentally Disabled
350.TABLE D	Food Service Sanitation Rules, 77 Illinois Admin. Code 750, 1983 Applicable for New Intermediate Care Facilities for the Developmentally Disabled of 16 Beds or Less
350.TABLE E	Construction Types and Sprinkler Requirements for New Intermediate Care Facilities for the Developmentally Disabled of Sixteen (16) Beds or Less
350.TABLE F	Heat Index Table/Apparent Temperature

AUTHORITY: Implementing and authorized by the MR/DD Community Care Act [210 ILCS 47].

SOURCE: Emergency rules adopted at 4 Ill. Reg. 10, p. 495, effective March 1, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 30, p. 1, effective July 28, 1980; amended at 5 Ill. Reg. 1657, effective February 4, 1981; amended at 6 Ill. Reg. 5981, effective May 3, 1982; amended at 6 Ill. Reg. 6453, effective May 14, 1982; amended at 6 Ill. Reg. 8198, effective June 29, 1982; amended at 6 Ill. Reg. 14544, effective November 8, 1982; amended at 6 Ill. Reg. 14675, effective November 15, 1982; amended at 6 Ill. Reg. 15556, effective December 15, 1982; amended at 7 Ill. Reg. 278, effective December 22, 1982; amended at 7 Ill. Reg. 1919 and 1945, effective January 28, 1983; amended at 7 Ill. Reg. 7963, effective July 1, 1983; amended at 7 Ill. Reg. 15817, effective November 15, 1983; amended at 7 Ill. Reg. 16984, effective December 14, 1983; amended at 8 Ill. Reg. 15574 and 15578 and 15581, effective August 15, 1984; amended at 8 Ill. Reg. 15935, effective August 17, 1984; amended at 8 Ill. Reg. 16980, effective September 5, 1984; codified at 8 Ill. Reg. 19806; amended at 8 Ill. Reg. 24214, effective November 29, 1984; amended at 8 Ill. Reg. 24680, effective December 7, 1984; amended at 9 Ill. Reg. 142, effective December 26, 1984; amended at 9 Ill. Reg. 331, effective December 28, 1984; amended at 9 Ill. Reg. 2964, effective February 25, 1985; amended at 9 Ill.

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Reg. 10876, effective July 1, 1985; amended at 11 Ill. Reg. 14795, effective October 1, 1987; amended at 11 Ill. Reg. 16830, effective October 1, 1987; amended at 12 Ill. Reg. 979, effective December 24, 1987; amended at 12 Ill. Reg. 16838, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18705, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 6040, effective April 17, 1989; amended at 13 Ill. Reg. 19451, effective December 1, 1989; amended at 14 Ill. Reg. 14876, effective October 1, 1990; amended at 15 Ill. Reg. 466, effective January 1, 1991; amended at 16 Ill. Reg. 594, effective January 1, 1992; amended at 16 Ill. Reg. 13910, effective September 1, 1992; amended at 17 Ill. Reg. 2351, effective February 10, 1993; emergency amendment at 17 Ill. Reg. 2373, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 7948, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; emergency amendment at 17 Ill. Reg. 9105, effective June 7, 1993, for a maximum of 150 days; emergency expired on November 4, 1993; amended at 17 Ill. Reg. 15056, effective September 3, 1993; amended at 17 Ill. Reg. 16153, effective January 1, 1994; amended at 17 Ill. Reg. 19210, effective October 26, 1993; amended at 17 Ill. Reg. 19517, effective November 4, 1993; amended at 17 Ill. Reg. 21017, effective November 20, 1993; amended at 18 Ill. Reg. 1432, effective January 14, 1994; amended at 18 Ill. Reg. 15789, effective October 15, 1994; amended at 19 Ill. Reg. 11481, effective July 29, 1995; emergency amendment at 20 Ill. Reg. 512, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 10065, effective July 15, 1996; amended at 20 Ill. Reg. 12049, effective September 10, 1996; amended at 21 Ill. Reg. 14990, effective November 15, 1997; amended at 22 Ill. Reg. 4040, effective February 13, 1998; amended at 22 Ill. Reg. 7172, effective April 15, 1998; amended at 22 Ill. Reg. 16557, effective September 18, 1998; amended at 23 Ill. Reg. 1052, effective January 15, 1999; amended at 23 Ill. Reg. 7970, effective July 15, 1999; amended at 24 Ill. Reg. 17254, effective November 1, 2000; amended at 25 Ill. Reg. 4879, effective April 1, 2001; amended at 25 Ill. Reg. 6499, effective May 15, 2001; amended at 26 Ill. Reg. 4878, effective April 1, 2002; amended at 26 Ill. Reg. 10611, effective July 1, 2002; emergency amendment at 27 Ill. Reg. 2238, effective February 1, 2003, for a maximum of 150 days; emergency expired June 30, 2003; emergency amendment at 27 Ill. Reg. 5489, effective March 25, 2003, for a maximum of 150 days; emergency expired August 21, 2003; amended at 27 Ill. Reg. 5924, effective April 1, 2003; emergency amendment at 27 Ill. Reg. 14237, effective August 15, 2003, for a maximum of 150 days; emergency expired January 11, 2004; amended at 27 Ill. Reg. 15924, effective September 25, 2003; amended at 27 Ill. Reg. 18160, effective November 15, 2003; expedited correction at 28 Ill. Reg. 3552, effective November 15, 2003; amended at 28 Ill. Reg. 7653, effective May 24, 2004; amended at 28 Ill. Reg. 11217, effective July 22, 2004; emergency amendment at 29 Ill. Reg. 11971, effective July 12, 2005, for a maximum of 150 days; emergency rule modified in response to JCAR Recommendation at 29 Ill. Reg. 15247, effective September 23, 2005, for the remainder of the maximum 150 days; emergency expired December 8, 2005; amended at 29 Ill. Reg. 12954,

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effective August 2, 2005; amended at 30 Ill. Reg. 1460, effective January 23, 2006; amended at 30 Ill. Reg. 5338, effective March 2, 2006; amended at 30 Ill. Reg. 13876, effective August 7, 2006; amended at 31 Ill. Reg. 6119, effective April 3, 2007; amended at 31 Ill. Reg. 8850, effective June 6, 2007; amended at 33 Ill. Reg. 9393, effective June 17, 2009; amended at 34 Ill. Reg. 19224, effective November 23, 2010; amended at 35 Ill. Reg. 3461, effective February 14, 2011; amended at 38 Ill. Reg. _____, effective _____.

SUBPART F: HEALTH SERVICES

Section 350.1260 Vaccinations

- a) *A facility shall annually administer a vaccination against influenza to each resident, in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention that are most recent to the time of vaccination, unless the vaccination is medically contraindicated or the resident has refused the vaccine. Influenza vaccinations for all residents age 65 and over shall be completed by November 30 of each year or as soon as practicable if vaccine supplies are not available before November 1. Residents admitted after November 30, during the flu season, and until February 1 shall, as medically appropriate, receive an influenza vaccination prior to or upon admission or as soon as practicable if vaccine supplies are not available at the time of the admission, unless the vaccine is medically contraindicated or the resident has refused the vaccine. (Section 2-213 of the Act)*
- b) *A facility shall document in the resident's medical record that an annual vaccination against influenza was administered, refused or medically contraindicated. (Section 2-213 of the Act)*
- c) *A facility shall provide or arrange for administration of a pneumococcal vaccination to each resident ~~who is age 65 or over~~, in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, who has not received this immunization prior to or upon admission to the facility unless the resident refuses the offer for vaccination or the vaccination is medically contraindicated. (Section 2-213 of the Act)*
- d) *A facility shall document in each resident's medical record that a vaccination against pneumococcal pneumonia was offered and administered, refused, or medically contraindicated. (Section 2-213 of the Act)*

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(Source: Amended at 38 Ill. Reg. _____, effective _____)

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NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Long-Term Care for Under Age 22 Facilities Code
- 2) Code Citation: 77 Ill. Adm. Code 390
- 3) Section Number: 390.1140 Proposed Action: Amendment
- 4) Statutory Authority: ID/DD Community Care Act [210 ILCS 47]
- 5) A Complete Description of the Subjects and Issues Involved: This proposed amendment implements the statutory requirements of PA 98-271, which removed language from ID/DD Community Care Act that limited the administration of pneumococcal vaccination to residents aged 65 or older.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

The Department anticipates adoption of this rulemaking approximately six to nine months after publication of this Notice in the *Illinois Register*.

- 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 proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning this rulemaking within 45 days after this issue of the *Illinois Register* to:

Susan Meister

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Division of Legal Services
Department of Public Health
535 W. Jefferson St., 5th Floor
Springfield IL 62761

dph.rules@illinois.gov

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Skilled nursing and intermediate care facilities
 - B) Reporting, bookkeeping or other procedures required for compliance: Yes
 - C) Types of Professional skills necessary for compliance: Nursing
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2014

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

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NOTICE OF PROPOSED AMENDMENT

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIESPART 390
LONG-TERM CARE FOR UNDER AGE 22 FACILITIES CODE

SUBPART A: GENERAL PROVISIONS

Section	
390.110	General Requirements
390.120	Application for License
390.130	Licensee
390.140	Issuance of an Initial License for a New Facility
390.150	Issuance of an Initial License Due to a Change of Ownership
390.160	Issuance of a Renewal License
390.165	Criteria for Adverse Licensure Actions
390.170	Denial of Initial License
390.175	Denial of Renewal of License
390.180	Revocation of License
390.190	Experimental Program Conflicting With Requirements
390.200	Inspections, Surveys, Evaluations and Consultation
390.210	Filing an Annual Attested Financial Statement
390.220	Information to be Made Available to the Public by the Department
390.230	Information to Be Made Available to the Public By the Licensee
390.240	Municipal Licensing
390.250	Ownership Disclosure
390.260	Issuance of Conditional Licenses
390.270	Monitor and Receivership
390.271	Presentation of Findings
390.272	Determination to Issue a Notice of Violation or Administrative Warning
390.274	Determination of the Level of a Violation
390.276	Notice of Violation
390.277	Administrative Warning
390.278	Plans of Correction
390.280	Reports of Correction
390.282	Conditions for Assessment of Penalties
390.284	Calculation of Penalties
390.286	Determination to Assess Penalties

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390.288	Reduction or Waiver of Penalties
390.290	Quarterly List of Violators (Repealed)
390.300	Alcoholism Treatment Programs in Long-Term Care Facilities
390.310	Department May Survey Facilities Formerly Licensed
390.315	Supported Congregate Living Arrangement Demonstration
390.320	Waivers
390.330	Definitions
390.340	Incorporated and Referenced Materials

SUBPART B: ADMINISTRATION

Section	
390.500	Administrator

SUBPART C: POLICIES

Section	
390.610	Management Policies
390.620	Resident Care Policies
390.625	Pre-admission Assessment and Request for Criminal History Record Information (Repealed)
390.630	Admission, Retention and Discharge Policies
390.635	Identified Offenders (Repealed)
390.636	Discharge Planning for Identified Offenders (Repealed)
390.637	Transfer of an Identified Offender (Repealed)
390.640	Contract Between Resident and Facility
390.650	Residents' Advisory Council
390.660	General Policies
390.670	Personnel Policies
390.675	Initial Health Evaluation for Employees
390.680	Child Care/Habilitation Aides
390.681	Health Care Worker Background Check
390.682	Resident Attendants
390.683	Registry of Child Care/Habilitation Aides
390.685	Student Interns
390.690	Disaster Preparedness
390.700	Incidents and Accidents
390.750	Contacting Local Law Enforcement
390.760	Infection Control

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SUBPART D: PERSONNEL

Section	
390.810	General
390.820	Categories of Personnel
390.830	Consultation Services

SUBPART E: HEALTH AND DEVELOPMENTAL SERVICES

Section	
390.1010	Service Programs
390.1020	Medical Services
390.1025	Life-Sustaining Treatments
390.1030	Physician Services
390.1035	Tuberculin Skin Test Procedures
390.1040	Nursing Services
390.1050	Dental Care Services
390.1060	Physical and Occupational Therapy Services
390.1070	Psychological Services
390.1080	Social Services
390.1090	Speech Pathology and Audiology Services
390.1100	Recreational and Activity Services
390.1110	Educational Services
390.1120	Work Activity and Prevocational Training Services
390.1130	Communicable Disease Policies
390.1140	Vaccinations
390.1150	Language Assistance Services

SUBPART F: RESTRAINTS AND BEHAVIOR MANAGEMENT

Section	
390.1310	Restraints
390.1312	Nonemergency Use of Physical Restraints
390.1314	Emergency Use of Physical Restraints
390.1316	Unnecessary, Psychotropic, and Antipsychotic Drugs
390.1320	Behavior Management
390.1330	Behavior Emergencies (Repealed)

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SUBPART G: MEDICATIONS

Section

- 390.1410 Medication Policies and Procedures
- 390.1420 Compliance with Licensed Prescriber's Orders
- 390.1430 Administration of Medication
- 390.1440 Labeling and Storage of Medications
- 390.1450 Control of Medications

SUBPART H: RESIDENT AND FACILITY RECORDS

Section

- 390.1610 Resident Record Requirements
- 390.1620 Content of Medical Records
- 390.1630 Confidentiality of Resident's Records
- 390.1640 Records Pertaining to Residents' Property
- 390.1650 Retention and Transfer of Resident Records
- 390.1660 Other Resident Record Requirements
- 390.1670 Staff Responsibility for Medical Records
- 390.1680 Retention of Facility Records
- 390.1690 Other Facility Record Requirements

SUBPART I: FOOD SERVICE

Section

- 390.1810 Director of Food Services
- 390.1820 Dietary Staff in Addition to Director of Food Services
- 390.1830 Hygiene of Dietary Staff
- 390.1840 Diet Orders
- 390.1850 Meal Planning
- 390.1860 Infant and Therapeutic Diets
- 390.1870 Scheduling Meals
- 390.1880 Menus and Food Records
- 390.1890 Food Preparation and Service
- 390.1900 Preparation of Infant Formula
- 390.1910 Food Handling Sanitation
- 390.1920 Kitchen Equipment, Utensils, and Supplies

SUBPART J: MAINTENANCE, HOUSEKEEPING, AND LAUNDRY

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Section

390.2010 Maintenance
390.2020 Housekeeping
390.2030 Laundry Services

SUBPART K: FURNISHINGS, EQUIPMENT, AND SUPPLIES

Section

390.2210 Furnishings
390.2220 Equipment and Supplies
390.2230 Sterilization of Supplies and Equipment

SUBPART L: WATER SUPPLY AND SEWAGE DISPOSAL

Section

390.2410 Codes
390.2420 Water Supply
390.2430 Sewage Disposal
390.2440 Plumbing

SUBPART M: DESIGN AND CONSTRUCTION STANDARDS FOR NEW FACILITIES

Section

390.2610 Applicability of these Standards
390.2620 Codes and Standards
390.2630 Preparation of Drawings and Specifications
390.2640 Site
390.2650 Administration and Public Areas
390.2660 Nursing Unit
390.2670 Dining, Play, Activity/Program Rooms
390.2680 Therapy and Personal Care
390.2690 Service Departments
390.2700 General Building Requirements
390.2710 Structural
390.2720 Mechanical Systems
390.2730 Plumbing Systems
390.2740 Electrical Systems

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SUBPART N: DESIGN AND CONSTRUCTION STANDARDS FOR EXISTING FACILITIES

Section

390.2910	Applicability
390.2920	Codes and Standards
390.2930	Preparation of Drawings and Specifications
390.2940	Site
390.2950	Administration and Public Areas
390.2960	Nursing Unit
390.2970	Play, Dining, Activity/Program Rooms
390.2980	Treatment and Personal Care
390.2990	Service Department
390.3000	General Building Requirements
390.3010	Structural
390.3020	Mechanical Systems
390.3030	Plumbing Systems
390.3040	Electrical Requirements

SUBPART O: RESIDENT'S RIGHTS

Section

390.3210	General
390.3220	Medical Care
390.3230	Restraints (Repealed)
390.3240	Abuse and Neglect
390.3250	Communication and Visitation
390.3260	Resident's Funds
390.3270	Residents' Advisory Council
390.3280	Contract With Facility
390.3290	Private Right of Action
390.3300	Transfer or Discharge
390.3310	Complaint Procedures
390.3320	Confidentiality
390.3330	Facility Implementation

SUBPART P: DAY CARE PROGRAMS

Section

390.3510	Day Care in Long-Term Care Facilities
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390.APPENDIX A	Interpretation and Illustrative Services for Long-Term Care Facility for Residents Under 22 Years of Age (Repealed)
390.APPENDIX B	Forms for Day Care in Long-Term Care Facilities
390.APPENDIX C	Guidelines for the Use of Various Drugs
390.TABLE A	Infant Feeding
390.TABLE B	Daily Nutritional Requirements By Age Group
390.TABLE C	Sound Transmissions Limitations
390.TABLE D	Pressure Relationships and Ventilation Rates of Certain Areas for New Long-Term Care Facilities for Persons Under Twenty-Two (22) Years of Age
390.TABLE E	Sprinkler Requirements
390.TABLE F	Heat Index Table/Apparent Temperature

AUTHORITY: Implementing and authorized by the ID/DD Community Care Act [210 ILCS 47].

SOURCE: Adopted at 6 Ill. Reg. 1658, effective February 1, 1982; emergency amendment at 6 Ill. Reg. 3223, effective March 8, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 11622, effective September 14, 1982; amended at 6 Ill. Reg. 14557 and 14560, effective November 8, 1982; amended at 6 Ill. Reg. 14678, effective November 15, 1982; amended at 7 Ill. Reg. 282, effective December 22, 1982; amended at 7 Ill. Reg. 1927, effective January 28, 1983; amended at 7 Ill. Reg. 8574, effective July 11, 1983; amended at 7 Ill. Reg. 15821, effective November 15, 1983; amended at 7 Ill. Reg. 16988, effective December 14, 1983; amended at 8 Ill. Reg. 15585, 15589, and 15592, effective August 15, 1984; amended at 8 Ill. Reg. 16989, effective September 5, 1984; codified at 8 Ill. Reg. 19823; amended at 8 Ill. Reg. 24159, effective November 29, 1984; amended at 8 Ill. Reg. 24656, effective December 7, 1984; amended at 8 Ill. Reg. 25083, effective December 14, 1984; amended at 9 Ill. Reg. 122, effective December 26, 1984; amended at 9 Ill. Reg. 10785, effective July 1, 1985; amended at 11 Ill. Reg. 16782, effective October 1, 1987; amended at 12 Ill. Reg. 931, effective December 24, 1987; amended at 12 Ill. Reg. 16780, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18243, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 6301, effective April 17, 1989; amended at 13 Ill. Reg. 19521, effective December 1, 1989; amended at 14 Ill. Reg. 14904, effective October 1, 1990; amended at 15 Ill. Reg. 1878, effective January 25, 1991; amended at 16 Ill. Reg. 623, effective January 1, 1992; amended at 16 Ill. Reg. 14329, effective September 3, 1992; emergency amendment at 17 Ill. Reg. 2390, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 7974, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; amended at 17 Ill. Reg. 15073, effective

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September 3, 1993; amended at 17 Ill. Reg. 16167, effective January 1, 1994; amended at 17 Ill. Reg. 19235, effective October 26, 1993; amended at 17 Ill. Reg. 19547, effective November 4, 1993; amended at 17 Ill. Reg. 21031, effective November 20, 1993; amended at 18 Ill. Reg. 1453, effective January 14, 1994; amended at 18 Ill. Reg. 15807, effective October 15, 1994; amended at 19 Ill. Reg. 11525, effective July 29, 1995; emergency amendment at 20 Ill. Reg. 535, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 10106, effective July 15, 1996; amended at 20 Ill. Reg. 12101, effective September 10, 1996; amended at 22 Ill. Reg. 4062, effective February 13, 1998; amended at 22 Ill. Reg. 7188, effective April 15, 1998; amended at 22 Ill. Reg. 16576, effective September 18, 1998; amended at 23 Ill. Reg. 1069, effective January 15, 1999; amended at 23 Ill. Reg. 8021, effective July 15, 1999; amended at 24 Ill. Reg. 17283, effective November 1, 2000; amended at 25 Ill. Reg. 4890, effective April 1, 2001; amended at 26 Ill. Reg. 4890, effective April 1, 2002; amended at 26 Ill. Reg. 10645, effective July 1, 2002; emergency amendment at 27 Ill. Reg. 2258, effective February 1, 2003, for a maximum of 150 days; emergency expired June 30, 2003; emergency amendment at 27 Ill. Reg. 5509, effective March 25, 2003, for a maximum of 150 days; emergency expired August 21, 2003; amended at 27 Ill. Reg. 5947, effective April 1, 2003; emergency amendment at 27 Ill. Reg. 14250, effective August 15, 2003, for a maximum of 150 days; emergency expired January 12, 2004; amended at 27 Ill. Reg. 15949, effective September 25, 2003; amended at 27 Ill. Reg. 18204, effective November 15, 2003; expedited correction at 28 Ill. Reg. 3565, effective November 15, 2003; amended at 28 Ill. Reg. 11231, effective July 22, 2004; emergency amendment at 29 Ill. Reg. 12025, effective July 12, 2005, for a maximum of 150 days; emergency rule modified in response to JCAR Recommendation at 29 Ill. Reg. 15301, effective September 23, 2005, for the remainder of the maximum 150 days; emergency amendment expired December 8, 2005; amended at 29 Ill. Reg. 12988, effective August 2, 2005; amended at 30 Ill. Reg. 1473, effective January 23, 2006; amended at 30 Ill. Reg. 5383, effective March 2, 2006; amended at 31 Ill. Reg. 6145, effective April 3, 2007; amended at 31 Ill. Reg. 8864, effective June 6, 2007; amended at 33 Ill. Reg. 9406, effective June 17, 2009; amended at 34 Ill. Reg. 19239, effective November 23, 2010; amended at 35 Ill. Reg. 3495, effective February 14, 2011; amended at 38 Ill. Reg. _____, effective _____.

SUBPART E: HEALTH AND DEVELOPMENTAL SERVICES

Section 390.1140 Vaccinations

- a) *A facility shall annually administer a vaccination against influenza to each resident, in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention that are most recent to the time of vaccination, unless the vaccination is medically contraindicated or the resident has refused the vaccine. Influenza vaccinations*

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for all residents age 65 or over shall be completed by November 30 of each year or as soon as practicable if vaccine supplies are not available before November 1. Residents admitted after November 30, during the flu season, and until February 1 shall, as medically appropriate, receive an influenza vaccination prior to or upon admission or as soon as practicable if vaccine supplies are not available at the time of the admission, unless the vaccine is medically contraindicated or the resident has refused the vaccine. (Section 2-213 of the Act)

- b) *A facility shall document in the resident's medical record that an annual vaccination against influenza was administered, refused or medically contraindicated. (Section 2-213 of the Act)*
- c) *A facility shall provide or arrange for administration of a pneumococcal vaccination to each resident ~~who is age 65 and over~~, in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, who has not received this immunization prior to or upon admission to the facility unless the resident refuses the offer for vaccination or the vaccination is medically contraindicated. (Section 2-213 of the Act)*
- d) *A facility shall document in each resident's medical record that a vaccination against pneumococcal pneumonia was offered and administered, refused, or medically contraindicated. (Section 2-213 of the Act)*

(Source: Amended at 38 Ill. Reg. _____, effective _____)

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NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Voluntary Registration and Recognition of Nonpublic Schools
- 2) Code Citation: 23 Ill. Adm. Code 425
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
425.20	Amendment
425.30	Amendment
- 4) Statutory Authority: 105 ILCS 5/2-3.6 and 2-3.51.5
- 5) A Complete Description of the Subjects and Issues Involved: Section 425.20(a) is being amended to require proof of a nonpublic school's non-profit status when it applies to the State Board for registration. Section 2-3.25(o) of the School Code [105 ILCS 5] limits registration and recognition of nonpublic schools to those that are non-profit. The amendment is proposed to address an increase in the number of for-profit schools that have applied for "registration" status in the last several months.

Section 425.30(b)(2) is being amended in response to concerns from representatives of recognized nonpublic schools that are privately funded and not required to have students recite the Pledge of Allegiance. The insertion of statutory language will clarify that only those nonpublic schools supported or maintained in whole or in part by public funds shall be required to have students recite the Pledge of Allegiance.

A proposed amendment to Section 425.30(c)(2) changes language that had required new employees to show freedom from tuberculosis in order to conform to changes made in the rules of the Illinois Department of Public Health (IDPH) (77 Ill. Adm. Code 696 (Control of Tuberculosis Code)). The amendment states that new or existing employees may be subject to additional health examinations, which could include screening for tuberculosis, in accordance with IDPH rules.

Finally, Section 425.30(d)(5) is being amended to incorporate language from Public Act 98-663, which amended the School Safety Drill Act [105 ILCS 128]. Recognized nonpublic schools are now required to hold an annual meeting for review of each building's emergency and crisis response plans.

- 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

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- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking will not create or enlarge a State mandate.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Written comments may be submitted within 45 days of the publication of this Notice to:

Shelley Helton
Agency Rules Coordinator
Illinois State Board of Education
100 North First Street, S-493
Springfield IL 62777-0001

217/782-5270
rules@isbe.net

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Some of the nonpublic schools may be organized as not-for-profit corporations.
- 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: January 2014

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

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NOTICE OF PROPOSED AMENDMENTS

TITLE 23: EDUCATION AND CULTURAL RESOURCES

SUBTITLE A: EDUCATION

CHAPTER I: STATE BOARD OF EDUCATION

SUBCHAPTER 1: NONPUBLIC ELEMENTARY AND SECONDARY SCHOOLS

PART 425

VOLUNTARY REGISTRATION AND RECOGNITION OF NONPUBLIC SCHOOLS

Section

425.10	Purpose and Applicability
425.20	Requirements for Registration
425.30	Requirements for Recognition
425.40	Process for Initial Recognition
425.50	Renewal of Recognition
425.60	Changes in Recognition Status
425.70	Appeals
425.80	Block Grant Funds
425.90	Textbook Block Grant Program

AUTHORITY: Implementing Sections 2-3.25o, 2-3.51.5, 2-3.155 and authorized by Sections 2-3.6 and 2-3.51.5 of the School Code [105 ILCS 5/2-3.25o, 2-3.51.5, 2-3.155 and 2-3.6].

SOURCE: Adopted at 33 Ill. Reg. 17123, effective December 7, 2009; amended at 36 Ill. Reg. 2241, effective January 26, 2012; amended at 37 Ill. Reg. 9492, effective June 19, 2013; amended at 38 Ill. Reg. _____, effective _____

Section 425.20 Requirements for Registration

- a) The State Superintendent of Education shall make available a form to be used for nonpublic schools' voluntary registration. A school's initial registration may occur at any time from October 1 through June 30 of the relevant school year. Initial registration of a school shall occur by means of a paper submission. Each paper registration form shall bear the signature of the school's chief administrative officer and must be received by the Illinois State Board of Education no later than June 25 for the school to be registered by June 30.
 - 1) Descriptive information that must be submitted shall include:

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- A) the name of the school, its location and telephone number, its affiliation, and the name of the chief administrator;
 - B) data on the students enrolled, by race, ethnicity, and grade level; and
 - C) data on the staff employed in various capacities.
- 2) The chief administrator of each school shall provide assurances that:
- A) the school offers an academic term of at least 176 days of pupil attendance annually, with at least five clock hours of instruction daily or at least 880 clock hours of instruction annually;
 - B) the school *provides instruction in English*, except as otherwise permitted pursuant to Section 27-2 of the School Code [105 ILCS 5/27-2], *in the branches of education taught to children of corresponding age and grade in the public schools* ~~(Section 26-1 of the School Code [105 ILCS 5/26-1])~~, *including the language arts, mathematics, the biological, physical and social sciences, the fine arts, and physical development and health* ~~(Section 27-1 of the School Code [105 ILCS 5/27-1])~~;
 - C) the school requires the students who are enrolled to attend daily during the entire regular school term;
 - D) the physical facilities occupied by the school comply with the applicable local building code and fire safety requirements;
 - E) the school will require evidence that, and will furnish to the State Superintendent of Education the required reports regarding the extent to which, students have complied with the requirements of Section 27-8.1 of the School Code [105 ILCS 5/27-8.1] and the rules of the Illinois Department of Public Health at 77 Ill. Adm. Code 665 with respect to health examinations, immunizations, eye examinations, and dental examinations; and will cooperate in the implementation of the Child Vision and Hearing Test Act [410 ILCS 205] and the rules of the Illinois Department of Public

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Health at 77 Ill. Adm. Code 675 and 685 regarding hearing and vision screenings, respectively; and

- F) the school complies with applicable federal and State laws prohibiting discrimination, including, but not limited to, Title IX of the Education Amendments of 1972 (20 USC 1681 et seq.), the Individuals with Disabilities Education Improvement Act (20 USC 1400 et seq.), the Age Discrimination in Employment Act of 1967 (29 USC 621 et seq.), Titles VI and VII of the Civil Rights Act of 1964 (42 USC 2000d et seq., 2000e et seq.), the Americans With Disabilities Act of 1990 (42 USC 12101 et seq.), the Illinois School Code [105 ILCS 5], and relevant case law, including Plyler v. Doe, 457 U.S. 202, 102 S. Ct. 2382 (1982).
- 3) The chief administrator of each school shall provide assurances that the school is a not-for-profit entity that is subject to the General Not For Profit Corporation Act of 1986 [805 ILCS 105] or incorporated as a not-for-profit entity in another state and authorized to do business in the State of Illinois pursuant to the Business Corporation Act of 1983 [805 ILCS 5]. The evidence provided shall consist of the file number assigned to the not-for-profit entity by the Illinois Secretary of State, Department of Business Services, and a copy of the entity's certificate of good standing issued for the year in which the school is applying for registration.
- b) Upon receipt of complete information for initial registration, including the required assurances, the State Superintendent shall assign a unique identifying number to the school. This number shall be evidence of completed registration and shall permit the school's chief administrator to apply for a user account affording access to the Illinois Web Application Security (IWAS) System, which the school may then use to exchange information with the State Superintendent of Education as relevant to its situation.
- c) The application for renewal of a school's registration in any subsequent year must be submitted no sooner than October 1 and no later than November 15 of that school year. Annual renewal of a school's registration shall be performed electronically and shall be submitted only by the chief administrator.

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- d) The chief administrator of each school applying to renew its registration shall submit to the Illinois State Board of Education the same information and assurances required in subsection (a) ~~of this Section~~.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 425.30 Requirements for Recognition

No nonpublic school shall apply for recognition unless it was registered for the previous school year, except that a school whose educational program is delivered via correspondence may seek recognition without registration, in acknowledgment of the fact that students participating in a school of this type do not gather in a physical location and thus the school does not provide assurances about ~~its~~~~their~~ compliance with requirements for health examinations, as required for registration under Section 2-3.25o(b) of the School Code. Recognition shall be granted only to schools that meet the requirements of this Section. A nonpublic school applying for recognition that has not applied for registration renewal by November 15 of the year in which the recognition application is submitted shall not be considered for recognition during the remainder of that school year.

- a) Administrative Requirements
- 1) Each school's recognition shall be contingent upon evidence of compliance with the administrative requirements that are made applicable to nonpublic schools by relevant statutes.
 - A) The school shall offer an academic term of at least 176 days of pupil attendance annually, with at least five clock hours of instruction daily or at least 880 clock hours of instruction annually.
 - B) The school shall require the students who are enrolled to attend daily during the entire regular school term.
 - C) The school shall comply with applicable federal and State laws prohibiting discrimination, including, but not limited to, Title IX of the Education Amendments of 1972 (20 USC 1681 et seq.), the Individuals with Disabilities Education Improvement Act (20 USC 1400 et seq.), the Age Discrimination in Employment Act of 1967 (29 USC 621 et seq.), Titles VI and VII of the Civil Rights Act of 1964 (42 USC 2000d et seq., 2000e et seq.), the Americans With

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Disabilities Act of 1990 (42 USC 12101 et seq.), the Illinois School Code [105 ILCS 5], and relevant case law, including Plyler v. Doe, 457 U.S. 202, 102 S. Ct. 2382 (1982).

- D) The school shall comply with the requirements of Section 4 of the Abused and Neglected Child Reporting Act [325 ILCS 5/4], Section 5 of the Missing Children Records Act [325 ILCS 50/5], Section 5 of the Missing Children Registration Law [325 ILCS 55/5], and the rules of the State Board of Education promulgated pursuant to Section 2-3.13a of the School Code [105 ILCS 5/2-3.13a] (see 23 Ill. Adm. Code 375.75, ~~Public and Nonpublic Schools: Transmission of Records for Transfer Students~~).
 - E) The school shall comply with the requirements of the School Reporting of Drug Violations Act [105 ILCS 127].
 - F) The school shall comply with the requirements of Sections 10-27.1A and 10-27.1B of the School Code [105 ILCS 5/10-27.1A and 10-27.1B] regarding firearms and drug-related incidents in schools.
 - G) The school shall comply with the requirements of Section 10-21.7 of the School Code [105 ILCS 5/10-21.7] regarding the reporting of attacks on school personnel.
- 2) Recognition shall also be contingent upon evidence of compliance with the additional administrative requirements of this subsection (a)(2).
- A) The school shall maintain written descriptions of its governance structure and its policy-making procedure, shall maintain its policies in written form, and shall make its policies routinely available to parents of the students enrolled and to school staff, as well as to other individuals upon request.
 - B) The school shall maintain a written description of its methods for complying with the nondiscrimination requirements identified in subsection (a)(1)(C) ~~of this Section~~.
- b) Educational Program

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Each school's recognition shall be contingent upon evidence of compliance with the programmatic requirements that are made applicable to nonpublic schools by relevant statutes.

- 1) *Instruction shall be provided in English, except as otherwise permitted pursuant to Section 27-2 of the School Code ~~[105 ILCS 5/27-2]~~, in the branches of education taught to children of corresponding age and grade in the public schools (Section 26-1 of the School Code), including the language arts, mathematics, the biological, physical and social sciences, the fine arts, and physical development and health (Section 27-1 of the School Code).*
 - 2) *Each school shall provide instruction in American patriotism, the principles of representative government, as enunciated in the American Declaration of Independence, the Constitution of the United States of America and the Constitution of the State of Illinois, and the proper use and display of the American flag. ~~The, and shall require pupils to recite the~~ Pledge of Allegiance shall be recited daily in nonpublic schools supported or maintained in whole or in part by public funds. (Sections 27-3 and 27-4 of the School Code ~~[105 ILCS 5/27-3 and 27-4]~~) *Not less than one hour per week shall be devoted to the study of this subject matter in the seventh and eighth grades or their equivalent and in all high school grades. No student shall receive a certificate of graduation from the eighth grade or from high school without passing an examination on these subjects. No student shall be graduated from the eighth grade unless he or she has received instruction in the history of the United States and has given evidence of a comprehensive knowledge of the subject.* (Section 27-21 of the School Code [105 ILCS 5/27-21])*
 - 3) *The school shall provide health education as required by the Critical Health Problems and Comprehensive Health Education Act [105 ILCS 110].*
- c) **Personnel Requirements**
- 1) *Each school's recognition shall be contingent upon evidence of compliance with the requirements of subsection (c-5) of Section 2-3.25o of the School Code .*

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- 2) Each school shall require of each new employee evidence of freedom from communicable disease, ~~including tuberculosis.~~ A new or existing employee may be subject to additional health examinations, including screening for tuberculosis, as may be required under rules of the Illinois Department of Public Health at 77 Ill. Adm. Code 696. ~~This evidence shall consist of a tuberculin skin test and, if appropriate, an x-ray, performed by a physician licensed in Illinois or any other state to practice medicine in all its branches, an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes the nurse to perform health examinations, or a physician assistant who has been delegated the authority to perform health examinations by his or her supervising physician, not more than 90 days preceding the date on which the report of the test results is presented to the school's chief administrator.~~
- 3) Each school's personnel policies shall require:
 - A) monitoring the performance of each employee who provides or assists with instruction or has other instructional responsibilities (e.g., teachers, teacher aides, administrators, department chairs); and
 - B) formal evaluation at least every two years in terms of proficiency and competency.
- 4) Students' needs for support services such as counseling and social work shall be evaluated when school staff believe consideration is needed, such as when there are changes in the student body or stresses within the surrounding community, and the school's staffing configuration shall reflect decision-making about how those needs should be addressed.
- 5) Each individual first assigned to a full-time teaching or administrative position at or after the beginning of the 2011-12 school year shall hold a bachelor's or higher degree.
- 6) Each individual first assigned to a full-time teaching or administrative position prior to the beginning of the 2011-12 school year who does not hold a bachelor's or higher degree shall participate annually in professional development that is demonstrably designed to strengthen his or her knowledge and skills in areas directly related to job duties (e.g.,

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content-area knowledge or pedagogy for teaching staff, and administration, supervision, evaluation, or school management for administrators).

- 7) Each individual employed in a field requiring licensure shall hold and practice within the scope of the relevant license.
- d) Health and Safety
- Each school's recognition shall be contingent upon evidence of compliance with the health and safety requirements that are made applicable to nonpublic schools by the following relevant statutes.
- 1) The physical facilities occupied by the school shall comply with the applicable local building code and fire safety requirements.
 - 2) If the school provides food service, the nutrition program and the facilities used shall comply with the Richard B. Russell National School Lunch Act (42 USC 1751 et seq.), the Child Nutrition Act of 1966 (42 USC 1771 et seq.), and the School Breakfast and Lunch Program Act [105 ILCS 125].
 - 3) The school shall have a wellness policy on file that complies with the requirements of the Child Nutrition and WIC Reauthorization Act of 2004 (section 204 of Public Law 108-265; 42 USC 1751 [et seq. note](#)).
 - 4) The school shall require evidence that, and shall furnish to the State Superintendent of Education the required reports regarding the extent to which, students have complied with the requirements of Section 27-8.1 of the School Code [105 ILCS 5/27-8.1] and the rules of the Illinois Department of Public Health at 77 Ill. Adm. Code 665 with respect to health examinations, immunizations, eye examinations, and dental examinations; and shall cooperate in the implementation of the Child Vision and Hearing Test Act [410 ILCS 205] and the rules of the Illinois Department of Public Health at 77 Ill. Adm. Code 675 and 685 regarding hearing and vision screenings, respectively.
 - 5) The school shall comply with the requirements of the School Safety Drill Act [105 ILCS 128], [including conducting a review of the plan in accordance with Section 25\(f\) of that Act.](#)

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- 6) The school shall comply with the requirements of the Eye Protection in School Act [105 ILCS 115].
- 7) The school shall comply with the requirements of the Toxic Art Supplies in Schools Act [105 ILCS 135].
- 8) The school shall comply with the applicable requirements of the Asbestos Abatement Act [105 ILCS 105].

(Source: Amended at 38 Ill. Reg. _____, effective _____)

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Child Care
- 2) Code Citation: 89 Ill. Adm. Code 50
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
50.105	Amendment
50.110	Amendment
50.210	Amendment
50.230	Amendment
50.235	Amendment
50.250	Amendment
50.310	Amendment
- 4) Statutory Authority: Implementing Articles I through IXA and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IXA and 12-13]
- 5) Effective Date of Rule: September 17, 2014
- 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*: November 1, 2013; 37 Ill. Reg. 17140
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: Various non-substantive changes were made to the proposed rulemaking. In addition, Section 50.230(b)(5) was added as follows:

"Families with active CCAP cases in which all parents in the household are called into active military duty and the relative caregivers are employed or in an approved education/training activity.".

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- 12) Have all changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
50.105	Amendment	38 Ill. Reg. 18067; August 29, 2014
50.510	Amendment	38 Ill. Reg. 18067; August 29, 2014
50.520	Amendment	38 Ill. Reg. 18067; August 29, 2014
50.530	Amendment	38 Ill. Reg. 18067; August 29, 2014
50.540	Amendment	38 Ill. Reg. 18067; August 29, 2014
50.550	Amendment	38 Ill. Reg. 18067; August 29, 2014
50.560	Repeal	38 Ill. Reg. 18067; August 29, 2014
50.570	Amendment	38 Ill. Reg. 18067; August 29, 2014
50.580	Amendment	38 Ill. Reg. 18067; August 29, 2014

- 15) Summary and Purpose of Rulemaking: To be consistent with recommendations from the Child Care Advisory Council and with the federal Administration for Children and Families (ACF) Office of Child Care priorities and principles for child care subsidy programs and children's continuity of care, this rulemaking makes a number of revisions to the child care assistance rules. These changes are also based on recommendations from the Program Administration Committee of the DHS Child Care Advisory Council.

This rulemaking expands the definition for "Access to Children" to establish that all individuals with access to children in care will be required to submit to the required background checks. This rulemaking adds a definition for "Base Wages and Salary". The definition for "Work" is expanded to include additional options for parents. The definition for "Family" is expanded to include additional custody arrangements.

This rulemaking makes the requirements for reporting changes that affect child care eligibility more flexible. So that clients remain eligible for child care assistance during brief transitions, teen parents will now remain eligible for child care assistance during the summer months and during a three-month period after graduation in order to secure employment or to prepare for higher education.

As a result of this rulemaking, parents or other relatives who are working and are unable to supervise their children will be eligible for child care assistance. Rather than requiring

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the applicant to supply documentation, this rulemaking specifies that child care staff will use Department computerized case information systems to document participation in a Department approved program.

The requirements for social service agencies that provide recognized English as a Second Language (ESL) and other adult education courses and programs will now be more flexible. The eligibility and participation requirements for vocation education programs, for post-secondary education or training programs and for web-based classes are also made more flexible by this rulemaking. The provisions for child care during study time have also been expanded. Regarding the termination of child care assistance, if it is determined that the child is no longer enrolled with the approved child care provider, child care assistance will be terminated immediately.

Previously, additional days of child care would not be granted for study time. As a result of this rulemaking, when approved by the Bureau of Child Care and Development, study time can now be granted to add an extra day of care.

This proposed rulemaking makes changes regarding the earned income that is considered when determining eligibility for child care assistance. This rulemaking clarifies that only gross base wages and salaries will be considered in determining the household's earned income. This rulemaking exempts lottery winning or proceeds obtained by gambling as well as other forms of non-recurrent or inconsistent income from consideration. As a result of this rulemaking, individuals who are 19-20 years old will be included in the family size for the household but their earned income will be disregarded.

This rulemaking also clarifies the eligibility requirements for parents who are in the military. The requirements to maintain child care arrangements are expanded by providing that the parent must report a loss of employment or a break in the approved activity within 30 days of the loss or break. Families will be eligible to receive child care assistance for up to three 30-day periods in any 12-month period.

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

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

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

217/785-9772

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

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

TITLE 89: SOCIAL SERVICES
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES
SUBCHAPTER a: GENERAL PROGRAM PROVISIONS

PART 50
CHILD CARE

SUBPART A: GENERAL PROVISIONS

Section	
50.101	Incorporation by Reference
50.105	Definitions
50.110	Participant Rights and Responsibilities
50.120	Notification of Available Services
50.130	Child Care Overpayments and Recoveries

SUBPART B: APPLICABILITY

Section	
50.210	Child Care
50.220	Method of Providing Child Care
50.230	Child Care Eligibility
50.235	Income Eligibility Criteria
50.240	Qualified Provider (Repealed)
50.250	Additional Service to Secure or Maintain Child Care
50.260	Job Search (Repealed)

SUBPART C: PAYMENT FEES

Section	
50.310	Fees for Child Care Services
50.320	Maximum Monthly Income and Parent Fee by Family Size, Income Level and Number of Children Receiving Full-time Care

SUBPART D: PROVIDER REQUIREMENTS

Section	
50.400	Purpose
50.410	Qualified Provider

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- 50.420 Provider Registration and Certification Requirements
- 50.430 Provider Background Checks
- 50.440 Payment for Child Care Services

SUBPART E: GREAT START PROGRAM

- Section
- 50.510 Great START Program
- 50.520 Method of Providing the Wage Supplement
- 50.530 Eligibility
- 50.540 Employer Responsibility
- 50.550 Notification of Eligibility
- 50.560 Phase-in of Wage Supplement Scale
- 50.570 Wage Supplement Scale
- 50.580 Evaluation

SUBPART F: CHILD CARE COLLABORATION PROGRAM

- Section
- 50.610 Child Care Collaboration Program
- 50.620 Approvable Models of Collaboration
- 50.630 Requirements for Approval in the Child Care Collaboration Program
- 50.640 Notification of Eligibility
- 50.650 Rules and Reporting for the Child Care Collaboration Program

SUBPART G: GATEWAYS TO OPPORTUNITY CREDENTIALS

- Section
- 50.710 Gateways to Opportunity, the Illinois Professional Development System
- 50.720 Gateways to Opportunity Credentials
- 50.730 Application for Credentials
- 50.740 Framework for Gateways to Opportunity Credentials
- 50.750 Professional Knowledge
- 50.760 Gateways to Opportunity Registry

AUTHORITY: Implementing Articles I through IXA and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IXA and 12-13].

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SOURCE: Emergency rules adopted at 21 Ill. Reg. 9502, effective July 1, 1997, for a maximum of 150 days; adopted at 21 Ill. Reg. 14961, effective November 10, 1997; emergency amendment at 22 Ill. Reg. 12816, effective July 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 21037, effective November 27, 1998; emergency amendment at 23 Ill. Reg. 10875, effective August 20, 1999, for maximum of 150 days; amended at 24 Ill. Reg. 1058, effective January 10, 2000; emergency amendment at 24 Ill. Reg. 6604, effective April 5, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 13987, effective September 1, 2000; amended at 24 Ill. Reg. 15423, effective October 10, 2000; emergency amendment at 25 Ill. Reg. 2735, effective February 5, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 8176, effective June 23, 2001; emergency amendment at 25 Ill. Reg. 8443, effective July 1, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 14854, effective October 31, 2001; emergency amendment at 25 Ill. Reg. 16116, effective December 1, 2001, for a maximum of 150 days; amended at 26 Ill. Reg. 7113, effective April 25, 2002; amended at 27 Ill. Reg. 12090, effective July 14, 2003; amended at 27 Ill. Reg. 18411, effective November 24, 2003; amended at 28 Ill. Reg. 6895, effective April 23, 2004; emergency amendment at 28 Ill. Reg. 10121, effective July 1, 2004, for a maximum of 150 days; emergency expired November 27, 2004; amended at 29 Ill. Reg. 2687, effective February 4, 2005; emergency amendment at 29 Ill. Reg. 13253, effective August 11, 2005, for a maximum of 150 days; emergency expired January 7, 2006; amended at 30 Ill. Reg. 11190, effective June 6, 2006; amended at 31 Ill. Reg. 12584, effective August 20, 2007; emergency amendment at 31 Ill. Reg. 13350, effective September 10, 2007, for a maximum of 150 days; emergency expired February 6, 2008; amended at 32 Ill. Reg. 6048, effective March 31, 2008; emergency amendment at 32 Ill. Reg. 6652, effective April 1, 2008, for a maximum of 150 days; amended at 32 Ill. Reg. 9604, effective June 20, 2008; amended at 32 Ill. Reg. 14742, effective August 28, 2008; amended at 33 Ill. Reg. 8195, effective June 8, 2009; emergency amendment at 33 Ill. Reg. 15889, effective November 1, 2009, for a maximum of 150 days; emergency amendment at 33 Ill. Reg. 16517, effective November 1, 2009, for a maximum of 150 days; emergency expired March 30, 2010; amended at 34 Ill. Reg. 5275, effective March 29, 2010; emergency amendment at 34 Ill. Reg. 8619, effective June 16, 2010, for a maximum of 150 days; emergency expired on November 12, 2010; amended at 34 Ill. Reg. 10512, effective July 8, 2010; amended at 34 Ill. Reg. 19539, effective December 6, 2010; amendment at 35 Ill. Reg. 1397, effective January 6, 2011; amended at 35 Ill. Reg. 3993, effective February 25, 2011; emergency amendment at 35 Ill. Reg. 6583, effective April 1, 2011, for a maximum of 150 days; emergency expired August 28, 2011; amended at 35 Ill. Reg. 8878, effective May 25, 2011; amended at 36 Ill. Reg. 1564, effective January 17, 2012; amended at 36 Ill. Reg. 12104, effective July 10, 2012; amended at 36 Ill. Reg. 14513, effective September 12, 2012; amended at 36 Ill. Reg. 16085, effective October 29, 2012; amended at 38 Ill. Reg. 18490, effective August 22, 2014; amended at 38 Ill. Reg. 19513, effective September 17, 2014.

SUBPART A: GENERAL PROVISIONS

DEPARTMENT OF HUMAN SERVICES

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Section 50.105 Definitions

"Access to Children" – an employee (including volunteers) whose job duties require that the employee be present in the child care facility during the hours that children are present in the facility and includes any person who is permitted to be alone outside the visual or auditory supervision of facility staff with children receiving care in the facility. All individuals with access to children in care must submit to the required background checks.

"Background Check" –

a criminal history check via fingerprints of persons age 18 and over that are submitted to the Illinois State Police and the Federal Bureau of Investigation (FBI) for comparison to their criminal history records, as appropriate; and

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 Illinois and National Sex Offender Registries.

"Base Wages and Salary" – is the amount of gross earned income calculated by multiplying the number of hours worked by the hourly wage plus tips, before any deductions, such as taxes, pension payments, union dues, insurance, etc., are made. Base wages and salary do not include non-recurrent or inconsistent pay for overtime, incentives, bonuses, sick, vacation, travel reimbursements or other types of non-recurrent or inconsistent income.

"CANTS" – the Child Abuse and Neglect Tracking System operated and maintained by the Department of Children and Family Services. This system is being replaced by the Statewide Automated Child Welfare Information System (SACWIS).

"Child Care Assistance Program" or "CCAP" – Child care services authorized by the Department of Human Services (DHS) as specified in 89 Ill. Adm. Code 50.

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"Child Care Provider" or "Child Care Facility" – any individual, group of persons, agency, association, or organization that provides programs or services exclusively directed towards persons under the age of 18.

"Conviction" – *a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense, rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.* (Section 2-5 of the Criminal Code of 1961 [720 ILCS 5/2-5])

"Employment" or "Work" – a trade, profession, occupation, job or other means of livelihood for which a wage, salary or monetary compensation is paid.

"Family" – the applicant, his or her spouse, and the biological or adoptive children or stepchildren of the applicant or his or her spouse under age 21 living in the same household. Family must also include the child for whom care is requested, the child's dependent blood-related and adoptive siblings, and the child's and sibling's parents living in the same household. The ~~family applicant~~ may also include ~~in his or her family~~ other persons related by blood or law to the applicant or his or her spouse living in the same household if they are dependent upon the family for more than 50 percent of their support, if including these individuals would be beneficial for the family. The ~~family applicant~~ may also include ~~in his or her family~~ a child of the applicant or his or her spouse under age 21 who is dependent upon the family for more than 50 percent of his or her support and who is a full-time student away at school, provided he or she has not established legal residence outside the family household, if including this individual would be beneficial for the family.

"Improper Payment" – any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements, and includes any payment to an ineligible recipient, any payment for an ineligible service, any duplicate payment, payments for services not received, and any payment that does not account for applicable discounts.

"Parents" or "Parents or other Relatives" – applicants for or recipients of child care assistance who reside in the same household as the child. Parents or other relatives include:

a biological parent;

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an adoptive parent;

a child's biological or adoptive parent who is the primary residential parent (custodian) of the child:

in an order of joint custody entered pursuant to Section 602.1 of the Illinois Marriage and Dissolution of Marriage Act [750 ILCS 5]; or

in an original or modification proceeding as provided in Section 201 of the Uniform Child-Custody Jurisdiction and Enforcement Act [750 ILCS 36], pursuant to Section 601 of the Illinois Marriage and Dissolution of Marriage Act;

a stepparent;

a legal guardian; or

a caretaker relative within the fifth degree of kinship. The degrees of kinship are the following blood and adoptive relatives:

First Degree of Kinship:

father; or

mother.

Second Degree of Kinship:

brother;

sister;

grandfather; or

grandmother.

Third Degree of Kinship:

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great-grandfather;

great-grandmother

uncle;

aunt;

nephew; or

niece.

Fourth Degree of Kinship:

great-great-grandfather;

great-great-grandmother;

great-uncle;

great-aunt;

first cousin;

great-niece; or

great-nephew.

Fifth Degree of Kinship:

great-great-great-grandfather;

great-great-great-grandmother;

great-great-uncle;

great-great-aunt;

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first cousin once removed;

second cousin;

great-great niece; or

great-great nephew.

Step-Relatives:

step-father;

step-mother;

step-brother; or

step-sister.

"Persons Subject to Background Checks" –

the operators of the child care facility;

all current and conditional employees of the child care facility;

any person who is used to replace or supplement staff; and

any person who has access to children.

If the child care facility operates in a family home, the provider and all members of the household age 13 and over are subject to background checks, as appropriate, even if these members of the household are not usually present in the home during the hours the child care facility is in operation.

"Teen Parent" – parents through age 19.

"Two-Parent Household" or "Two-Parent Family" – a family with two parents living in the home; includes unmarried parents who share a child in common.

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~~"Work"—a trade, profession, or other means or legal livelihood for which a wage, salary, or monetary compensation is paid.~~

(Source: Amended at 38 Ill. Reg. 19513, effective September 17, 2014)

Section 50.110 Participant Rights and Responsibilities

- a) Hearings
 - 1) Persons receiving child care services can request hearings, as provided at 89 Ill. Adm. Code 14, Subpart A, as appropriate, on issues concerning the appropriateness of, denial of, prompt issuance of, or intended actions to discontinue, terminate, suspend or reduce, child care assistance under this Part.
 - 2) Assistance under this Part will not be continued at the previous level pending a hearing.
- b) Child care services received by a family must be reasonably related to the hours of training or employment including the transportation needs of the family. Teen parents enrolled full-time in elementary or high school or GED classes are eligible for full-time, full-year child care eligibility, including summers, when using a licensed child care provider, up to and including a three-month period after graduation.
- c) Parents may choose their child care arrangements, but payments will be subject to all appropriate rules.
- d) Parents are responsible for providing income verification and all other information required by the Department in order to determine eligibility for child care services.
- e) Parents are responsible for reporting to the Department or its agents additional income, loss of employment, or departure from an approved education or training activity~~all changes in income, employment, family size, number of children receiving care or any other factor~~ that would affect eligibility for child care services. The Department or its agents may schedule a redetermination at any time upon receiving information that could affect eligibility for child care services.

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- f) Parents must avail themselves of all other available child care services including child care appropriate and available from the Department of Children and Family Services ([DCFS](#)) offered to particular categories of caregivers, such as foster parents who are employed and need child care to be foster parents.

(Source: Amended at 38 Ill. Reg. 19513, effective September 17, 2014)

SUBPART B: APPLICABILITY

Section 50.210 Child Care

- a) To the extent resources permit, the Department shall provide child care services:
- 1) to parents or other relatives who are working and are unable to supervise their children outside the home;
 - 2) to parents or other relatives who are participating in employment, training, or education programs ~~outside the home~~ that are approved by the Department; and
 - 3) to teen parents to enable them to obtain a high school degree or its equivalent, to provide time to find employment after graduation, and to provide a stable learning environment for their children.
- b) In a two-parent household, both parents must be working or in an approved education and training activity and unavailable to care for the children unless one of the parents is unable to care for the children for one of the following reasons:
- 1) A physical or mental disability that limits the ability of the parent to provide adequate child care;
 - 2) Participation in an alcohol or drug abuse rehabilitation program;
 - 3) Military service away from home; or
 - 4) Participation in a Department approved program such as a Temporary Assistance for Needy Families (TANF) Employment and Work ~~and~~

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~~Training~~ Activity ([see 89 Ill. Adm. Code 112.78](#)) or Teen Parent Services (TPS).

- c) The applicant must furnish written documentation to verify the reason why the other parent, [if living in the home](#), is unable to work and unable to provide care for the children that live in the home.
- 1) To document the other parent's physical or mental health problem or participation in a rehabilitation program, the applicant shall submit written verification from the treating physician, psychiatrist, or other appropriate licensed health care practitioner that includes details of the nature and degree of the person's disability or impairment, the reason the condition prevents the individual from providing care, and the projected length of disability.
 - 2) To document military service away from home, the applicant must furnish a copy of the orders from the appropriate branch of the military that details the length and location of the assignment, as well as any money allowances for clothing and housing.
 - 3) To document participation in a Department approved program ([see subsection \(b\)\(4\)](#)), [child care staff shall use Department computerized case information systems](#). [If participation in a Department approved program cannot be verified via the Department computerized case information systems, the applicant may be required to](#) ~~must~~ submit a copy of the [Responsibility and Services Plan \(RSP\) \(FORM 4003\)](#) or other relevant Department forms signed by the caseworker. ~~In determining whether one of the parents is unable to care for the children, the Department shall consider the age of the child, special needs, the degree of supervision required, medical information, and all other available evidence.~~

(Source: Amended at 38 Ill. Reg. 19513, effective September 17, 2014)

Section 50.230 Child Care Eligibility

- a) Child care services are restricted to children under age 13 and to children under age 19 who are under court supervision or have physical or mental incapacities as documented by a statement from a local health provider or other health professional.

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- b) Parents and other relatives eligible to receive child care services include:
 - 1) Recipients of Temporary Assistance for Needy Families (TANF) under Article IV of the Public Aid Code participating in work and/or training-related activities as specified in their RSP (see 89 Ill. Adm. Code 112.74) as approved by the Department's TANF case worker personal plans for employment and self-sufficiency who have been approved for child care benefits by the Department and who meet the monthly income ceilings in subsection (b)(2) of this Section.
 - 2) Working families, including teen parents enrolled full-time in elementary or high school or GED classes while they attend school to obtain a high school degree or its equivalent, whose monthly incomes do not exceed the following amounts by family size:

Family Size	Gross Monthly <u>Base</u> Income
2	\$2,268
3	\$2,857
4	\$3,446
5	\$4,035
6	\$4,624
7	\$5,213
8	\$5,802
9	\$6,391
10	\$6,980

The above income guidelines will be indexed annually so that the thresholds are no less than 185% of the most current federal poverty level for each family size.

- 3) Families who do not receive TANF and need child care services in order to attend school or training (up to and including the acquisition of the first ~~Associate~~ Associate's Degree and/or the first Bachelor's Degree) whose monthly income does not exceed the monthly income ceilings in subsection (b)(2) of this Section. Child care services approved under this Part must be reasonably related to the education or training activity,

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including class hours and research, study, laboratory, library and transportation time, and unpaid educationally required work activities such as student teaching, an internship, a clinical, a practicum or an apprenticeship. Teen parents enrolled full-time in elementary or high school or GED classes will be eligible for full-time, full-year child care, including summers, when using a licensed child care provider, up to and including a three-month period after graduation, in order to secure employment or to prepare for higher education. If a parent is claimed as a dependent by another person for federal income tax purposes, that parent is only eligible if his or her income, when added to the income of the other person, does not exceed the monthly income ceiling in subsection (b)(2) ~~of this Section~~ for that family size. All education programs under this Part must be administered by an educational institution accredited under requirements of State law, including, but not limited to, the Barber, Cosmetology, Esthetics, Hair Braiding, and Nail Technology Act of 1985 [225 ILCS 410], the Real Estate Act of 2000 [225 ILCS 454], the Public Community College Act [110 ILCS 805], the University of Illinois Act [110 ILCS 305], the Chicago State University Law [110 ILCS 660], the Eastern Illinois University Law [110 ILCS 665], the Governors State University Law [110 ILCS 670], the Illinois State University Law [110 ILCS 675], the Northeastern Illinois University Law [110 ILCS 680], the Northern Illinois University Law [110 ILCS 685], the Western Illinois University Law [110 ILCS 690], or the Department of Financial and Professional Regulation. Social service agencies that provide recognized English as a Second Language (ESL) and other adult education courses and programs are not required to hold or maintain any separate type of accreditation, as long as the program they offer is supported by an accredited institution.

A) Below Post-Secondary Education Eligibility and Participation Requirements

This category of education includes literacy and other adult basic education, English as a Second Language, and GED preparation programs. There is no work requirement for the first 24 non-consecutive months the client participates. From the 25th month on, the client must work at least 20 hours per week. Child care provided to a teen parent to obtain a high school diploma or its equivalent does not count against this 24-month limit. Individuals enrolled in below post-secondary education must maintain a "C"

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average if this measurement is used by the institution to determine satisfactory progress. The individual will be allowed one semester below a "C" average to bring the grades up to a "C" average. When grades are not used, progress will be determined by the written policy of the institution to establish a comparable grade level upon completion of the academic term. The determination of satisfactory progress must be reported upon completion of the academic term or twice a year if the program is continuous for 12 months.

- B) Vocational Education Eligibility and Participation Requirements
~~Programs in this category of education~~~~This category of education prepares the individual for a specific job, and includes all programs that prepare the client for a specific type of work.~~ ~~The program~~ may be offered by a public community college, public or private university, or private business/technical school. The program usually results in the receipt of a Certificate of Achievement or Completion and/or prepares the client for a specific job or to obtain a license required by some occupations. There is no work requirement for the first 24 non-consecutive months the client participates. From the 25th month on, the client must work at least 20 hours per week. Individuals enrolled in vocational education must maintain a "C" average if this measurement is used by the institution to determine satisfactory progress. The individual will be allowed one semester below a "C" average to bring the grades up to a "C" average. When grades are not used, progress will be determined by the written policy of the institution to establish a comparable grade level upon completion of the academic term. The determination of satisfactory progress must be reported upon completion of the academic term or twice a year if the program is continuous for 12 months.
- C) Post-Secondary Education
- i) This category of education includes all undergraduate college level courses that could result in an Associate~~Associate's~~ or Bachelor's Degree. Families

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eligible to receive child care services while they attend an education or training program under this Section must:

- be enrolled in a program accredited under requirements of State law as stated in subsection (b)(3) ~~of this Section~~.
 - not already have an ~~Associate~~ Associate's or Bachelor's Degree, if requesting child care to earn an ~~Associate~~ Associate's Degree. Child care will not be approved for attainment of a second ~~Associate~~ Associate's Degree.
 - not already have a Bachelor's Degree, if requesting child care to earn a Bachelor's Degree. Child care will not be approved for attainment of a second Bachelor's Degree.
 - not be in an advanced degree program (beyond a Bachelor's Degree). Child care will not be approved for education beyond the attainment of a Bachelor's Degree.
- ii) There is no work requirement for the first 48 non-consecutive months the client participates. From the 49th month on, the client must work at least 20 hours per week. Clients who do not work and who need child care to attend college must maintain a 2.5 grade point average (GPA) (on a 4.0 scale) if this measurement is used by the institution to determine satisfactory progress. Clients who work 20 hours or more per week in paid employment while they attend college must maintain a 2.0 GPA (on a 4.0 scale). In the absence of a GPA, satisfactory progress will be determined by the written policy of the institution. The determination of satisfactory progress, including test/retest results or GPA, must be reported upon completion of the academic term or twice a year if the program is continuous for 12 months. If the client's GPA falls below 2.5 or 2.0 for those students who work or at any time the client does not

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maintain satisfactory progress, the client may continue to go to school for another semester. If the GPA is below 2.5 or 2.0 two semesters in a row, the client will be ineligible for child care until his or her GPA is at or above 2.5 or 2.0.

- D) For child care services received under education/training, a parent enrolled in web-based courses or correspondence learning from an accredited university or college is only eligible for child care assistance if both of the following are met:
- i) The class is offered only at a regularly scheduled time (i.e., 11:00 a.m. every Monday and Wednesday) or the parent must leave the home to have access to a computer. ~~Web-based classes that the parent may take at any time do not fit this criteria.~~
 - ii) The child or children for whom care is requested must be under the age of six, except during the summer or school breaks. Care shall not be authorized during the hours the child is in school or is home schooled, or if the child is in a two-parent family when the other parent is available to care for the child.
- E) Study Time
Child care services may be granted for up to one hour of study time per week for each classroom hour ~~or~~ of course credit. When possible, study periods should be arranged around regularly scheduled classes in order to provide a consistent and uninterrupted routine for children in care. Study time ~~shall not be~~ granted to add ~~an extra day~~ additional days of care must be approved first by the Department's Bureau of Child Care and Development Policy Unit.
- 4) Relatives (other than parents) who receive child-only TANF ~~or General Assistance (GA)~~ benefits as a Representative Payee for children in need of care while they work ~~outside the home.~~
- 5) Families with active CCAP cases in which all parents in the household are called into active military duty and the relative caregivers are employed or

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in an approved education/training activity.

- c) All families must be residents of Illinois.
- d) Payment for child care services to eligible parents may begin:
 - 1) if care was provided at the time and all eligibility factors are met, on either:
 - A) the date of the parent's signature; or
 - B) one week (seven calendar days) prior to the stamped date of receipt by the Department or its agents, whichever is later; or
 - 2) on the date the child care provider actually begins providing child care services, if the application is received in advance of services being provided and all eligibility factors are met.
- e) Eligibility ceases 10 calendar days from the date of the termination notice sent to the parent by the Department or its agents following a determination of ineligibility. Care will be terminated immediately if it is determined the child is no longer enrolled with the approved provider.

(Source: Amended at 38 Ill. Reg. 19513, effective September 17, 2014)

Section 50.235 Income Eligibility Criteria

A family is considered "income eligible" when the combined gross monthly base income (earned and unearned) (see subsection (a)) of all family members is at or below the amounts listed in Section 50.230 for the corresponding family size. In ~~two~~ parent families, both incomes must be combined to determine eligibility. Two-parent families include those with 2 or more adults living in the home, such as the applicant and his or her spouse or parents of a common child in the home. Eligibility is determined on the basis of gross monthly ~~gross-base~~ income. To convert weekly income into monthly base income, multiply weekly income by 4.333. To convert bi-weekly income into monthly base income, multiply bi-weekly income by 2.1666. To convert twice monthly income into monthly base income, multiply twice monthly income by 2. Documentation must be secured for all income and maintained in the family eligibility file prior to approval for child care payments.

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- a) Income Included (Non-Exempt)
- 1) gross base wages and salary;
 - 2) net income from farm self-employment;
 - 3) net income from non-farm self-employment;
 - 4) dividends, interest, net rental income and royalties;
 - 5) pensions and annuities;
 - 6) alimony;
 - 7) child support received by the family;
 - 8) ongoing monthly adoption assistance payments from DCFS;
 - 9) veteran's pensions;
 - 10) unemployment compensation;
 - 11) worker's compensation;
 - 12) public assistance and welfare payments;
 - 13) social security payments for all family members, including Supplemental Security Income (SSI) and pensions;
 - 14) survivor's benefits, permanent disability payments, and railroad retirement benefits from the federal government.
- b) Exempt Income
- 1) per capita payments to or funds held in trust for any individual in satisfaction of the Indian Claims Commission or the Court of Claims;
 - 2) payments made pursuant to the Alaska Native Claims Settlement Act to the extent such payments are exempt from taxation under Section 21(a) of

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the Act (43 USC 1620(a));

- 3) money received from sale of property, such as stocks, bonds, a house, or a car (unless the person was engaged in the business of selling such property, in which case the net proceeds would be counted as income from self-employment);
- 4) non-recurrent or inconsistent pay for overtime, incentives, bonuses, sick, vacation, travel reimbursements or other types of non-recurrent or inconsistent income that is not part of the family's base income;
- 5) money borrowed, including educational loans to a student who is included in the family unit as authorized in Section 50.210(c);
- 65) withdrawals of bank deposits;
- 76) tax refunds, or any Earned Income Tax Credit (EITC) payments;
- 87) gifts;
- 9) lottery winnings or proceeds obtained by gambling;
- 108) lump sum inheritances or insurance payments;
- 119) capital gains;
- 1240) the value of the coupon allotment or Supplemental Nutrition Assistance Program (SNAP)~~food stamp~~ benefits under the Food Stamp Act of 1977 (PL 95-113) or the Food and Nutrition Act of 2008 (PL 110-246), as amended;
- 1344) the value of United States Department of Agriculture (USDA) donated foods;
- 1442) the value of supplemental food assistance under the Child Nutrition Act of 1966 (42 USC 1771 et seq.) and the special food service for children under the National School Lunch Act (42 USC 1751 et seq.), as amended;
- 1543) any payment received under the Uniform Relocation Assistance and Real

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Property Acquisition ~~Policy~~Policies Act of 1970 (~~42 USC 4651~~);

- ~~1614~~) earnings of a child under age ~~21~~19 (unless that child is the applicant);
- ~~1715~~) grants such as scholarships, obtained and used by a student who is included in the family unit as authorized in Section 50.210(c) ~~under conditions that preclude their use for current living costs~~;
- ~~1816~~) any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Commission of Education under the Higher Education Act of 1965 (~~20 USC 1001 et seq.~~);
- ~~1917~~) home produce utilized for household consumption;
- ~~2018~~) energy grants or allowances received through the Low-Income Energy Assistance Program authorized by the Low-Income Home Energy Assistance Act of ~~1981~~1980 (~~42 USC 8625~~);
- ~~2119~~) any DCFS foster care board payments or clothing allowance; and
- ~~2220~~) child support paid out of the family's income.

(Source: Amended at 38 Ill. Reg. 19513, effective September 17, 2014)

Section 50.250 Additional Service to Secure or Maintain Child Care

The Department will provide payments to secure or maintain a child care arrangement ~~for a period not to exceed one month~~ when child care arrangements would otherwise be lost and subsequent employment or activity is scheduled to begin or resume ~~within that period~~. To qualify, the parent must be approved for child care assistance and must report a loss of employment or break in the approved activity within ~~30~~10 days after the date of loss or break, ~~without exception~~. Families are eligible to receive care under this Section for up to three 30-day period~~times~~ in any 12-month period. Payments shall not be approved if the child does not attend care.

(Source: Amended at 38 Ill. Reg. 19513, effective September 17, 2014)

SUBPART C: PAYMENT FEES

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Section 50.310 Fees for Child Care Services

All parents must share in the cost of child care as illustrated in Section 50.320, except relatives (other than parents) who receive a child-only TANF ~~or GA~~ benefit for children needing care due to the relatives' employment and families with active CCAP cases in which all parents in the household are called into active military duty and the relative caregivers are employed or in an approved education/training activity. If all of the children in care are of school age and are approved for part-time (less than 5 hours per day) day care for any month September through May, the parent share is 50% of the amount shown in Section 50.320. A school age child is a child whose age is 5 to 13 years and is enrolled in school.

(Source: Amended at 38 Ill. Reg. 19513, effective September 17, 2014)

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- 1) Heading of the Part: Practice and Procedure in Administrative Hearings
- 2) Code Citation: 77 Ill. Adm. Code 100
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
100.2	Amendment
100.3	Amendment
100.4	Amendment
100.6	Amendment
100.7	Amendment
100.8	Amendment
100.10	Amendment
100.11	Amendment
100.12	Amendment
100.13	Amendment
100.14	Amendment
100.50	Amendment
100.55	Amendment
- 4) Statutory Authority: Section 5-10(a)(i) of the Illinois Administrative Procedure Act [5 ILCS 100/5-10(a)(i)] and Sections 55 through 55.63 of the Civil Administrative Code of Illinois [20 ILCS 2310/55 through 55.63]
- 5) Effective Date of Rule: September 22, 2014
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rules, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Notice of Proposed Rulemaking published in the *Illinois Register*: October 4, 2013; 37 Ill. Reg. 15608
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version:

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The following changes were made in response to comments received during the first notice or public comment period:

In Section 100.2, the definition of "Speaking Objections" was deleted.

In Section 100.2, a new subsections (b)(12) and (13) were added: "12) Illinois Supreme Court Rule 213: 'Written Interrogatories to Parties' (paragraph 213(i))" and "13) Illinois Supreme Court Rule 214: 'Discovery of Documents, Objects, and Tangible Things'".

In Section 100.4(c), "This subsection shall not apply to attorneys representing the Department." was deleted.

In Section 100.7, subsection (a)(4) ("allegation of noncompliance") was reinstated.

In Section 100.7(a)(5), "sent" was stricken.

In Section 100.7(e), "pleadings concerning all" and shall be freely allowed up until the Final Order is entered" were deleted. "Allegations of Noncompliance" was stricken; "Amendments to" was deleted; "A pleading may be freely amended at any time prior to the conclusion of a hearing." was added.

In Section 100.8(i), "(2)" was deleted in the last sentence.

In Section 100.12(a), "of all" was reinstated.

In Section 100.12(a), "or the Notice of Opportunity for an Administrative Hearing" was added after "Noncompliance".

In Section 100.12(f), ", in accordance with Illinois Supreme Court Rules 213 and 214," was added after "duty".

Section 100.12(j), was rewritten as follows: "The Department shall not release or produce copies of any record containing the personal health information of any individual unless the requesting party possesses legal authority under a written power of attorney, certified copy of a court order, or other written HIPAA compliant authorization."

In Section 100.12(k), "45 CFR 2" was deleted and "Section 1864 of the Social Security Act" was added.

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In Section 100.13(f), "as against" was deleted and "binding" was added.

In Section 100.13(j)(2), "These shall include, but not be limited to, federal form 2567 and the notice of pre-hearing." was deleted.

In Section 100.13(k) "The documents may be used to prove the truth of the matters asserted in the documents." was deleted.

In Section 100.13(r), "During testimony or argument, speaking objections shall not be permitted, unless expressly invited by the administrative law judge." was deleted; all text after "objection" (beginning with ", such as") was deleted and a period was added after "objection".

In Section 100.14(a) "subpoenas shall be issue to any" was deleted and "shall be subject to a subpoena" was added after "employee".

In Section 100.14(f), "formal action" was deleted and "contested case" was added in the first sentence; "formal action against the party to whom the information pertains" was deleted in the second sentence and "a contested case" was added.

The following changes were made in response to comments and suggestions of JCAR:

In Section 100.2, the references to Supreme Court rules 213 and 214 and the incorporation of 45 CFR 2 were deleted; subsection (d) was deleted.

In Section 100.4(b), "or attend" was deleted.

In Section 100.6, a new subsection (d) was added and subsequent subsections were re-labeled.

Section 100.12(f) was reinstated and new language was deleted.

Section 100.12(g) was reinstated and new language was deleted.

Section 100.12(j) was amended as follows: "Copies of any record containing the personal health information of any individual shall not be shared with a third party, as referenced in Section 100.3(b), unless that third party possesses legal authority to access personal

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health information under a written power of attorney, certified copy of a court order, or other written HIPAA compliant authorization."

Section 100.12(k) was deleted.

In Section 100.13(j)(2), "and" and "including the Department" were deleted.

Subsection 100.13(n) was reinstated.

Subsection 100.14(f) was deleted.

In addition, various non-substantive typographical, grammatical and form changes were made in response to the comments from JCAR.

- 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: This rulemaking updates and clarifies the Department's Practice and Procedure in Administrative Hearings. Updates include aligning appearance, discovery, and subpoena provisions with Illinois Supreme Court Rules, the Illinois Code of Civil Procedure, and federal regulations. The rulemaking clarifies rules concerning stipulations, objections, filing answers and requesting a hearing; streamlines use of official documents and records; and allocates costs for hearing transcripts. Procedures under the Smoke Free Illinois Act are also updated.
- 16) Information and questions regarding these adopted rules shall be directed to:

Susan Meister
Division of Legal Services
Department of Public Health
535 West Jefferson, 5th Floor
Springfield IL 62761

217/782-2043
e-mail: dph.rules@illinois.gov

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

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TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER a: GENERAL RULES

PART 100
PRACTICE AND PROCEDURE IN ADMINISTRATIVE HEARINGS

SUBPART A: APPLICABILITY AND DEFINITIONS

Section

- 100.1 Authority and Applicability
- 100.2 Definitions and [Incorporated and Referenced Materials](#)

SUBPART B: GENERAL HEARINGS

Section

- 100.3 Parties to Hearings
- 100.4 Appearance – Right to Counsel
- 100.5 Emergency Action
- 100.6 Hearings Requested by Complainants [Pursuant to Section 3-702 of the Nursing Home Care Act or the ID/DD Community Care Act](#)
- 100.7 Initiation of a Contested Case
- 100.8 Motions
- 100.9 Form of Papers
- 100.10 Service
- 100.11 Prehearing Conferences
- 100.12 Discovery
- 100.13 Hearings
- 100.14 Subpoenas
- 100.15 Administrative Law Judge's Report and Recommendations
- 100.16 Proposal for Decision (Repealed)
- 100.17 Final Orders
- 100.18 Records of Proceedings
- 100.19 Miscellaneous

SUBPART C: ADMINISTRATIVE HEARINGS UNDER
THE SMOKE FREE ILLINOIS ACT

Section

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100.25	Initiation of a Hearing
100.35	Parties to Hearings
100.40	Right to Counsel
100.45	Prehearing Conference
100.50	Motions
100.55	Discovery
100.60	Hearings
100.70	Report and Recommendations
100.80	Final Order and Payment of Fines
100.90	Record of Hearing

AUTHORITY: Implementing and authorized by Section 5-10(a)(i) of the Illinois Administrative Procedure Act [5 ILCS 100/5-10(a)(i)] and Sections 55 through 55.63 of the Civil Administrative Code of Illinois [20 ILCS 2310/55 through 55.63].

SOURCE: Adopted at 2 Ill. Reg. 38, p. 91, effective September 23, 1978; amended and codified at 4 Ill. Reg. 43, p. 127, effective October 14, 1980; amended at 5 Ill. Reg. 14167, effective December 9, 1981; amended at 6 Ill. Reg. 2235, effective February 2, 1982; amended at 11 Ill. Reg. 1937, effective January 9, 1987; amended at 18 Ill. Reg. 5980, effective April 1, 1994; amended at 21 Ill. Reg. 3208, effective March 3, 1997; amended at 34 Ill. Reg. 11768, effective July 30, 2010; amended at 35 Ill. Reg. 7701, effective April 29, 2011; amended at 38 Ill. Reg. 19538, effective September 22, 2014.

SUBPART A: APPLICABILITY AND DEFINITIONS

Section 100.2 Definitions and Incorporated and Referenced Materials

a) Definitions

"Administrative law judge" or "hearing officer" shall mean any attorney licensed to practice law in Illinois, appointed by the Director to preside at an administrative hearing. For the purpose of hearings conducted pursuant to Sections 2-110(d) and 3-410 of the Nursing Home Care Act (NHCA), or the ID/DD Community Care Act (ID/DD Act), the Department's Regional Health Officer in the region in which the facility is located may act as administrative law judge.

"Alleged violator" shall mean a person or entity issued a citation under the Smoke Free Illinois Act.

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"Citation" shall mean a document alleging a violation of the Smoke Free Illinois Act.

"Contested case" shall have the meaning ascribed to it in Section 1-30 of the IAPA and shall include hearings pursuant to the Smoke Free Illinois Act ([SFIA](#)).

"Default" or "default judgment" shall mean a written order entered after due process requirements of adequate notice and opportunity for hearing have been provided and the respondent fails to appear, defend, or answer; or a written order entered as an ultimate sanction for improper conduct. This order is considered a final order.

"Department" shall mean the Illinois Department of Public Health.

"Director" shall mean the Director or the designee of the Director of the Department of Public Health.

"Enforcing agency" shall be as described in Section 40 of the Smoke Free Illinois Act.

"Final order" or "final decision" shall mean a written order that disposes of a case or action, either with or without the imposition of a penalty, sanction, or other action.

"License" shall have the meaning ascribed to it in Section 1-35 of the IAPA.

"Licensing" shall have the meaning ascribed to it in Section 1-40 of the IAPA.

~~"NHCA" shall mean the Nursing Home Care Act [210 ILCS 45].~~

"Person" shall have the meaning ascribed to it in Section 1-60 of the IAPA.

b) Referenced Materials

The following federal laws, State laws and rules, and Illinois Supreme Court Rules are referenced in this Part:

- 1) Social Security Act (42 USC 1395 and 1396)

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- 2) [Health Insurance Portability and Accountability Act of 1996 \(HIPAA\) \(110 USC 1936\)](#)
- 32) Illinois Administrative Procedure Act ~~(IAPA)~~ [5 ILCS 100]
- 43) Nursing Home Care Act [210 ILCS 45]
- 5) [ID/DD Community Care Act \[210 ILCS 47\]](#)
- 64) Smoke Free Illinois Act (SFIA) [410 ILCS 82]
- 75) Code of Civil Procedure [735 ILCS 5]
- 86) Administrative Review Law [735 ILCS 5/Art. III]
- 97) Health Facilities and Services Review Board: Health Facilities Planning Procedural Rules (77 Ill. Adm. Code 1130)
- 108) [Illinois Supreme Court Rule 216: Admission of Fact or of Genuineness of Documents](#)
- 11) [Illinois Supreme Court Rule 13: Appearances – Time to Plead – Withdrawal](#)

(Source: Amended at 38 Ill. Reg. 19538, effective September 22, 2014)

SUBPART B: GENERAL HEARINGS

Section 100.3 Parties to Hearings

- a) Except for hearings conducted pursuant to the NHCA [or the ID/DD Act](#), the parties to an administrative hearing before the Department are the Department (as Complainant) and the Respondent.
- b) For hearings conducted pursuant to the NHCA [or the ID/DD Act](#):
 - 1) In a Complainant's hearing (Section 3-702(g) of the NHCA [or the ID/DD Act](#)), the parties are the Department and the Complainant. The facility that was investigated may participate as a third party (see Section 100.6 of

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this Part).

- 2) In a denial of access hearing (Section 2-110(d) of the NHCA or the ID/DD Act), the parties are the person who requested a hearing based on denial of access to a facility and the facility.
 - 3) In an involuntary transfer/discharge hearing, the parties are the resident who is to be transferred/discharged and the facility.
 - 4) In all other NHCA or ID/DD Act hearings, the parties are the Department (as Complainant) and facility (as Respondent). If the action resulted from a complaint filed with the Department, the person who filed the complaint may participate as a third party.
 - 5) A third party shall file an appearance with the administrative law judge on or before the date of the prehearing conference, if one is scheduled, or prior to the hearing date if no prehearing conference was scheduled.
- c) A Respondent or alleged violator is a person or entity against whom a complaint or petition is filed or to whom a citation or notice of an opportunity for hearing is directed.

(Source: Amended at 38 Ill. Reg. 19538, effective September 22, 2014)

Section 100.4 Appearance – Right to Counsel

- a) Any party to a proceeding may appear and be represented by a private attorney authorized to practice law in the State of Illinois at his or her own cost. Any individual party may waive this right and represent himself or herself. For hearings conducted pursuant to Sections 2-100(d) and 3-410 of the NHCA and the ID/DD Act, a visitor or resident shall have the option of being represented by a non-attorney of his or her choosing. A corporation, a limited liability company, partnership, association or certified local health department shall appear and be represented only by an attorney authorized to practice law in the State of Illinois. A shareholder, corporate officer, employee, or member of the board of directors may not appear or represent a corporation or association unless that individual is authorized to practice law in the State of Illinois.
- b) All persons appearing in proceedings before the Department, including a visitor's

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or resident's non-attorney representative, shall conform to the standards of ethical conduct required of attorneys before the courts of Illinois. If any person or attorney does not conform to those standards, the administrative law judge may decline to permit that person to appear in any proceeding.

- c) Any attorney or other person appearing before the Department as a representative of a visitor or resident shall file an Appearance form containing: the name of the party represented; the name, address and telephone number of the attorney or representative; an affirmative statement that the attorney is or is not duly licensed in the State of Illinois; and the written signature of the attorney or representative.
- d) Special appearances are not recognized. The initial appearance, regardless of form, is deemed a general appearance.
- e) An attorney may withdraw his or her appearance and/or representation only upon motion and appropriate ruling by the administrative law judge in accordance with Illinois Supreme Court Rule 13. However, attorneys may be substituted without motion upon notice to all parties and the administrative law judge if the substitution will not delay the proceedings, a statement to that effect is contained in the notice, and a substitute Appearance form is filed concurrently with the notice.

(Source: Amended at 38 Ill. Reg. 19538, effective September 22, 2014)

Section 100.6 Hearings Requested by Complainants Pursuant to Section 3-702 of the Nursing Home Care Act or the ID/DD Community Care Act

Pursuant to Section 3-702(g) of the NHCA and the ID/DD Act, *a complainant who is dissatisfied with the determination or investigation of his or her complaint by the Department may request a hearing.* (Section 3-702(g) of the NHCA and the ID/DD Act) Any complainant requesting a hearing shall be deemed to have consented in writing to disclosure of his or her name.

- a) The parties to administrative hearing pursuant to this Section are the Department and the Complainant. *The facility shall be given notice of any such hearing and may participate in the hearing as a third party* (Section 3-702(g) of the NHCA and the ID/DD Act). A request to participate as a third party must be filed in accordance with Section 100.3(b)(5) of this Part.
- b) For the purposes of this Section, a Complainant is an individual who has filed a

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complaint pursuant to the NHCA or the ID/DD Act. If the individual filing the complaint indicates that she or he is acting as the agent of an organization or another individual, and so requests, the organization or other individual will be the Complainant for the purposes of this Section. In that case, the individual who acted as agent for the organization or other individual will be a "referring agent". Unless objected to by the Complainant, the referring agent shall be entitled to receive Notice of Complaint Determination and any request for hearing made pursuant to this Part.

- c) In accordance with Sections 3-703 through 3-712 of the NHCA and the ID/DD Act, the Director shall designate an administrative law judge to conduct hearings requested by dissatisfied Complainants. All hearings shall be conducted pursuant to the provisions of this Part.
- d) The Department shall not release or produce copies of any record containing the personal health information of any individual to a Complainant, as defined in this Section, unless the Complainant possesses legal authority under a written power of attorney, certified copy of a court order, or other written HIPAA compliant authorization.
- ~~e~~) Dissatisfied Complainants pursuant to this Section shall have the opportunity to contest the adequacy of the Department's investigation and its determination as to whether the complaint was valid, invalid or undetermined and also the Department's determination as to whether to issue any violation as a result of the determination. Whenever "determination" is used in this Section, it shall include any investigation resulting in the determination.
- ~~f~~) Dissatisfied Complainants pursuant to this Section do not have the opportunity to contest any other determinations or decisions of the Department.
- ~~g~~) Nothing contained in this Section shall be deemed to entitle a dissatisfied Complainant to additional hearings or to a rehearing of a case that has already been the subject of a formal administrative hearing or a Final Order.
- ~~h~~) Complainants pursuant to this Section shall carry the burden to prove, by a preponderance of the evidence, that the aforesaid determinations of the Department were improper.
- ~~i~~) At the conclusion of the hearing, the administrative law judge shall prepare a

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report in accordance with Section 100.15, and make a recommendation to the Director specifying whether the complaint should be reinvestigated and/or any invalid or undetermined finding should be changed to a valid finding or the Department should reconsider the failure to cite a facility with any violation.

(Source: Amended at 38 Ill. Reg. 19538, effective September 22, 2014)

Section 100.7 Initiation of a Contested Case

- a) In contested cases, except those held pursuant to Section 100.6, the Department shall serve on the Respondent a Notice of Opportunity for an Administrative Hearing, which shall contain:
- 1) *a statement of the time, place and nature of the action;*
 - 2) *a statement of the legal authority and jurisdiction under which the hearing is to be held;*
 - 3) *a reference to the particular Sections of the applicable substantive and procedural statutes and rules;*
 - 4) allegations of noncompliance;
 - 5) a statement of the procedure for requesting an administrative hearing (see Section 10-25 of the IAPA), including a date by which the request must be received by the Department, which must be ~~sent~~ at least 10 days after the Notice is mailed or personally served;
 - 6) unless the case is brought pursuant to Title XVIII (health insurance for the aged and disabled) or XIX (medical assistance) of the Social Security Act, or the NHCA or the ID/DD Act, a statement setting forth the requirement of an Answer, pursuant to subsection (d) of this Section; and
 - 7) *except where a more detailed statement is otherwise provided for by law, a short and plain statement of the matters asserted, the consequences of a failure to respond, and the official file or reference number. (Section 10-25 of the IAPA)*
- b) A person who receives a Notice of an Opportunity for an Administrative Hearing

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must submit a written request for a hearing to the Department. The request is to be sent to the Department at the address stated in the Notice and must be received by the date set forth in the Notice. Failure to comply with this Section shall constitute a waiver of the person's right to an administrative hearing.

- c) Upon receipt of a timely written request for hearing, the Department shall issue a Notice of Hearing or Prehearing Conference. *The Notice of Hearing or Prehearing Conference shall contain:*
- 1) *a statement of the time, place, and nature of the hearing;*
 - 2) *a statement of the legal authority and jurisdiction under which the hearing is to be held; and*
 - 3) *the names and mailing addresses of the administrative law judge, all parties, and all other persons to whom the agency gives notice of the hearing, unless otherwise confidential by law. (Section 10-25 of the IAPA)*
- d) Unless the case is brought pursuant to Title XVIII or XIX of the Social Security Act, ~~or the NHCA;~~ or the ID/DD Act, a written Answer to the Allegations of Noncompliance shall be filed by a Respondent. The Answer must be served on all parties within 20 days after receipt of the notice alleging noncompliance. However, if the Respondent fails to submit a timely written request for hearing, the Respondent waives its right to Answer. If a Respondent fails to file a timely Answer, each alleged violation of a statute or Department rule by the Respondent shall be deemed to have been judicially admitted and, therefore, no longer subject to dispute by the Respondent. If the Respondent has insufficient knowledge of the facts to form a belief as to the truth of the allegation, the Respondent may so state with an affidavit of insufficient knowledge. If the Respondent wishes to raise defenses that are affirmative in nature or would be likely to take the Department by surprise, the Respondent must do so in the Answer. If Affirmative Defenses are filed within an Answer, the Department shall reply to the Affirmative Defenses within 20 days after receipt of the Answer.
- e) A pleading may be freely amended at any time prior to the conclusion of a hearing. Amendments to ~~the Allegations of Noncompliance and~~ Answers may be allowed upon proper motion at any time during the pendency of the proceedings

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on ~~such~~ terms ~~that areas shall be~~ just and reasonable. However, a prior Answer shall be admissible and may be used to cross-examine the person preparing or verifying the prior Answer.

- f) All written documents provided for under this Section shall be liberally construed with a view toward doing substantial justice between the parties.
- g) Venue shall be the location designated in the Notice of Administrative Hearing. Venue may be moved to another location upon stipulation by all parties or upon a showing to and a finding by the administrative law judge that exceptional circumstances ~~exist, including, but not limited to, age, infirmity or inability to travel, that~~ make it desirable, in the interest of justice, to allow a change of venue. Exceptional circumstances include, but are not limited to, age, infirmity or inability to travel due to ill health. However, mere inconvenience shall not constitute grounds for a change in venue.

(Source: Amended at 38 Ill. Reg. 19538, effective September 22, 2014)

Section 100.8 Motions

- a) Motions, unless made during a hearing, shall be made in writing and shall set forth the relief or order sought and the legal authority for the action requested. Except as otherwise provided in this Part or by a specific statute, motions may seek any relief or order recognized in the Code of Civil Procedure and Rules of the Illinois Supreme Court, and shall include a reference to the applicable Section of the Code or Rules. Motions based on a matter that does not appear of record shall be supported by affidavit.
- b) Written motions shall be titled as to the party making the motion and the nature of the relief sought. The title shall be in capital letters and shall be placed either below the caption or to the right of the caption beneath the docket number. No motion shall be identically titled with any other motion. Examples of properly-titled motions: Respondent's Motion to Dismiss, Respondent's Second Motion to Dismiss.
- c) Motions directed at the pleadings, if not raised at the earliest opportunity, shall be deemed waived. ~~Motions to the pleadings shall not be granted if the pleadings do not conform to Section 100.7.~~

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- d) The administrative law judge shall not have the authority to dismiss, postpone, vacate, or overturn an Order or Notice issued by the Director, but may make a recommendation to the Director at any time that circumstances merit such a recommendation.
- e) Motions [to continue a hearing for a continuance](#) shall be granted only for good cause shown. Motions for a continuance shall be in writing and filed at least five working days prior to the hearing. Motions for a continuance shall be made immediately when the party learns that a continuance is needed. Statements as to when the party learned that a continuance was needed, steps that were taken to avoid the continuance, and the current reasons the continuance is needed shall be contained in the motion. After one continuance has been granted to a party, additional continuances may be granted to that party only if:
- 1) a hearing on the issue of whether to grant the continuance has been held and the administrative law judge finds that the moving party has presented sufficient evidence showing entitlement to another continuance; or
 - 2) there is an emergency; or
 - 3) all parties so stipulate.
- f) Whenever possible, as much of the hearing as possible shall be completed, and only those matters that must be continued shall be continued.
- g) If there is an unforeseen emergency, motions [to continue a hearing for a continuance](#) may be made by telephone rather than in writing. Motions by telephone shall be made through a conference call involving the administrative law judge and all parties and shall be confirmed within three business days by the filing of a written motion.
- h) Responses shall be in writing unless made at a prehearing conference or a hearing.
- i) On a motion [to disqualify an administrative law judge](#) made by any party, the administrative law judge who is the subject of the motion shall determine whether he or she should be disqualified on the basis of *bias or conflict of interest*, and shall remove himself or herself if a determination is made that bias or a conflict of interest exists. If the motion is granted, the Director shall appoint a new administrative law judge. [A motion for the disqualification of an administrative](#)

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law judge shall be based upon the alleged bias or conflict of interest of the administrative law judge. An adverse ruling, in and of itself, shall not constitute bias or conflict of interest. (Section 10-30 of the IAPA) Motions for substitution of an administrative law judge pursuant to Section 2-1001(a) of the Code of Civil Procedure shall not be permitted.

- j) The following shall constitute bias or conflict of interest for the purpose of disqualification under subsection (i):
- 1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;
 - 2) The judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during that association as a lawyer concerning the matter, or the judge has been a material witness concerning it;
 - 3) The judge was, within the preceding three years, associated in the private practice of law with any law firm or lawyer currently representing any party in the controversy (provided that referral of cases when no monetary interest was retained shall not be deemed an association within the meaning of this subsection (j)) or, for a period of seven years following the last date on which the judge represented any party to the controversy while the judge was an attorney engaged in the private practice of law;
 - 4) The judge knows that any of the following persons has an economic interest in the subject matter in controversy or in a party to the proceeding, or has any other more than minimal interest that could be substantially affected by the proceeding:
 - A) the judge individually;
 - B) a fiduciary;
 - C) the judge's spouse, parent or child, wherever residing; or
 - D) any other member of the judge's family residing in the judge's household.

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- k) Demands for a Bill of Particulars shall not be allowed.
- l) Requests for an extension of time other than to continue a hearing shall be in writing and may be granted for good cause shown.

(Source: Amended at 38 Ill. Reg. 19538, effective September 22, 2014)

Section 100.10 Service

- a) Notices under Section 100.7(a) shall be served either personally or by certified mail upon all parties (including complainants under the NHCA, when applicable) or their agents appointed to receive service of process unless the applicable licensing statute requires a different form of service, in which case service shall conform to the statute.
- b) Service to the last official address of a party or agent provided to the Department by a party shall be considered in compliance with this Section. Notices and citations sent by certified mail that have been returned to the Department as unclaimed or refused by the addressee shall be considered served. For purposes of this Section, the "last official address" shall be: the address listed on the most recent application submitted to the Department, unless the Department has been subsequently notified in writing of a change of address. For certified nursing assistants and habilitation aides, the "most recent application" shall be the information submitted by the training program or testing entity that qualified the individual to be entered on the registry.
- c) Service of pleadings or motions under this Section, unless otherwise provided for in this Section, shall be made by delivering in person or by depositing in the United States Mail, properly addressed with postage prepaid, one copy to each party to the proceedings. When any party or parties have appeared by attorney, service upon the attorney shall be deemed service upon the party or parties. All pleading or motions under this Section shall also be served upon the administrative law judge.
- d) Proof of service under subsection (b) ~~of this Section~~ shall be by either:
 - 1) certificate of attorney; or,

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- 2) affidavit or verification by certification acknowledgment.

(Source: Amended at 38 Ill. Reg. 19538, effective September 22, 2014)

Section 100.11 Prehearing Conferences

- a) A telephonic prehearing conference may be scheduled by the administrative law judge or Department or as a result of a request pursuant to subsection (b) ~~of this Section~~. This conference shall be held prior to the date of hearing and shall be for the purpose of considering:
- 1) the simplification of the issues;
 - 2) amendments to the pleadings;
 - 3) the possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof;
 - 4) the limitation of the number of expert witnesses; and
 - 5) any other matters that may aid in the disposition of the hearing.
- b) In any proceedings under this Section in which the Department has not scheduled a prehearing conference, any party to the proceedings may request the scheduling of a prehearing conference. The request shall be made in writing and received by the administrative law judge at least five days prior to the scheduled date of hearing. The requesting party shall serve all other parties to the proceedings with a copy of the request.
- c) Upon the receipt of a request for a prehearing conference in accordance with subsection (b) ~~of this Section~~, the administrative law judge shall schedule the prehearing conference and notify all parties of the date, time and place of the conference.
- d) After a prehearing conference, the administrative law judge shall make a written report that recites any action taken by the administrative law judge and any agreements made by the parties as to any of the matters considered.
- e) Any party may request additional prehearing conferences. The administrative law

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judge may deny or grant such a request, based on the nature of the motion.

- f) A certified stenographic reporter (court reporter) will not be present at a prehearing conference unless one of the parties to the proceeding requests the Department to make arrangements for a court reporter to be present. The request shall be received by the Department at least two working days in advance of the scheduled prehearing conference. The party requesting the presence of the court report shall be billed directly for the attendance fee of the reporter.

(Source: Amended at 38 Ill. Reg. 19538, effective September 22, 2014)

Section 100.12 Discovery

- a) Prior to or at the prehearing conference, the Department shall provide all parties with a copy of all of the Department's inspection or investigative reports resulting in relating to the Allegations of Noncompliance or the Notice of Opportunity for an Administrative Hearing. If no pre-hearing conference is held, the Department shall provide copies of the investigative reports prior to the hearing.
- b) At least 21 days prior to the commencement of the hearing, each party shall provide all other parties with a copy of any document that it may offer into evidence. This subsection shall not require any party to again provide copies of those documents already provided by the Department under subsection (a).
- c) At least 21 days prior to the commencement of the hearing, each party shall provide all other parties with a list containing the name and address of any witness who may be called to testify.
- d) All parties shall be entitled to any exculpatory evidence in the Department's possession that tends to support the Respondent's position or that would impeach the credibility of a Department witness.
- e) The ~~Upon a written request by the Department, at any time after a notice or hearing request is filed, or at any stage of the hearing, the~~ Respondent shall ~~be required to produce within seven days~~ documents, books, records or other evidence that relates directly to conduct of the business entity or other subject of the administrative hearing within seven days upon a written request by the Department.

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- f) All parties shall be under a continuing obligation to promptly update requested discovery until the hearing is concluded without the necessity for further or additional requests.
- g) There shall be no depositions for discovery purposes or interrogatories allowed in any proceedings brought pursuant to this Part, except as agreed to by the parties.
- h) Requests to Admit Facts and Genuineness of Documents shall be allowed in accordance with Supreme Court Rule 216.
- i) Nothing contained in this Section shall preclude the parties from agreeing to the voluntary exchange of more information than is required.
- j) Copies of any record containing the personal health information of any individual shall not be shared with a third party (see Section 100.3(b)), unless that third party possesses legal authority to access personal health information under a written power of attorney, certified copy of a court order or other written HIPAA compliant authorization.

(Source: Amended at 38 Ill. Reg. 19538, effective September 22, 2014)

Section 100.13 Hearings

- a) All hearings conducted in any proceedings shall be open to the public.
- b) Hearings will be conducted by the Director or by an administrative law judge appointed by the Director. If the Director conducts the hearings, any reference in this Section to the administrative law judge shall be read to refer to the Director.
- c) The administrative law judge shall have the authority to conduct a hearing, take all necessary actions to avoid delay, maintain order, ensure the development of a clear and complete record and set reasonable limits on the scope of testimony or argument. He or she shall also have the authority to:~~conduct hearings;~~ administer oaths and ensure that all witnesses are duly sworn; issue subpoenas; hold informal conferences for the settlement, simplification, or definition of issues; dispose of procedural requests, motions and similar matters; continue the hearing from time to time when necessary; examine witnesses; and rule upon the admissibility of evidence.

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- d) The administrative law judge shall direct all parties to enter their appearances on the record.
- e) Written opening arguments and written closing arguments shall not be permitted unless all parties so stipulate.
- f) Parties may by stipulation agree upon any facts involved in the proceeding. The facts stipulated shall be considered as evidence in the proceeding. The administrative law judge shall accept all stipulations as conclusive fact binding the stipulating parties, unless he or she makes a finding on the record that the stipulation is made in bad faith, together with the basis of the bad faith determination. Unless precluded by law, disposition may be made of any contested case by stipulation, agreed settlement, consent order, default or motion.
- g) At any stage of the hearing or after all parties have completed the presentation of their evidence, the administrative law judge may call for further testimony, subject to cross-examination by the parties.
- h) *The rules of evidence and privilege as applied in civil cases in the circuit courts of this State shall be followed. Evidence not admissible under those rules of evidence may be admitted, however, (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Immaterial, irrelevant or unduly repetitious material shall be excluded. A copy of the whole or any part of an admissible book, record, paper or memorandum of the Department that is made by photostatic or other method of accurate and permanent reproduction shall be admitted in evidence at the hearing without further proof of the accuracy of the copy. Objections to evidentiary offers may be made and shall be noted in the record. (Section 10-40(a) of the IAPA)*
- i) *Official notice may be taken of matters of which the circuit courts of this State may take judicial notice. In addition, official notice may be taken of generally recognized technical or scientific facts within the Department's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The Department's experience, technical competence and specialized knowledge may be utilized in the evaluation of evidence. (Section 10-40(c) of the IAPA)*

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- j) A party may offer into evidence any of the following documents without foundation or other proof, provided that a copy of the document has been timely provided to all other parties in accordance with Section 100.12(b):
- 1) records and reports of health care facilities, doctors, nurses, physical therapists or other health care providers; however, these records and reports shall not include affidavits or other documents specifically prepared for litigation;
 - 2) investigation reports from governmental law enforcement agencies;
 - 3) the enforcing agency's inspection or investigative reports produced pursuant to Section 100.12(a).
- k) For good cause shown, including, but not limited to, age, infirmity or inability to travel due to ill health, evidentiary depositions shall be allowed.
- l) Absent a showing of good cause, no document shall be offered into evidence that was not disclosed in accordance with the requirements of Section 100.12(b), and no witness shall testify whose name was not provided pursuant to Section 100.12(c). For purposes of this subsection, a showing of good cause shall mean that a party, through no fault of its own, did not have knowledge of a document to be offered into evidence or the name of a witness within the timeframe necessary for compliance with Section 100.12(b) and (c).
- m) The Department will arrange for a certified stenographic reporter (court reporter) to make a stenographic record of the hearing in all administrative hearings under this Part. Any person may make arrangements to obtain a copy of the stenographic record from the reporter. The Department reserves the right to employ a certified stenographic reporter. ~~A copy of any stenographic record made by a Department employee may be purchased from the Department at a cost of half the actual cost to the Department.~~ There shall be no audio or video taping apart from any made by the certified stenographic reporter employed for those purposes by the Department without the express consent of the administrative law judge and all parties to the hearing. Unless an applicable statute expressly provides otherwise, the actual costs of the stenographic reporter's attendance and the transcript or transcripts shall be shared equally among the parties whenever a Respondent requests review of a Department decision by the circuit court. The Respondent shall provide payment prior to the Department's transmission of the

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[transcript to the Circuit Court](#)

- n) Corrections to the transcript of the record may be made by the Director or administrative law judge.
- o) If a party, or any person at the instance of or in collusion with a party, violates any ruling of the administrative law judge, the administrative law judge, on motion, may enter such orders as are just, including, among others, the following:
 - 1) that further proceedings be stayed until the order or rule is complied with;
 - 2) that the offending party be barred from filing any other pleadings relating to any issue to which the refusal or failure relates;
 - 3) that the offending party be barred from maintaining any particular claim or defense relating to that issue;
 - 4) that a witness be barred from testifying concerning that issue;
 - 5) that, as to claims or defenses asserted in any pleading to which that issue is material, an order of default be entered against the offending party or that his or her pleading be dismissed without prejudice; or
 - 6) that any portion of the offending party's pleadings relating to that issue be stricken and, if thereby made appropriate, judgment be entered as to the issue.
- p) At any time, the administrative law judge may order the removal of any person from the hearing room who is creating a disturbance, whether by physical actions, profanity or otherwise engaging in conduct that disrupts the hearing.
- q) At the request of any party, the administrative law judge may exclude all witnesses from the hearing room, except that each party or a representative of a party, in addition to legal counsel, shall be allowed to remain.
- r) [All objections shall be raised using a short and concise statement of the basis for the objection.](#)
- s) [The administrative law judge shall have the authority to conduct hearings on](#)

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motions and other matters by telephonic or other electronic means, so long as all parties of record are afforded the option to attend using a similar electronic method. If the administrative law judge permits the use of electronic means, the administrative law judge and all parties may choose to participate from any location. However, if a controlling statute mandates the location of a hearing, all parties shall be afforded the option to attend from a statutorily mandated location.

(Source: Amended at 38 Ill. Reg. 19538, effective September 22, 2014)

Section 100.14 Subpoenas

- a) Subpoenas requiring the attendance and the giving of testimony by witnesses, and subpoenas duces tecum requiring the production of books, papers, records or memoranda, may be issued by the Director or the administrative law judge upon his or her own motion or upon the written request of any party upon a showing of the relevancy of the request to the issues in the hearing. For good cause shown, the Director or the administrative law judge may deny or modify the request for subpoenas. Alternatively, an attorney of record may issue subpoenas pursuant to Section 2-1101 of the Code of Civil Procedure. Copies of the subpoenas and any documents obtained by subpoenas duces tecum shall be promptly served on all other parties. No Department employee shall be subject to a subpoena without prior express authorization of the administrative law judge.
- b) Subpoenas issued by the Director or the administrative law judge upon the request of a party to the proceeding shall be delivered to the requesting party, who shall be responsible for serving the subpoenas. Subpoenas shall be served personally or by certified mail at least seven days before the date on which appearance or production is required. Copies of the subpoenas and any documents obtained by subpoenas duces tecum shall be promptly served on all other parties.
- c) The witness fee for attendance and travel shall be the same as the fee of witnesses before the circuit courts of this State. When a witness is subpoenaed by the Director, or by the administrative law judge upon his or her own motion or upon the request of the Department, the witness fee shall be paid in the same manner as other expenses of the agency.
- d) The appearance at the hearing of a party, or a person who at the time of the hearing is an officer, director or employee of a party, may be required by serving the party with a notice designating the person who is required to appear at least

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seven days before the date on which appearance is required.

- e) Subpoenas shall be enforced in the same manner as subpoenas issued by the circuit courts of this State.

(Source: Amended at 38 Ill. Reg. 19538, effective September 22, 2014)

SUBPART C: ADMINISTRATIVE HEARINGS UNDER
THE SMOKE FREE ILLINOIS ACT

Section 100.50 Motions

- a) Motions, unless made during a hearing, shall be made in writing and shall set forth the relief or order sought and the legal authority for the action requested. Except as otherwise provided in this Part or by specific statute, motions may seek any relief or order recognized in the Code of Civil Procedure and Rules of the Illinois Supreme Court, and shall include a reference to the applicable Section of the Code or Rules. Motions based on a matter that does not appear of record shall be supported by affidavit.
- ba) All motions in cases brought under the SFIA, except those based on unforeseen or emergency circumstances, shall be made in writing. An opposing party shall have 28 days after any motion is served in which to serve a written response. The administrative law judge shall then rule on the motion. Oral arguments on motions will not be permitted unless all parties stipulate, in which situation the administrative law judge shall have the discretion to hear oral arguments.
- cb) Motions shall be served by delivery in person or by deposit in the United States Mail, properly addressed with postage prepaid, one copy to each party. Service upon the party's attorney shall be deemed service upon the party. Motions shall also be served upon the administrative law judge.
- de) The title of the written motion shall include the name of the party making the motion and the action. The title shall be in capital letters and shall be placed either below the caption or to the right of the caption beneath the docket number. No motion shall be identically titled with any other motion. Examples of properly-titled motions: Respondent's Motion to Dismiss, Respondent's Second Motion to Dismiss.

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- ed) Motions or objections attacking the pleadings, jurisdiction or constitutionality, if not raised before the first pre-hearing conference, or if no pre-hearing conference is scheduled, no later than 10 days before the beginning of the hearing, shall be deemed waived. Motions to the pleadings shall not be granted unless the motion conforms to Section 100.8100.7 of this Part.
- fe) Motions for a continuance shall be made immediately when the party learns that a continuance is needed. Motions for a continuance shall be in writing, be filed more than five business days before the pre-hearing or hearing, and shall be granted only for good cause shown. Statements as to when the party learned that a continuance was needed, steps that were taken to avoid the continuance, and the current reasons the continuance is needed shall be contained in the motion. After one continuance has been granted to a party, additional continuances may be granted to that party only if:
- 1) The administrative law judge finds that the moving party has presented sufficient evidence showing entitlement to another continuance; or
 - 2) There is an emergency; or
 - 3) All parties agree.
- gf) If there is an unforeseen emergency, motions for a continuance may be made by telephone rather than in writing. Motions by telephone shall be made through a conference call involving the administrative law judge and all parties and shall be confirmed within three business days by filing a written motion.
- hg) Whenever possible, as much of the hearing as possible shall be completed, and only those matters that must be continued shall be continued.

(Source: Amended at 38 Ill. Reg. 19538, effective September 22, 2014)

Section 100.55 Discovery

- a) General discovery (depositions, interrogatories, or requests to produce) shall not be permitted in SFIA cases.
- b) Disclosure of the following shall be required:

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- 1) At least 21 days prior to the commencement of the hearing, each party shall provide all other parties with a copy of any document that it may offer into evidence. This subsection (b)(1) shall not require any party to again provide copies of documents already provided.
- 2) At least 21 days prior to the commencement of the hearing, each party shall provide all other parties with a list containing the name and address of any witness who may be called to testify.
- 3) The alleged violator shall be entitled to any exculpatory evidence in the enforcing agency's possession that tends to support the alleged violator's position or that might impeach the credibility of an enforcing agency witness.

c) All parties shall be under a continuing obligation to promptly update requested discovery until the hearing is concluded without the necessity for further or additional requests.

(Source: Amended at 38 Ill. Reg. 19538, effective September 22, 2014)

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NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Merit Commission Public Information, Rulemaking and Organization
- 2) Code Citation: 2 Ill. Adm. Code 555
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
555.10	Amendment
555.110	Amendment
- 4) Statutory Authority: Implementing and authorized by Section 8 of the Secretary of State Merit Employment Code [15 ILCS 310], Section 3 of the Freedom of Information Act [5 ILCS 140] and Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100]
- 5) Effective Date of Rule: September 19, 2014
- 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 Proposed published in the *Illinois Register*: As this rule is a Title 2 internal rulemaking, First Notice filing was not required.
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: As this rule is a Title 2 internal rulemaking, First Notice filing was not required.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? As this rule is a Title 2 internal rulemaking, first notice filing was not required.
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No

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15) Summary and Purpose of Rulemaking: The amendment updates the rule to reflect the current physical address of the Merit Commission.

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

Amy N. Williams
Office of the General Counsel
298 Howlett Building
Springfield IL 62756

awilliams3@ilsos.net

17) Does this rulemaking require the preview of the Procurement Policy Board as specified in Section 5-25 of the Illinois Procurement Code [30 ILCS 500/5-25]? No

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

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NOTICE OF ADOPTED AMENDMENTS

TITLE 2: GOVERNMENTAL ORGANIZATION
SUBTITLE C: CONSTITUTIONAL OFFICERS
CHAPTER III: SECRETARY OF STATEPART 555
MERIT COMMISSION
PUBLIC INFORMATION, RULEMAKING AND ORGANIZATION

SUBPART A: PUBLIC INFORMATION

Section
555.10 Public Information

SUBPART B: RULEMAKING

Section
555.110 Rulemaking

SUBPART C: ORGANIZATION

Section
555.210 Organization of the Merit Commission

555.TABLE A Organization Chart

AUTHORITY: Implementing and authorized by Section 8 of the Secretary of State Merit Employment Code [15 ILCS 310], Section 3 of the Freedom of Information Act [5 ILCS 140] and Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100].

SOURCE: Adopted at 7 Ill. Reg. 17497, effective January 1, 1984; codified at 8 Ill. Reg. 12487; amended at 8 Ill. Reg. 18516, effective October 1, 1984; amended at 19 Ill. Reg. 13456, effective September 12, 1995; amended at 35 Ill. Reg. 12756, effective July 14, 2011; amended at 38 Ill. Reg. 19566, effective September 19, 2014.

SUBPART A: PUBLIC INFORMATION

Section 555.10 Public Information

- a) The public can obtain information on programs and activities of the Merit

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Commission or request to inspect and/or copy documents by writing, phoning, or visiting the Merit Commission office located at [421 E. Capitol](#)~~630 S. College~~, Springfield, Illinois 62756.

- b) All written requests to inspect or copy documents will be handled in accordance with the Freedom of Information Act (FOIA) [5 ILCS 140].
- c) Copies of current agendas, minutes, rules, notices of public hearings and public meetings, and annual reports will be provided free of charge. All other copies, including non-current copies of the aforementioned items, but excluding transcripts, will be provided for a fee of 50 cents per page. Copies of transcripts will be provided for the same fee as charged by the court reporter who prepared the transcript.
- d) All written requests submitted to the Merit Commission must be on an approved form, available without charge from the Merit Commission.
- e) All oral requests will be considered promptly. However, FOIA does not apply to oral requests.

(Source: Amended at 38 Ill. Reg. 19566, effective September 19, 2014)

SUBPART B: RULEMAKING

Section 555.110 Rulemaking

- a) The current rulemaking procedure of the Merit Commission is as set forth in the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1991, ch. 127, pars. 1001-1 et seq.).
- b) All interested persons who wish to submit a request to comment must do so in writing within the 14 day notice period.
- c) Emergency rulemaking:
When, in the opinion of the Commission, an emergency situation exists which reasonably constitutes a threat to the public interest, safety, or welfare, emergency rules may be passed in accordance with Section 5-45 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1991, ch. 127, par. 1005-45).

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- d) Any interested or affected person or agency may petition this Commission requesting the adoption, amendment, or repeal of a Commission rule. Such petition shall be submitted in writing to the Merit Commission, [421 E. Capitol S. College](#), Springfield, Illinois. Five copies of each petition along with any supporting documents shall be submitted in the following form:

Petition for (adoption, amendment, repeal) of (a) Rule (Rule No. if applicable) to the Merit Commission.

I, (name of interested party), do hereby petition the Merit Commission to (adopt, amend, repeal) (a) Rule.

(State reasons as fully as possible. Attach or include any documentation for your reasons.)

- e) If the petition is for the adoption or amendment of a rule, attach a draft of the proposed, adopted or amended Rule which will adequately deal with the reasons outlined for adoption or amendment.
- f) All such petitions shall be signed by the petitioner and shall state his or her address and phone number.
- g) Upon receipt of the petition in the proper form, such petition will be considered by the Commission. If the petition is granted, the petitioner will be notified in writing and the Commission will initiate rulemaking proceedings in accordance with subsection (a) or (b) above.

(Source: Amended at 38 Ill. Reg. 19566, effective September 19, 2014)

CONCEALED CARRY LICENSING REVIEW BOARD

NOTICE OF EMERGENCY RULES

- 1) Heading of the Part: Concealed Carry Licensing Review
- 2) Code Citation: 20 Ill. Adm. Code 2900
- 3)

<u>Section Numbers</u> :	<u>Emergency Action</u> :
2900.100	New Section
2900.110	New Section
2900.120	New Section
2900.130	New Section
2900.140	New Section
2900.150	New Section
2900.160	New Section
2900.170	New Section
- 4) Statutory Authority: Implements the Firearm Concealed Carry Act [430 ILCS 66] and authorized by Section 20 of that Act
- 5) Effective Date: September 18, 2014
- 6) These amendments will expire at the end of the 150-day period, or upon adoption of the proposed amendments, whichever comes first.
- 7) Date Filed with the Index Department: September 18, 2014
- 8) A copy of the Emergency Amendments, including any materials incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Reason for Emergency: These emergency rules are being filed in an effort to strengthen the statutory framework of the Firearm Concealed Carry Act and address concerns raised in pending litigation. Since April 2014, the Illinois State Police and the Concealed Carry Licensing Review Board (CCLRB) have received in excess of 200 petitions for review of CCLRB denials. In addition, CCLRB members have been named in federal and state lawsuits in which plaintiffs are seeking injunctive relief. It is anticipated that the volume of litigation will continue until the statutory framework is bolstered by a regulatory process.
- 10) A Complete Description of the Subjects and Issues Involved: The emergency rules will establish procedures and requirements of the Concealed Carry Licensing Review Board

CONCEALED CARRY LICENSING REVIEW BOARD

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(CCLRB) to include meetings of the CCLRB, conflicts of interest, department liaison, consideration of objections, hearings, decisions and reporting.

- 11) Are there any other proposed rulemakings pending on this Part? No
- 12) Statement of Statewide Policy Objectives: These emergency rules will not require a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.
- 13) Information and questions regarding these emergency rules shall be directed to:

Ms. Robinzina Bryant
Chair, Concealed Carry Licensing Review Board
Illinois State Police
801 South 7th Street, Suite 1200-A
Springfield IL 62703

217/782-7658

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

CONCEALED CARRY LICENSING REVIEW BOARD

NOTICE OF EMERGENCY RULES

TITLE 20: CORRECTIONS, CRIMINAL JUSTICE, AND LAW ENFORCEMENT
CHAPTER X: CONCEALED CARRY LICENSING REVIEW BOARDPART 2900
CONCEALED CARRY LICENSING REVIEW

Section

2900.100 Definitions

EMERGENCY

2900.110 Meetings of the CCLRB

EMERGENCY

2900.120 Conflicts of Interest

EMERGENCY

2900.130 Department Liaison to CCLRB

EMERGENCY

2900.140 Consideration of Objections

EMERGENCY

2900.150 Hearings of the CCLRB

EMERGENCY

2900.160 Decisions of the CCLRB

EMERGENCY

2900.170 CCLRB Reporting

EMERGENCY

AUTHORITY: Implements the Firearm Concealed Carry Act [430 ILCS 66] and authorized by Section 20 of that Act.

SOURCE: Adopted by emergency rulemaking at 38 Ill. Reg. 19571, effective September 18, 2014, for a maximum of 150 days.

Section 2900.100 Definitions**EMERGENCY**

The following definitions apply to this Subpart.

"Act" means the Firearms Concealed Carry Act [430 ILCS 66].

"CCLRB" or "Concealed Carry Licensing Review Board" means the Board created under Section 20 of the Act to review objections filed by the Department

CONCEALED CARRY LICENSING REVIEW BOARD

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or another law enforcement agency to the licensure of an FCCL applicant and to make a determination of whether licensure of that applicant would pose a danger to the applicant or others, or constitute a threat to the public safety. The Board is comprised of 7 members appointed by the Governor.

"CCLRB Staff" means personnel of the Department assigned to provide staff support to the CCLRB.

"Chairperson" means the person assigned by the Governor to serve as the Chairperson of the Board and any Acting Chairperson appointed by the Chairperson, or, if the Chairperson is unable to select this substitute, by the majority vote of the remaining commissioners, to serve in the absence of the Chairperson for individual periods of up to 30 days.

"Commissioner" means any person appointed by the Governor to serve as a member of the CCLRB.

"Department" means the Illinois Department of State Police.

"Executive Director" means the individual appointed to supervise the CCLRB staff.

"License" means Firearms Concealed Carry License issued pursuant to the Act.

**Section 2900.110 Meetings of the CCLRB
EMERGENCY**

- a) Meetings shall be called at the request of the Chairperson, as often as reasonably necessary to satisfy the CCLRB's obligations under the Act. Whenever practicable, the Chairperson shall give commissioners a minimum of 5 calendar days' advance notice prior to the date of a meeting.
- b) The Chairperson shall preside over all meetings.
- c) A quorum of the CCLRB shall be 4 members. If a quorum is in attendance at a meeting, other Commissioners may attend telephonically or electronically (including via video conference).

CONCEALED CARRY LICENSING REVIEW BOARD

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- d) An electronic database shall be maintained for the purpose of providing Commissioners with information on objections they are reviewing and through which Commissioners can cast votes on issues placed before them.
 - 1) Votes shall be cast by the Commissioners during a meeting, within the time period the Chairman declares open for the purpose of voting on a particular issue.
 - 2) In the event of a tie vote brought about due to absence or abstention of a Commissioner, the CCLRB will request of the applicant, pursuant to Section 20(f) of the Act, another 30 days to consider the objection, and may also request any additional information necessary to resolve the tie vote.
- e) Section 20(e) of the Act says that the Board may only consider information submitted by the Department, a law enforcement agency or the applicant. Other individuals shall not attempt to provide information concerning an applicant to the CCLRB. If any commissioner receives any information regarding an applicant from a source other than the Department, that information shall be promptly forwarded to the Chairperson and shall not be considered.

**Section 2900.120 Conflicts of Interest
EMERGENCY**

- a) No commissioner, including the Chairperson, shall participate in any CCLRB business, including, but not limited to, voting, when that commissioner has a conflict of interest.
- b) For the purposes of this Section, whether a commissioner has a conflict of interest shall be determined by the following guidelines:
 - 1) A commissioner has a conflict of interest in a matter if the commissioner's interest, through business, investment, personal relationship or family, reasonably creates the appearance of impropriety in the performance of his or her duties on the CCLRB.
 - 2) Examples of conflicts of interest include, but are not limited to, the following:

CONCEALED CARRY LICENSING REVIEW BOARD

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- A) using public office for direct or indirect private gain;
 - B) giving preferential treatment to any organization or person;
 - C) losing independence or impartiality of action;
 - D) making a government decision outside official channels; or
 - E) otherwise adversely affecting the confidence of the public in the integrity of the CCLRB.
- c) Disclosure
Prior to the CCLRB taking any action on a matter in which a commissioner has or may have a conflict of interest, the interested commissioner shall disclose that interest to the other commissioners.
- d) Determination of Conflict of Interest
A commissioner may use any of the following procedures to determine whether his or her own interest or the interest of another commissioner constitutes a conflict of interest:
- 1) The commissioner may request the advice of the CCLRB's Executive Director, who shall promptly render a recommendation to the CCLRB; or
 - 2) The commissioner may ask the CCLRB to determine whether the interest constitutes a conflict of interest.
 - A) The CCLRB shall ask the commissioner with the potential conflict of interest to leave the meeting during any discussion or deliberation regarding whether a conflict of interest exists.
 - B) A majority of the non-interested commissioners present at a meeting at which a quorum is present shall determine whether a conflict of interest exists.
 - C) The interested commissioner shall be counted for purposes of determining whether a quorum is present, but shall not participate in the deliberations or vote regarding whether a conflict of interest exists.

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- e) Prior to any determination of a conflict of interest and, even if, after a determination, a conflict of interest is found not to exist, the reporting commissioner may indicate his or her decision to abstain from any CCLRB action regarding the matter as to which the potential conflict of interest exists and, when appropriate, to absent himself or herself from any CCLRB discussion and determination of the pending matter.
- f) **Procedure When a Conflict of Interest is Determined**
Upon the CCLRB's determination that a conflict of interest exists, the commissioner with the conflict of interest shall not participate in the CCLRB's discussion and determination of the matter. In addition, when appropriate, the commissioner with the conflict of interest shall absent himself or herself from any deliberations and determinations.

**Section 2900.130 Department Liaison to CCLRB
EMERGENCY**

- a) Pursuant to Section 20 of the Act, the CCLRB, independently from the Department, shall serve to review objections by law enforcement agencies. The Department shall not in any way influence the vote of the CCLRB.
- b) The Department shall designate an employee to provide logistical and administrative assistance only regarding the electronic computer database established for recording votes regarding objections, as may be required or requested by the Executive Director.

**Section 2900.140 Consideration of Objections
EMERGENCY**

- a) The CCLRB will review all objections presented by local law enforcement agencies or the Department. In its review of objections, the CCLRB shall consider only the following information:
 - 1) any material properly submitted by the objecting local law enforcement agency or the Department pursuant to Section 15 of the Act;
 - 2) any material properly submitted by the applicant; and

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- 3) any additional information requested by the CCLRB pursuant to subsection (b).
- b) The CCLRB may request additional information from the objecting law enforcement agency, the Department or the applicant.
 - 1) If the applicant has not previously submitted electronic fingerprints to the Department and there is a question of whether the objection pertains to the applicant that the submission of electronic fingerprints may resolve, the applicant shall be required to submit those fingerprints within 30 days after receipt of a notice from the CCLRB that the fingerprints will be required.
 - 2) If the applicant or law enforcement does not provide the fingerprints or other information requested by the CCLRB within the timeframe allotted by statute, the CCLRB will enter a final disposition based solely on consideration of the information already properly submitted.
 - c) The CCLRB, by a vote of at least 4 commissioners, may request testimony at a hearing from a representative of the objecting law enforcement agency, from a representative of the Department, or from the applicant or the applicant's counsel; however, hearings shall be limited to circumstances that cannot be resolved to the CCLRB's satisfaction through written communication with the parties.
 - d) If the CCLRB votes to hold a hearing on the objection, the CCLRB shall notify the applicant and the objecting party in writing of the need for, as well as the date, time and location of, the hearing.
 - e) CCLRB will review an objection to determine whether the objection appears sustainable on its face or in light of any information the CCLRB has obtained pursuant to subsection (b) or (c). Within 10 calendar days after determining that an objection appears sustainable, the CCLRB shall send the applicant notice of the objection, including the basis of the objection and the agency submitting the objection. This determination of a sustainable objection is not a final administrative decision of the Board and shall not be reported as such to the Department.

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- 1) The applicant shall have 15 days after receipt of the notice to submit any additional material in response to the objection that the applicant wants the CCLRB to consider.
- 2) The CCLRB will consider any additional information received during the 15 day period. Once the 15 day period has elapsed, the CCLRB will not consider any additional information received.
- 3) Unless it is determined that a hearing is necessary pursuant to subsection (c), the objection shall be considered, along with any additional information received, at the next meeting held at the call of the Chairperson. If a hearing is held, then the objection shall be considered following the hearing.

**Section 2900.150 Hearings of the CCLRB
EMERGENCY**

- a) Hearings of the CCLRB may be conducted when a quorum of the commissioners is present in person, by video, telephonically or by other electronic means. The hearing shall be recorded.
- b) The CCLRB shall determine the date, time and location of any hearing. The CCLRB shall make reasonable efforts to hold the hearing at a date, time and location convenient to all parties.
- c) The Chairperson shall preside over the hearing.
- d) Any testimony requested by the CCLRB shall be under oath or affirmation.
- e) Applicants and law enforcement agencies requested to participate in hearings of the CCLRB may be represented by counsel and present evidence relating to the local law enforcement or Department objection. Hearings shall be closed to the public.
- f) The procedures for admissibility of evidence shall be as described in Section 10-40 of the Illinois Administrative Procedure Act [5 ILCS 100/10-40] and as ordered by the Chairperson.

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NOTICE OF EMERGENCY RULES

- g) Deliberations of the CCLRB, upon conclusion of a hearing held pursuant to this Section, shall be held in executive session without the applicant or other participants in the hearing present and shall not be subject to either the Open Meetings Act [5 ILCS 120] or the Freedom of Information Act [5 ILCS 140].
- h) No later than 35 days from the date of any final administrative decision by the CCLRB concerning eligibility for a license, the applicant may make a written request to the CCLRB for a transcript of the recording made at the hearing.
 - 1) The cost of transcription shall be the responsibility of the applicant.
 - 2) Fees shall not exceed the actual cost for the preparation of the transcript.
 - 3) The record need not be transcribed unless the CCLRB receives a written request and fee from the applicant in accordance with this Section.

**Section 2900.160 Decisions of the CCLRB
EMERGENCY**

- a) The CCLRB shall make a record, electronically or by other reliable means, of the final votes cast by each individual commissioner during meetings held at the call of the Chairperson.
- b) Upon a vote to overrule an objection, the CCLRB shall send the Department notice of its decision that the applicant does not pose a danger to himself or herself or others and is not a threat to public safety via an electronic transmission using the electronic computer database established for recording votes to objections.
- c) If, upon consideration of an objection and any information obtained pursuant to Section 2900.140, the CCLRB determines by a preponderance of the evidence that the applicant poses a danger to himself or herself or to others, or is a threat to public safety, and is therefore ineligible for a license, the CCLRB shall notify the applicant. The CCLRB will also notify the Department of its determination using the electronic computer database. The CCLRB shall make a record of the basis for its finding that the applicant is ineligible for a license.
- d) Upon electronic transmission to the Department of a final decision by the CCLRB that an applicant is ineligible for a license under Section 20 of the Act, the

CONCEALED CARRY LICENSING REVIEW BOARD

NOTICE OF EMERGENCY RULES

CCLRB decision shall be final and subject to judicial review pursuant to 20 Ill. Adm. Code 1231.170.

**Section 2900.170 CCLRB Reporting
EMERGENCY**

Pursuant to Section 20(i) of the Act, the CCLRB shall report monthly to the Governor and to the General Assembly the following information:

- a) the number of objections it has received;
- b) the number of objections it has affirmed; and
- c) the number of times a decision to deny an applicant a license was because the applicant poses a danger to himself or herself, the applicant poses a danger to others, or the applicant poses a threat to public safety.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLYSTATEMENT OF RECOMMENDATION
TO EMERGENCY RULEMAKING

DEPARTMENT OF NATURAL RESOURCES

Heading of the Part: Open Space Lands Acquisition and Development Grant Program

Code Citation: 17 Ill. Adm. Code 3025

Section Numbers: 3025.30 3025.34 3025.50
3025.32 3025.36 3025.70

Date Originally Published in the Illinois Register: 8/1/14
38 Ill. Reg. 16400

At its meeting on September 16, 2014, the Joint Committee on Administrative Rules considered the above-cited emergency rule and recommended that the Department of Natural Resources be more timely in implementing Public Acts. Any emergency that exists appears to be agency created. The underlying statute was effective in 8/13, almost a year before DNR adopted this emergency rule. The Department had sufficient time to use regular rulemaking procedures.

The agency should respond to this Recommendation in writing within 90 days after receipt of this Statement. Failure to respond will constitute refusal to accede to the Committee's Recommendation. The agency's response will be placed on the JCAR agenda for further consideration.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received during the period of September 16, 2014 through September 22, 2014. The rulemakings are scheduled for review at the Committee's October 14, 2014 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>
10/30/14	<u>Illinois Commerce Commission</u> , Rules of Practice (83 Ill. Adm. Code 200)	2/7/14 38 Ill. Reg. 6	10/14/14
11/1/14	<u>Department of Commerce and Economic Opportunity</u> , State Administration of the Federal Community Development Block Grant Program for Small Cities (47 Ill. Adm. Code 110)	7/11/14 38 Ill. Reg. 14071	10/14/14
11/1/14	<u>State Board of Education</u> , Charter Schools (23 Ill. Adm. Code 650)	5/30/14 38 Ill. Reg. 11482	10/14/14
11/1/14	<u>State Board of Education</u> , Educator Licensure (23 Ill. Adm. Code 25)	7/11/14 38 Ill. Reg. 14081	10/14/14
11/1/14	<u>State Board of Education</u> , Dismissal of Tenured Teachers Under Article 24 and Dismissal of Tenured Teachers and Principals Under Article 34 of the School Code (23 Ill. Adm. Code 51)	7/11/14 38 Ill. Reg. 14217	10/14/14
11/5/14	<u>Department of Financial and Professional Regulation</u> , The Barber, Cosmetology,	7/7/14 38 Ill. Reg.	10/14/14

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

Esthetics, Hair Braiding, and Nail Technology 13595
Act of 1985 (68 Ill. Adm. Code 1175)

ILLINOIS ADMINISTRATIVE CODE
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